Carson City Board of Supervisors Agenda Report

Date Submitted: April 19, 2013 Agenda Date Requested: May 2, 2013
Time Requested: 15 Minutes

To: Mayor and Supervisors

From: City Manager

Subject Title: For Possible Action: To approve and authorize the Mayor to sign Amendment No. 5 to the Ground Lease between The Seasons Limited Partnership (Autumn Village) and Carson City which retroactively clarifies, and waives past inconsistent tax accrual, that the consideration for the lease is in part a payment in lieu of ad valorem taxes for this tax exempt entity and such payment is calculated as a normal ad valorem tax but only that portion of the tax attributable to Carson City's portion of the tax is payable under the lease. (Larry Werner)

Staff Summary: The Ground Lease, as amended, involves APN 002-121-15. Paragraph 2 of the Ground Lease provides that rent shall be fixed as one dollar (\$1.00), and it was the intent of the parties that the means to calculate the contractual obligation was the treatment of the leasehold as "taxable." Autumn Village qualifies under NRS 361.082 as tax exempt. Any "ad valorem tax" owed from Autumn Village to Carson City is exclusively a contractual obligation to the City and no other legal entity that might have benefited from the "tax" has any interest in the Ground Lease between the parties.

Type of Action Requested:	(check one)		
() Resolution	(_) Ordinance	
(X_) Formal Action/Mot	ion	() Other (Spe	ecify)
Does This Action Require A Bu	usiness Impa	act Statement: () Yes(X)No

Recommended Board Action: Move to approve and authorize the Mayor to sign Amendment No. 5 to the Ground Lease between The Seasons Limited Partnership (Autumn Village) and Carson City which retroactively clarifies, and waives past inconsistent tax accrual, that the consideration for the lease is in part a payment in lieu of ad valorem taxes for this tax exempt entity and such payment is calculated as a normal ad valorem tax but only that portion of the tax attributable to Carson City's portion of the tax is payable under the lease.

Explanation for Recommended Board Action: In the past Autumn Village has applied for and did qualify for a tax exemption pursuant to NRS 361.082. As a matter of contract (and not by operation of law) this exemption triggered the contractual requirement that the consideration owed to the City be calculated based upon "all real property taxes that would otherwise have been paid." Autumn Village has not been able to make such tax payments since 2008 and this amendment is intended to provide a means to assist their debt restructure and the refinancing of their mortgage.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 361.082

NRS 361.082 Exemption of portions of qualified low-income housing projects.

- 1. That portion of real property and tangible personal property which is used for housing and related facilities for persons with low incomes is exempt from taxation if the portion of property qualifies as a low-income unit and is part of a qualified low-income housing project that is funded in part by federal money appropriated pursuant to 42 U.S.C. §§ 12701 et seq. for the year in which the exemption applies.
- 2. The portion of a qualified low-income housing project that is entitled to the property tax exemption pursuant to subsection 1 must be determined by dividing the total assessed value of the housing project and the land upon which it is situated into the assessed value of the low-income units and related facilities that are occupied by or used exclusively for persons with low incomes.
- 3. The Nevada Tax Commission shall, by regulation, prescribe a form for an application for the exemption described in subsection 1. After an original application is filed, the county assessor of the county in which the housing project is located may mail a form for the renewal of the exemption to the owner of the housing project each year following a year in which the exemption was allowed for that project.
- 4. A renewal form returned to a county assessor must indicate the total number of units in the housing project and the number of units used for housing and related facilities for persons with low incomes. If the owner of a housing project fails to provide a properly completed renewal form to the county assessor of the county in which the project is located by the date required in NRS 361.155, except as otherwise provided in subsection 6 of that section, or fails to qualify for the exemption described in subsection 1, the owner is not entitled to the exemption in the following fiscal year.
- 5. As used in this section, the terms "low-income unit" and "qualified low-income housing project" have the meanings ascribed to them in 26 U.S.C. § 42.

Fiscal Impact: The loss of accrued lease payment accounts receivable in the amount of \$94,073.44. The ad valorem tax calculation is merely the means to calculate lease payment consideration. The Assessor calculates the change in accrual as follows:

Tax Year	Full Tax Accrual	Carson City Only	Difference
2007/08	\$36,989.87	\$19,392.52	\$17,597.35
2008/09	39,949.06	20,943.93	19,005.13
2009/10	43,065.09	22,577.55	20,487.53
2010/11	28,181.96	15,859.88	12,322.08
1011/12	27,323.61	15,375.28	11,948.33
2012/13	29,072.32	16,359.30	12,713.02
TOTAL			\$94,073.44

Funding Source: N/A

Alternatives: Do not approve Amendment and refer the matter back to staff.

Supporting Material:

Ground Lease

Amendment No. 1 to Ground Lease

Amendment No. 2 to Ground Lease

Amendment No. 3 to Ground Lease

Amendment No. 4 to Ground Lease

Assessor's Spread Sheet Tax Calculation

Prepared By: Randal R. Munn, Chief Deputy District Attorney

Reviewed By:	(Public Works Director)	Date:	
	(City Manager)	Date: 4/23/13	
	(Finance Director)	Date: 4/23/13	
	District Attorneys	Date: 4/2/3/13	
Board Action To			Aye/Nay
Motion:		1)	
		2)	
		3)	
		4)	
		5)	
(Vote Recor	ded By)		

AMENDMENT NO. 5 TO GROUND LEASE

This Amendment No. 5 is dated	and is between Carson City,
a consolidated municipality and political su	ubdivision of the State of Nevada,
("Landlord") and The Seasons Limited Pa	artnership, a Nevada non-profit limited
partnership ("Tenant") and amends the ori	ginal Ground Lease entered into by the
parties dated January 7, 2005 and recorde	ed with the Carson City Clerk-Recorder
on February 22, 2005 File # 332275, as ar	mended.

WHEREAS, The purpose of the Ground Lease was for the construction and use of housing for senior citizens as set forth in Paragraph 1(b) of the Ground lease; and

WHEREAS, The Ground Lease, as amended, between the City and The Seasons Limited Partnership (Autumn Village) involves APN 002-121-15, which must be maintained by the Carson City Assessor as to its: 1) tax status under Nevada law; and 2) Ground Lease payment in lieu of taxes (as contractual consideration owed to the City); and

WHEREAS, In the past Autumn Village has applied for and did qualify for a tax exemption pursuant to NRS 361.082, which established its legal tax status for the official records of the Assessor. As a matter of contract (and not by operation of law) this exemption triggered the contractual requirement that the consideration owed to the City be calculated based upon "all real property taxes that would otherwise have been paid"; and

WHEREAS, Any "ad valorem tax" owed from Autumn Village to Carson City is exclusively a contractual obligation to the City and no other jurisdiction has any interest in the Ground Lease between the parties; and

WHEREAS, Paragraph 2 of the Ground Lease provides that rent shall be fixed as one dollar (\$1.00), and it was the intent of the parties that the means to calculate that contractual obligation was the treatment of the leasehold as "taxable" regardless of its actual legal tax status; and

NOW THEREFORE, in consideration of the above and other valuable consideration the parties named above do hereby agree as follows:

1. INCORPORATED DOCUMENTS. All provisions of the original Ground
Lease dated January 7, 2005 and record on February 22, 2005 File # 332275; its
Amendment No. 1 to the Ground Lease dated December 15, 2005 and recorded
on December 23, 2005 File # 347628; its Amendment No. 2 dated November 27,
2006 and recorded on File # 361861; its Amendment No. 3 dated
October 16, 2008 (not recorded); and its Amendment No. 4 dated September 20,
2012 (not recorded), are hereby incorporated and remain in full force and effect
with the exception of the following amendment, which alters any prior inconsistent

terms and conditions contained in the Ground Lease and any of its Amendments No. 1 through 4, inclusive:

- 2. <u>AMENDMENT</u>. Paragraph 3 Taxes, Assessments, etc., is hereby amended to add a new subparagraph (f) as follows:
 - (f) Calculation of Ad Valorem Taxes. All ad valorem taxes due and payable pursuant to Paragraphs 3(a), 3(b), 3(c), 3(d) and 3(e) of the Ground Lease, as amended, shall be deemed a contractual payment in lieu of taxes due. The calculation of ad valorem taxes shall be the same as any other taxpayer, but the contractual payment in lieu of all ad valorem taxes due shall be those taxes attributable only to Carson City's portion of the total ad valorem taxes due net of those additional tax portions of the State of Nevada and the Carson City School District.
- 3. PARTIAL WAIVER OF DELINQUENT TAX PAYMENTS. Any currently outstanding delinquent unpaid ad valorem taxes now due and payable pursuant to the Ground Lease, as amended, shall be limited and adjusted retroactively to the amount due pursuant to this Amendment No. 5. Any outstanding delinquent unpaid ad valorem taxes in excess of Carson City's portion of those total ad valorem taxes due are hereby waived and released.
- 4. <u>REQUIRED APPROVAL</u>. This amendment to the original contract shall not become effective until and unless approved by the Carson City Board of Supervisors.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to the original Ground Lease to be signed and intend to be legally bound thereby.

THE SEASONS LIMITED PARTNERSHIP By: Community Development Inc, dba Date West Coast Affordable Housing, Inc., General Partner By: C. Fred Cornforth, Chief Executive Date

	Ву:	
	Janice McIntosh, Director Carson City Senior Citizens Cente General Partner	Date er, Inc.
	CARSON CITY	
	By:	
	Robert Crowell, Mayor	Date
Approved as to form by:		(1)
Deputy District Attorney	7/ 2-3/ Date	<u>773 </u>
Approved by the Carson C	City Board of Supervisors:	
Attest:		
Carson City Clerk-Record	er	Date

With obsolescence Parcel Number	Property Address					
002-121-15	1101 Beverly Dr					
	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Taxable Value Assessment Level Assessed Value Tax Rate Tax Amount Capped Amount	\$3,617,131 35% \$1,265,996 0.029218 \$36,989.87 \$36,989.87	\$3,741,017 35% \$1,309,356 0.031278 \$40,954.04 \$39,949.06	\$3,832,297 35% \$1,341,304 0.031279 \$41,954.65 \$43,065.09	\$2,607,847 35% \$912,746 0.030876 \$28,181.96	\$2,528,746 35% \$885,061 0.030872 \$27,323.61 \$27,323.61	\$2,452,229 35% \$858,280 0.0356 \$30,554.77 \$29,072.32
Tax Rate less State & Schools Tax Amount Capped Amount Difference	0.015318 \$19,392.52 \$19,392.52 \$17,597.35	0.017378 \$22,753.99 \$20,943.93 \$19,005.13	0.017379 \$23,310.52 \$22,577.55 \$20,487.53	0.017376 \$15,859.88 \$15,859.88 \$12,322.08	0.017372 \$15,375.28 \$15,375.28 \$11,948.33	0.0221 \$18,967.99 \$16,359.30 \$12,713.02
				Receiving 24% obsolescence	e Receiving 24% obsolescence	Receiving 24% obsolescence

based on rents

based on rents

based on rents

Notes: This parcel was exempt from the 2007/08 fiscal to through 2011/12

The season paid a recapture amount of \$89.44 for the 2007/08 and 2008/09 fiscal years.

The Seasons did not file an appeal for a reduction of value for any year. The obsolescence that was given is based on the apartment building next to this building, which is owned by the same company.

This property was capped at the alternative higher cap. Because they were tax exempt we never set out the rental affidavits.

Without obsolescence Parcel Number	Property Address					
002-121-15	1101 Beverly Dr					
	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Taxable Value Assessment Level Assessed Value Tax Rate	\$3,617,131 35% \$1,265,996 0.029218	\$3,741,017 35% \$1,309,356 0.031278	\$3,832,297 35% \$1,341,304 0.031279	\$3,431,377 35% \$1,200,982 0.030876	\$3,327,297 35% \$1,164,554 0.030872	\$3,226,617 35% \$1,129,316 0.0356
Tax Amount Capped Amount Increase cap	\$36,989.87 \$36,989.87 (7.2)	\$40,954.04 \$39,949.06 (8.0)	\$41,954.65 \$43,065.09 (7.8)	\$37,081.52 \$37,081.52	\$35,952.11 \$35,952.11	\$40,203.65 \$38,253.05 (6.4)
Tax Rate less State & Schools Tax Amount	s 0.015318 \$19,392.52	0.017378 \$22,753.99	0.017379 \$23,310.52	0.017376 \$20,868.26	0.017372 \$20,230.63	0.0221 \$24,957.88
Capped Amount	\$19,392.52	\$20,943.93	\$22,577.55	\$15,859.88	\$15,375.28	\$16,359.30
Difference	\$17,597.35	\$19,005.13	\$20,487.53	\$21,221.64	\$20,576.83	\$21,893.75

Notes: This parcel was exempt from the 2007/08 fiscal to through 2011/12

The season paid a recapture amount of \$89.44 for the 2007/08 and 2008/09 fiscal years.

Per agreement #3, The season will start repayment of exempted taxes in 2015 if able

This property was capped at the alternative higher cap. Because they were tax exempt we never set out the rental affidavits.