

Office of the Chief Financial Officer

September 1, 2020

Via Electronic and Overnight Mail

101 Ash, LLC
c/o Cisterra Development
3580 Carmel Mountain Road, Suite 460
San Diego, California 92130
Attention: Steven L. Black

Re: City of San Diego Lease Agreement Payments for 101 Ash Street Property

Dear Mr. Black:

I am writing to advise that effective with the September 1, 2020, lease payment due under the Lease Agreement Between 101 Ash, LLC and the City of San Diego (“Lease Agreement”), the City is suspending its lease payments because the City cannot use the building for the intended purposes of its leasing and possibly for additional reasons including, but not limited to, those set forth below which are currently under review. The City has lost use of the building due, in part, to direct physical loss and damage to the premises, including from widespread and negligent disturbance of asbestos.

Also, the City is a named party to litigation, John A. Gordon v. 101 Ash LLC et al., San Diego County Superior Court case no. 37-2020-00028837-CU-FR-CTL, alleging, among other claims, that the City’s lease payments are an active waste of public funds. Indeed, the taxpayer bringing that action recently demanded the City cease tendering payments required by the Lease Agreement.

Additionally, the City is reviewing the Lease Agreement to assess its compliance with state law. In particular, the Lease Agreement is being assessed considering the requirements and prohibitions of Article 16, Section 18(a), of the California Constitution (the “Debt Limitation”), which provides:

Sec. 18. (a) No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose

Elements of the Lease Agreement under review include the following:

- Section 5 of the Lease Agreement limits the City’s right to rent abatement (i.e., the City’s ability to stop paying the rent) to a handful of events identified in Section 11, which include: Casualty, Insured Peril, and condemnation, as defined in the Lease Agreement. This narrow rent abatement language allows for multiple potential situations in which the City would apparently be obligated to pay rent even if, as now, it cannot use the property due, in part, to direct physical loss and damage to the premises, including from widespread and negligent disturbance of asbestos.

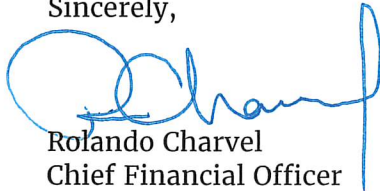
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- The general terms of the lease are like those in installment-sales contracts. The “lease payments” are payments on the total purchase price, which may have created an immediate debt when the Lease Agreement was entered.
- Under Section 16(b) of the Lease Agreement 101 Ash, LLC can require the City to pay all future rent immediately, which may yet again establish an immediate indebtedness of the City.

The City is reviewing these and other considerations regarding the property and Lease Agreement. Accordingly, the City will not make any further rental payments referenced in Section 4 of the Lease Agreement until these issues are fairly resolved.

If you wish to discuss a path forward, please contact me by email at RCharvel@sandiego.gov or by telephone (619) 236-5941.

Sincerely,



Rolando Charvel
Chief Financial Officer

RC/cb

Copy by Overnight Mail to:

LexTerra PLC
3580 Carmel Mountain Road, Suite 460
San Diego, CA 92130
Attention: David L. Dick

CGA Servicing, LLC
9690 Deereco Road, Suite 250
Timonium, Maryland 21093
Attention: Richard A. Jacobs
W. Kyle Gore

Wilmington Trust, National Association, as trustee for the registered certificate holders, from time to time, of the CGA Capital Credit Lease-Backed Pass-Through Trust, Series 2017-CTL-1
25 South Charles Street, 11th Floor
Baltimore, Maryland 21202
Attention: Corporate Trust Department