

REPORT

DATE ISSUED: June 6, 2024

REPORT NO: HDP24-005

ATTENTION: Chair and Members of the Board of Directors of
Housing Development Partners of San Diego
For the Agenda of June 13, 2024

SUBJECT: Approval for Housing Development Partners’ Exit from the Island Village Partnership

STAFF RECOMMENDATION

That the Housing Development Partners (HDP) Board of Directors (Board) take the following actions:

- 1) Approve HDP’s exit from the Island Village Partnership.
- 2) Find that the foregoing action just and reasonable as to HDP for purposes of California Corporations Code Section 5234.

Please note a Conflict Disclosure Statement at the end of this report has been included because HDP has financing from the San Diego Housing Commission (Housing Commission) on this project, and these transactions otherwise involve the Housing Commission.

SUMMARY

Island Village Apartments is an affordable rental housing development at 1245 Market St., San Diego, 92101, for households with low income. It consists of 281 residential units with rents restricted to remain affordable for households earning the income levels shown on the following table.

Units	AMI
84	50%
196	60%

Island Village was originally developed in 2004 with tax-exempt bonds, low-income housing tax credits and loans from various governmental entities, including the Housing Commission and California Housing Finance Agency. Island Village initially included a tax credit investment partner, which exited the partnership in 2015 after receiving the benefit of tax credits awarded to the project.

The property is deed-restricted in accordance with the following government agency regulatory agreements:

- Housing Commission DCC&Rs (with 4 amendments) Expires 2060
- Tax-Exempt Bond Regulatory Agreement Expires 2061
- CalHFA Regulatory Agreement Expires 2059
- California Tax Credit Allocation Committee Regulatory Agreement Expires 2034

The Housing Commission monitors compliance with the DCC&Rs and Tax-Exempt Bond Regulatory Agreement. CalHFA and the California Tax Credit Allocation Committee monitor compliance with their respective agreements.

In 2015, HDP formed HDP Island Village LLC, a California limited liability company, to act as the managing general partner for a new limited partnership, East Village West LP, to acquire and operate Island Village in accordance with the deed restrictions. East Village West LP admitted three family trusts as limited investment partners and East Village West, LLC, as a co-general partner. The partnership obtained permanent financing to replace the Housing Commission loan, and limited partners invested equity to rehabilitate the property in 2015. In 2022, one limited partner divided its interest among four family trusts in accordance with the Limited Partnership Agreement (LPA), resulting in the current ownership structure below:

Name	Partnership Interest
GENERAL PARTNERS:	
East Village West LLC	0.06%
HDP Island Village LLC	0.04%
LIMITED PARTNERS:	
Jonathan Roper and Ugne Skripkus Roper, as Trustees of the Roper Living Trust dated February 24, 2012	0.10%
Birch Trust dated September 16, 2022	39.80%
Paulius Kudirka and Victoria Kudirka, as Trustees of the P. and V. Revocable Living Trust dated May 21, 2009	0.10%
Amber VJ Irrevocable Trust, dated September 7, 2022	19.90%
Hal Gregory Kuykendall and Denise Lynette Kuykendall, as Trustees of the Kuykendall Family Trust dated May 8, 1998	20.00%
David Stapleton, as Trustee of the Stapleton Family Trust dated September 16, 2015	20.00%
Total:	100.00%

As the Managing General partner, HDP Island Village, LLC, receives an annual fee of \$30,000 to perform the following duties:

- Monitor and ensure compliance with government regulations.
- Oversee all partnership activity, including accounting, which is delegated to the co-General Partner.
- Obtain annual property tax welfare exemptions.
- Participate in and execute partnership management major decisions, which are determined by general partners' vote based on percentage ownership interest.

The annual Asset Management fee offsets all the HDP costs associated with this property's Asset Management, Financial and Legal oversight. Significant staff time and legal resources are allocated to this asset.

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In recent conversations with the Co-General Partner, East Village West, LLC, HDP staff discussed the difference in the business model of the Island Village partnership from other partnership deals. HDP staff sought to identify the differences in this deal structure and determine the best strategy in the future. Island Village is in HDP's real estate portfolio but has a unique ownership and financial structure from typical HDP partnerships. This is because the investment partners do not receive any tax credits and have the authority to obtain supplemental financing with no remaining government agency loans. The investment partner's return on investment is cash flow distributions, which may include proceeds from supplemental financing. This is significantly different from HDP's standard practice.

An additional key difference between Island Village and HDP's other partnership properties is that because there is no government agency loan, there is no requirement for an annual financial audit by a third-party auditor. In typical HDP partnerships, HDP primarily meets their oversight and monitoring obligations through third-party audits, which provide several benefits and insights for the partnership. In particular, these include: (1) an objective assessment of the partnership's financial statements and practices to identify discrepancies, errors, or potential fraud; (2) ensure compliance verification; (3) enhance the accuracy and reliability of financial reporting; (4) identify financial risks and recommend implementations for stronger financial controls; (5) identify instances of financial mismanagement safeguarding the partnerships long-term health. Lacking the requirement for a third-part financial review and HDP's continued involvement in the partnership exposes HDP to potential risks, including the possibility of financial mismanagement.

While HDP have the authority to audit the partnership books and records there is no regulatory requirement to perform third party audits, so HDP would have to incur this annual expense. An audit for this partnership is anticipated to cost more than the annual fee HDP receives. Additionally, an efficient audit would require significant effort from the co-GP.

If HDP controlled major partnership decisions, HDP could perform annual audits as a partnership expense, however major partnership decisions are decided by a GP vote based on partnership interest, and so controlled by the co-GP. Major decisions defined in the LPA include determining excess cash distributions, borrowing money, refinancing, and modifying any deed restrictions.

HDP has the ability to conduct routine site inspections. During the site inspections performed, HDP staff observed impressive operations by the on-site staff. Royal Management, the third-party Property Management company, oversees the daily operations at Island Village. The property is well maintained and secured and also boasts strong occupancy.

All 281 units at Island Village will continue to operate as affordable housing through December 21st, 2060, due to the deed restrictions that encumber the property regardless of HDP's involvement on this project. The Housing Commission's Compliance and Monitoring department will continue to monitor the project for the compliance of the terms of the deed restrictions. At the conclusion of the deed restrictions in December 2060, East Village West, LLC, the co-GP will have the decision-making authority for the partnership to extend any deed restrictions or operate the property as market rate housing. To date, East Village West, LLC has not indicated any plans for affordability restrictions that expand beyond December 2060. The limited partnership agreement expires in 2064, upon expiration the co-GP controls partnership assets through liquidation, the net proceeds after debt repayment are distributed to partners based on ownership interest. HDP's 0.04% interest equates to \$400 for every \$1,000,000 of net profit. .

The absence of an audit requirement on financial statements and the limited authority of HDP Island Village, LLC as a managing general partner present significant challenges for HDP in overseeing this asset. HDP's

oversight is restricted to property site inspections, reviewing the financial reports as provided, and conducting the annual welfare exemption paperwork. HDP's association with this property can be of concern where HDP has significant obligations and no decision-making authority. HDP lacks the ability to influence the future directions of the property and partnership. An exit from this partnership would eliminate the potential risks of remaining in this partnership and remove HDP's involvement in the asset. Upon the Board's approval of this action, HDP Island Village, LLC will be required to provide 180-day notice to East Village West, LLC with HDP's intent to exit the partnership. It is anticipated that the notice will be provided by June 30, 2024, with a planned exit date of December 31, 2024.

HDP would be assigning their partnership interest to a replacement non-profit at HDP's sole discretion. HDP will encourage East Village West, LLC to recruit one of the local non-profit housing and homeless service providers who currently support tenants at the property as the substitute non-profit partner. Such a partnership will benefit the property by enhancing the service provider's involvement.

FISCAL CONSIDERATIONS

Approval of this action will reduce the Asset Management fees collected by \$30,000.

Approval of this action will reduce the associated Asset Management, Fiscal and Legal costs associated with the oversight and monitoring of this property.

CONFLICT DISCLOSURE STATEMENT:

Two San Diego Housing Commissioners (Commissioners), Eugene "Mitch" Mitchell and Ryan Clumpner, and the San Diego Housing Commission's (Housing Commission) President and Chief Executive Officer (President and CEO), Lisa Jones, are each directors of Housing Development Partners (HDP), a California nonprofit public benefit corporation qualified as an Internal Revenue Code Section 501(c)(3) corporation for federal purposes. Any Commissioner who is also a director of HDP as of the date of this staff report and President and CEO Jones have no conflict of interest as discussed below. After approval of action before the HDP Board on June 13, 2024, Councilmember/Housing Authority Member Stephen Whitburn will become a Director of HDP. As a member of the Housing Authority, he has responsibilities for oversight of the Housing Commission. The Councilmember/Housing Authority Member receives no compensation for his service on the HDP Board and/or as an officer of HDP. Pursuant to the provisions of 1091.5(a)(9), the City Councilmember/Housing Authority Member has a non-interest as described in Government Code Section 1091.5 for purposes of his action on Housing Authority matters associated with this matter, if any. This disclosure shall be incorporated into the record of the Housing Authority, if and when this matter is heard by the Housing Authority, if ever.

The Commissioners and President and CEO Jones receive no compensation for their service on HDP's Board of Directors and/or as officers of HDP. Pursuant to the provisions of Government Code Sections 1091.5(a)(7) and 1091.5(a)(8), the Commissioners and President and CEO Jones each have a "non-interest" as described in Government Code Section 1091.5 for purposes of their action on Housing Commission matters associated with this matter, if any. This disclosure shall be incorporated into the record of the Housing Commission, if and when this matter is heard by the Housing Commission.

Further, as members of the Housing Commission Board of Commissioners or the Housing Authority, the Commissioners and the Councilmember/Housing Authority Member are legally entitled to vote and be counted for quorum purposes in this HDP matter. Further, Ms. Jones is not compensated by HDP, and

she sits on the HDP Board of Directors. She is legally entitled to vote and to be counted for quorum purposes for this HDP matter.


None of HDP's Board members has a financial interest in this action item that would legally preclude their participation under the provisions of Government Code Sections 1090 and/or 87100 et. seq. Further, the Housing Commission, the Housing Authority, which are both public agencies, and their respective Commissioners are not compensated for their service as Commissioners of the Housing Commission or the Housing Authority. Further, Ms. Jones' compensation from a public agency, the Housing Commission, is a non-interest under the provisions of Government Code Section 1091.5(a)(9) as well as for the purposes of Government Code Section 87100 et. seq. Ms. Jones' compensation with the Housing Commission is not a financial interest that would, in any way, preclude him being counted for quorum purposes or voting on these matters before HDP.

Further, to the extent that HDP is a public agency for local Ethics Ordinance purposes, neither the Commissioners nor Director Jones has any conflicts of interest under the local ethics ordinance that would preclude their, or any of their, actions in this matter or from being counted for quorum purposes. This disclosure shall be and is hereby documented in the official records of the HDP. Similar disclosures will be made in the records of the Housing Commission, if and when this matter his heard by the Housing Commission and/or the Housing Authority.

MUTUAL DIRECTORS STATEMENT:

To the extent that Commissioners may be considered to be "directors" of the Housing Commission or Housing Authority Members may be considered "directors" of the Housing Authority for purposes of California Corporations Code Section 5234 and, hence, common directors with HDP, a vote on this matter should incorporate a finding that these transactions are just and reasonable as to HDP.

Respectfully submitted,


Emmanuel Arellano
Vice President of Asset Management
Housing Development Partners

Approved by,


Jeff Davis
Deputy Chief Executive Officer
Housing Development Partners

Docket materials are available on HDP's website at www.hdpartners.org