

M David Kroot August 17, 2016

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Goldfarb & Lipman LLP

Sharon Anderson, County Counsel
Contra Costa County
651 Pine Street, 9th Floor
Martinez, CA 94553

Scott Hanin, City Manager
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

Re: Joint Representation and Potential Conflict of Interest – Hana Gardens Senior Housing

Dear Ms. Anderson and Mr. Hanin:

We are writing this letter in response to your request that Goldfarb & Lipman LLP ("Goldfarb & Lipman") jointly represent the County of Contra Costa (the "County") and the City of El Cerrito (the "City") in connection with City and County financing to be provided to a limited partnership affiliate of Eden Housing, Inc. ("Eden") for the construction of a 63-unit senior affordable housing project located at 10848 and 10869 San Pablo Avenue, El Cerrito, California.

The primary purpose of this letter is to request your acknowledgment of and consent to the potential conflict of interest that arises from Goldfarb & Lipman's joint representation of the County and the City in this transaction. Isabel Brown is the attorney working with the County, and Karen Tiedemann is the attorney working with the City. Although different Goldfarb & Lipman attorneys represent the County and the City in the transaction, such representation is still considered joint representation.

I. Background

The City owns the real property located at 10848 and 10869 San Pablo Avenue, El Cerrito, California (the "Property"). The City intends to transfer the Property to El Cerrito Senior, L.P., a limited partnership in which the general partner will be controlled by Eden (the "Partnership") pursuant to a Disposition, Development and Loan Agreement (the "DDLA"). A memorandum of the DDLA will be recorded against the Property in a senior position. The Partnership intends to construct a 63-unit senior affordable housing development on the Property (the "Improvements") (collectively, with the Property, the "Development").

The County intends to provide HOME and CDBG funds to be used to fund the construction of the Development by Partnership. The County loan will be in an amount not to exceed Two Million One Hundred Thousand Dollars (\$2,100,000) (\$1,475,000 in HOME funds and \$625,000 in CDBG funds) (the "County Loan"). The County Loan

will be evidenced by a Regulatory Agreement and Declaration of Restrictive Covenants and a Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing to be recorded against the Property. The County Loan will have a term of fifty-five (55) years.

The City will also provide financing for the Development in the approximate amount of Three Hundred Thousand Dollars (\$300,000) (the "City Loan").

It is our understanding that both the City Loan and County Loan will be repayable from excess cash flow (if any) from the Development. The Development is proposed to be restricted to persons earning at or below fifty percent (50%) and sixty percent (60%) of Area Median Income. Cash flow from developments of this income level tends to be minimal as most income generated is used for operating expenses including debt service on commercial bank financing.

To effect the sharing of Development cash flow, the City and the County will enter into an Intercreditor Agreement that documents the repayment of the City Loan and the County Loan, in proportion to the amount of the City Loan and the City's land contribution to the Development, and the County Loan. Those repayment provisions will also be set out in the County Loan Agreement. The Intercreditor Agreement may also set forth the City and County agreement as to the relative lien position of the deeds of trust for the City Loan and County Loan and the process for addressing foreclosure of such deeds of trust.

The Intercreditor Agreement proposed to be used is a standard form that the County has used on multiple other transactions when County and other public agency funds are part of the project financing and is generally not a heavily negotiated document. This is the only document in the transaction where both the County and the City are parties.

Goldfarb & Lipman is currently representing the City in the development of the Property. The County has requested that Goldfarb & Lipman represent the County in all aspects of its role in the Development including the drafting and negotiating of the documents evidencing the County Loan. The Contra Costa County Counsel's office will review all documents and will be involved in any negotiations of the Intercreditor Agreement.

II. Rules of Professional Conduct

As attorneys, we are governed by specific rules relating to joint representation of clients when we are representing more than one party in a transaction. According to the Rules 3-310(A), (B), (C), and (E) of the Rules of Professional Conduct of the State Bar of California, we must disclose certain information, and obtain the written consent of the County and the City in order to represent both clients.

III. Joint Representation

As discussed above, the County's and the City's consents are being requested because of the potential conflict of interest which may arise due to Goldfarb & Lipman's existing relationships with the County and the City, and the joint representation of each of you in the Development.

A. Existing Relationships

The County is an existing client. We represent the County on numerous housing loan transactions throughout the County.

The City is also an existing client. We represent the City in redevelopment and affordable housing matters.

The existing relationships that Goldfarb & Lipman have with each of you could create a potential conflict of interest as discussed below.

B. Consequences of Joint Representation

As you are aware, the interests and objectives of each of you on certain issues related to the Development are, or may become inconsistent with one another. Therefore, it is important that you thoroughly understand the consequences of joint representation.

In representing both of you in this Development, Goldfarb & Lipman will strive to provide legal services which are equally beneficial to both the County and the City. In other words, rather than vigorously asserting each of your respective interest in the Development, we will strive to reach agreements on matters that are mutually beneficial to both clients.

At this point, we feel that we can competently represent both the County and the City. There are, however, some consequences of joint representation that the County and the City should consider, and for which the advice of independent legal counsel should be sought.

1. No Secrets. First, Goldfarb & Lipman cannot maintain any secrets between the County and the City in connection with the Development. In other words, anything disclosed by the County and the City to Goldfarb & Lipman that is relevant to the representation must be disclosed to the other party. Therefore, if one party does not wish something relevant disclosed to the other party, then that party should not disclose it to us.

Additionally, in fulfilling our obligations to provide competent legal services, we may have to disclose to each party any information that we have obtained from any party in this transaction or any other transactions which may be relevant or material to this joint representation. Notwithstanding the foregoing, we would be required to obtain your prior written consent before we could make any such disclosures. At this point, we are unaware of any information that would require such disclosure.

2. Adverse Interest. Second, if any actual adverse interest develops between the County and the City, then we will have to determine whether we can continue our representation. If we decide that the interests are too divergent and that we can no longer provide competent legal representation to both of the respective interests, then we will have to withdraw from representing either party in connection with the Development.

3. Attorney-Client Privilege. Finally, with joint representation, the County and the City waive the attorney-client privilege between themselves in connection with this

Contra Costa County
City of El Cerrito
August 17, 2016
Page 4

Development. This means that in the event of litigation between the County and the City in connection with the Development, Goldfarb & Lipman could be compelled to testify against a party. Both parties would, however, maintain the attorney-client privilege against third parties who might sue them.

IV. Consents

You should thoroughly review and consider the matters discussed in this letter, and perhaps seek independent counsel before providing your consent. If, after such review, each of you consents to Goldfarb & Lipman representing the County and the City in the manner outlined above, please sign and return the attached consent form acknowledging that you have been advised of (i) Goldfarb & Lipman's past and continuing relationships with the County and the City, (ii) the potential conflict of interest that Goldfarb & Lipman may have in its joint representation of the County and the City in connection with the Development, and (iii) the consequences of such joint representation; and that you nevertheless, want to consent to our joint representation of the County and the City in connection with the Development.

If you have any questions regarding this letter, please call before signing and returning the enclosed copy of this letter.

Sincerely,



ISABEL BROWN



KAREN M. TIEDEMANN

CONSENT

Goldfarb & Lipman LLP ("Goldfarb & Lipman") has apprised the County and the City of: (i) Goldfarb & Lipman's past and continuing relationships with the County and the City; (ii) the potential conflict of interest that Goldfarb & Lipman may have in its joint representation of the County and the City in connection with the Development; and (iii) the consequences of such joint representation. The undersigned nevertheless consent to Goldfarb & Lipman's joint representation of the County and the City in the Development.

We understand that we have the right to seek independent counsel before signing this consent or at any future time.

Dated: _____

CONTRA COSTA COUNTY, a political
subdivision of the State of California

By: _____
Sharon Anderson, County Counsel

Dated: _____

CITY OF EL CERRITO, a municipal corporation

By: _____
Scott Hanin, City Manager