

Summary of CHR-City Contracts Re: Property
Prepared for CHR Board of Directors
August 8, 2023

The City of Sanibel currently owns the land under and surrounding the following CHR properties:

Airport Way (12 units) Rental Units

Mahogany Way (14 units) Rental Units

Whitehall Toad (Sanibel Highlands 3 units) Mixed Rental Units and LEO Properties

Beach Road (5 units) Mixed Rental Units and LEO Properties

Wood Haven (12 units) Rental Units + Current CHR Office

Casa Mariposa (12 units) Rental Units

CHR or Coast and Island Community Land Trust ("CICLT") owns both the land and structures for:

Centre Place (14 units) Mixed Rental Units and LEO Properties – owned by CICLT.

Lake Palm on Wooster Lane (4 units) Rental Units – owned by CHR.

Riverview on Periwinkle – owned by CHR.

The first four properties listed above (Airport Way, Mahogany Way, Whitehall and Beach Road) were part of the arrangement known as the "Debt for Land Swap" between the City of Sanibel and CHR in October of 2003 (the "2003 Agreement"). Prior to that time, CHR owned the land outright. The Contract for Sale and Purchase was signed by CHR's Vice President at the time, Phyllis Bogen, and Sanibel's Mayor at the time, Steve Brown.

- CHR had acquired Airport Way from Container Products Corporation in November, 1990. The listed amount is \$100 so this could have been a donation, or there could be another sale document that we haven't seen. The land was vacant at the time of this transaction. In October of 2003, the property was transferred to the City. It had already been improved, and the price listed with the Lee County Property Appraiser ("LEEPA") for this transaction is \$581,800.
- CHR had acquired Mahogany Way from James and Alice Artale in May of 1991 at a listed amount of \$300,000*. The land was vacant at the time of this transaction. In October of 2003, the property was transferred to the City. It has already been improved, and the price listed with LEEPA is also \$581,800 as above and the transaction includes mention of all four properties.

- CHR had acquired the Beach Road properties in 1987 from Francis and Sam Bailey. The listed price in LEEPA is \$45,000. In 2003 the still-vacant parcel was transferred to the City as part of the \$581,800 transaction listed above.
- The Whitehall Road properties, known as the Sanibel Highlands, are a little more complex. The City is listed as the owner of White Hall Road but with a CHR minor subdivision approved in 2016. CHR had originally acquired the properties from the Sawbridge family in 1984. In the Debt for Land Swap, CHR grants Lots 9-16 of Block 12 to the City. LEEPA still lists CHR as the owner of record for 465 Whitehall Rd. due to CHR's development of the minor subdivision there and as owner of the buildings. There is an additional Quit Claim Deed for Lot 12 listed with a sale price of \$1,800,000* as well as the other Deed listed for \$581,800.

In the 2003 Agreement between the City and CHR, the above four properties are listed, and the purchase price states: In consideration for Seller selling the Real Property to Buyer as set forth herein, Buyer shall cancel, satisfy and discharge seller of and from all obligations under the Promissory Notes described on Exhibit "B" attached hereto, said Real Property being conveyed in full satisfaction of said Notes.

Exhibit "B" lists at Promissory Notes: City Loans Listed in CHR's Quarterly Financial Statements and Related Documents. As of this time, we do not have a record of what these amounts were although, as noted above, there are "sale" prices listed in LEEPA of both \$581,800 and \$1,800,000 for the four properties.

The Agreement also noted that "At Closing, Seller shall lease back the land portion of the Real Property from Buyer, and Buyer shall lease such land portion of the Real Property to Seller, pursuant to a Ground Lease in the form of Exhibit D."

The initial Ground Lease was also signed on October 7, 2003 by Phyllis Bogan on behalf of CHR and Steve Brown on behalf of the City.

The initial Ground Lease for the properties above included the following provisions:

- A term of fifteen years from November 1, 2003 through October 31, 2018.
- An option for CHR to renew the Lease Term for an additional fifteen years.
- A confirmation that CHR remained the owner of all the buildings, structures and other improvements now located or hereafter constructed by CHR.
- A provision that states that in the event CHR does not exercise its right to repurchase the land, then all of the buildings become the property of the City.
- CHR's Option to Repurchase states that in the event the Ground Lease ends, or the Landlord terminates the Ground Lease, then CHR has an 180 day option to purchase the

land and any improvements not owned by CHR for “the Landlord’s purchase price plus a CPI adjustment to the date of closing of the repurchase.”

- Rent is set at \$1.00 per year.
- CHR has an obligation to include the City as an insured in connection with liability insurance policies.

References to CHR’s Operation of the City’s BMRH Program

- In the Whereas clauses of the initial ground lease, it is noted that “all land, buildings, structures and improvements constitute part of the BMRH Program operated by CHR.
- Under the Ownership of Buildings, there is a note that CHR has an obligation to collect, receive and account for income from the buildings and land pursuant to the BMRH contract.
- CHR is specifically entitled to use the Premises “only for the BMRH Program.”
- Under a section entitled “Additional Responsibilities of Tenant” the lease states that there are Performance Standards Relating to the BMRH Program which includes providing annual audits, quarterly financial statements, and an annual narrative report which is the report to the Planning Commission’s Below Market Rate Housing subcommittee.
- In the event that the City finds that there is a default or failure to perform under the lease, the City has the right to cancel the lease. This would trigger CHR’s right to repurchase the land as noted above. If CHR does not, or cannot, repurchase then the buildings become the property of the City.

In 2009, the Ground Lease was Amended. The Amendment made the following changes, among others:

- The term of the lease was changed to make an initial term of 50 years for “that portion of the Premises described on Exhibit C” which includes Mahogany Way and Airport Way (the “50 Year Premises”). The amendment clarifies that the term would go from November 1, 2003 through October 31, 2053.
- The term of the lease was changed to make an initial term of 135 years for the White Hall Road and Beach Road properties (the “135 Year Premises”), again beginning on November 1, 2003 and ending on October 31, 2138.
- In regard to both the 50 Year Premises and the 135 Year Premises, there is an unlimited ability to extend the lease for unlimited periods of five-year terms with the caveat that either party may give notice to the other 90 days before the expiration of any term of its intention not to extend the lease.

The Amended Ground Lease reemphasizes the importance of the Lease being solely for the City's BMRH program. Under a section labeled Automatic Assignment and Termination, it is stated that:

- The Lease is for the "sole benefit of the BMRH Program."
- The BMRH Contract is for a shorter duration than the Lease.
- If CHR is no longer the operation of the BMRH Program, all rights and obligations are transferred to the new operator of the BMRH Program and CHR shall convey to the new operator of the BMRH Program all of CHR's "Improvement" which refers to all of the buildings and other structures paid for by CHR.
- This section reiterates the City right to administer the BMRH Program on its own and its right to "terminate this Lease without the consent of the Tenant" and any leases entered into by CHR prior to the termination would be transferred to the City.

The Amended Ground Lease goes on to emphasize that unless CHR exercises its option to repurchase the Premises (the land), then upon expiration of the lease "for any reason" all of the "Tenant Improvement" (CHR's buildings) will remain with the Premises and CHR will have no further claim to them.

CHR's Option to Repurchase the land was also amended so that there is still an option at the expiration of the Lease whether by its term or by the Landlord, but the purchase price has changed to be the "fair market value as determined by a good faith appraisal performed by an independent appraiser."

There is a question as to whether the City could select another provider to run the BMRH Program and force CHR to transfer its obligations under the Lease to the new provider and then argue that the Lease had not been "terminated" and so the Option to Repurchase would not apply. I would like to clarify that question with the City. There are other provisions that could also be amended to make this a more equitable lease between the parties.

The other properties owned by the City and governed by a Ground Lease between the City and CHR are Casa Mariposa and Wood Haven. This Ground Lease was entered into in February of 2019.

- Casa Mariposa appears to have always been owned by the City of Sanibel.
- Wood Haven had been purchased by CHR in 2000 from Island Storage Park for \$155,000* and was later transferred by deed to the City of Sanibel in December of 2008 for \$250,000*.

*All numbers from Lee County Property Appraiser website.

The Ground Lease between the City and CHR for Casa Mariposa and Wood Haven contains the following provisions:

- The City is noted as the owner of the land ("Premises") and CHR is noted as the owner of the buildings and other improvements that "provide residential dwelling units for the BMRH Program." The City's "Premises" include any improvements not owned by Tenant at the time of the lease so any new buildings or other structures added since 2009 would be counted as City property.
- Like the other Ground Lease, this one also states that upon expiration or termination of the Lease for any reason, and unless CHR exercises its right to repurchase the Premises, then all of CHR's owned buildings become the property of the Landlord.
- Despite the note above, Section 5C. that states "any buildings...placed, or maintained upon any part of the Premises shall be and remain the exclusive property of the Tenant." Nonetheless, I believe that the provisions above re: termination would control in the event of a termination of the Lease.
- The Lease term is for an initial term fifty years, Feb 25, 2009 – Feb 24, 2059 with perpetual options to extend for five-year terms unless 90 days before the expiration of the term either party gives written notice not to extend the Lease.
- Rent is again for \$1.00 per year.
- CHR also has an obligation to list the City as an additional insured in regard to Liability insurance.

Once again, the Lease has strict terms in regard to the BMRH Program. Section 4, Use of Premises, states that: Tenant shall use the Premises only for the BMRH Program. Any other use requires written consent of the City. The same provision is set forth in Paragraph 11, B: "Automatic Assignment and Termination" where the Parties acknowledge:

- The Lease is for the "sole benefit of the BMRH Program."
- The BMRH Contract is for a shorter duration than the Lease.
- If CHR is no longer the operation of the BMRH Program, all rights and obligations are transferred to the new operator of the BMRH Program and CHR shall convey to the new operator of the BMRH Program all of CHR's "Improvement" which refers to all of the buildings and other structures paid for by CHR.
- This section reiterates the City right to administer the BMRH Program on its own and its right to "terminate this Lease without the consent of the Tenant" and any leases entered into by CHR prior to the termination would be transferred to the City.

Like the other Ground Lease, this one includes the additional responsibilities of CHR to the City including providing financial data and other information. If CHR does not provide the information for more than 90 days after a written demand, CHR would be in default.

Like the other Ground Lease, there is also an option to purchase the Premises for fair market value. This Ground Lease was signed by then-Manager Judie Zimomra for the City and Michael Cuscaden, then-President of CHR.

The same question arises with this Lease as set forth above in regard to the City's termination of CHR as the BMRH operator and then claiming that the Lease was not terminated but that CHR's obligations have simply been transferred to the new operator. Again, I would be happy to address this and other issues with the City so that all rights and obligations are clarified.