



Agency Report

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SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

April 23, 1981

CITY MANAGER'S OFFICE
RECEIVED
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Housing Authority of the
City of Sacramento
Sacramento, California

Honorable Members in Session:

SUBJECT: Partial Settlement of Dispute on Polk Street
Apartments

SUMMARY

The attached agreement between the Authority and Polk Street Properties, Ltd. would resolve several aspects of the existing dispute between the parties while allowing the dispute relating to damages under the Lease to remain unresolved.

BACKGROUND

Your Board has previously rejected claims from Polk Street Properties, Ltd., the owner of Polk Street Apartments for rents for January, 1981 (Resolution No. 81-013, adopted February 24, 1981), for damages under the lease to the premises (Resolution No. HA-81-092 adopted March 17, 1981), and has given notice of its intention to exercise that certain option to purchase pertaining to the Polk Street Apartments (Resolution No. 1855 passed November 25, 1980). By the attached agreement, the parties would agree that the Housing Authority would abandon any further efforts to enforce its option to purchase, the owner, Polk Street Properties, Ltd., would agree that the Lease terminated as of December 11, 1980 and waive its claim for additional rent and the Authority would agree to allow the rent for the balance of December, 1980 to be applied toward any subsequent settlement achieved between the Authority and the owner. The agreement would not affect in any way the liabilities, if any, of the Authority toward Polk Street nor would it in any way affect Polk Street's remedies, if any, toward the Authority.

The attached resolution authorizes the Executive Director to execute the attached agreement and to take such other action pursuant to that agreement as is necessary to effectuate it.

APPROVED
SACRAMENTO HOUSING AUTHORITY

Date 5/5/81

5-5-81

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

Housing Authority of the
City of Sacramento
April 23, 1981
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FINANCIAL IMPACT

The attached agreement would have no direct financial impact except to resolve unliquidated claims of and against the Authority.

RECOMMENDATION OF THE COMMISSION

It is anticipated that at its regular meeting of May 4, 1981, the Sacramento Housing and Redevelopment Commission will recommend adoption of the attached resolution. If they should fail to do so, you will be notified prior to your May 5, 1981 meeting.

RECOMMENDATION

The staff recommends adoption of the attached resolution authorizing execution of the agreement with Polk Street Properties, Ltd.

Respectfully submitted,

William H. Edgar

WILLIAM H. EDGAR
Interim Executive Director

TRANSMITTAL TO COUNCIL:

Walter J. Slipe

WALTER J. SLIPE
City Manager

Contact Person: Brenton A. Bleier

RESOLUTION NO. HA- 81-043

Adopted by the Housing Authority of the City of Sacramento

May 5, 1981

PARTIAL SETTLEMENT OF DISPUTE
ON POLK STREET APARTMENTS

BE IT RESOLVED BY THE HOUSING AUTHORITY OF THE CITY
OF SACRAMENTO:

Section 1. The Executive Director is authorized to
execute that certain agreement between the Authority and Polk
Street Properties, Ltd., in form approved by Agency Counsel.

Section 2. The Executive Director is authorized to
take such additional action and execute such additional docu-
ments as are necessary to effectuate said agreement.

CHAIRMAN

ATTEST:

SECRETARY

APPROVED
SACRAMENTO HOUSING AUTHORITY

Date 5/5/81

PARTIAL SETTLEMENT AGREEMENT

POLK STREET PROPERTIES, LTD., ("Polk") and THE HOUSING AUTHORITY OF THE CITY AND COUNTY OF SACRAMENTO ("Authority") agree as follows:

1. Background. This agreement concerns that certain lease ("the Lease") between the Authority and OGO Associates, Polk's predecessor in interest, dated December 16, 1970. There are three disputes surrounding the Lease. The first is whether an option to purchase the leased property was effectively waived by the Authority. It is the position of Polk that such a waiver was made. It is the position of the Authority that the option was not waived, and that the option has, in fact, been exercised. The second dispute concerns the expiration of termination of the Lease. Polk maintains that the Lease expired at midnight, January 31, 1981. The Authority maintains that the Lease was terminated by mutual agreement as of December 11, 1980. Finally, there is a dispute concerning the liability of the Authority to Polk arising out of failure of the Authority to perform its obligations under the Lease. Polk maintains that such liability is in the amount of \$353,250, and has submitted its claim for damages in that amount pursuant to Section 910 of the California Government Code. It is the position of the Authority that its liability approximates \$24,000.

2. Purposes. The primary purposes of this agreement are to settle the dispute concerning the option and to

settle the dispute concerning the expiration or termination of the Lease. One incidental purpose of this agreement is to deal with an issue of offset. Another incidental purpose is to deal with an issue of holdover tenants.

3. The Option. The Authority hereby revokes its purported exercise of the option, and hereby authorizes and directs the executive director on behalf of the Authority to quitclaim any and all interest which the Authority may have in the Lease, the option and the real property described in Exhibit A attached hereto. The Authority represents that it has not and will not assign or transfer any such interest.

4. Termination. Polk hereby agrees that for purposes of accrual of rent, the Lease shall be deemed to have terminated at midnight December 11, 1981. Therefore, Polk agrees that it is indebted to the Authority in an amount equal to the rent paid by the Authority under the Lease for December 12 through December 31 (\$11,411.61), and Polk abandons its claim for rent under the Lease for the month of January 1981--except for holdover rents referred to in paragraph 6, below.

5. Offset. Certain dwelling units in the apartment complex formerly covered by the Lease are now occupied by tenants pursuant to the so-called Section 8 Program. Portions of the rent to which Polk is entitled by reason of such occupancy is paid to Polk by the Authority. The Authority has failed and refused to pay such rent and has based its failure and refusal on an asserted right to offset such sums against the \$11,411.61 referred to in paragraph 4, above. The Authority agrees to pay forthwith to Polk all Section 8 rents heretofore withheld, and the Authority agrees that it will not continue to offset rents in such fashion. Such agreement by the Authority is based upon the

fact that even by its own figures it owes Polk \$24,000 which is more than the \$11,411.61 referred to in paragraph 4, above.

6. Holdover Rents. Certain dwelling units in the apartment complex have been occupied after December 11, 1980, by tenants of the Authority, which tenants did not sign Section 8 leases with Polk. Since for purposes of accrual of rent the Lease is deemed to have terminated at midnight December 11, 1981, the Authority owes to Polk rent for those units pursuant to paragraph 11(c) of the Lease. That liability is itemized in the schedule attached to this agreement, and shall be paid by the Authority to Polk forthwith, and shall not be offset by the Authority against the \$11,411.61 referred to in paragraph 4, above.

7. Liability of Authority. This agreement is intended only to eliminate any option rights in the Authority, to eliminate any claim by Polk for rents referable to the period after December 11, 1980, except for Section 8 rents referred to in paragraph 5 and for holdover rents referred to in paragraph 6. This agreement is not intended to prejudice or to affect in any way the position of Polk or that of the Authority with respect to any liability of the Authority arising out of failure of the Authority to perform its obligations under the Lease.

8. Effect. This agreement is submitted to the Authority in duplicate original executed by Polk. It shall constitute a revocable offer until such time as it is accepted by the Authority. The Authority may accept the offer by returning to Polk an original hereof, executed on behalf of the Authority by the executive director, together with certified copies of resolutions adopted by the Housing Authority of the City of Sacramento and by the Housing

.Authority of the County of Sacramento approving this agree-
ment and authorizing the executive director to execute the
same and to return it to Polk.

Dated: April __, 1981

Polk Street Properties, Ltd.

By

Gerald W. Schulkamp
Gerald W. Schulkamp,
general partner

Housing Authority of the
City and County of Sacramento

By

Executive Director

S&M Capital Co.

2015 J Street Suite #1
Sacramento, CA 95814

(916) 443-4104

HOLD OVER TENANTS

Move Out	# Bdrms.	Name	Unit		Total		
1/10/81	4 bdrms	Young	# 10	1 mo.	194.00	194.00	
1/20/81	4 bdrms	Luna	#15	1 mo 19 day	194.00	122.74	316.74
12/16/80	4 bdrms	Pugh	#51	5 day		32.30	32.30
1/11/81	4 bdrms	Velasquez	#48	1 mo 2 day	194.00	12.92	206.92
1/24/81	4 bdrms	Stell	#70	1 mo 13 day	194.00	83.98	277.98
1/17/81	3 bdrms	Garcia	# 8	1 mo 6 day	174.00	34.80	208.80
12/18/80	3 bdrms	Wilbur	#13	1 mo 7 day	174.00	40.60	214.60
1/2/81	3 bdrms	Retrata	#20	23 day		133.40	133.40
12/29/80	2 bdrms	Allen	#99	18 day		79.20	79.20
					1124.00	539.94	1663.94

All that certain real property situate, lying, and being in the County of Sacramento, State of California, described as follows:

PARCEL NO. ONE:

That portion of Lot 92, as shown on the "Plat of Oakdale", recorded in Book 14 of Maps, Map No. 15, records of said County, described as follows:

BEGINNING AT a point on the West line of said Lot 92, being on the center line of Polk Street, a public road, 50 feet in width as shown on said plat, located North $0^{\circ} 04'$ East 250 feet (Measured along said West line and said center line) from the Southwest corner of said Lot 92, said Southwest corner being at the intersection of the center line of said Polk Street with the South line of Myrtle Avenue, a public road 50 feet in width as shown on said plat; thence said point to beginning parallel with the South line of said Lot, South $89^{\circ} 09' 15''$ East 275 feet; thence parallel with the West line of said Lot 92, North $0^{\circ} 04'$ East 150 feet; thence parallel with the South line of said Lot, North $89^{\circ} 09' 15''$ West 76 feet; thence parallel with the West line of said Lot, South $0^{\circ} 04'$ West 115 feet; thence parallel with the South line of said Lot, North $89^{\circ} 09' 15''$ West 219 feet to the West line of said Lot and the center line of said Polk Street; thence along said West line and said center line, South $0^{\circ} 04'$ West 25 feet to the point of beginning.

PARCEL NO. TWO:

The North 510 feet of Lot 92, as shown on the "Plat of Oakdale", recorded in Book 14 of Maps, Map No. 15, records of said County.

EXCEPTING THEREFROM all that portion as follows:

BEGINNING at a point on the West line of said Lot 92, being on the center line of Polk Street, a public road, 50 feet in width as shown on said plat, located North $0^{\circ} 04'$ East 250 feet (measured along said West line and said center line) from the Southwest corner of said Lot 92, said Southwest corner being at the intersection of the center line of said Polk Street with the South line of Myrtle Avenue, a public road 50 feet in width as shown on said plat; thence from said point of beginning, parallel with the South line of said Lot South $89^{\circ} 09' 15''$ East 275 feet; thence parallel with the West line of said Lot 92, North $0^{\circ} 04'$ East 150 feet; thence parallel with the South line of said Lot, North $89^{\circ} 09' 15''$ West 76 feet; thence parallel with the West line of said Lot, South $0^{\circ} 04'$ West 115 feet; thence parallel with the South line of said Lot, North $89^{\circ} 09' 15''$ West 219 feet to the West line of said Lot and the center line of said Polk Street; thence along said West line and said center line South $0^{\circ} 04'$ West 25 feet to the point of beginning.

PARCEL NO. THREE:

The East 100 feet of the West 225 feet of the South 250 feet of Lot 92, as shown on the "Plat of Oakdale", recorded in Book 14 of Maps, Map No. 15, records of said County, said West 225 feet measured from the center line of Polk Street, said East 100 feet on the West of said Lot 92, said South 250 feet being measured from the South line of Myrtle Avenue, a 50 foot road on the South of said Lot 92, as shown on said plat.

#34

PARTIAL SETTLEMENT AGREEMENT

POLK STREET PROPERTIES, LTD., ("Polk") and THE HOUSING AUTHORITY OF THE CITY AND COUNTY OF SACRAMENTO ("Authority") agree as follows:

1. Background. This agreement concerns that certain lease ("the Lease") between the Authority and OGO Associates, Polk's predecessor in interest, dated December 16, 1970. There are three disputes surrounding the Lease. The first is whether an option to purchase the leased property was effectively waived by the Authority. It is the position of Polk that such a waiver was made. It is the position of the Authority that the option was not waived, and that the option has, in fact, been exercised. The second dispute concerns the expiration of termination of the Lease. Polk maintains that the Lease expired at midnight, January 31, 1981. The Authority maintains that the Lease was terminated by mutual agreement as of December 11, 1980. Finally, there is a dispute concerning the liability of the Authority to Polk arising out of failure of the Authority to perform its obligations under the Lease. Polk maintains that such liability is in the amount of \$353,250, and has submitted its claim for damages in that amount pursuant to Section 910 of the California Government Code. It is the position of the Authority that its liability approximates \$24,000.

2. Purposes. The primary purposes of this agreement are to settle the dispute concerning the option and to

settle the dispute concerning the expiration or termination of the Lease. One incidental purpose of this agreement is to deal with an issue of offset. Another incidental purpose is to deal with an issue of holdover tenants.

3. The Option. The Authority hereby revokes its purported exercise of the option, and hereby authorizes and directs the executive director on behalf of the Authority to quitclaim any and all interest which the Authority may have in the Lease, the option and the real property described in Exhibit A attached hereto. The Authority represents that it has not and will not assign or transfer any such interest.

4. Termination. Polk hereby agrees that for purposes of accrual of rent, the Lease shall be deemed to have terminated at midnight December 11, 1981. Therefore, Polk agrees that it is indebted to the Authority in an amount equal to the rent paid by the Authority under the Lease for December 12 through December 31 (\$11,411.61), and Polk abandons its claim for rent under the Lease for the month of January 1981--except for holdover rents referred to in paragraph 6, below.

5. Offset. Certain dwelling units in the apartment complex formerly covered by the Lease are now occupied by tenants pursuant to the so-called Section 8 Program. Portions of the rent to which Polk is entitled by reason of such occupancy is paid to Polk by the Authority. The Authority has failed and refused to pay such rent and has based its failure and refusal on an asserted right to offset such sums against the \$11,411.61 referred to in paragraph 4, above. The Authority agrees to pay forthwith to Polk all Section 8 rents heretofore withheld, and the Authority agrees that it will not continue to offset rents in such fashion. The monies retained by Polk representing the excess rent paid for the month of December 1980, to wit, \$11,411.61, shall be credited and applied toward the liability, if any, of the Authority to Polk by reason of its

obligations under the Lease as such liability shall be ultimately determined. If the amount retained by Polk pursuant to this provision shall exceed the total amount of liability ultimately established of the Authority to Polk, Polk shall refund the excess to Authority.

6. Holdover Rents. Certain dwelling units in the apartment complex have been occupied after December 11, 1980, by tenants of the Authority, which tenants did not sign Section 8 leases with Polk. Since for purposes of accrual of rent the Lease is deemed to have terminated at midnight December 11, 1981, the Authority owes to Polk rent for those units pursuant to paragraph 11(c) of the Lease. That liability is itemized in the schedule attached to this agreement, and shall be paid by the Authority to Polk forthwith, and shall not be offset by the Authority against the \$11,411.61 referred to in paragraph 4, above.

7. Liability of Authority. This agreement is intended only to eliminate any option rights in the Authority, to eliminate any claim by Polk for rents referable to the period after December 11, 1980, except for Section 8 rents referred to in paragraph 5 and for holdover rents referred to in paragraph 6. This agreement is not intended to prejudice or to affect in any way the position of Polk or that of the Authority with respect to any liability of the Authority arising out of failure of the Authority to perform its obligations under the Lease.

8. Effect. This agreement is submitted to the Authority in duplicate original executed by Polk. It shall constitute a revocable offer until such time as it is accepted by the Authority. The Authority may accept the offer by returning to Polk an original hereof, executed on behalf of the Authority by the executive director, together with certified copies of resolutions adopted by the Housing Authority of the City of Sacramento and by the Housing Authority of the County of Sacramento approving this

agreement and authorizing the executive director to execute the same and to return it to Polk.

Dated: _____, 1981

Polk Street Properties, Ltd.

By K. David Metcalfe
K. David Metcalfe
general partner

Housing Authority of the
City and County of Sacramento

By _____
Executive Director

EXHIBIT "A"

R210219P 430

All that certain real property situate, lying and being in the County of Sacramento, State of California, described as follows:

PARCEL NO. ONE:

That portion of Lot 92, as shown on the "Plat of Oakdale", recorded in Book 14 of Maps, Map No. 15, records of said County, described as follows:

BEGINNING AT a point on the West line of said Lot 92, being on the center line of Polk Street, a public road, 50 feet in width as shown on said plat, located North $0^{\circ} 04'$ East 250 feet (Measured along said West line and said center line) from the Southwest corner of said Lot 92, said Southwest corner being at the intersection of the center line of said Polk Street with the South line of Myrtle Avenue, a public road 50 feet in width as shown on said plat; thence said point to beginning parallel with the South line of said Lot, South $89^{\circ} 09' 15''$ East 225 feet; thence parallel with the West line of said Lot 92, North $0^{\circ} 04'$ East 140 feet; thence parallel with the South line of said Lot, North $89^{\circ} 09' 15''$ West 76 feet; thence parallel with the West line of said Lot, South $0^{\circ} 04'$ West 115 feet; thence parallel with the South line of said Lot, North $89^{\circ} 09' 15''$ West 219 feet to the West line of said Lot and the center line of said Polk Street; thence along said West line and said center line, South $0^{\circ} 04'$ West 25 feet to the point of beginning.

PARCEL NO. TWO:

The North 410 feet of Lot 92, as shown on the "Plat of Oakdale", recorded in Book 14 of Maps, Map No. 15, records of said County.

EXCEPTING THEREFROM all that portion as follows:

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PARCEL NO. THREE:

The East 100 feet of the West 225 feet of the South 250 feet of Lot 92, as shown on the "Plat of Oakdale", recorded in Book 14 of Maps, Map No. 15, records of said County, said West 225 feet measured from the center line of Polk Street, a 50 foot road on the West of said Lot 92, said South 250 feet being measured from the South line of Myrtle Avenue, a 50 foot road on the South of said Lot 92, as shown on said plat.

S&M Capital Co.

2015 J Street Suite #1
Sacramento, CA 95814

(916) 443-4104

HOLD OVER TENANTS

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1/12/81	4 bdrms	Velasquez	#48	1 mo 2 day	194.00	12.92 206.92
1/24/81	4 bdrms	Estell	#70	1 mo 13 day	194.00	83.98 277.98
1/17/81	3 bdrms	Garcia	# 8	1 mo 6 day	174.00	34.80 208.80
12/18/80	3 bdrms	Wilbur	#13	1 mo 7 day	174.00	40.60 214.60
1/2/81	3 bdrms	Estrata	#20	23 day		133.40 133.40
12/29/80	2 bdrms	Allen	#99	18 day		79.20 79.20
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