ATTACHMENT

For Item

#17

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December 27, 2021

Ms. Anne Baldwin
Project Manager, Real Estate
County of San Diego
Dept. of Public Works, Airports
1960 Joe Crosson Drive
El Cajon, CA 92020-1236

RE: Impacts of the Working Family Ordinance on Large Ground Lessees

Dear Ms. Baldwin:

We write to explain the impacts of the Working Families Ordinance ("Ordinance") on several of the larger ground lessees that lease and develop properties at the various airports within the County of San Diego Airports system. This letter is being submitted by Lee Chesnut as owner of Chesnut Properties, Skip & Rob Tschantz as owners of Diversified Properties, Edward L. Goldberg as owner of HELF Investments and The Goldberg Family Trust, Colton Sudberry as owner of Sudberry Properties, and Jeremy Dentt as owner of Dentt Development LLC ("Ground Lessees"). As the principal long terms ground lessees of non-aviation industrial and commercial property located on San Diego County Airports Ground Lessees' leases encompass approximately 100 acres of Airport land and generate over $3 Million in rents every year to support the Airport Enterprise Fund. As described herein, the Ordinance will have the immediate and future effect of making these leaseholds worthless while depriving the Airport Enterprise Fund of over $3 Million in annual revenues.

When the Ordinance was first proposed in July of 2021, the Board of Supervisors directed staff to conduct an economic analysis to evaluate the impacts of the Ordinance on lessees and sublessees of County owned land. We are aware that the County has recently engaged DTA Consulting Firm to conduct an economic analysis. We have carefully reviewed the questionnaire that was distributed on behalf of DTA Consulting Firm as part of the economic analysis. We are deeply concerned that the questionnaire will not collect the data necessary to assess the economic impacts on non-aviation businesses in general and Ground Lessees in particular.

The questionnaire appears to be designed to focus specifically on the employment practices related to the company's policy/commitment to their "lowest wage" employees. The survey begins by asking for the participant to enter their company name and address and goes on to ask for data related to their business practices focused on low wage employees. This survey is clearly focused on sublessees and has no relevance to the Ordinance's impact on Ground Lessees.

Even for businesses for whom the questions are relevant, we predict that the survey will not receive much participation due to the survey requirement that the company fully disclose who they are and share their detailed business practices to the public since there is no assurance of confidentiality or anonymity. The likely low participation rate should not be considered as evidence that the Ground Lessees and sublessees "must not be too concerned" about the impacts of the Ordinance. Without exception, the companies that are aware of the threat of the Ordinance are gravely concerned.

While not reflected in the County Questionnaire, Ground Lessees have had, and continue to have significant negative impacts to their existing and planned investments in their leasehold because of the mere threat of the Ordinance. These investments were made in good faith with the understanding that the County was acting in good faith as both our partner and lessor.[1] The Ordinance has already and will progressively make these investments essentially worthless due to the Ordinance's impacts on current and prospective subleases. Unlike aviation sublessees, non-aviation sublessees have the freedom to locate either on or off of airport property. It is not possible to attract or retain subleases to airport leaseholds when they will be required to incur labor costs estimated to be four times the going rate for businesses not located on the airport property.

Additionally, the Ordinance imposes "prevailing wage" labor rates for construction. Once again this will have the result of Ground Lessees demanding rent concessions from the Airports to account for these added costs in order to remain competitive with similar off airport projects that are not impacted by the Ordinance. This in turn will result in dramatic reductions in revenues to the Airport Enterprise Fund in derogation of FAA Grant Assurances.

Just the threat of the Ordinance creates a cloud of uncertainty and additional risk to sublessees considering locating on Airport land in an already turbulent and high-risk economic environment. As a result, Ground Lessees are already finding that what was previously considered highly desirable properties are now viewed as a risk to their business that they cannot tolerate. If the Ground Lessees are unable to find sublessees willing to take on the risk of enormous increases in labor costs, the Ground Lessees will be forced to either abandon their leaseholds entirely or demand rent relief that will starve the Airport Enterprise Fund. Ground Lessees are aware of and have identified hundreds of jobs that have already been lost or are at risk of being lost as businesses currently located on airport land are being forced to relocate off the Airports and, in many cases, out of the County leaving a significant number of minority blue collar workers out of jobs entirely.

Ground Lessees have cultivated great long-term relationships with quality sublessees who occupy our projects on County owned land. These relationships have helped create the financial returns necessary for constructing, maintaining, and improving our projects on airport land. Moreover, these projects create a consistent stream of cash flow that supports the County of San Diego Airports operations without resort to General Fund revenues. As we lose one tenant, and then another, our entire business operation is under threat of being wiped out.

In August of 2021, as one of the Ground Lessees, Chesnut was asked by County Staff and County Counsel to sponsor an independent economic impact report analyzing the impacts of the Ordinance. The purpose of the report was to assist County Staff and County Counsel in evaluating the potential impacts of the Ordinance on Lessees, Sublessees, and the Airport Enterprise Fund. Preparation of the report included a process to obtain input from lessees and sublessees regarding the potential impacts of the Ordinance. The report was submitted to the County at the end of September 2021 in time for the October 2021 Board hearing. Based on numerous confidential and candid interviews with lessees and sublessees, the report's author concluded labor costs for businesses operating on airport property would increase in the range of $50,000 per employee per year. The report concluded that companies would be forced to leave the County Airports to protect their businesses from catastrophic failure. The Kattau report also identified the risk Ground Lessees as the potential of completely undermining the financial support for their

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[1] In several cases our Ground Leases contain a percentage rent provision that we believe makes the County as much a partner in the enterprise as a landlord. Moreover, at the end of the lease term, the capital improvements all revert to the County, once again making the County more of a partner and less of just a landlord.

portfolio of sublessees which could result in the economic failure of Ground Lessees' projects and the elimination of ground lease payments benefiting the Airport Enterprise Fund.

This narrative summary is intended to illustrate how severe the threat of the Ordinance has become to our businesses. By this letter, we request that the County Board of Supervisors quickly resolve the cloud of uncertainty that has severely damaged our projects by agreeing that all San Diego County Airport's property (and all sub-tenants/businesses on San Diego County Airports land) will be exempted from the ordinance due to the severe and immediate financial impacts caused by the mere threat of the Ordinance being imposed on San Diego County Airports.

We also note that a likely unanticipated consequence of the mere threat of the Ordinance to Airport Properties will be a violation of FAA Grant Assurances. As of the date of this letter, we are aware that at least ten FAA Part 13 Complaints have been filed appealing to the FAA for protection from the discriminatory actions being taken by the County. More Part 13 Complaints are likely to be submitted to the FAA in the coming days and weeks as more lessees and sublessees become aware of the devastating impacts of the Ordinance on their businesses, employees, and the community. We request that the San Diego County Board of Supervisors acknowledge that the Ordinance is violative of FAA Grant Assurances and expressly exempt airport property from the Ordinance pursuant to Section 73.12(a)(1).

The discriminatory aspects of the Ordinance have made financing of projects or project improvements infeasible. We believe this contradicts the concepts of investment backed expectations and constitutional contract law.

> "[The requirements of the Ordinance are] intended to have prospective effect only and shall not be interpreted to impair the obligations of any agreement entered into by the County prior to the effective date of this Ordinance unless such agreement requires compliance with later-enacted ordinances or policies. Notwithstanding the prior sentence, these requirements shall, to the extent legally permissible, be incorporated into existing agreements as a condition of any amendment extending the term of the agreement."[2]

The Ordinance becomes applicable to similarly situated ground leases differently depending on the remaining length of the lease and the need for any amendment extending the term. This provision results in two discriminatory aspects that make project financing infeasible and, thus are discriminatory. Several Ground Lessees have already experienced these discriminatory aspects based on the mere threat of the Ordinance.

First, ground leases with shorter terms are at an immediate disadvantage to similar ground leases with longer terms and will be appraised for a lower value. Thus, lending institutions will apply the increase in debt to value when evaluating a refinancing of the property by either rejecting the refinancing outright or by demanding a higher interest rate to reflect the increased risk that the loan will not be repaid.

Second, the Ordinance creates uncertainty for lenders as to when the increased labor rates will apply to any ground lease. Ground Lessees cannot predict when a lease amendment might be required or desirable. Thus, lenders will assume that the application of the Ordinance is inevitable and imminent resulting in a dramatic loss of tenants when evaluating the Ground Lessee's ability to repay the loan. Once

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[2] Ordinance at Sec. 73.12(b)

again, lenders will either reject the loan application or demand a higher interest rate to reflect the possibility that the loan will not be repaid.

Lastly, we acknowledge that our business ventures and all our subtenants must comply with all duly enacted laws and ordinances. The process of adoption of laws and ordinances is within the County's police powers. However, any ordinance must meet three basic standards. It cannot be discriminatory, arbitrary or capricious. This Ordinance fails to meet all three of these standards. The Ordinance singles out and discriminates against County lessees and sublessees while exempting all other properties within the County, making it both arbitrary and discriminatory. The Ordinance will only result in the loss of existing jobs. Rather than helping employees at County Airports it will hurt them. Thus, the Ordinance is capricious.

In closing, the following is a summary of some of the direct impacts that some of the signatories have already suffered and will continue to suffer as a result of Ordinance. Thank you for considering our concerns.

Chesnut:
Weld Blvd:
A 30-acre raw land, fully entitled project with a ground lease revenue stream to the county of over $32,000,000 and over $60,000,000 capital investment, which includes Chesnut's participation in implementing San Diego Climate Action Plan by requiring sublessees to utilize all electric delivery vehicles and a commitment to achieve 100% Net Zero impact from operations of the project. The entitlement process includes full San Diego County Water Board approval (permits in hand), and the relocation of a federally endangered plant that the County required would be removed from the property as a condition of development. This work has already been done and the endowment for the perpetual maintenance of the plant has been paid. The cost of entitlement efforts and environmental work totals nearly $2,000,000. The effort made by Chesnut and the costs borne by Chesnut created investment backed expectations made in good faith reliance on the Interim Ground Lease and long-term Ground Leases executed by the County and Chesnut. The Weld project is literally "permit ready" waiting for fees to be paid to the City of El Cajon. Chesnut is unable to move forward due to the threat of the Ordinance. No tenant will engage in sublease negotiations with Chesnut due to the threat of the Ordinance. Chesnut is unable to even engage the commercial real estate brokerage community to market the property for lease until the "threat of the Ordinance goes away". The project may very well be dead as a result of the mere threat of the County enacting the Ordinance without a clear exemption for airport properties.

Diversified Properties:
Various entities owned and managed by Diversified Properties are the Lessees of 11 properties within the Gillespie Field Business Park (Cuyamaca West Phases I and II) ("Business Park") which date back to 1991. The project has been a significant success in terms of getting the Cuyamaca West subdivision off the ground as it had been sitting for many years without any interest from potential developers or users. Diversified Properties took significant risks during those early days as the country was in recession in the early 90's and access to financing for development was almost non-existent. The first building to be constructed was a build to suit for Taylor Guitars at 1940 Gillespie Way. This project was built with private financing and investor capital as conventual financing was not available, especially for properties on unsubordinated ground leases. At that time Taylor Guitars was a small and undercapitalized company that had outgrown its 10,000 SF facility in Santee, requiring us to take a significant risk to get this business

park off the ground. Taylor is now an international success as the premier acoustic guitar manufacturer in the world and currently occupies 7 buildings within the business park.

In those early days we worked very closely with County staff as well as Supervisor Jacob to bring about a first-class business park development that had the potential of raising the bar and attracting significant users/employers to the area. The results speak for themselves with more than 600,000 SF of first class industrial and office product in a master planned and architecturally controlled environment. This is a project that the County of San Diego, City of El Cajon and Diversified Properties, as well as other ground lessees within the Business Park, should be very proud of. It has been a true joint effort and accomplishment of significant proportions and with significant benefits to the local community including the County and the City of El Cajon.

With this as a backdrop, it was a sad day when we were first made aware of the proposed Working Families Ordinance. It really took some time to digest the significance of the ordinance and the potential negative impacts to not only our project but to the entire industrial community in El Cajon. The letter above speaks to the broad issues that will have a negative impact on our businesses, but it is worth reiterating that this proposed ordinance, or even the potential of it being enacted, is and will continue to have significant impacts on our ability to operate the Business Park. Existing tenants have already questioned their ability to renew their leases; we have a large building that will likely be vacated at the end of the current lease due to the business relocating to another state. We have significant concerns over our ability to even market this building for lease with the cloud of uncertainty that has been brought about by the proposed ordinance and even while attempting to market the property, we will find ourselves competing with other properties that are not subject to this ordinance leaving us at a significant disadvantage in being able to attract a high-quality user.

In short, this proposed ordinance has the real potential of destroying the success and progress of this public/private joint effort development. We implore the Board of Supervisors to exempt the airport properties from this intrusive, discriminatory ordinance and allow us to continue with operating the Business Park in a first-class manner.

HELF Investments & The Goldberg Family Trust:
My family and I are the largest lease holders in the Gillespie Field Industrial Park. For the record we are adamantly opposed to this proposed Ordinance.

The Ordinance requires tenants on County land to pay wages set by the County that will be higher than the state minimum wage. The County Ordinance being proposed will severely hurt my tenants and some 400 employees because they will no longer be able to be competitive in the open market. This ordinance will only apply to sub-tenants who lease County Land and will prevent businesses that operate on County land from being competitive with like kind businesses who lease on private property. This ordinance will not create a level playing field and it will create undue hardship for our sub-tenants because you will be increasing their cost of doing business, therefore precluding them to provide competitive pricing.

This Ordinance will not increase employment, it will cause a loss of employment in the El Cajon sub-market, vacancies will increase, and no one will be willing to move onto County land because of this Ordinance. How will I pay my land rent if I do not have tenants?

Over the past two years, Ground Lessees and their tenants have suffered significant economic impacts from Covid. It is likely that these impacts will continue now that the Omicron variant is spreading through the County. The Ordinance will only exacerbate the economic impacts and cause even more tenants to close their doors and move off the airport to survive.

This Ordinance is violative of HELF's investment backed expectations. Years ago (1979), HELF entered into ground leases with the County based on economic projections that never anticipated the adoption of the Ordinance. This year (2021), HELF extended those leases through the payment of approximately a $1 million-dollar non-refundable payment to exercise that option, which takes those ground lease terms through 2066. At the time HELF exercised those extensions and made the payment, they did so without receiving any disclosure of this proposed Ordinance by the County that would impose a wage requirement on Lessees and sublessees that is, frankly unsustainable without significant rent subsidies. The imposition of unrealistic wage requirements on new subtenants and existing subtenants who renew their leases, throws all the forecasts out the window. HELF will be forced to demand rent concessions from the County to address the requirements of the Ordinance.

This Ordinance will have exactly the opposite effect as to what the Board of Supervisors is seeking to achieve. It will effectively drive away good paying jobs and bankrupt the Airport Enterprise Fund. The Ordinance can only be effectively implemented if the costs being imposed on Lessees and sublessees are subsidized by cash payments from the County General Fund so that they will be able to absorb the proposed wage structure, pay their rents to the Airport Enterprise Fund and assure that the County complies with its FAA Grant Assurance obligations.

Sudberry Properties:
Just the threat of this Ordinance being adopted has severely hindered our efforts to re-lease vacant or vacating spaces. If the Ordinance passes, there are too many options just down and across the street at other properties for tenants to go which they will en masse.

Dentt Development LLC:
We recently completed Phase I of the Marshall Industrial Park which in total was $9,000,000 Capital Investment and in the process of building another 55,000 sq feet which will be another $7,500,000 capital invested in County Land. Our tenant base represents small 950 sq foot mom and pop shops up to 25,000 square foot corporate tenants. Phase 1 has over 75 employees, we spoke with each of the business owners and manager to discuss the impact of this ordinance and they all unanimously stated they would relocate to properties that did not impose these types of regulations.

Additionally, we are working on the leasing of Phase II, tenants that have set reservations for new space are reconsidering based off this new ordinance. We are very concerned if action is not taken immediately to withdraw this Ordinance we will not be able to lease the second phase.

In 2012 we agreed to a 50-year lease for both phases which binds us to payments in excess of $30,000,000. The ground lease payment is based off a fair market value for the land and a return on the land to the County. This ordinance severely diminishes the value of our land while leaving the current rent in place. If this ordinance is put in place our tenants will vacate all 7 buildings and move down the street making it impossible to sustain the rent that is in the lease agreement.

Respectfully,

Chesnut Properties

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Lee M. Chesnut

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Lee Chesnut, Owner

Diversified Properties

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Copy to: Mayor Bill Wells, City of El Cajon
Mayor Matt Hall, City of Carlsbad
Catheryn Cason, FAA