

OVERSIGHT BOARD STAFF REPORT

MEETING DATE: April 14, 2016

ITEM II: Consideration and Approval of First Amendment to Real Property Purchase Sale Agreement Between Successor Agency and Lodging Dynamics Development LLC Regarding Property Located Alder Drive and Barber Lane, Milpitas, California (APN 086-02-086)

RECOMMENDED ACTION:

The Oversight Board Ad Hoc Committee recommends Adoption of Resolution No. 79 Approving First Amendment to Real Property Purchase and Sale Agreement and Mutual Escrow Instructions (NWC Alder Drive and Barber Lane, APN 086-02-086, Milpitas, CA 95035).

BACKGROUND AND DISCUSSION:

On February 19, 2016, the Oversight Board adopted Resolution No. 76 approving the Successor Agency's sale of real property located at Alder Drive and Barber Lane, Milpitas, CA (APN 086-02-086) to Lodging Dynamics LLC. The parties entered into a Real Property Purchase Sale Agreement and Mutual Escrow Instructions (hereafter "Purchase Sale Agreement"). The effective date of the Purchase Sale Agreement is March 16, 2016.

Through no fault of Lodging Dynamics, the Preliminary Title Report was not delivered to Lodging Dynamics until March 29, 2016. Lodging Dynamics was unable to secure surveyor bids in order to get the ALTA survey done without having the Preliminary Title Report. Lodging Dynamics has requested that the initial 30 day period (of the Due Diligence Period) relating to return of its deposit be extended by 13 days.

The Successor Agency and Ad Hoc Oversight Board Committee agree that Lodging Dynamics should not be penalized for not obtaining the Preliminary Title Report until March 29, 2016. Extending the initial 30 day period by 13 days requires an amendment to the Purchase Sale Agreement.

Based on the foregoing, attached is a proposed amendment to the Purchase Sale Agreement amending the initial 30 day period by 13 days and reducing the second 13 day period by 13 days. The overall Due Diligence Period and will not be extended. All other terms and conditions in the Purchase Sale Agreement would remain unchanged.

RESOLUTION NO. 79

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY APPROVING FIRST AMENDMENT TO REAL PROPERTY PURCHASE SALE AGREEMENT AND MUTUAL ESCROW INSTRUCTIONS FOR PROPERTY LOCATED AT ALDER DRIVE AND BARBER LANE, MILPITAS, CALIFORNIA (APN 086-02-086) BETWEEN SUCCESSOR AGENCY AND LODGING DYNAMICS DEVELOPMENT, LLC.

WHEREAS, on February 19, 2016, the Oversight Board adopted Resolution No. 76 approving the Successor Agency's sale of real property located at Alder Drive & Barber Lane, Milpitas, California (APN 086-02-086) to Lodging Dynamics Development LLC; and

WHEREAS, the Successor Agency and Lodging Dynamics entered into a Real Property Purchase Sale Agreement and Mutual Escrow Instructions (hereafter "Purchase Sale Agreement") for purchase of said real property in accordance with Resolution No. 76;

WHEREAS, the effective date of the Purchase Sale Agreement is March 16, 2016; and

WHEREAS, through no fault of Lodging Dynamics, the Preliminary Title Report was not delivered to Lodging Dynamics until March 29, 2016, and as a result was unable to secure surveyor bids in order to get the ALTA survey done without having the Preliminary Title Report; and

WHEREAS, Lodging Dynamics has requested that the initial 30 day period of the Due Diligence Period regarding return of its deposit be extended by 13 days; and

WHEREAS, after reviewing this matter the Oversight Board agrees with Successor Agency that Lodging Dynamics should not be penalized for not obtaining the Preliminary Title Report until March 29, 2016; and

WHEREAS, amending the Purchase Sale Agreement to extend the initial thirty day time period regarding the return of deposit during the Due Diligence Period by 13 days is in the best interest of the Successor Agency and taxing entities to ensure the sale is completed; and

WHEREAS, the overall 120 Day Due Diligence Period will not be extended.

NOW, THEREFORE, the Oversight Board of the former Milpitas Redevelopment Agency resolves as follows:

Section 1. The recitals set forth above are true and correct and are incorporated herein by reference.

Section 2. The Oversight Board:

- a. Approves the First Amendment to Real Property Purchase and Sale Agreement and Mutual Escrow Instructions (NWC Alder Drive and Barber Lane, Milpitas, California)

Between the Successor Agency of the Former Redevelopment Agency of the City of Milpitas and Lodging Dynamics Development, LLC as set forth in Exhibit A.

- b. Directs and authorizes the Successor Agency to execute the First Amendment to the Purchase Sale Agreement attached hereto as Exhibit A.

PASSED AND ADOPTED on April 14, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Barbara Crump
Oversight Board Secretary

Michael McInerney
Oversight Board Chair

**FIRST AMENDMENT TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND
MUTUAL ESCROW INSTRUCTIONS**

**(NWC ALDER DRIVE AND BARBER LANE
APN NO. 086-02-086, MILPITAS, CA 95035)**

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (“First Amendment”) is entered into by and between the Successor Agency of the Former Redevelopment Agency of the City of Milpitas, a separate public entity (Successor Agency” or “SELLER”) and Lodging Dynamics Development, LLC (BUYER). Buyer and Seller are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

A. The Parties entered into a Real Property Purchase Sale Agreement and Mutual Escrow Instructions (hereafter “Purchase Sale Agreement”) for purchase of real property located at the northwest corner of Alder Drive and Barber Lane, Milpitas, California, APN No. 086-02-086.

B. The effective date of the Purchase Sale Agreement is March 16, 2016.

C. Through no fault of BUYER, the Preliminary Title Report was not delivered to BUYER until March 29, 2016.

D. BUYER was unable to secure surveyor bids in order to get the ALTA survey done without having the Preliminary Title Report.

E. The Parties agree that BUYER should not be penalized for not obtaining the Preliminary Title Report until March 29, 2016.

F. Buyer and Seller now wish to amend the Purchase Sale Agreement to extend the initial thirty day time period regarding the return of deposit during the Due Diligence Period. The overall Due Diligence Period and shall not be extended.

NOW, THEREFORE, the Parties mutually agree as follows

SECTION 1. Section 3B of the Purchase Sale Agreement is hereby amended to read as follows:

B. Return of Deposit During Due Diligence Period. Upon receipt of Buyer’s Termination Notice in escrow pursuant to Section 3.A., the DEPOSIT or portion thereof shall be returned as follows:

(i) The full DEPOSIT shall be refunded upon notification by the Buyer within the first (43) days of the Due Diligence Period that it is cancelling the contract.

- (ii) Seventy five percent (75%) of the DEPOSIT shall be refunded upon notification by the Buyer more than thirty (30) but less than (60) days of the Due Diligence Period that it is cancelling the contract.
- (iii) Fifty percent (50%) of the DEPOSIT shall be refunded upon notification by the Buyer more than sixty (60) but less than ninety (90) days of the Due Diligence Period that it is cancelling the contract.
- (iv) Twenty five percent (25%) of the DEPOSIT shall be refunded upon notification by the Buyer more than ninety (90) but less than one hundred twenty (120) days of the Due Diligence Period that it is cancelling the contract.

After the Due Diligence Period, if the Agreement is not terminated pursuant to Section 3.A., the DEPOSIT shall become nonrefundable.

SECTION 2. This First Amendment may be executed in two or more fully or partially executed counterparts, each of which will be deemed an original binding the signer thereof against the other signing parties, but all counterparts together will constitute one and the same instrument.

SECTION 3. Signatures to this First Amendment and any notice given hereunder, transmitted by telecopied or electronic mail shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an executed original of this First Amendment with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this First Amendment, it being expressly agreed that each party to this First Amendment shall be bound by its own telecopied or e-mailed signature and shall accept the telecopied or e-mailed signature of the other party to this First Amendment.

SECTION 4. Except as expressly modified by this First Amendment, the Purchase Sale Agreement and the rights, duties, and obligations of the Parties thereunder are unchanged and remain in full force and effect as originally written. From and after the terms and conditions of the execution of this First Amendment, all references in the Purchase Sale Agreement to the "Agreement" shall be deemed as references to the Purchase Agreement as modified by this First Amendment.

SECTION 5. Upon execution by both parties, this First Amendment shall be effective on April 15, 2016.

(Signature Page on Page 3)

IN WITNESS WHEREOF, the Parties have executed this First Amendment to Real Property Purchase Sale Agreement and Mutual Escrow Instructions as of the date first written above.

SELLER:

Successor Agency of the Former Redevelopment Agency of the City of Milpitas

Name: _____

Title: _____

Date: _____

ATTEST:

Name: _____

Clerk, Successor Agency

BUYER:

Lodging Dynamics Development, LLC

Name: _____

Title: _____

Date: _____

ATTEST:

Name: _____

Title: _____