



DATE: December 4, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Property Management Division

SUBJECT: **AMENDMENT 3 TO THE PURCHASE AND SALE AGREEMENT WITH R.D. OLSON DEVELOPMENT TO EXTEND THE CLOSE OF ESCROW FOR TWO YEARS FOR THE PROPERTY AT THE NORTHEAST CORNER OF OCEANSIDE BOULEVARD AND RANCHO DEL ORO DRIVE AND DEPOSIT AN ADDITIONAL \$100,000 APPLICABLE TO THE PURCHASE PRICE AND RELEASED TO THE CITY**

SYNOPSIS

Staff recommends that the City Council approve Amendment 3 to the Purchase and Sale Agreement with R.D. Olson Development, a California corporation, to extend the close of escrow for two years with an additional deposit of \$100,000, applicable to the purchase price, which is to be released to City upon receipt by the Escrow Agent for the purchase of the property located at the northeast corner of Oceanside Boulevard and Rancho del Oro Drive; and authorize the City Manager to execute the amendment.

BACKGROUND

On October 12, 2011, the City entered into a Purchase and Sale Agreement ("Agreement") with R.D. Olson Development ("Buyer") for the vacant real property located at the northeast corner of Oceanside Boulevard and Rancho del Oro Drive ("Property"). The purchase price for the Property was \$2,050,000 with \$100,000 deposited into escrow. The Agreement was subsequently amended on May 16, 2012, reducing the purchase price from \$2,050,000 to \$1,750,000, and again on October 17, 2012, to extend the close of escrow one-year with the payment of an additional \$100,000 deposit into escrow, applicable to the purchase for the Property with \$100,000 of the total deposit released to the City.

ANALYSIS

The proposed amendment will extend the close of escrow two additional years from the original close of escrow date, require the payment of an additional \$100,000 of the total deposited to the City into escrow, applicable to the purchase price, and authorize the release of an additional \$100,000. The proposed amendment will bring the total amount of non-refundable deposit on the property to \$300,000, of which \$200,000 will have

been released to the City. Close of escrow is estimated to be completed by October 12, 2015.

FISCAL IMPACT

As a result of the amendment, Buyer shall deposit with the escrow agent the additional \$100,000 deposit concurrent with the delivery of the amendment to the Agreement to the Escrow Agent. Said deposit shall be released to the City upon receipt by the Escrow Agent of the amendment and as before, appropriated to the El Corazon Silica Reclamation account number 912880500501.5305.10600.

COMMISSION OR COMMITTEE REPORT

Does not apply.

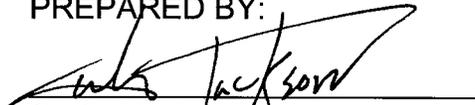
CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

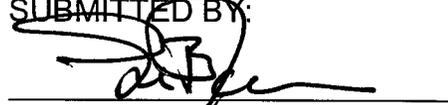
RECOMMENDATION

Staff recommends that the City Council approve Amendment 3 to the Purchase and Sale Agreement with R.D. Olson Development, a California corporation, to extend the close of escrow for two years with an additional deposit of \$100,000, applicable to the purchase price, which is to be released to City upon receipt by the Escrow Agent for the purchase of the property located at the northeast corner of Oceanside Boulevard and Rancho del Oro Drive; and authorize the City Manager to execute the amendment.

PREPARED BY:


Curtis M. Jackson
Property Agent

SUBMITTED BY:


Steven R. Jepsen
City Manager

REVIEWED BY:

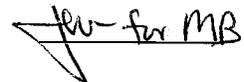
Michelle Skaggs Lawrence, Deputy City Manager



Douglas Eddow, Real Property Manager



Michael Blazeinski, Interim Financial Services Director



Attachments:

Purchase and Sale Agreement Amendment 3

AMENDMENT NO. 3 TO PURCHASE AND SALE AGREEMENT

This Amendment No. 3 to the Purchase and Sale Agreement, dated November 20, 2013 for identification purposes ("Amendment"), is made by and between the City of Oceanside, a California charter city, "Seller", and Olson Real Estate Group, Inc., d/b/a R.D. Olson Development, a California corporation ("Buyer").

RECITALS

WHEREAS, Seller and Buyer are the parties to that certain Purchase and Sale Agreement, dated October 12, 2011 ("the Agreement"); and

WHEREAS, Seller and Buyer are the parties to that certain Amendment No. 1 to the Agreement, dated May 16, 2012;

WHEREAS, Seller and Buyer are the parties to that certain Amendment No. 2 to the Agreement, dated October 12, 2012;

WHEREAS, Seller and Buyer mutually desire to amend and modify ARTICLE III PURCHASE AND SALE OF PROPERTY, Subsection 702 Opening Deposit, Subsection 703 Closing, and Subsection 704 Extension Options Price as set forth in the Agreement to provide, among other things, for the additional deposit of \$100,000, applicable to the Purchase Price, to be released to Seller Upon receipt by Escrow Agent, and an extension of the Close of Escrow.;

NOW, THEREFORE, in consideration of the covenants, conditions, terms and other valuable consideration as set forth herein, the parties hereto do mutually agree that the Agreement be modified as follows:

AGREEMENT

1. ARTICLE VII ESCROW Subsection 702 **Opening Deposits** shall be deleted in its entirety and replaced with the following:

*702. Deposit. Concurrent with the execution of this Agreement, but no later than the establishment of Escrow pursuant to Section 701 herein, Buyer shall deposit with the Escrow Agent the sum of ONE HUNDRED THOUSAND and No/100 Dollars (\$100,000.00). Said sum shall represent Buyer's initial good faith deposit for the transaction contemplated under this Agreement. Within two (2) business days following Escrow Agent's acknowledgment of receipt of the fully executed Amendment No. 2 to Purchase and Sale Agreement, Buyer shall deposit with Escrow Agent an additional sum of ONE HUNDRED THOUSAND and No/100 Dollars (\$100,000.00), which said additional sum of \$100,000 shall be released to Seller by Escrow Agent upon receipt. Within two (2) business days following Escrow Agent's acknowledgement of receipt of the fully executed Amendment No. 3 to Purchase and Sale Agreement, Buyer shall deposit with Escrow Agent an additional sum of ONE HUNDRED THOUSAND and No/100 Dollars (\$100,000), which said additional sum of \$100,000 shall be released to Seller by Escrow Agent upon receipt. Said deposits shall be applied towards the Purchase Price for the Property and shall be non-refundable to Buyer, except in the event of Seller's default or failure of a Condition Precedent (excepting Conditions Precedent identified in Sections 403, 405, 406, and 407) under this Agreement. In the event that Buyer otherwise fails to consummate the transaction contemplated under this Agreement or defaults hereunder, said deposit shall be considered as Liquidated Damages due Seller pursuant to Section 902 herein and in either event Escrow Agent is hereby instructed to release the total of Buyer's deposits to Seller.

2. ARTICLE VII ESCROW Subsection 703 Closing shall be deleted in its entirety and replaced with the following:

703. Closing. Subject to the provisions of Section 401 herein, on the earlier of (i) sixty (60) calendar days after non-appealable governmental approval of the Project or (ii) four (4) years from the Effective Date ("Closing Deadline"), the Grant Deed shall be recorded and the Property transferred from Seller to Buyer ("Close of Escrow") after Buyer has either approved or waived each Condition Precedent.

3. Unless otherwise defined, or the context otherwise indicates, the terms as used herein have the meaning defined in the Agreement. The provisions of this Amendment shall control over any inconsistent provisions of the Agreement.

4. All provisions in the Agreement that are not addressed and/or amended by this Amendment shall remain in full force and effect, and are hereby ratified and reaffirmed.

5. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority enter into and to execute this Amendment on behalf of the Seller and Buyer.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Amendment to be executed by setting hereunto their signatures on the day and year respectively written herein below.

"Seller"

City of Oceanside, a California Charter City

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
City Manager

By: *Robert Hamilton*, ASST.
City Attorney

"Buyer"

Olson Real Estate Group, Inc.,
dba R.D. Olson Development,
a California corporation

By: *Dustin Schmidt*

By: *Blake Evans*

Print Name: DUSTIN SCHMIDT

Print Name: Blake Evans

Title: V.P. REAL ESTATE

Title: VP of Finance

Dated: 11/14/13

Dated: 11/14/13

NOTARY ACKNOWLEDGMENTS OF BUYER'S SIGNATURE(S) MUST BE ATTACHED

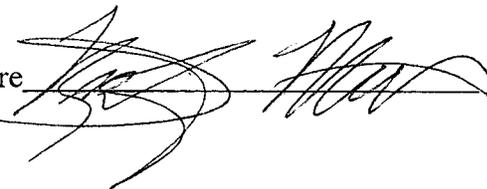
ACKNOWLEDGMENT

State of California
County of Orange

On November 14, 2013 before me, Kristy Mutch, A Notary Public, personally appeared Blake Evans & Dustin Schmidt, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she~~ they executed the same in ~~his/her~~ their authorized capacity(ies), and that by ~~his/her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



