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Title: CONSIDER APPROVING THE FIFTH AMENDMENT TO THE PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS FOR A 1.6 ACRE PARCEL AT 1007 EAST VICTORIA STREET (APN 7319-038-900) BETWEEN THE COMMUNITY DEVELOPMENT CENTER, INC. AND CITY OF CARSON (JOINTLY SELLER) AND BRANDYWINE ACQUISTIONS GROUP, LLC (BUYER) (CITY COUNCIL)

Sponsors:

Indexes:

Code sections:

Attachments: 1. EX. NO. 1 - Fifth Amendment to PSA v2 - JN, 2. Exhibit No. 2 - Settlement Agreement with CDC

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, September 17, 2019

Consent

SUBJECT:

CONSIDER APPROVING THE FIFTH AMENDMENT TO THE PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS FOR A 1.6 ACRE PARCEL AT 1007 EAST VICTORIA STREET (APN 7319-038-900) BETWEEN THE COMMUNITY DEVELOPMENT CENTER, INC. AND CITY OF CARSON (JOINTLY SELLER) AND BRANDYWINE ACQUISTIONS GROUP, LLC (BUYER) (CITY COUNCIL)

I. SUMMARY

Background:

September 3rd Meeting: At the September 3, 2019 City Council meeting, a motion was passed to continue Brandywine’s request for a further extension of the closing date under the Purchase and Sale Agreement to the September 17th meeting. In addition, the City Council indicated an interest in the current fair market value of the property. The City’s appraiser advised Staff that land values have *increased* during the past two years especially for multi-family zoned properties that are in very high demand. This high demand is evident in the influx of new multifamily projects that have been submitted to the City in the past two years including, but not limited to, the 175-unit Victoria Gardens project

(Central and Victoria), the 32-unit Birch Condominium project, and 1,048-unit JPI project (Avalon and 213th).

History with Brandywine:

On June 13, 2018, the City (as City and on behalf of Community Development Center, Inc. (“**CDC**”)) entered into an Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions (“**PSA**”) with Brandywine Acquisitions Group, LLC (“**Brandywine**”) for the sale of the 1.6 acres of vacant land located at 1007 E. Victoria Street (APN No. 7319-038-900). Brandywine proposes to develop a residential development project with 38 for sale units (“**Project**”) and is currently undergoing the City’s entitlement process. Under the PSA the original closing date was to be not later than June 28, 2019, which was subsequently extended to September 26, 2019 (“**Current Closing Date**”). An extension beyond the Current Closing Date requires City Council approval.

When the PSA was originally executed in June 2018, the purchase price was \$4,905,000 (“**Original Purchase Price**”). Brandywine apparently based its proforma calculations using the fees that were in effect at that time which included (i) \$10,000 per unit for Development Impact Fees (“**DIF**”), and (ii) approximately \$14,000 per unit for Quimby Fees for a total of \$912,000 for the proposed project of 38 units (“**Project**”). Subsequently the City adopted new DIF fees and eliminated the Quimby Fee resulting in total fees due for the Project of \$532,000, constituting a total savings of \$380,000.

In September 2018, Brandywine requested a price reduction due to unexpected development costs of \$504,630, which include the Quimby Fees that they asserted were not part of their proforma together with certain other costs. The City Council had formally approved the price reduction but prior to executing the amendment, the parties realized that the fees were not correct and, accordingly the Original Purchase Price was only reduced by the sum of \$71,826.70 for unexpected costs resulting in the current purchase price of \$4,833,173.30. (“**Current Purchase Price**”).

With the price reduction to the Current Purchase Price as reflected in the Second Amendment, Brandywine approved its due diligence and deposited the 2nd \$100,000 for a total deposit of \$200,000 (“**Deposit**”) in escrow. The Deposit was then subsequently released to the City as a non-refundable deposit but applicable to the purchase price at Closing.

Based on the increase in property values and the fee miscalculations, Staff recommends extending the PSA as requested to December 31, 2019 but with a clear unequivocal statement that Brandywine is advised that the City will not agree to reduce the Current Purchase Price in the event that the Project is approved with a reduced number of units or any increased costs. Although this language would not legally prohibit Brandywine for requesting a price reduction, it will certainly be a clear indication to Brandywine of the City Council’s intentions.

Fifth Amendment Summary: The proposed Fifth Amendment to the PSA (Exhibit No. 1):

- ◆ Extends the Closing Date to not later than December 31, 2019.
- ◆ Includes a statement that the extension is based on the specific understanding

that Brandywine will not seek a price reduction based on any changes to the Project.

- ◆ Authorizes the City Manager in her discretion to extend the Closing Date for up to 180 days beyond the December 31, 2019 deadline.

While Brandywine's attainment of entitlements is not a condition precedent to its obligations to close under the PSA, the additional time is requested for Brandywine to comply with City Council's direction to meet with the community and process the revised Project through the planning process.

II. RECOMMENDATION

1. APPROVE the Fifth Amendment to the Agreement for Purchase and Sales of Real Property and Joint Escrow Instructions ("Fifth Amendment").
2. AUTHORIZE the Mayor to execute the Fifth Amendment following approval as to form by the City Attorney.

III. ALTERNATIVES

Take additional actions the City Council deems appropriate.

IV. BACKGROUND

Brandywine wishes to purchase the 1.6 acres of vacant land ("**Property**") from the City and CDC, and is proposing to construct six buildings that collectively include 38 for sale residential condominium units (28 two-bedroom, 6 three-bedroom, and 4 four-bedroom units). The Property is currently subjected to the Dominguez Hills Village (DHV) Specific Plan and is designated as Lot 11. The DHV Specific Plan, as originally approved, was designed for residential, childcare, neighborhood retail, industrial and open space uses, and allowed for a maximum buildout of 893 residential units. However, since its development in 1996, Dominguez Hills Village has evolved into solely residential uses, built out to only 574 residences ranging from condominiums to single-family.

Under the DHV Specific Plan as originally approved, Lot 11 was designated for a 1.6-acre child care center to be developed by K. Hovnanian at Dominguez Hills, Inc. (K. Hovnanian). On February 23, 2007, a Grant Deed ("**Hovnanian Deed**") was recorded, granting CDC ownership of the Property. The Deed was subject to an Executory Limitation that provided the City a Power of Termination and Right of Re-entry should CDC violate the terms and conditions set forth in the Deed. A condition of the Deed held CDC responsible for the development and use of the Property as a childcare center and related educational facility. The childcare facility was to be operative by the relinquishment date set for December 31, 2016. CDC violated the Executory Limitation by neglecting to develop Lot 11 with a childcare facility, and in 2017, a dispute involving the title to the Property emerged between the City and CDC when the City exercised its power of termination.

CDC Settlement Agreement and Purchase and Sales Amendment

The City and CDC settled the dispute pursuant to the terms set forth in a Settlement Agreement executed by CDC on July 31, 2017 (Exhibit No. 2) ("**Settlement Agreement**").

The Settlement Agreement provided that the City would have the exclusive right to negotiate the sale of the Property in the name of both the City and CDC. Further, the Settlement Agreement mandated that CDC to cooperate with executing any documents necessary to transfer title. On June 13, 2018, the City and CDC entered into the PSA to sell the Property to Brandywine and set the original closing date to June 28, 2019. The PSA was amended several times to memorialize key milestones in the escrow process (e.g. Title Approval and Due Diligence Period) as well as providing applicable time extensions for those milestones.

Approval of the proposed Fifth Amendment would entail the following:

- Extends the Closing Date to not later than December 31, 2019.
- Includes a statement that the extension is based on the specific understanding that Brandywine will not seek a price reduction based on any changes to the Project.
- Authorizes the City Manager in her discretion to extend the Closing Date for up to 180 days beyond the December 31, 2019 deadline.

V. FISCAL IMPACT

The current purchase price is \$4,833,176.70, which will be equally divided between the City and CDC after accounting for expenses. Expenses include closing costs, marketing costs, commission, cost of the appraisal, and attorney's fees incurred by City with respect to negotiating, commission agreement, and sale agreement as specified in the Settlement Agreement. It is anticipated the sale of the Property would net the City's General Fund approximately \$2.2 million.

If the sale to Brandywine does not proceed, the City and CDC have a right to retain the \$200,000 Deposit after deduction of the applicable costs associated with the transaction. At that time the City could issue a call for Requests for Proposals.

VI. EXHIBITS

1. Proposed Fifth Amendment for Purchase and Sale of Real Property and Joint Escrow Instruction (pgs. 5-6)
2. Settlement Agreement with CDC (pgs. 7-14)

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