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Title: CONSIDER APPROVAL OF THE SUBORDINATION AGREEMENT BY AND BETWEEN THE CARSON SUCCESSOR AGENCY WIN CHEVROLET PROPERTIES, LLC, AND WIN CHEVROLET, INC. SUBORDINATING THE AGENCY NOTE TO BANK OF AMERICA, N.A. IN CONNECTION WITH THE WIN CHEVROLET DEALERSHIP PROPERTY LOCATED AT 2201 E. 223RD STREET (SUCCESSOR AGENCY)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Exhibit No. 1 - WIN DDA 12-06-2011, 2. Exhibit No. 2 - Vicinity Map (2201 E. 223rd Street), 3. Exhibit No. 3 - Agency Note, 4. Exhibit No. 4 - Agency Subordination Agreement 06-19-2013, 5. Exhibit No. 5 - Agency Trust Deed, 6. Exhibit No. 6 - Appraisal, 7. Exhibit No. 7 - Proposed Subordination Agreement

Date	Ver.	Action By	Action	Result
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Report to Successor Agency

Tuesday, May 21, 2019

Consent

SUBJECT:

CONSIDER APPROVAL OF THE SUBORDINATION AGREEMENT BY AND BETWEEN THE CARSON SUCCESSOR AGENCY WIN CHEVROLET PROPERTIES, LLC, AND WIN CHEVROLET, INC. SUBORDINATING THE AGENCY NOTE TO BANK OF AMERICA, N.A. IN CONNECTION WITH THE WIN CHEVROLET DEALERSHIP PROPERTY LOCATED AT 2201 E. 223RD STREET (SUCCESSOR AGENCY)

I. SUMMARY

WIN Chevrolet, Properties, LLC (“WIN”) is preparing to refinance its holdings at 2201 E. 223rd Street (“Property”) with Bank of America, N.A. (“Senior Lender”). The Carson Successor Agency (“Agency”) currently holds a 20-year note (“Note”) in the original amount of \$7 million, which was secured by a deed of trust against the Property (“Agency Trust Deed”). The current principal balance of the Agency Note is \$4,550,000, having been forgiven over the years in accordance to the Note at the rate of \$350,000 per year provided WIN complied with certain obligations, including the continued operation of the existing WIN Chevrolet and Hyundai auto dealerships. The Agency Note was executed in 2011

pursuant to the Disposition and Development Agreement between the Carson Redevelopment Agency (“RDA”) and WIN and Win Chevrolet, Inc. (“WIN Inc.”) representing a portion of the purchase price for the Property (“DDA”). The RDA received an ALTA loan title policy insuring the Agency Trust Deed in the amount of \$7,000,000 (“Agency Loan Policy”).

In 2013, the Agency Trust Deed was subordinated to Senior Lender’s original construction Deed of Trust (“Senior Trust Deed”) securing a loan in the amount of \$11,350,000 (“Senior Lender’s Loan”). Section 8 of the Agency Trust Deed requires it to be subordinated provided certain requirements are satisfied including (collectively the “Subordination Requirements”):

- The total of both the senior loan and the Agency loan must not exceed 80% of the fair market value of the Property.
- The proceeds of the Senior Loan are to be used for the improvement of the Property.
- Senior Loan documents and terms are approved by the Agency.

WIN has requested Senior Lender to modify the terms of the Senior Lender’s Loan to, among other things, to provide for an additional advance to satisfy the operating debt of the business. The total amount of the revised Senior Lender’s Loan will be \$14,000,000 (“Amended Senior Loan”).

A condition of the Senior Lender’s approval of the modified loan terms for the Amended Senior Loan is that the Agency (as successor to the RDA) execute a subordination agreement (“Subordination Agreement”) subordinating the Agency Trust Deed to the Amended Senior Trust Deed.

The Senior Lender has provided a current appraisal of the Property which shows the current fair market value as \$32,850,000. If the Amended Senior Loan is consummated, the total amount of the loans secured by the Property will be \$18,550,000 and the loan to value ratio would be 56% which is substantially lower than the mandatory maximum of 80%.

If approved by the Successor Agency, the proposed Subordination Agreement must be reviewed and approved by the Consolidated Oversight Board of Los Angeles County - Second District (“County Oversight Board”) and, if required, the State of California, Department of Finance (“DOF”).

II. RECOMMENDATIONS

TAKE the following actions:

1. APPROVE the Subordination Agreement, and DIRECT staff to bring the matter to the County Oversight Board for consideration.

2. After receiving County Oversight Board approval, AUTHORIZE the Chairman to execute the Subordination Agreement and any other documents reasonably required to consummate the transaction and deliver same to the Agency Counsel for conditional delivery to the Senior Lender upon satisfaction of the following requirements:
 - a. Evidence satisfactory to the Executive Director and Agency Counsel is provided by WIN to evidence that the additional advance under the Amended Senior Loan is equivalent to amounts previously paid by WIN or its owners for improvements to the Property.
 - b. Recordation of both a statutory Request for Notice (CC 2924b) and Request for Notice of Delinquency (CC 2924d) for the Amended Senior Loan.
 - c. The Agency Loan Policy is updated or appropriate endorsements are issued insuring the Agency Trust Deed in second lien position junior to the Amended Senior Trust Deed at WIN's cost.
 - d. The Senior Lender covenants to deliver executed copies of all the Amended Senior Loan documents to the Agency.

III. ALTERNATIVES

TAKE another action the Board deems appropriate.

IV. BACKGROUND

On December 6, 2011, the RDA was dissolved by State law and succeeded by the Agency.

In 2011, WIN, WIN Inc. and the RDA entered into the DDA for sale and development of the Property (Exhibit No. 1).

Pursuant to the terms of the DDA, the RDA agreed to sell the Property (Exhibit No. 2) consisting of approximately 10 acres to WIN for a total purchase price of \$12,000,000. WIN acquired the Property by (i) paying \$5,000,000 in cash, and (ii) issuing the Agency Note in the original principal amount of \$7,000,000 (Exhibit No. 3). Provided WIN operates the dealerships on the Property and satisfies other requirements in the DDA and Grant Deed, the sum of \$350,000 will be forgiven annually. To date \$2,450,000 has been forgiven and the current balance of the Agency Loan is \$4,550,000. Upon breach of the Note, the outstanding balance of the Note would be due and payable.

The dealership remains operational, and no default has occurred under the DDA, the Agency Note, the Agency Trust Deed or the covenants in the Grant Deed. WIN wishes to modify the terms of the Senior Loan to, among other things, obtain an additional advance. The Senior Lender is processing the proposed loan documents, which include a subordination agreement to be executed by the Agency. The RDA previously executed a subordination agreement (Exhibit No. 4) subordinating the Agency Trust Deed to the Senior Loan in June 2013 per WIN's request.

The proposed loan is a term loan for the purpose of refinancing the existing loan dated July 1, 2014. The borrower is WIN as the owner of the Property. The new loan will be in the

amount of \$14,000,000 with interest payable monthly at an annual rate of BBA LIBOR plus 1.65%. Monthly principal payments in the amount of \$58,333.33 will begin on July 1, 2019 and all remaining principal, interest and any other fees and charges are due on the maturity date of July 1, 2029. The loan is guaranteed by Win, Inc., Jerry L. Heuer, Hani W. Nassif and each of their respective trusts. The proceeds from the refinance the existing balance of the Senior Loan and will provide an additional funds to satisfy operating debt of the business. The loan is to be secured by a deed of trust in first lien position on the Property and the Agency Trust Deed must be subordinated.

A condition to the Senior Lender is the subordination of the Agency Deed of Trust. Pursuant to Article VIII of the Agency Deed of Trust (Exhibit No. 5), the total loan value ratio including principal for “take out or refinancing” of the Property must not exceed eighty (80%) of the appraised value of the Property. An appraisal report (dated October 30, 2018) prepared by Cushman & Wakefield, appraised the Market Value As-Is for the Property at \$32,850,000 (Exhibit No. 6). WIN’s proposed \$14,000,000 refinancing loan with the Agency’s outstanding \$4,550,000 brings the total loan value to 56.5%, which meets the subordination provisions as stipulated in the Agency Trust Deed.

Following approval by the Agency Board, this item regarding the proposed Subordination Agreement (Exhibit No. 7) will be brought forth to the County Oversight Board for approval and, if required, submitted to the DOF for final authorization.

V. FISCAL IMPACT

Should WIN default on the Amended Senior Loan to which the SA has subordinated the Agency Loan, the SA could potentially lose a portion of the remaining forgivable loan balance of \$4,550,000 unless it paid off the Amended Senior Loan and then proceeded to foreclose on the Property. However, loan to value ratio of 56% means that WIN has substantial equity in the Property so it would be unlikely to default. The Agency Loan will continue to diminish by \$350,000 annually provided that WIN continues to operate the dealership on the Property in accordance to the DDA.

VI. EXHIBITS

1. Development & Disposition Agreement (pgs. 5-33)
2. Vicinity Map (pg. 34)
3. Agency Note - \$7,000,000 (pgs. 35-42)
4. Agency Subordination Agreement, dated June 19, 2013 (pgs. 43-50)
5. Agency Trust Deed - \$7,000,000 (pgs. 51-62)
6. Appraisal (pgs. 63-67)
7. Proposed Subordination Agreement (pgs. 68-73)

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