



20 N. Swinton Avenue
Delray Beach, FL 33444

Agenda Item # **AA**
September 22, 2016

~ CRA BOARD SUMMARY ~
**SEVENTH AMENDMENT TO AGREEMENT WITH DELRAY BEACH HOLDINGS, LLC –
FOURTH & FIFTH REDEVELOPMENT (IPIC)**

At its meeting of December 12, 2013, the CRA Board approved the Agreement for Purchase and Sale with Delray Beach Holdings, LLC for CRA's Fourth and Fifth properties (former Old Library/Chamber of Commerce sites). The development proposal is for the construction of a mixed use building consisting of: 44,979 square-foot iPic Theater (497 seats); 43,880 square feet of Class A office space; 7,487 square feet of retail space; and, a multi-level parking garage with 315 spaces (providing a minimum 90 public spaces). There have been six amendments to the Purchase and Sale Agreement since its original approval, which primarily related to modifications to the legal description and associated time frames. The following are the most recent amendments:

On December 15, 2015, the CRA Board approved the Fifth Amendment to the Purchase and Sale Agreement to modify Section 1.2 of the Agreement extending the Approval Date to May 31, 2016 and Section 1.17 extending the Termination Date to October 31, 2016; modify Paragraph 4 to have it read that "the Purchaser hereby represents and warrants it will move its corporate offices to the property within 30 days of obtaining a Certificate of Occupancy as per the RFP"; and, modify Paragraph 8 to add "The provisions set forth in Paragraph 4 shall survive the closing."

On March 15, 2016, the City Commission approved the waiver requests associated with the iPic project as well as the associated plat and landscape maintenance agreement. The conditions of approval included a provision that the abandoned alley will be conveyed to the City if the project is not constructed, and that the City is party to the Parking Facility Easement Agreement. The Agreement pertains to the operation, management, and maintenance of the parking garage, including the proposed 90 public parking spaces and a public access easement. It was felt that as the City is party to the agreement for the public spaces and access, it would be cleaner for the City and Purchaser to enter into the Parking Facility Easement Agreement, without the CRA being a party to the agreement. Therefore, at its meeting of May 12, 2016, the CRA Board approved the Sixth Amendment to the Agreement for Purchase and Sale with Delray Beach Holdings, LLC to indicate the Parking Facility Easement Agreement shall be negotiated between the Purchaser and the City, and extend the approval of the Parking Facility Easement Agreement with the City to October 31, 2016.

In August, Delray Beach Holdings submitted a request to extend the Termination Date to January 31, 2017 (copy attached). Permit applications for the parking garage and theater/office building were also submitted to the City in August. Based on the City's expedited permit review process, it is anticipated that building permits will be issued within four (4) months.

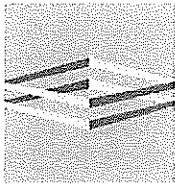
In addition, the Purchaser's and City's attorneys have been coordinating with each other on finalizing of the agreements related to the development approval including the Tri-Party Agreement (between the CRA, City, and Delray Beach Holdings), which addresses conveyance of the alley to the City if the project is not constructed and references the Parking Facility Easement Agreement. As issuance of the building permits will not occur until these agreements are approved by the City Commission, it is reasonable to remove the stipulation requiring approval of the Parking Facility Easement Agreement by a specific date in the CRA's agreement with Delray Beach Holdings.

Recommended Action:

Approve the Seventh Amendment to the Agreement for Purchase and Sale with Delray Beach Holdings, LLC to modify Section 1.12 of the Agreement to eliminate the time frame for the Parking Facility Easement Agreement to be negotiated between the Purchaser and the City, and Section 1.17 of the Agreement to extend the Termination Date to January 31, 2017.

Submitted By: Jeffrey A. Costello, Executive Director

Attachment: Request Letter dated 8-16-16; 7th Amendment to Purchase & Sale Agreement - Delray Beach Holdings, LLC



**DUNAY
MISKEL
BACKMAN** LLP

Gary Dunay
Bonnie Miskel
Scott Backman

Hope Cathoun
Dwayne Dickerson
Ele Zachariades

Christina Bilenki
Heather Jo Allen
Andrea Keiser

August 16, 2016

Jeffrey A. Costello, Executive Director
CRA - City of Delray Beach
20 North Swinton Avenue
Delray Beach, Florida 33444

Re: Purchase and Sale Agreement ("Contract"), as amended, between Delray Beach Community Redevelopment Agency ("Seller") and Delray Beach Holdings, LLC ("Purchaser")

Dear Jeff:

As you know, my client has been working diligently to address all of the conditions of approval in anticipation of the submittal of the building permit application ("Application"). To that end, my client has advised me that the Application will be filed prior to the end of the month. In discussions with staff, it is our belief that the City will not complete review of the Application in time to meet the October closing deadline. As such, we are respectfully requesting an extension in order to complete the building permit process. As discussed previously with staff, we expect that process to take five (5) months. We respectfully request an extension until January 31, 2017.

A timeline reflecting the approvals and submittals to the City that are pending, including the Parking Facilities Agreement and the Tri-Party Agreement will be forthcoming.

If you need any additional information, please do not hesitate to call.

Sincerely,

Bonnie Miskel, Esq.
BM/rmm

cc: Hamid Hashemi, President and CEO
Paul Safran, Vice President, General Counsel
Joseph Abbruzese, Vice President of Development
Maria Bolivar, Director of Purchasing
Donald J. Doody, Esq.
Gary S. Dunay, Esq.

TIMELINE OF CITY APPROVALS AND SUBMITTALS - IPIC/FOURTH AND FIFTH DELRAY

CITY APPROVALS:

1. August 18, 2015 - City Commission meeting:
 - a. Conditional Use Request - to allow for building height in excess of 48 feet;
 - b. Conditional Use Request - to allow a movie theater; and
 - c. Abandonment of a portion of the 16 foot wide north-south alley right-of-way, lying within Block 101.

2. January 20, 2016 - SPRAB meeting:
 - a. Class V Site plan;
 - b. Landscape plan; and
 - c. Architectural elevations.

3. March 15, 2016 - City Commission meeting:
 - a. Three (3) waiver requests;
 - b. Final Subdivision Plat; and
 - c. Landscape Maintenance Agreement.

SUBMITTALS OF PARKING FACILITIES AGREEMENT AND TRI-PARTY AGREEMENT*:

1. Parking Facilities Agreement:
 - a. Submitted first draft on November 6, 2015, to Jeff Costello; and
 - b. Submitted second draft on May 27, 2016, to Noel Pfeffer.

Note: i) Meeting with Tim Stillings, Scott Pape, Noel Pfeffer, Jeff Costello, DJ Doody, John Morgan, Bonnie Miskel and Ipic on 2/23/2016; and 2) Meeting with Scott Pape, Noel Pfeffer, Jeff Costello, DJ Doody, John Morgan, Bonnie Miskel and client on 3/31/2016 to discuss Parking Facilities Agreement.

2. Tri-Party Agreement - submitted first draft on June 24, 2016, to Noel Pfeffer.

* We have been advised that Attorney Steve Rubin has been retained by the City to complete these agreements as Noel Pfeffer is no longer City Attorney. On August 18th, Bonnie Miskel spoke with Janice Rustin, who asked for additional information. She wanted the parking valet and operational plans in advance of providing other comments. A permit application, including full construction drawings, have been submitted for the parking garage.

SEVENTH AMENDMENT
TO PURCHASE AND SALE AGREEMENT

WHEREAS, Delray Beach Community Redevelopment Agency, a Florida public body corporate and politic created pursuant to Section 163.356 F.S. (the "Seller") and Delray Beach Holdings, LLC, a Florida limited liability company (the "Purchaser") entered into that certain Purchase and Sale Agreement (the "Agreement") dated December 17, 2013 concerning the real property located on SE 4th and 5th Avenue, Delray Beach, Florida (the "Property").

WHEREAS, the Agreement was amended by that certain First Amendment to Agreement for Purchase and Sale of Real Property (the "First Amendment") which amended Section 1.12 of the Agreement regarding the Parking Facility Easement Agreement.

WHEREAS, the Agreement was amended by that certain Second Amendment to Agreement for Purchase and Sale of Real Property (the "Second Amendment") to amend Exhibit "A" of the Agreement to include in the legal description of the Property as shown in the survey of the Property prepared by Avirom & Associates, Inc. which confirmed the legal description of the Property and also include the property legally described in the Quit-Claim Deed recorded in Official Records Book 26996, page 1421, of the Public Records of Palm Beach County, Florida.

WHEREAS, the Agreement was amended by that certain Third Amendment to Agreement for Purchase and sale of Real Property (the "Third Amendment") to extend the Approval Date for all governmental approvals to October 26, 2015.

WHEREAS, the Agreement was amended by that certain Fourth Amendment to Agreement for Purchase and sale of Real Property (the "Fourth Amendment") to extend the Approval Date to December 31, 2015 and to extend the Termination Date to January 31, 2016.

WHEREAS, the Agreement was amended by that certain Fifth Amendment to Agreement for Purchase and sale of Real Property (the "Fifth Amendment") to extend the Approval Date to May 31, 2016, to extend the Termination Date to October 31, 2016, to provide that Purchaser shall move its corporate offices to the Property within 30 days of receipt of the Certificate of Occupancy and to provide for ninety (90) spaces of Public Parking and to provide that the Parking Facility Easement Agreement shall be negotiated and entered into prior to the expiration of the Approval Date.

WHEREAS, the Agreement was amended by that certain Sixth Amendment to Agreement for Purchase and sale of Real Property (the "Sixth Amendment") to extend the date to obtain the approved Parking Facility Easement Agreement with the City to October 31, 2016.

WHEREAS, Purchaser has submitted permit applications for the parking garage and theater/office building, which are currently in the review process, and will not be approved and issued in time to meet the current Termination Date and therefore Purchaser is requesting an extension to the Termination Date.

WHEREAS, the building permits cannot be issued until the Tri-Party Agreement and the Parking Facility Easement Agreement are approved by the City Commission, therefore the approval of the Parking Facility Easement Agreement by a specific date is no longer necessary.

NOW THEREFORE, in consideration of the mutual covenants, the Purchaser and Seller do agree to enter into this Seventh Amendment to provide that:

1. The Whereas clauses are hereby ratified and confirmed.
2. Section 1.12 of the Agreement is hereby modified to eliminate the time frame for the Parking Facility Easement Agreement to be negotiated between the Purchaser and the City.
3. Section 1.17 of the Agreement is hereby revised to provide that the Termination Date is extended until January 31, 2017.
4. In the event of any inconsistencies between this Seventh Amendment and the Agreement, the First, Second, Third, Fourth, Fifth and Sixth Amendments, the provisions contained in this Seventh Amendment shall prevail. In all other respects, the terms and provisions of the Agreement are ratified and confirmed.

PURCHASER:

Delray Beach Holdings, LLC

By: IPIC Gold Class Entertainment, LLC,
Its Managing Member

SELLER:

**Delray Beach Community
Redevelopment Agency**

By: Hamid Hashemi
Title: Managing Member

By: Reginald A. Cox
Title: Chair

Date: _____

Date: _____