

RESOLUTION NO. OB-04-15

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING A FIRST AMENDMENT TO THE PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF EL CAJON AS SUCCESSOR AGENCY AND JKC EL CAJON, LLC, FOR THE SALE OF SITE #10, APN 482-250-34-00, LOCATED AT 572-588 NORTH JOHNSON AVENUE

WHEREAS, on September 9, 2014, the City Council as Successor Agency to the El Cajon Redevelopment Agency (the "Successor Agency") approved the Purchase and Sale Agreement (the "PSA") between the Successor Agency and JKC El Cajon, LLC (the "Buyer") for the sale of 572-588 North Johnson Avenue, a 1.36 acre parcel in a premium location adjacent to Interstate 8 with easy access to the freeway, APN 482-250-34-00 (the "Property"), and

WHEREAS, the PSA was approved by the Oversight Board on September 17, 2014 and the California Department of Finance (the "DOF") on September 24, 2014; and

WHEREAS, the Buyer and the Successor Agency entered into that certain Purchase and Sale Agreement dated October 28, 2014, for the purpose of the purchase of the Property by the Buyer; and

WHEREAS, the Buyer and the Successor Agency have proposed modification of certain terms and conditions of the PSA to include (1) the terms related to the acquisition of an approximately 1,200 square foot area by the City of El Cajon, for a highway oriented sign, including necessary access easements; (2) adding a condition that the Buyer must first obtain a conditional use permit for vehicle sales and service; (3) adding a condition that the Property is removed from FEMA's floodway map through an approved Conditional Letter of Map Revision ("CLOMR"), with an agreement for the sharing of costs for the CLOMR; (4) extending the date for the close of escrow in order to meet the conditions for obtaining both the conditional use permit and the CLOMR; and (5) including the option for the Buyer to acquire the Property as a part of a property exchange pursuant to Internal Revenue Code section 1031; and

WHEREAS, approval of the proposed First Amendment has been obtained from the El Cajon City Council on behalf of the Successor Agency, including the identification of funds to meet the Successor Agency's obligations under the First Amendment in the Recognized Obligation Payment Schedules (the "ROPS"); and

WHEREAS, the proposed sale of the Property is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Section 15061(b); (General Rule) of the CEQA Guidelines; and as it pertains to this project, the subject property is vacant land, and there is no proposed redevelopment or use of the property

at this time; and Section 15061(b) provides an exemption for projects where it can be seen with certainty that there is no possibility that the proposed project may have a significant impact on the environment; and

WHEREAS, the El Cajon City Council, acting solely in its capacity as Successor Agency to the El Cajon Redevelopment Agency, approved the First Amendment to the Purchase and Sale Agreement on March 10, 2015.

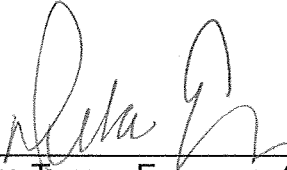
NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY AS FOLLOWS:

- A. The Oversight Board finds that:
  - 1. The above recitals are true and correct and are the findings of the City Council.
  - 2. The proposed sale is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because it will have no physical effect on the environment.
- B. The Oversight Board hereby APPROVES the First Amendment to the Purchase and Sale Agreement for the sale of the Property to JKC El Cajon, LLC, to modify certain terms and conditions of the PSA as more particularly set forth therein, and herein.
- C. The Oversight Board hereby APPROVES execution by the City Manager of the City of El Cajon, or such person designated by the City Manager, acting in the capacity of chief executive officer for the Successor Agency, of the First Amendment, substantially in the form as presented at this meeting, with such changes as the City Manager, or designee, shall approve, and all actions and execution of all such other and further documents, instructions, certificates, and agreements necessary to close the escrow for the sale of the Property in accordance with the terms of the PSA.

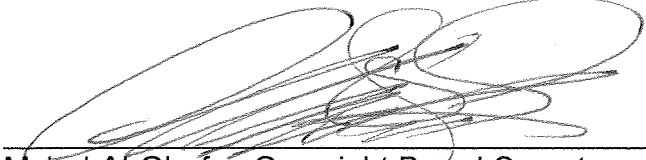
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PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly-scheduled meeting held this 18<sup>th</sup> day of March 2015, by the following vote to wit:

AYES: ABUSHABAN, BUXBAUM, CHADWICK, DAVIES, SHUTE, TURNER-EMERSON  
NOES: NONE  
ABSENT: OB Vacant Position

  
\_\_\_\_\_  
Debra Turner-Emerson, Chairperson

ATTEST:

  
\_\_\_\_\_  
Majed Al-Ghafry, Oversight Board Secretary

**FIRST AMENDMENT TO  
PURCHASE AND SALE AGREEMENT  
BETWEEN CITY OF EL CAJON AS SUCCESSOR  
AGENCY TO THE FORMER EL CAJON REDEVELOPMENT  
AGENCY AND JKC EL CAJON, LLC**

THIS FIRST AMENDMENT is made and entered into effective this \_\_\_\_ day of January, 2015, by and between JKC EL CAJON, LLC, an Oregon limited liability company (the "Buyer"), and the CITY OF EL CAJON AS SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY, a charter city and municipal corporation (the "Seller").

**RECITALS**

1. Developer and Agency entered into that certain Purchase and Sale Agreement dated October 28, 2014 (as amended from time to time, the "Agreement"), for the purpose of selling, on the part of the Seller, to the Buyer, certain real property and improvements thereon commonly known as 572 North Johnson Avenue, El Cajon, California (APN 482-250-34) (the "Property").

2. The Agreement provides, in Section VII, paragraph (M), that it may be amended by the parties only by an agreement in writing.

3. Buyer and Seller now wish to modify certain terms and conditions of the Agreement and wish to reduce their understanding to writing in accordance with the requirements of Section VII, paragraph (M), of the Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Paragraph (7) of Subdivision (B) of Section III, is hereby amended to read as follows:

7. City Acquisition of Sign Area. Buyer and the City of El Cajon (the "City"), in its own capacity, and not as the successor agency to the El Cajon Redevelopment Agency, will enter into a mutually acceptable written agreement prior to April 30, 2015 regarding the City's acquisition of approximately 1,200 square feet of the Property for a City of El Cajon sign, together with such rights to access the Sign Area, including all utilities, under, over, and upon the Property as may be agreed to by the Buyer (the "Sign Area"). The agreement for the Sign Area shall include the following terms:

a. City shall pay the sum of \$36,000 to the Buyer for the Sign Area, which payment shall be made through Escrow.

b. Seller will provide legal description of Sign Area, which includes the access easement, to the escrow company for recordation.

Section 2. Paragraph (2) of Subdivision (B) of Section II, is hereby amended to read as follows:

2. Deposit. The Initial Deposit and a subsequent deposit made by the Buyer in the amount of FIFTY THOUSAND and 00/100 Dollars (\$50,000.00) due on or before 121 calendar days after this Agreement is signed by both parties (the "Second Deposit"), **and, if applicable, a third deposit in the amount of FIFTY THOUSAND and 00/100 Dollars (\$50,000), as hereinafter set forth, are sometimes referred to herein as the "Deposits".** In the event that for any reason, including additional time needed to obtain a conditional use permit for the property, closing does not occur on or prior to June 30, 2015, Buyer shall make a third deposit in the amount of FIFTY THOUSAND and 00/100 Dollars (\$50,000.00) (the "Third Deposit") on or before June 30, 2015, for the purposes of extending the Close of Escrow beyond June 30, 2015 but in no event later than as set forth in Subdivision (D) of Section III. **Upon Escrow's receipt of Buyer's Third Deposit, Buyer's entire Deposit (of ONE HUNDRED FIFTY THOUSAND AND 00/100 Dollars (\$150,000)) shall become non-refundable to Buyer unless the CLOMR is not approved by FEMA or Buyer as set forth in Subdivision (D) of Section III .** The Deposits shall, if requested by Buyer, be deposited by Escrow Holder in an interest-bearing bank or savings and loan association account and the accrued interest shall become part of the Deposits. All Deposits shall be made by cash, check or wired funds

Section 3. Paragraph 9 of Subdivision (B) of Section III is hereby amended to read as follows:

9. Conditional Use Permit. The parties acknowledge that the Property is currently zoned C-M (Heavy Commercial – Light Industrial) and that as of the date hereof, it is Buyer's intent to develop the Property for vehicle sales and service, and related businesses. The parties further acknowledge that such intended uses are permitted within the C-M zoning but only with an approved conditional use permit. Buyer shall have **until February 28, 2015** to apply for a conditional use permit and, if an application for a conditional use permit is made, **until June 30, 2015** to obtain a conditional use permit for such intended uses. The Seller agrees to cooperate in the execution of any application or other documentation that may be required, as the owner of the Property, to facilitate Buyer completing such application. All application costs and fees, and any third parties' expenses shall be paid by Buyer. Buyer understands that the Seller cannot make any representations or covenants that its planning agency and its legislative body, if applicable, will approve the Buyer's application; Buyer further acknowledges that the Seller, by approving this Agreement, cannot make a commitment to Buyer's proposed use of the Property.

Section 4. Subdivision (D) of Section III is hereby amended to read as follows:

D. Close of Escrow. For purposes of this Agreement, the "Close of Escrow" shall be defined as the date that the grant deed or deeds conveying the Property to Buyer is or are recorded in the Official Records of San Diego County, California. Escrow shall close on or before sixty (60) days after the Buyer's approval as set forth in paragraphs 2, 3, 4, 5, 6 and 9, of Subdivision (B), above, delivery of the Deposits as set forth in paragraph 2 of Subdivision (B) of Section II, above, and approval of the CLOMR by **(a) FEMA; and (b) Buyer, to the extent of any conditions in the CLOMR to occur within ten (10) days of receipt by Buyer,** as set forth in Section VIII, below (the "Closing Date"), **but not later than the later of (i) August 31, 2015, or (ii) fifteen (15) days after approval of the CLOMR by FEMA and Buyer.**

Section 5. A new Section VIII, entitled, "Flood Map Revision" is added to the Agreement to read as follows:

VIII. Flood Map Revision

As a result of the Buyer's investigation of the Property as set forth in Paragraph (8) of Subdivision (B) of Section III, above, it has been determined that the Property will require a Conditional Letter of Map Revision (the "CLOMR") with the Federal Emergency Management Agency ("FEMA") for the Property with the intent to remove the Property from the existing FEMA floodway map. Notwithstanding the obligation of Buyer to be responsible for the costs related to any appeals of the FEMA designation, the parties hereby agree that the Seller will be responsible for processing the application for a CLOMR, and that Buyer will share in the expense incurred by Seller. The parties estimate that the total cost for Seller to process the CLOMR is \$15,000.00. Buyer agrees to contribute up to 50% of the actual the cost for the CLOMR not to exceed \$7,500.00.

Section 5. A new Section IX, entitled "IRS Section 1031 Exchange" is added to the Agreement to read as follows:

IX. IRS Section 1031 Exchange

The parties acknowledge that Buyer may elect the right to acquire the Property as part of a like-kind exchange transaction by the transfer of this Agreement in whole or in part to a "qualified intermediary" selected by Buyer in connection with a tax-deferred exchange as contemplated by Section 1031 of the Internal Revenue Code of 1986, as amended. Seller agrees to execute a consent and acknowledgment of an assignment of this Agreement as part of such an exchange. Seller agrees to cooperate with Buyer in connection with such tax-deferred exchange, including the execution of such documents as may be reasonably necessary to effectuate the same; provided that (a) the Closing

Date shall not be delayed as the result of such exchange; (b) all additional costs in connection with such exchange shall be borne by Buyer; (c) Seller conveys title to the Property directly to Buyer (or its permitted assignee) by direct deeding and does not take title to any exchange property; and (d) Buyer shall indemnify Seller and hold Seller harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including, without limitation, reasonable attorney fees relating to Seller's participation in such exchange. This agreement and Buyer's obligations hereunder are not subject to or conditioned upon Buyer's ability to consummate an exchange. Seller's responsibility for reviewing exchange documents shall be limited to determining whether the terms and conditions of such exchange documents are such that they are in compliance with the foregoing provisions. Buyer shall be responsible for making all determinations as to the legal sufficiency or other consideration, including, but not limited to tax considerations, relating to such exchange documents. Seller, in so cooperating in any exchange transaction arranged by Buyer, shall in no event be responsible for, or in any way warrant, the tax consequences of the exchange transaction.

Section 6. Except as otherwise modified by this First Amendment the Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Affordable Housing Agreement effective the date and year first written above.

CITY OF EL CAJON AS SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY, a charter city and municipal corporation

Date \_\_\_\_\_

\_\_\_\_\_  
Douglas Williford, Executive Director

ATTEST:

\_\_\_\_\_  
Belinda A. Hawley, Secretary

JKC EL CAJON, LLC, an Oregon limited liability company

Date \_\_\_\_\_

\_\_\_\_\_  
John P. Keifer, Member

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Morgan L. Foley, General Counsel

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Majed Al-Ghafry, Assistant City Manager