

Meeting Date: 9/23/2014

Report Type: Consent

Report ID: 2014-00698

Title: Loan Amendment: Curtis Park Village Brownfield Revolving Loan Fund Loan

Location: District 5

Recommendation: Pass a Motion authorizing the City Manager or the City Manager's designee to execute 1) First Amendment to Installment Promissory Note and to Brownfields Cleanup Revolving Loan Fund Program Loan Agreement for Site Remediation; and 2) First Amendment to Short Form Deed of Trust and Assignment of Rent.

Contact: Denise Malvetti, Senior Project Manager, (916) 808-7064, Economic Development Department

Presenter: None

Department: Economic Development Dept

Division: Citywide Development

Dept ID: 18001031

Attachments:

- 1-Description/Analysis
- 2-First Amendment P Note and Loan Agreement
- 3-First Amendment Deed

City Attorney Review

Approved as to Form
Michael Sparks
9/18/2014 9:16:31 AM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 9/9/2014 11:17:48 AM

Description/Analysis

Issue Detail: In 1997, the City established a Brownfields cleanup revolving loan fund program (the “BCRLF Program”) funded by the United States Environmental Protection Agency. The purpose of the BCRLF Program is for the City to provide loans and sub-grants to qualified projects to assist with the investigation and cleanup of contaminated sites within the City.

In 2009, the City provided a \$900,000 BCRLF loan to Calvine & Elk Grove-Florin, LLC (“Borrower”) for the environmental cleanup at the Curtis Park Village project. The loan has a five-year term with two percent simple interest payments due annually. The Borrower is current on these interest payments.

The loan is scheduled to mature on October 1, 2014 and the Borrower has requested a one-year extension to October 1, 2015. The proposed amendment also modifies the loan agreement and promissory note to reflect that interest has been charged as provided in the City’s Brownfield Revolving Loan Funds Implementation Plan Loan Policies and Procedures Manual (“Policies”) and according to industry standards for a loan of this kind. Although these changes result in the Borrower paying approximately \$9,000 less interest over the life of the loan, there is significant public benefit because it will help facilitate the redevelopment of the former railyard into the Curtis Park Village project.

Policy Considerations: The BCRLF program supports the 2013 Economic Development Strategy goals of Invest in Building Sacramento and Invest in Partners.

Economic Impacts: Not applicable.

Environmental Considerations: The recommendations are administrative, organizational and fiscal matters that do not constitute a “project” under the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3). The activity is covered by the general rule that CEQA applies only to projects which have the potential to cause significant effect on the environment.

Sustainability: Not applicable as the recommendation is an administrative matter.

Commission/Committee Action: None.

Rationale for Recommendation: The borrower requested the one-year extension because of unforeseen delays related to both the remediation and infrastructure construction. During the remediation process, additional contaminated soils were discovered that needed to be characterized and subsequently removed causing a delay of approximately six months. Further delays were incurred during the construction of the infrastructure because remnant portions of the former facility were discovered that needed to be excavated and removed from the site. The removal of these remnant pieces caused an additional year delay.

Financial Considerations: The proposed Amendment extends the loan by one year under the original terms; therefore, the Borrower will be required to make an interest payment of \$18,000 in January 2015 and will be required to make the balloon payment of \$900,000 and accrued interest payment of \$13,266 by October 1, 2015. When the funds are received, they will be returned to the Brownfields Revolving Loan Program Fund (Fund 2029) and be available for loans and sub-grants for other qualified projects within the City.

Local Business Enterprise (LBE): Not applicable, no good or services are being procured under this report.

FIRST AMENDMENT TO INSTALLMENT PROMISSORY NOTE AND TO BROWNFIELD CLEANUP REVOLVING
LOAN FUND PROGRAM LOAN AGREEMENT FOR SITE REMEDIATION
(City Agreement 2009-1031)

This agreement (the "**Amendment**") dated September 16, 2014, for reference purposes only, is hereby made part of (i) that certain installment promissory note dated October 1, 2009 (the "**Original Note**"), payable by CALVINE & ELK GROVE-FLORIN, LLC (the "**Borrower**"), a California limited liability company, to the CITY OF SACRAMENTO (the "**Lender**"), a California municipal corporation, in the original principal amount of Nine Hundred Thousand Dollars (\$900,000) (the "**Loan**"), and (ii) that certain Brownfields Cleanup Revolving Loan Fund Program loan agreement for site remediation dated October 1, 2009, and identified as City Agreement 2009-1031, between Lender and Borrower (the "**Original Loan Agreement**").

Background

The Original Note is currently scheduled to mature on October 1, 2014 (the "**Original Maturity Date**"). Although Borrower is current on its scheduled payments under the Original Note and Original Loan Agreement, Borrower may be unable to make the scheduled balloon payment of the Loan balance on the Original Maturity Date. Lender and Borrower have determined that it is in their best interests to extend the maturity date to October 1, 2015, and have agreed to amend the Original Note and Original Loan Agreement on the terms and conditions set forth below.

The parties also desire to amend the Original Loan Agreement and Original Note to reflect that interest on the Loan has been charged as provided in the City's Brownfield Revolving Loan Funds Implementation Plan Loan Policies and Procedures Manual.

With these background facts in mind, the Borrower and Lender agree as follows:

1. **Definitions.** All capitalized terms used in this Amendment but not expressly defined in this Amendment shall have the meanings ascribed to them in the Original Note and the Original Loan Agreement. All references in the Original Note and the Original Loan Agreement to "Loan Agreement" or "AGREEMENT" constitute a reference to the Original Loan Agreement, as amended by this Amendment, and all references to "Note" or "PROMISSORY NOTE" constitute a reference to the Original Note, as amended by this Amendment.
2. **Modification of Note Terms.** The Original Note is hereby modified as follows:
 - (a) **Extension of Term.** Maturity is hereby extended to October 1, 2015. All unpaid principal and accrued and unpaid interest under the Loan shall be due and payable at Maturity. The unpaid principal due and payable at Maturity is \$900,000.00, and the accrued and unpaid interest due at Maturity is \$13,266.
 - (b) **Annual Installment Payment.** Borrower shall make an annual installment payment of principal and interest in the amount of \$18,000 on January 5, 2015.
 - (c) **Amendment of Section 5.** Section 5 of the Original Note is hereby amended to read in its entirety as follows:

This Note is either secured by, or entitled to the benefits, rights and privileges of, the following instrument executed contemporaneously with this Note:

Short Form Deed of Trust and Assignment of Rents made as of September ____, 2014, between Calvin & Elk Grove-Florin LLC, Petrovich Properties LLC, Fidelity National Title Company, and the City of Sacramento.

3. Modification of Loan Agreement Terms.

(a) **Amendment to Loan Agreement.** The Original Loan Agreement is hereby amended to conform to the terms of section 2 of this Amendment.

(b) **Section I.A.** Section I.A. of the Original Loan Agreement is hereby amended to read in its entirety as follows:

A. **LOAN.** CITY hereby agrees to loan to BORROWER the principal sum of Nine Hundred Thousand Dollars (\$900,000) for the purpose described in this AGREEMENT, with interest on the unpaid principal of the loan funds that are disbursed under section I.K. of this AGREEMENT from the date immediately following disbursement, until paid, at the rate of two percent (2%) per annum (the "LOAN").

(c) **Section I.I.2.** Section I.I.2. of the Original Loan Agreement is hereby amended to read in its entirety as follows:

2. **Deed of Trust.** The indebtedness evidenced by the PROMISSORY NOTE shall be secured by a DEED OF TRUST, dated concurrently with this Agreement, executed by Borrower. The DEED OF TRUST shall also secure (i) all indebtedness evidenced by any extension or renewal of the PROMISSORY NOTE, and (ii) payment of such further sums as BORROWER may owe CITY in the future for any interest, fees and costs due under this AGREEMENT. CITY may, in its sole discretion, accept a DEED OF TRUST executed and delivered by a third-party if the DEED OF TRUST otherwise satisfies the requirements of this section I.I.2.

(d) **Section I.I.3.** Section I.I.3. of the Original Loan Agreement is hereby deleted in its entirety.

4. Confirmation of Note and Loan Agreement. The Original Note and the Original Loan Agreement, each as amended by this Amendment, shall remain in full force and effect. If any conflict exists between the terms and provisions of the Original Note and the Original Loan Agreement and the terms and provisions of this Amendment, the terms and provisions of this Amendment shall govern and control.

5. Affix to Original Note. Lender shall affix the fully-executed original of this Amendment to the Original Note.

6. Effective Date. This Amendment is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.

7. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original as against the party signing such counterpart, but which together shall constitute one and the same instrument.

BORROWER:

CALVINE & ELK GROVE-FLORIN, LLC,
a California limited liability company



Date signed: September 16, 2014

By: _____
Name: Paul S. Petrovich
Its: Manager

LENDER:

CITY OF SACRAMENTO, a California municipal
corporation

Date signed: _____

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:



CITY ATTORNEY

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Economic Development Department
City of Sacramento
915 I Street, HCH, 4th Floor
Sacramento, CA 95814

FIRST AMENDMENT TO SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

This FIRST AMENDMENT TO SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS (this "**Amendment**"), dated September 16, 2014, for reference purposes only, is made by CALVINE & ELK GROVE-FLORIN, LLC (the "**Borrower**"), a California limited liability company, and Petrovich Properties LLC, a California limited liability company (the "**Trustor**") in favor of the CITY OF SACRAMENTO (the "**Beneficiary**"), a California municipal corporation.

RECITALS

A. Trustor previously executed and delivered to Beneficiary that certain Short Form Deed of Trust and Assignment of Rents dated October 1, 2009, by and between Borrower, Trustor, Fidelity National Title Insurance Company, as Trustee, and Beneficiary (the "Original Deed of Trust"), which encumbers that certain real property situated in the City of Woodland, Yolo County, California, described in Exhibit A hereto and incorporated herein (the "Property"). Although the Property is located in Yolo County, the Original Deed of Trust was inadvertently Recorded on December 16, 2009, in the Official Records of Sacramento County, California ("Official Records"), Book 20091216, Page 0397. The Original Deed of Trust is attached as Exhibit B hereto and incorporated herein.

B. The Original Deed of Trust secures certain indebtedness and obligations of Borrower as evidenced by that certain installment promissory note dated October 1, 2009 (the "Original Note") executed by Borrower and payable to Beneficiary, in the original principal amount of Nine Hundred Thousand Dollars (\$900,000) (the "Original Loan"). The Original Deed of Trust was provided under that certain Brownfields Cleanup Revolving Loan Fund Program loan agreement for site remediation dated October 1, 2009, and identified as City Agreement 2009-1031, between Beneficiary and Borrower (the "Original Loan Agreement").

C. Concurrently herewith, Borrower has executed and delivered to Beneficiary a First Amendment to Installment Promissory Note and to Brownfield Cleanup Revolving Loan Fund Program loan agreement for site remediation of even date herewith (the "First Amendment"), which modifies the Original Note and the Original Loan Agreement to extend the maturity date and to modify the payment obligations under the Original Loan.

D. In connection with the First Amendment, Trustor and Beneficiary have agreed to amend the Original Deed of Trust as set forth herein, and that the Original Note, as amended by

the First Amendment, shall continue to be secured by the Original Deed of Trust, as amended hereby.

AMENDMENTS

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Amendment, and other good and valuable consideration, receipt of which is hereby acknowledged, the Original Deed of Trust is hereby amended as follows:

1. **Definitions.** All capitalized terms not otherwise defined herein shall have the meanings set forth in the Original Deed of Trust. In addition, for purposes of the Deed of Trust (as defined herein), the following defined terms shall have the following meanings: (a) "Deed of Trust" means the Original Deed of Trust, as amended by this Amendment; and (b) "Note" means the Original Note, as amended by the First Amendment, together with all renewals, extensions, modifications, refinancings, and substitutions for the Note.

2. **Security.** The indebtedness and obligations evidenced by the Original Note, as amended by the First Amendment, are secured by the Deed of Trust, as amended herein.

3. **Confirmation.** Trustor covenants and confirms that (a) the Property continues to be subject to the lien of the Deed of Trust; (b) all of the Property is subject to all terms and covenants of the Deed of Trust; and, (c) this Amendment is also given as security for: (i) the repayment of the indebtedness evidenced by the Note; (ii) Borrower's performance of the obligations set forth in the Note; and, (iii) Trustor's performance of the obligations set forth in the Deed of Trust.

4. **Amendment of Fictitious Deed of Trust.** The last paragraph of the Deed of Trust is amended to read in its entirety as follows:

TO PROTECT THE SECURITY of this Deed of Trust, Trustor agrees: By the execution and delivery of this Deed of Trust and the rate secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz.:

COUNTY	BOOK	PAGE
Yolo	653	245

(which provisions, identical in all counties, are printed on pages 6 to 9 hereof) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that Trustor will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

5. **No Impairment of Lien.** The Original Deed of Trust and this Amendment shall together constitute and be construed as one document. This Amendment shall in no way impair the lien, charge or priority of the Original Deed of Trust upon all Property covered thereby.

6. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties authorize each other to detach and combine, or cause to be detached and combined, original signature pages and consolidate them into a single identical original for recordation of this Amendment in the Official Records.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the dates set forth below.

TRUSTOR:

PETROVICH PROPERTIES, LLC,
a California limited liability company



By: _____
Name: Paul S. Petrovich
Its: Manager

Date signed: September 16, 2014

BENEFICIARY:

CITY OF SACRAMENTO, a California municipal corporation

By: _____
Name: _____
Its: _____

Date signed: _____, 2014

BORROWER:

CALVINE & ELK GROVE-FLORIN, LLC,
a California limited liability company



By: _____
Name: Paul S. Petrovich
Its: Manager

Date signed: September 16, 2014

State of California)
)
County of SACRAMENTO)

On SEPTEMBER 17, 2014 before me, LAURA KASSAHN, a notary public, personally appeared PAUL S. PETROVICH, 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 *Laura Kassahn*

(Seal)

State of California)
)
County of _____)

On _____ before me, _____, a notary public, personally appeared _____, 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)

State of California)

County of _____)

On _____ before me, _____, a notary public, personally appeared _____, 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)

Exhibit A to First Amendment to Deed of Trust

Legal Description of Property

**801, 819 AND 823 MAIN STREET
WOODLAND, CALIFORNIA**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF WOODLAND, COUNTY OF YOLO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Lots 1, 2 and 3, Block 4, Town (now City) of Woodland, according to the official plat thereof, filed for record in the Office of the Recorder of Yolo County, California on June 25, 1863 in Book D of Deeds, Page 722.

APN: 005-223-001-000

Parcel Two:

Lot 4, Block 4, Town (now City) of Woodland, according to the official plat thereof, filed for record in the Office of the Recorder of Yolo County, California on June 25, 1863 in Book D of Deeds, Page 722.

APN: 005-223-002-000

Parcel Three:

Lot 5, Block 4, Town (now City) of Woodland, according to the official plat thereof, filed for record in the Office of the Recorder of Yolo County, California on June 25, 1863 in Book D of Deeds, Page 722.

APN: 005-223-003-000

Exhibit B to First Amendment to Deed of Trust

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

Office of the City Clerk
City of Sacramento
915 I Street, HCH, 1st Floor
Sacramento, CA 95814-2604

No Fee Document per Gov. Code § 6103

[SPACE ABOVE FOR RECORDER'S USE ONLY]



Sacramento County Recorder
Craig A. Kramer, Clerk/Recorder
BOOK 20091216 PAGE 0397
Wednesday, DEC 16, 2009 9:28:13 AM
Ttl Pd \$0.00 Nbr-0006159747
REB/51/2-11

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
2009 DEC 28 P 2:40

SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made as of October 1, 2009, between Calvin & Elk Grove Florin LLC, a California Limited Liability Company, herein called Borrower, whose mailing address is 5046 Sunrise Boulevard, Suite One, Fair Oaks, California 95628, Petrovich Properties LLC, a California Limited Liability Company, herein called Trustor, whose mailing address is 5046 Sunrise Boulevard, Suite One, Fair Oaks, California 95628, Fidelity National Title Company, herein called Trustee, and CITY OF SACRAMENTO, herein called Beneficiary,

WITNESSETH: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in Yolo County, California, commonly known as 801 Main Street located at 801, 819 and 823 Main Street, Woodland, California (Property Address) (hereinafter, together referred to as "the Property"), in the City of Woodland; Legal Description: SEE EXHIBIT "A", attached hereto and incorporated herein by this reference; APN # 005-223-01-1, 005-223-02-1, and 005-223-03-1.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits.

FOR THE PURPOSE OF SECURING: (i) Payment of the indebtedness of Borrower evidenced by one promissory note of even date herewith ("the Promissory Note"), and any extension or renewal thereof, in the principal sum of NINE HUNDRED THOUSAND DOLLARS EVEN (\$900,000.00) executed by Borrower in favor of Beneficiary or order; and (ii) Payment of such further sums as Borrower may owe Beneficiary in the future under the terms of the Promissory Note on and after October 1, 2009 through the date of sale or foreclosure of the Property under this Deed of Trust, which has not been paid to Beneficiary as required by law. SHOULD TRUSTOR SELL, CONVEY, TRANSFER, OR DISPOSE OF, or further encumber said property, or any part thereof or any interest

I



***2009-1031-A**

With: Calvin & Elk Grove Florin, LLC

Title: Short Form Deed Trust/Assignment of Rents
Authorization: Ordinance 99-024

therein, voluntarily or involuntarily, without the written consent of Beneficiary being first had and obtained, the BENEFICIARY SHALL HAVE THE RIGHT, AT ITS OPTION, TO DECLARE ALL SUMS SECURED HEREBY FORTHWITH DUE AND PAYABLE.

TO PROTECT THE SECURITY of this Deed of Trust, Trustor agrees: By the execution and delivery of this Deed of Trust and the rate secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz.:

COUNTY	BOOK	PAGE
Sacramento	4331	62

(which provisions, identical in all counties, are printed on pages 6 to 9 hereof) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that Trustor will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

SIGNATURE PAGE FOLLOWS

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at its address hereinbefore set forth.

TRUSTOR:

Petrovich Properties LLC,
a California Limited Liability Company

By: 
Name: Paul S. Petrovich

Its: Manager

BORROWER:

Calvine & Elk Grove-Florin LLC,
a California Limited Liability Company

By: 
Name: Paul S. Petrovich

Its: Manager

The State of California

County of Sacramento

On Nov. 13, 2009, before me, Susan Lynn Millsap personally appeared PAUL S. PETROVICH who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person 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] Susan Lynn Millsap
(This area for official notarial seal)

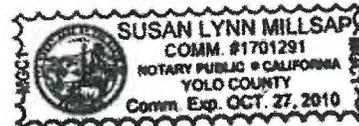


EXHIBIT A

LEGAL DESCRIPTION FOR

**801, 819 AND 823 MAIN STREET
WOODLAND, CALIFORNIA**

The land referred to herein is situated in the State of California, County of Yolo, City of Woodland, and is described as follows:

PARCEL ONE:

LOTS 1, 2 AND 3, BLOCK 4, TOWN OF WOODLAND (NOW CITY), ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF YOLO COUNTY, CALIFORNIA, ON JUNE 25, 1863, IN BOOK D OF DEEDS, PAGE 722.

APN: 005-223-01-1

PARCEL TWO:

LOT 4, BLOCK 4, TOWN OF WOODLAND (NOW CITY), ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF YOLO COUNTY, CALIFORNIA, ON JUNE 25, 1863, IN BOOK D OF DEEDS, PAGE 722.

APN: 005-223-02-1

PARCEL THREE :

LOT 5, BLOCK 4, TOWN OF WOODLAND (NOW CITY), ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF YOLO COUNTY, CALIFORNIA, ON JUNE 25, 1863, IN BOOK D OF DEEDS, PAGE 722.

APN: 005-223-03-1