

Meeting Date: 12/16/2014

Report Type: Consent

Report ID: 2014-00856

Title: Amendment to Entertainment and Sports Center Property Conveyance Agreement

Location: Downtown Plaza, District 4

Recommendation: Pass a Motion 1) authorizing the City Manager or his designee to execute the Second Amendment to the Property Conveyance Agreement and Joint Escrow Instructions to extend the date of transfer of the City properties to Sacramento Basketball Holdings LLC affiliates.

Contact: Desmond Parrington, AICP, ESC Project Manager, (916) 808-5044, Office of the City Manager

Presenter: None

Department: City Manager

Division: Executive Office

Dept ID: 02001011

Attachments:

1-Description/Analysis

2-Background

3-1st PCA Amendment

4-2nd PCA Amendment

City Attorney Review

Approved as to Form

Matthew Ruyak

12/11/2014 11:08:21 AM

Approvals/Acknowledgements

Department Director or Designee: John Dangberg - 12/11/2014 10:02:39 AM

Description/Analysis

Issue Detail: Staff is seeking authorization to amend the Property Conveyance Agreement and Joint Escrow Instructions (PCA) between the City and the affiliates of Sacramento Basketball Holdings LLC (SBH), which are SBH Real Estate Group LLC, SBH Natomas LLC, SBH Downtown LLC, and SG Downtown LLC. This amendment would extend the transfer date for the eight City-owned properties to the SBH affiliates until no later than October 1, 2016.

The SBH affiliates are currently focused on the development of an arena, plaza, and a new mixed-use hotel project at the ESC site. SBH has requested an extension of the timeframe to accept the transfer of the City properties. The transfer would take place no later than the scheduled completion of the arena in October 2016. Should a development opportunity arise, transfer of the all the properties could occur sooner. The SBH affiliates and the City will continue to market and plan for the future development of these sites, particularly the 184-acre Natomas property so that when ownership is transferred the sites are development-ready. Given 1) the City's desire to see the completion of these major projects and 2) SBH's limited capacity now to undertake development at the eight City properties, staff is recommending that Council approve the second amendment to the PCA.

Policy Considerations: The PCA was approved by City Council on May 20, 2014, with a minor amendment in November. This proposed change to the transfer timeline for the City properties is considered a major amendment that requires Council review and approval.

Economic Impact: This change should have no impact on the actual development of the sites given that development planning will continue.

Environmental Considerations: This report identifies changes to an existing agreement related to the timing for the transfer of eight City-owned properties to SBH affiliates. The actions in this report do not have any potential for significant effect on the environment and are exempt under CEQA Guidelines section 15061(b)(3).

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Changing the transfer date of the City properties enables SBH to focus its efforts on the completion of the ESC and hotel projects, but does not prevent the marketing or planning of these sites for future development. The amendment also gives SBH the flexibility to take

ownership of the properties as soon as they have the capacity to own, sell, or develop these sites.

Financial Considerations: Staff in its presentation to Council for the approval of the ESC project on May 20, 2014 did not anticipate property tax revenues from the transfer of these properties until 2016. The estimated amount of property tax revenue that these properties would generate upon transfer as undeveloped land is approximately \$74,000 per year. By extending the timeframe, the City would not receive this revenue until transfer. The City would continue to pay the property tax until the transfer of title to the SBH affiliates.

Local Business Enterprise (LBE): Not applicable.

Background

Under the Property Conveyance Agreement approved by Council on May 20, 2014, the City properties, as shown in the table below, were to transfer to the SBH affiliates within three days of the second closing when SBH's lender approved the Guaranteed Maximum Price (GMP) contract between Sacramento Downtown Arena LLC (ArenaCo) and Turner Construction and released the remainder of ArenaCo's loan. At that same time, the amount of the appraised value of the City properties (\$32,049,480) was to be deposited by ArenaCo into the City's escrow account to be used for the construction of the ESC.

City Properties	Appraised Value
Natomas Arena	14,815,000
3 rd Street and Capitol Mall	13,400,000
2 nd Street and O Street	370,000
4 th and J Street	1,640,000
312-324 K Street	830,000
1401 H Street	700,000
5 th and K Street Air Rights	293,480
J Street Remnant Parcel	1,000
Total	\$32,049,480

Prior to the second closing, the SBH affiliates requested an administrative extension to the transfer of the eight City-owned properties. On November 5, 2014, the GMP contract was approved and the second closing occurred. The City Manager, pursuant to authority granted under Section 6 of City Resolution 2014-0132, agreed to an extension of 30 business days which was memorialized in the First Amendment to the PCA executed on November 7, 2014 (refer to attachment).

SBH will continue to focus over the next two years on the arena, the plaza, and the new mixed-use hotel project. They have requested an additional extension in the property transfer schedule. If approved, the Second Amendment allows the SBH affiliates to take the properties any time before October 1, 2016, but on that date all properties would automatically transfer to the SBH affiliates. Despite the extension of the transfer date, the SBH affiliates and the City continue to plan for the future development of these sites, particularly the Natomas land, which has tremendous economic potential and will

be poised for development when the flood moratorium is lifted. In addition, this extension has no impact on the transfer of the \$32 million from ArenaCo to the City for the ESC construction funding.

FIRST AMENDMENT TO PROPERTY CONVEYANCE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This **FIRST AMENDMENT TO PROPERTY CONVEYANCE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** (this "**Amendment**") is made and entered into as of November 4, 2014, by and between the CITY OF SACRAMENTO, a municipal corporation of the State of California (the "**City**"), and SBH REAL ESTATE GROUP LLC, SBH NATOMAS LLC, SBH DOWNTOWN LLC, and SG DOWNTOWN LLC (collectively, "**SBH Parties**"). The City and SBH Parties are sometimes collectively referred to in this Amendment as the "**Parties.**"

BACKGROUND

The Parties entered into that certain Property Conveyance Agreement and Joint Escrow Instructions, dated May 20, 2014 (City Agreement No. 2014-0507; the "**Agreement**").

The Agreement provides that the City Parcels Closing shall occur within three business days following the satisfaction of the GMP Condition.

The Parties believe additional time for the City Parcels Closing is beneficial.

City Resolution No. 2014-0132 authorizes the City Manager or his designee to make, execute, and deliver on the City's behalf technical, clerical, and minor amendments to the Agreement, subject to approval as to form by the City Attorney or his designee.

With these background facts in mind, the Parties agree as follows:

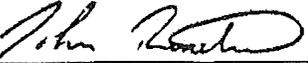
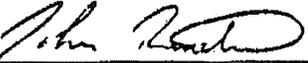
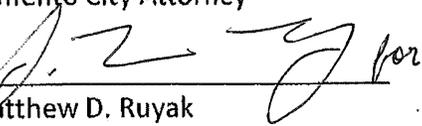
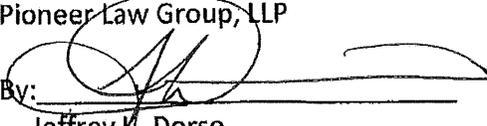
1. The first two sentences of Section 3.3 of the Agreement are deleted and replaced with the following single sentence:

Consummation of the transactions related to the City Parcels contemplated by this Agreement (the "**City Parcels Closing**"; City Parcels Closing and ESC Land Closing are collectively referred to herein as the "**Closings**") shall occur on the date that is 30 business days after satisfaction of the City Parcels Contingencies and the GMP Condition (the "**City Parcels Closing Date**").

2. Except as provided in Section 1, above, all provisions of Section 3.3 and the remainder of the Agreement are unchanged and remain in full force and effect.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the day and year first above written.

<p>City of Sacramento</p> <p>By: <u></u> John F. Shirey City Manager</p> <p>Date: <u>Nov. 7</u>, 2014</p>	<p>SBH Real Estate Group LLC, a Delaware limited liability company.</p> <p>By: <u></u> Name: John Rinehart Its: CFO</p> <p>SBH Downtown LLC, a Delaware limited liability company</p> <p>By: <u></u> Name: John Rinehart Its: CFO</p> <p>SBH. Natomas LLC, a Delaware limited liability company</p> <p>By: <u></u> Name: John Rinehart Its: CFO</p> <p>SG Downtown LLC, a Delaware limited liability company</p> <p>By: <u></u> Name: John Rinehart Its: CFO</p>
<p>Approved as to Form Sacramento City Attorney</p> <p>By: <u></u> Matthew D. Ruyak Assistant City Attorney</p>	<p>Approved as to Legal Form Pioneer Law Group, LLP</p> <p>By: <u></u> Jeffrey K. Dorso Attorneys for SBH Parties</p>

SECOND AMENDMENT TO PROPERTY CONVEYANCE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This **SECOND AMENDMENT TO PROPERTY CONVEYANCE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** (this "**Amendment**") is made and entered into as of December 16, 2014, by and between the CITY OF SACRAMENTO, a municipal corporation of the State of California (the "**City**"), and SBH REAL ESTATE GROUP LLC, SBH NATOMAS LLC, SBH DOWNTOWN LLC, and SG DOWNTOWN LLC (collectively, "**SBH Parties**"). The City and SBH Parties are sometimes collectively referred to in this Amendment as the "**Parties**."

BACKGROUND

A. The Parties entered into that certain Property Conveyance Agreement and Joint Escrow Instructions, dated as of May 20, 2014 (City Agreement No. 2014-0507), as amended by that certain First Amendment to Property Conveyance Agreement and Joint Escrow Instructions, dated as of November 4, 2014 (collectively, the "**Agreement**"). Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

B. While the Agreement currently provides that the City Parcels Closing shall occur within 30 business days following the satisfaction of the GMP Condition, the Parties now believe additional time for the City Parcels Closing is beneficial.

With these background facts in mind, the Parties agree as follows:

1. The first sentence of Section 3.3 of the Agreement (as amended) is deleted and replaced with the following two sentences:

Consummation of the transactions related to the City Parcels contemplated by this Agreement (the "**City Parcels Closing**"; City Parcels Closing and ESC Land Closing are collectively referred to herein as the "**Closings**") shall occur on October 1, 2016 or such sooner date selected by the SBH Parties pursuant to the conditions set forth in the immediately following sentence (the "**City Parcels Closing Date**"). SBH Parties may, in their sole discretion, select a City Parcels Closing Date that is earlier than October 1, 2016, provided: (a) written notice is provided to City specifically stating the new City Parcels Closing Date; and (b) such City Parcels Closing Date is at least 60 days later than the date such notice is provided to City.

2. The Parties acknowledge that the conditions to the City Parcels Closing set forth in Sections 10.1 and 11.1 of the Agreement have been satisfied.
3. Within 30 days after the mutual execution of this Amendment, City shall, at SBH Parties' expense, record a memorandum (in a form acceptable to both Parties) of the Agreement disclosing SBH Parties' rights to acquire the City Parcels against

the record title of each of the City Parcels in the Sacramento County Recorder's Office.

4. SBH Parties acknowledge that section 24.1 shall be considered to apply on the City Parcels Closing Date as though acknowledged, represented, and warranted on that future date, and, in addition to but in no way limiting the foregoing, SBH Parties further specifically acknowledge, absent further written agreement with the City, that any changes (environmental or otherwise) to the City Parcels occurring prior to the City Parcels Closing Date (occurring other than as a result of any unapproved material deviation from the current use or maintenance of such City Parcel(s)) shall not in any way create any liability for the City to the SBH Parties or require the City to incur any costs associated with the City Parcels. In the event that the City desires to materially change or deviate from the current use or maintenance of any City Parcel during such period, the City shall obtain the written approval of the appropriate SBH Party prior to effecting such change.
5. Except as provided above, all provisions of Sections 3.3, 10, 11, 24.1 and the remainder of the Agreement are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the day and year first above written.

<p>City of Sacramento</p> <p>By: _____ John F. Shirey City Manager</p> <p>Date: _____, 2014</p>	<p>SBH Real Estate Group LLC, a Delaware limited liability company</p> <p>By: _____ Name: Its:</p> <p>SBH Downtown LLC, a Delaware limited liability company</p> <p>By: _____ Name: Its:</p> <p>SBH Natomas LLC, a Delaware limited liability company</p> <p>By: _____ Name: Its:</p> <p>SG Downtown LLC, a Delaware limited liability company</p> <p>By: _____ Name: Its:</p>
<p>Approved as to Form Sacramento City Attorney</p> <p>By: _____ Matthew D. Ruyak Assistant City Attorney</p>	<p>Approved as to Legal Form Pioneer Law Group, LLP</p> <p>By: _____ Jeffrey K. Dorso Attorneys for SBH Parties</p>

ACCEPTANCE BY ESCROW HOLDER

Fidelity National Title Company hereby acknowledges that it has received a fully executed copy of the foregoing Second Amendment to Property Conveyance Agreement and Joint Escrow Instructions by and among the City of Sacramento, and SBH Real Estate Group LLC, SBH Natomas LLC, SBH Downtown LLC, and SG Downtown LLC, and agrees to act as Escrow Holder under the Agreement (as amended) and to be bound by and strictly perform the terms thereof as such terms apply to Escrow Holder. Escrow Holder shall execute two (2) originals of this Acceptance by Escrow Holder and promptly deliver one (1) original to each of SBH Real Estate Group LLC and City.

Dated: _____, 2014

Fidelity National Title Company

By: _____

Name: _____

Title: _____