

City of Brisbane as Successor Agency Agenda Report

DATE: Successor Agency meeting of April 27, 2017

TO: Chair Liu and Members of the Successor Agency

FROM: Michael Roush, General Counsel

SUBJECT: Termination of a Ground Lease on 3.5+/- acres in Sierra Point

RECOMMENDATION: Adopt the attached resolution terminating a ground lease on property owned by the Successor Agency to the Redevelopment Agency of the City of Brisbane, authorize the Executive Director to sign the Termination of Ground Lease Agreement and direct the Board Secretary to record the document.

BACKGROUND

In 1984, the Redevelopment Agency of the City of Brisbane entered into a Ground Lease Agreement with Sierra Point Associates Two concerning a vacant parcel of land located in the Sierra Point area, consisting of about 3.5 acres. The term of this lease was for 80 years and the rent of \$2 Million was prepaid to the Agency. Sierra Point Associates Two owned adjacent land and intended for this parcel to be developed consistent with its development of the adjacent parcels. Later, Sierra Point LLC became the lessee of this property.

In 2012, Sierra Point, LLC, entered into a development agreement with the City concerning its property in Sierra Point which agreement was due to expire in 2022. In 2015, Sierra Point LLC requested an extension of the development agreement through 2027. As part of the negotiations, Sierra Point LLC agreed to terminate its interest in the ground lease on the 3.5 acres and pay the City \$300,000 plus additional sums as it pulled building permits for its development.

The City has agreed to extend the term of the development agreement to 2027 and the termination of the ground lease and the payment of money referenced above are part of the amendment to the development agreement. The Ordinance approving the amendment to the development agreement is now in effect and the amendment has been recorded.

In 2011, state law dissolved Redevelopment Agencies and created "Successor Agencies" to the Redevelopment Agencies. Accordingly, what was the Redevelopment Agency of the City of Brisbane is now the Successor Agency to the Redevelopment Agency of the City of Brisbane. As part of that process, properties that were owned by the Redevelopment Agency were

transferred to the Successor Agency. The Successor Agency is therefore the record owner of the 3.5 acres that had been leased in 1984.

In order to implement the terms of the amendment to the development agreement, the attached Termination of Ground Lease Agreement has been prepared and is before the Successor Agency for its consideration.

DISCUSSION

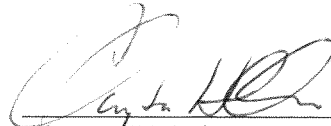
The Termination of Ground Lease is straight forward and terminates Sierra Point's interest in the property. Note that Sierra Point LLC, as lessee, has been paying assessments to the Sierra Point Owners Association (for general maintenance) and to the Sierra Point Environmental Management Association (for maintenance of the closed landfill), as well as paying the in lieu property taxes. City staff is advised those annual assessments are about \$900 and \$29,500, respectively. Those assessments are current but by terminating the Ground Lease, Sierra Point LLC will no longer be responsible for those assessments. For other City owned property within Sierra Point, the City pays assessments to the Environmental Management Association but not to the Owners Association. Staff assumes the same will apply to this acreage post termination of the Ground Lease. The Agency will also request the property taxes on this parcel be cancelled.

FINANCIAL IMPACT

The termination of the ground lease will result in the Successor Agency bearing the financial obligation to pay the assessments to the Sierra Point Environmental Management Association in the approximate amount of \$29,500. That obligation could become an obligation on the Successor Agency's Reported Obligations Payment Schedule or, more likely, could be assumed by the City under an agreement between the City and Successor Agency.



Michael H. Roush
General Counsel



Clayton Holstine
Executive Director

Attachments

Resolution terminating the Ground Lease Agreement
Termination of Ground Lease Agreement

RESOLUTION NO. 2017-01

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF BRISBANE APPROVING A TERMINATION OF GROUND LEASE AGREEMENT, AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN AND DIRECTING THE BOARD SECRETARY TO RECORD

WHEREAS, in 1984, the Redevelopment Agency of the City of Brisbane entered into a Ground Lease Agreement with Sierra Point Associates Two concerning a vacant parcel of land located in the Sierra Point area, consisting of about 3.5 acres; and

WHEREAS, the term of this lease was for 80 years and the rent of \$2 Million was prepaid to the Agency.; and

WHEREAS, Sierra Point Associates Two owned adjacent land and intended for this parcel to be developed consistent with its development of the adjacent parcels; and

WHEREAS, Sierra Point LLC became the successor in interest as to the leasehold interest of Sierra Point Associates Two as to this acreage, as well as the successor in interest as to the parcels adjacent to the leased property; and

WHEREAS, in 2012, Sierra Point LLC entered into a development agreement with the City concerning its property in Sierra Point which agreement was due to expire in 2022; and

WHEREAS, in 2015, Sierra Point LLC requested an extension of the development agreement through 2027 and, as part of the negotiations, Sierra Point agreed to terminate its ground lease on the 3.5 acres and pay the City \$300,000 plus additional sums as it pulled building permits for its development; and

WHEREAS, the City has agreed to extend the term of the development agreement to 2027 and the termination of the ground lease and the payment of money referenced above are part of the amendment to the development agreement and the Ordinance approving the amendment to the development agreement is now in effect and the amendment has been recorded; and

WHEREAS, in 2011, state law dissolved Redevelopment Agencies and created "Successor Agencies" to the Redevelopment Agencies and what was the Redevelopment Agency of the City of Brisbane is now the Successor Agency to the Redevelopment Agency of the City of Brisbane; and

WHEREAS. As part of that process, properties that were owned by the Redevelopment Agency were transferred to the Successor Agency and therefore the Successor Agency is now the record owner of the 3.5 acres that had been leased in 1984; and

WHEREAS, in order to implement the terms of the amendment to the development agreement, a proposed Termination of Ground Lease Agreement has been prepared and, at its meeting of April 27, 2017, the Successor Agency considered whether to approve such document.

NOW THEREFORE, THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF BRISBANE DOES RESOLVE AS FOLLOWS:

Section 1. The Successor Agency approves the Termination of Ground Lease Agreement, attached hereto as Exhibit 1, authorizes the Executive Director to sign the document and directs the Board Secretary to record the document in the Official Records of San Mateo County.

Section 2. This Resolution shall become effective immediately upon its adoption.

Lori Liu, Chair
Successor Agency to the Redevelopment
Agency of the City of Brisbane

I, the undersigned, hereby certify that the foregoing Resolution No. ____ was adopted by the Successor Agency to the Redevelopment Agency of the City of Brisbane at a special meeting held on April 27, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla
Interim Board Secretary

Recorded at the request of
And return to:

Executive Director
Successor Agency of the
Redevelopment Agency of the
City of Brisbane
50 Park Place
Brisbane, CA 94005

Exempt from filing fees under Government Code, sections 6103 and 27383

LEASE TERMINATION AGREEMENT

This Lease Termination Agreement (the "Termination Agreement") is made and entered into as of the ____ day of _____, 2017, by and between THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF BRISBANE, a public agency, as successor in interest to the REDEVELOPMENT AGENCY OF THE CITY OF BRISBANE ("Landlord"), and SIERRA POINT, L.L.C., a Delaware limited liability company, as successor in interest to SIERRA POINT ASSOCIATES TWO ("Tenant").

RECITALS

A. Landlord and Tenant are successors in interest to parties to a Ground Lease Agreement, dated March 29, 1984, by and between the Redevelopment Agency of the City of Brisbane, as Landlord, and Sierra Point Associates Two, as Tenant, recorded March 29, 1984, in the Official Records of San Mateo County, California as Document No. 84033200 (the "Lease"), for approximately 3.4 +/- acres, identified as a portion of San Mateo County Assessor's Parcel No. 007-165-060, as described in Exhibit A hereto, and commonly known as 400 Sierra Point Parkway, Brisbane, California, and more particularly described in the Lease (the "Premises").

B. The Lease, in part, provides the Tenant is to make monthly payments to the Sierra Point Owners Association and to the Sierra Point Environmental Management Association, as well as to make in lieu real property tax payments to the County of San Mateo

C. Landlord and Tenant desire to cancel and terminate the Lease, prior to the date of its natural expiration, upon the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Termination. The Lease is hereby canceled and terminated, effective as of the date of this Termination Agreement first written above (the "Termination Date"). As of the

Termination Date, the Lease will be null and void and of no further force and effect and neither Landlord nor Tenant shall have any further rights against the other under the Lease except as expressly set forth in the Lease or this Termination Agreement.

2. Representations, Warranties and Covenants of Tenant and Landlord. Tenant hereby represents and warrants to Landlord that: (a) Tenant has no claim or cause of action against Landlord for any monies or other relief under the Lease or otherwise; (b) although, as of the date of this Termination Agreement, possession of the Premises has not been delivered to Landlord, the Premises is free and clear of all personal property of Tenant; (c) Tenant has not entered into any assignment, encumbrance, pledge, transfer, sublease, license, concession, or other agreement which in any manner transfers Tenant's interest or any portion thereof in the Lease or the Premises, or permits the Premises to be in the possession of or occupied by any other person or entity (collectively, any "Transfer"); and (d) Tenant is current in its assessment payments to the Sierra Point Owners Association, its assessment payments to the Sierra Point Environmental Management Association, and payment to the County of San Mateo for all real property and related in-lieu real property taxes. Tenant shall be responsible for all such assessment payments to the Sierra Point Owners Association and the Sierra Point Environmental Management Association and for all real property and related in-lieu real property taxes accrued and due and payable before the Termination Date. All of the foregoing are referred to herein as "Tenant's Representations, Warranties and Covenants," and Landlord shall be entitled to rely on Tenant's Representations, Warranties and Covenants in entering into this Termination Agreement and in terminating the Lease. Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims, demands, losses, liabilities, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses) (each, a "Claim," and collectively "Claims") arising out of or resulting from any breach of Tenant's Representations, Warranties and Covenants. All of Tenant's Representations, Warranties and Covenants and the indemnification obligations of Tenant in this Section 2 shall survive the termination of the Lease and the performance of this Termination Agreement.

Landlord hereby represents and warrants to Tenant that, apart from Tenant's Representations, Warranties and Covenants, (a) Landlord hereby releases Tenant from all obligations, duties, responsibilities and requirements under the Lease, and (b) Landlord shall as of the Termination Date become responsible for Tenant's obligations under the Lease for assessment payments to the Sierra Point Owners Association and the Sierra Point Environmental Management Association and for all real property taxes and in-lieu real property taxes on the Premises accrued and due and payable after the Termination Date. All of the foregoing are referred to herein as "Landlord's Representations, Warranties and Covenants," and Tenant shall be entitled to rely on Landlord's Representations, Warranties and Covenants in entering into this Termination Agreement and in terminating the Lease. Landlord shall indemnify, defend and hold harmless Tenant from and against any and all claims, demands, losses, liabilities, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses) (each, a "Claim," and collectively "Claims") arising out of or resulting from any breach of Landlord's Representations, Warranties and Covenants. All of Landlord's Representations, Warranties and Covenants and the indemnification obligations of Landlord in this Section 2 shall survive the termination of the Lease and the performance of this Termination Agreement.

3. Successors. This Termination Agreement shall be binding upon and inure to the benefit of Landlord and Tenant, parties claiming by, through, or under Landlord or Tenant and all of their respective successors and assigns.

4. Entire Agreement. This Termination Agreement constitutes the entire agreement between the parties with respect to the matters stated herein and both parties acknowledge that neither relies upon any statements or representations by the other not contained herein. This Termination Agreement cannot be modified orally but only in writing signed by both parties hereto.

5. Choice of Law; Jurisdiction; Venue. The laws of the State of California shall govern the interpretation, validity, performance, and enforcement of this Termination Agreement. Tenant agrees that venue for any disputes hereunder shall be in the Superior Court in and for the County of San Mateo.

6. Authority. Landlord and Tenant represent and warrant that they have full authority to enter into and perform this Termination Agreement without the consent or approval of any other person or entity including, without limitation, any mortgagees, partners, ground lessors, or other superior interest holders or interested parties. The persons signing this Termination Agreement on behalf of Landlord and Tenant represent and warrant that they have the full and complete authority, corporate, partnership or otherwise, to bind Landlord and Tenant to this Termination Agreement.

7. Attorney's Fees. The prevailing party to any action or proceeding between Landlord and Tenant with respect to the interpretation of or breach of this Termination Agreement or the transactions contemplated hereunder shall be entitled to have and recover all reasonable costs, expenses, attorneys' fees, expert witness fees and other costs incurred in connection therewith.

8. Capitalized Terms. Capitalized terms used in this Termination Agreement that are not otherwise defined herein, shall have the meanings given to such terms in the Lease.

9. Counterparts. This Termination Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, when taken together, shall be considered a single agreement.

10. Recordation. This Termination Agreement shall be recorded in the Official Records of San Mateo County, California by Landlord upon execution by both Landlord and Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have entered into this Termination Agreement as of the date first set forth above.

LANDLORD:

TENANT:

**SUCCESSOR AGENCY OF THE
REDEVELOPMENT AGENCY OF THE
CITY OF BRISBANE**, a public agency

SIERRA POINT, L.L.C., a
Delaware limited liability company

By: _____
Clayton Holstine
Its: Executive Director

By: Keith P. Bednarowski
Keith P. Bednarowski
Its: President

Approved as to form:

Michael Roush
Michael Roush, City Attorney

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 20th day of April, 2017, by Keith P. Bednarowski, the President of Sierra Point, L.L.C., a Delaware limited liability company, on behalf of the limited liability company.

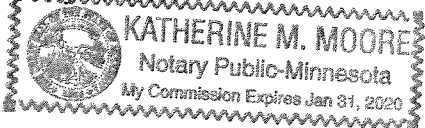
Katherine M. Moore
Notary Public

KATHERINE M. MOORE
Notary Public-Minnesota
My Commission Expires Jan 31, 2020

Exhibit A

Legal Description of Premises

REAL PROPERTY SITUATED IN THE CITY OF BRISBANE, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, BEING A PORTION OF A THE LANDS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED ON AUGUST 23, 1979 IN BOOK 8 OF LICENSED LAND SURVEYOR'S MAP AT PAGES 125 THROUGH 128, SAN MATEO COUNTY RECORDS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TIDE LOT 11 AS SHOWS ON SAID RECORD OF SURVEY,

THENCE N 1° 13' 30" E 600.00 FEET;

THENCE N 88° 46' 30" W 20.00 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE N 88° 46' 30" W 75.00 FEET;

THENCE N 43° 46' 30" W 261.63 FEET;

THENCE 1° 13' 30" E 120.00 FEET;

THENCE N 46° 13' 30" E 50.00 FEET;

THENCE N 43° 46' 30" W 83.94 FEET;

THENCE N 1° 13' 30" E 65.29 FEET;

THENCE N 46° 13' 30" E 56.57 FEET;

THENCE S 88° 46' 30" E 80.00 FEET;

THENCE N 1° 13' 30" E 213.70 FEET;

THENCE S 88° 46' 30" E 164.00 FEET;

THENCE S 1° 13' 30" W 718.70 TO THE TRUE POINT OF BEGINNING.

CONTAINING 150,000 SQUARE FEET OR 3.443 ACRES, MORE OR LESS.