



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Countywide Oversight Board

FROM: Garrett Evans, Executive Director

SUBJECT: Adoption of a Successor Agency Resolution Approving a Purchase and Sale Agreement for 300 Cumberland Street

MEETING DATE: September 27, 2021

EXECUTIVE SUMMARY

The Successor Agency to the Redevelopment Agency of the City of Pittsburg (Successor Agency) owns that certain real property located at 300 Cumberland Street, also known as County Assessor's Parcel Number 085-108-010 (Property). EJ Phair Brewing Company, a California corporation (Buyer) is the current tenant at the Property and operator of EJ Phair Brewing Company. The Successor Agency and Buyer propose to enter into a Purchase and Sale Agreement (PSA) for the sale and purchase of the Property.

FISCAL IMPACT

The Successor Agency proposes to sell to the Buyer and the Buyer proposes to purchase from the Successor Agency the Property for the amount of \$710,000 payable at the close of escrow.

Included in the PSA is the repayment by Buyer to Seller of \$72,955.24 (Repayment Amount), payable over 36 months, with interest at 3% per annum, with the first 6 months payment at \$0 and the remaining payments for 30 months at \$2,500 per month. The Repayment Amount will pay off amounts owed by Buyer to Seller consisting of an outstanding loan balance of \$5,147.78 and delinquent rent in the amount of \$67,807.46.

RECOMMENDATION

Countywide Oversight Board adopt the Resolution approving the PSA.

BACKGROUND

On November 27, 2006, by Agency Resolution 06-1166, the former Redevelopment Agency of the City of Pittsburg (Agency) approved the Building Lease Agreement by and between the Redevelopment Agency of the City of Pittsburg and EJ Phair Brewing Company, dated December 1, 2006, which was later amended on June 4, 2007 by Agency Resolution 07-

1200, on November 3, 2008 by Agency Resolution 08-1325, and then amended and restated on December 21, 2009 by Agency Resolution 09-1400.

The Third Amended and Restated Lease Agreement approved by Agency Resolution 09-1400 included a tenant improvement loan by the Agency to Buyer in the original principal amount of \$315,505.22. The current outstanding balance of the tenant improvement loan is \$5,147.78.

The Buyer was approximately three months behind on rent as staff was preparing to send out a Notice of Default for non-payment of rent. The COVID-19 pandemic further exacerbated the financial situation as the Buyer was forced to close the bar and restaurant operation for approximately fifteen months, during which time Buyer accrued a substantial delinquent rent obligation. Seller and Buyer have agreed to settle the outstanding delinquent rent obligation by having Buyer commit to pay Seller the amount of \$67,807.46 over time with interest as provided in the PSA. Buyer's obligation to repay the delinquent rent amount, together with the outstanding balance of the tenant improvement loan (the combined sum of which is \$72,955.24) will be memorialized in a promissory note, repayment of which will be secured by a second position deed of trust to be recorded against the Property at closing.

Pursuant to Section 18.26 of the Lease Agreement, Buyer has a contractual right to purchase the Property, which predates the AB 1486 (2019 statute) amendments to the Surplus Land Act (Government Code section 54220 et seq.), requiring local agencies to make surplus property available for sale to certain preferred purchasers, including affordable housing sponsors, prior to selling property to a third-party purchaser for non-affordable housing purposes. Buyer's contractual right to purchase the property is protected by the constitutional "contract clause" set forth in Article I, Section 9 of the California Constitution.

On August 16, 2021, by Successor Agency Resolution 21-043, the Successor Agency approved the PSA.

SUBCOMMITTEE FINDINGS

The sale and purchase of the Property and the repayment of the outstanding loan amount and delinquent rent were not discussed in a subcommittee.

STAFF ANALYSIS

To determine the fair market value of the Property, the Buyer submitted an appraisal, dated December 21, 2020, which determined the fair market value of the Property to be \$710,000. The Buyer has submitted an offer to the Successor Agency for the full appraised fair market value. The Successor Agency will receive \$710,000 in sales proceeds at the close of escrow.

Pursuant to the PSA, the Buyer is required to repay Seller the \$72,955.24 Repayment Amount over 36 months, with interest at the rate of 3% per annum, with the first 6 months payment at \$0 per month and the remaining 30 months at \$2,500 per month. The Repayment Amount will pay off the outstanding tenant improvement loan balance of \$5,147.78 and delinquent rent in the amount of \$67,807.46. A Deed of Trust will be recorded against the Property in second lien position. Buyer's purchase money loan amount will be secured by a first position deed of trust on the Property and shall not exceed seventy percent (70%) of the Purchase Price or Four Hundred Ninety Seven Thousand Dollars

(\$497,000), and that any purchase money loan in excess of that amount would have to be secured by a third position deed of trust that is behind and subordinate to the City's second deed of trust. If Buyer's fails to make one or more payments on the Repayment Amount, City staff, following notice and expiration of applicable cure periods, would commence a foreclosure process under the second deed of trust.

A copy of Successor Agency Resolution 21-043 was sent to the State Department of Housing and Community Development as required by the State Surplus Land Act Guidelines. If approved by the Countywide Oversight Board, the action will be submitted to the California Department of Finance (DOF) for review and consideration. If approved or deemed approved by the DOF, staff will pursue closing of the sale and repayment of the tenant improvement loan balance and delinquent rent.

Following the close of escrow and the completion of the transaction, the Successor Agency will transfer the net proceeds of sale to the County Auditor Controller for distribution to taxing entities as contemplated by the Successor Agency's long range property management plan and the Redevelopment Dissolution Law (AB x1-26).

ATTACHMENTS: Resolution
 Purchase and Sale Agreement

Report Prepared By: Maria M. Aliotti, Deputy City Manager