



CITY COUNCIL AGENDA REPORT

City of Anaheim ECONOMIC DEVELOPMENT DEPARTMENT

DATE: DECEMBER 20, 2022
FROM: ECONOMIC DEVELOPMENT DEPARTMENT
SUBJECT: APPROVAL OF GROCERY STORE COMPONENT GROUND LEASE WITH 39 COMMONS PARTNERS, LLC FOR THE DEVELOPMENT OF THE 39 COMMONS MIXED USE PROJECT

ATTACHMENT (Y/N): YES **ITEM # 21**

RECOMMENDATION:

That the City Council, by Motion, approve the Grocery Store Component Ground Lease, substantially in the form attached, proposed by the Amended and Restated Disposition and Development Agreement dated September 29, 2020 between the City of Anaheim and 39 Commons Partners, LLC; authorize the Director of Economic Development to execute, implement, and administer the Grocery Store Component Ground Lease; waive certain conditions to closing; and authorize changes to the Grocery Store Component Ground Lease that do not substantially change the terms and conditions of the Grocery Store Component Ground Lease, so long as such changes are determined to be de minimis by the City Attorney's Office.

DISCUSSION:

On September 29, 2020, the City Council approved an Amended and Restated Disposition and Development Agreement (DDA) with 39 Commons Partners, LLC (Developer). The DDA contemplated the development of the site in two phases referred to therein as the First Closing for the Residential Component Property, Retail Component Property, and Mixed Use Component Property, and Second Closing for the Grocery Store Component Property. The First Closing has occurred and the construction of the Nolin Townhomes on the southeast end of the site has commenced and is nearing completion.

The parties now wish to implement the Second Closing which involves a ground lease conveyance of the Grocery Store Component Property pursuant to a ground lease, substantially in the form attached, to the previously approved DDA with appropriate modifications to reflect the Grocery Store use and the environmental remediation of the Davis Mud Pit (the "Grocery Store Component Ground Lease").

To this end, we ask that the City Council approve the Grocery Store Component Ground Lease, substantially in the form attached hereto as Attachment 1, and further waive the certain conditions to closing described in the letter attached hereto as Attachment 3.

Conditions to be waived by the City include:

- DDA Section 205.3(d) - Conditional Use Permit and Basic Concept Drawings. Provided that the Developer shall obtain approval by the City of a conditional use permit, if applicable, and the Basic Concept Drawings for the Grocery Store Component as set forth in Section 302 of the DDA following the Second Closing.
- DDA Section 205.3(e) - Commercial General Liability Insurance. Provided that Developer shall provide proof of commercial general liability insurance as required by the Grocery Store Component Ground Lease prior to the Delivery Date.
- DDA Section 205.3(f) - Executed Leases. Provided that City shall have the right to approve, acting in its sole and absolute discretion, the identity of the lessee/operator of the Grocery Store Component and Developer shall provide to the City an executed Grocery Store Lease in accordance with the terms of the Grocery Store Component Ground Lease.
- DDA Section 205.3(i) - Retail Component. Provided that Developer shall commence vertical construction of the Retail Component pursuant to a schedule to be agreed upon by the City and Developer following City's completion of Landlord's Work and receipt of Remediation Approval.
- DDA Section 205.3(j) - Loan Pham Lease Amendment and Recognition Agreement. Provided that the City shall cooperate with the Developer to obtain (i) an amendment to the Loan Pham Lease which shall provide, among other things, that the landlord under the Loan Pham Lease shall execute a Recognition Agreement at the request of the tenant under the Loan Pham Lease, and (ii) the landlord under the Loan Pham Lease shall execute a Recognition Agreement with the subtenant of the Loan Pham Property substantially in the form attached as Attachment No. 10 of the DDA.
- DDA Section 205.3(k) - Transfer of Loan Pham Lease.
- DDA Section 205.3(l) – Environmental Condition. Provided that the City shall satisfy all conditions set forth in Section 205.3(l) following the Second Closing and the City shall perform Landlord's Work and obtain Remediation Approval.

Developer is also waiving similar conditions pursuant to the letter attached hereto as Attachment 3.

IMPACT ON BUDGET:

The rent with respect to the Grocery Store Component Ground Lease will be determined after the execution of a Grocery Store Operator Lease. At such time, a market rate payment for the Ground Lease shall be determined. Proceeds from the Ground Lease will be deposited into the Successor Agency funds in accordance with Redevelopment Dissolution Law.

Respectfully submitted,

Sergio M. Ramirez
Director
Economic Development Department

Attachments:

1. Grocery Store Component Ground Lease
2. Amended and Restated Disposition and Development Agreement
3. Waiver of the Conditions to Closing Letter
4. Project Concept Plan
5. Site Map
6. Landfill Map