



STAFF REPORT

Date: April 22, 2014

To: City Council

From: Bryan Montgomery, City Manager/Executive Director

SUBJECT: Resolution Approving an Amendment to the Short-term Loan Agreement with Rogelstad-Thorpe, LLC regarding the Development of the Oakley ACE Hardware at 3100 Main Street.

Background and Analysis

Attached is the Loan Agreement entered into in August of 2013 between the City and Rogelstad-Thorpe, LLC, the owners and operators of the Oakley ACE Hardware. The Loan is helping facilitate the construction project at 3100 Main Street that is nearing completion. The existing terms of the Agreement would have the \$400,000 loan paid in full later this summer; however, the principals of Rogelstad-Thorpe, LLC (Tony Rogelstad and Jerry Thorpe) have requested an amendment to the Agreement that would have the repayment take place on or before December 15, 2014.

If approved, the Amendment provides for all the terms of the Agreement to continue, including the payment of 5% interest on the borrowed funds.

Fiscal Impact

Additional interest earnings will accrue to the City – nearly \$10,000. (The loan pays 5% interest and current investment earnings on invested funds are less than 1%).

Recommendation

Staff recommends that the City Council adopt the resolution approving the Amendment to Short-Term Loan with Rogelstad-Thorpe, LLC regarding the development of the Oakley ACE Hardware.

Attachments

1. Amendment to Loan Agreement
2. Loan Agreement
3. Resolution

AMENDMENT TO LOAN AGREEMENT
City of Oakley/Rogelstad-Thorpe

WHEREAS the City of Oakley, a municipal corporation, and Rogelstad-Thorpe, LLC have previously entered into a Loan Agreement dated August 28, 2013 (“the Loan Agreement”); and

WHEREAS Paragraph 1 E of the Agreement specifies a deadline for repayment by Rogelstad-Thorpe to the City; and

WHEREAS the parties wish to extend the due date for the loan’s principal amount and accumulated interest;

NOW, THEREFORE, THE PARTIES AGREE that Paragraph 1 E of the Loan Agreement is hereby amended to specify December 15, 2014 as the deadline for payment by Rogelstad-Thorpe to the City of Oakley of principal and accrued interest payments. All other provisions of the Loan Agreement shall remain the same.

Dated: _____, 2014

BORROWER, Rogelstad-Thorpe, LLC

By: Anthony Rogelstad, Managing Member

By: Jerry Thorpe, Member

CITY OF OAKLEY

Bryan H. Montgomery, City Manager

ATTEST:

APPROVED AS TO FORM:

By: Libby Vreonis, City Clerk

By: William R. Galstan, Special Counsel

LOAN AGREEMENT

This Loan Agreement (this "**Agreement**") is entered into effective as of the 28 of August, 2013 ("**Effective Date**") by and among the City of Oakley, a municipal corporation, corporate and politic (the "**City**") and Rogelstad-Thorpe, LLC (, the "**Borrower**"). City and Borrower are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. The parties have previously entered into a Purchase and Sale Agreement dated June 12, 2012 whereby BORROWER is purchasing real property and completing various façade improvements in and expansion of the Oakley Plaza shopping center for the operation of an Ace Hardware Store.

B. Commercial lenders for the land purchase and construction project have required BORROWER to post with the lender collateral of up to Four Hundred Thousand (\$400,000) Dollars in the event that BORROWER should abandon the façade and construction improvement project.

C. It is anticipated that the commercial lender will return to BORROWER the collateral at the completion of the project.

D. BORROWER desires to borrow from CITY, and CITY is willing to loan to BORROWER, an amount of up to Four Hundred Thousand (\$400,000) Dollars for the purpose of posting the collateral required by the commercial lender. The parties enter into this loan under the terms and conditions specified in this Loan Agreement.

AGREEMENT

NOW THEREFORE, in consideration of their mutual undertakings and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. The Loan; Payments.

A. The Loan. Subject to the terms and conditions of this Agreement and for the purposes described herein, City agrees to make a loan to Borrower up to Four-Hundred Thousand Dollars (\$400,000) (the "**Loan**"). The Loan shall bear interest at the rate of five percent (5%) per annum. The Loan shall be secured and evidenced by a Promissory Note and Deed of Trust, as well as by personal guarantees of the principals of BORROWER, in the usual commercial form for such documents and encumbering a property generally described herein as "the Brentwood Ace Hardware Store," as more particularly described in the Deed of Trust."

B. Use of Loan Proceeds. The proceeds of the Loan (the "**Loan Proceeds**") shall be used solely and exclusively for the collateral of the construction project as set forth in this Agreement.

C. Disbursement and Use of Proceeds. Upon BORROWER's execution and delivery to CITY of this Agreement and the security documents specified herein, CITY shall disburse the funds of this loan in the amount demanded by BORROWER's commercial lender (not to exceed \$400,000) to BORROWER. BORROWER shall use these loan funds solely for the purpose of posting such funds as collateral with the commercial lender.

D. Interest. Beginning on the day of the CITY's delivery of funds to BORROWER and continuing until the Loan is repaid in full, the Loan shall bear interest at the rate of five percent (5%), compounded annually on the principal amount outstanding, including accrued unpaid interest, if any.

E. Amount and Time of Payment. The principal of the loan and all accrued interest thereon shall be due and payable on the date that is (1) 100 calendar days from CITY's issuance of a Certificate of Occupancy for the completed improvement project, or (2) August 1, 2014, whichever date is earlier. If the BORROWER's commercial lender has retained any portion of the collateral funds, BORROWER shall pay the remaining balance of the collateral funds to the CITY as specified herein, and shall negotiate in good faith and enter into a written agreement with CITY to pay the remaining unpaid amount of this Loan plus accrued interest pursuant to a payment schedule not to exceed an additional one-year of loan period, to be reduced to writing and executed and delivered by and to the parties hereto.

F. Place and Manner of Payment. All amounts due and payable pursuant to the Note are payable at the office of City at the address set forth above, or at such other place as City may designate to the Borrower in writing from time to time, in any coin or currency of the United States that on the respective dates of payment thereof shall be legal tender for the payment of public and private debts.

G. PREPAYMENT. Borrower may prepay all or a portion of the Loan at any time. All prepayments made by Borrower shall be identified by Borrower as "prepayments" and if so identified shall be applied by City to reduce the principal of Loan.

H. LATE FEE. If Borrower fails to pay any amount required to be paid pursuant to paragraph F above, Borrower shall pay to the City an amount equal to five percent (5%) of the amount due as a late fee.

Section 2. Default and Remedies.

A. Events of Default. Provided that City has provided written notice to Borrower specifying the nature of such default, the occurrence of any of the following events shall, at the option of the City, constitute an event of default by Borrower under this Agreement, if such default remains uncured 15 days following delivery of notice of monetary default or 30 days following delivery of notice of non-monetary default:

(1) Borrower fails to comply with or fully and timely perform any of Borrower's obligations under this Agreement;

(2) Unless approved in writing by the City and subject to Section 3.1, the Borrower voluntarily or involuntarily sells, transfers, disposes of or further encumbers all or any portion of its interest in the Property and/or in the Brentwood ACE Hardware Store property; or

(3) Borrower defaults in the performance of any other term, covenant, or agreement contained in this Agreement or the Note.

B. Remedies of the City upon Default. Upon the occurrence of an event of default by the Borrower in the performance of this Agreement or the Note, the City shall have the following rights, in addition to the City's other rights and remedies provided by law:

(1) The City may declare the entire outstanding principal balance of the Loan immediately due and payable;

(2) The City shall have full power to exercise any and all rights and powers granted to the City pursuant to the Note and this Agreement in the event of a default; and

(3) The City may terminate this Agreement.

(4) The CITY may initiate litigation against the Borrower and/or against the principals of Borrower on the personal Guarantees and shall be awarded its reasonable attorneys fees if successful in such litigation. "Successful" shall mean that the CITY receives payment of any amount from the Borrower or Borrowers' principals.

Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided herein or in the Note. The City may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand or legal process of any kind.

Section 3. General Provisions.

A. Assignment, Transfer, and Encumbrance. The Loan shall not be assigned nor shall Borrower transfer or encumber its interest in the Property and/or in the Brentwood ACE Hardware Store property without the prior written consent of the City.

B. Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section by: first-class mail.

CITY: City of Oakley
3231 Main Street
Oakley, CA 94561
Attn: City Manager

BORROWER: Rogelstad-Thorpe, LLC
8900-J Brentwood Blvd.
Brentwood, CA 94513-4035
Attn: Anthony Rogelstad

C. Amendments. This Agreement may be modified only by a written instrument signed by both Parties.

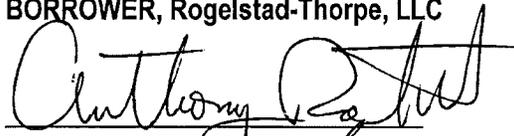
D. Governing Law. This Agreement and the Note shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

E. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

F. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

BORROWER, Rogelstad-Thorpe, LLC



By: Anthony Rogelstad, Managing Member



By: Jerry Thorpe, Member

CITY OF OAKLEY



Bryan H. Montgomery, City Manager

ATTEST:



By: Libby Vreonis, City Clerk

APPROVED AS TO FORM:



By: William R. Galstan, Special Counsel

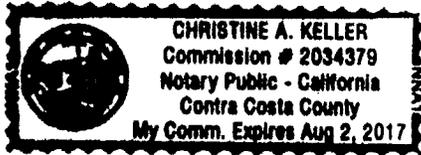
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa

On 8/29/13 before me, Christine A. Keller, Notary Public

personally appeared Anthony Rogelstad and Jerry Thorpe



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 Christine A. Keller
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Loan Agreement

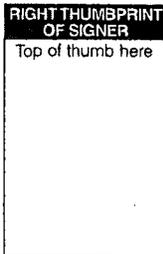
Document Date: 8/28/13 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

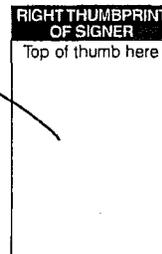
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE LOAN AGREEMENT WITH ROGELSTAD-THORPE, LLC REGARDING THE DEVELOPMENT OF THE OAKLEY ACE HARDWARE.

BE IT RESOLVED by the City Council of the City of Oakley approves the attached Amendment to the Loan Agreement with Rogelstad-Thorpe, LLC regarding the development of the Oakley ACE Hardware and authorizes the City Manager to execute the Amendment and any related documents thereto on its' behalf.

The foregoing resolution was introduced at a regular meeting of the Oakley City Council held on the 22nd day of April 2014, by Councilmember _____, who moved its adoption, which motion being duly seconded by Councilmember _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

APPROVED:

Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date