




Agenda Date: 11/08/2016

Agenda Item: 5.1

STAFF REPORT

Date: November 8, 2016
To: City Council, acting as the Successor Agency
From: Bryan Montgomery, Executive Director 
SUBJECT: **Resolution Approving the Sale of the Real Property located at 3201 Main Street, Oakley (APN 035-090-078) to James and Brenda D'Amico (dba Delta Black Bear Diner, Inc and/or D'Amico Investments, LLC), and direct the Executive Director to present the proposed sale to the Oversight Board for its final consideration.**

Summary and Background

This property of the former Oakley Redevelopment Agency is leased by the owners of the Black Bear Diner and was identified in the Long Range Property Management Plan (LRPMP), approved by the State Department of Finance in December of 2015, as a property to be sold with proceeds being distributed to the various taxing entities.

An appraisal on the property has been obtained that declares a market value of \$2,100,000 (see attached). This appraisal and various other terms were discussed with the Oversight Board at its September meeting and you, as the Successor Agency Board, adopted a resolution of intent to sell the property at the October 11, 2016 meeting.

The resolution of intent (attached) stated the intent to sell the property to the existing tenants, James and Brenda D'Amico, doing business as the Delta Black Bear Diner, Inc. for the appraised value of \$2,100,000 and that all costs associated with the closing of the purchase be borne by the D'Amico's. Further, because the parking area for the Diner is owned and maintained by the City, the recommendation is that the D'Amico's enter into a "Parking Lot and Public Spaces Maintenance Agreement" as part of the transaction. This Maintenance Agreement calls for the Diner property to pay for a share of the maintenance of the parking area on a monthly basis. While this amount may change from year to year, the current estimate is \$340 per month. The Diner already pays \$40 per month to the City for irrigation water for the landscaping on the Diner parcel (north of the building); and it is proposed that amount continue to be paid. Finally, because the Diner parcel is essentially part of the Civic Center Plaza, a provision is included that the City be granted the first right of refusal to purchase the property should the D'Amico's decide to sell it at a future date.

The resolution of intent also called for any other party interested in purchasing the property to submit a bid prior to 12 Noon on November 1, 2016 and notices were posted and published pursuant to City Code inviting bids. No other bids were received.

Attached is the proposed Purchase and Sales Agreement. If you as the Successor Agency Board approve the agreement, it then must go to the Oversight Board for final approval. If the Oversight Board approves, the actual sale of the property could then take place.

Fiscal Impact

Pursuant to State law and the LRPMP, the sale of this property requires the distribution of the sales proceeds to the various taxing entities. A list of the entities that includes the proportionate share of the 1% property tax is attached. Upon sale of the property there will be the loss of rental income to the Successor Agency, though that was expected and is required by the LRPMP.

Recommendation

Adopt a resolution approving the sale of the real property located at 3201 Main Street to James and Brenda D'Amico (dba Delta Black Bear Diner, Inc and/or D'Amico Investments, LLC), and direct the Executive Director to present the proposed sale to the Oversight Board for its final consideration.

Attachments

1. Aerial Map of the Property
2. Appraisal Executive Summary
3. Taxing Entities
4. Purchase and Sales Agreement
5. Resolution Approving the Sale

3201 Main St.



Dunn & Associates
REAL ESTATE APPRAISERS AND CONSULTANTS

VALUATION REPORT

Of

SINGLE TENANT RESTAURANT BUILDING

**6,096 Square Feet
3201 Main Street
Oakley, California**

For

Bryan H. Montgomery
City Manager
City of Oakley
3231 Main Street
Oakley, California 94561
montgomery@ci.oakley.ca.us

and

U.S. Small Business Administration
San Francisco District Office
455 Market Street, 6th Floor
San Francisco, California 94105

and

Capital Access Group
150 California Street
San Francisco, California 94111

As of

August 17, 2016

August 29, 2016

16-08-120

Bryan H. Montgomery
City Manager
City of Oakley
3231 Main Street
Oakley, California 94561
montgomery@ci.oakley.ca.us

and

U.S. Small Business Administration
San Francisco District Office
455 Market Street, 6th Floor
San Francisco, California 94105

and

Capital Access Group
150 California Street
San Francisco, California 94111

Re: SINGLE TENANT RESTAURANT BUILDING
6,096 Square Feet
3201 Main Street
Oakley, California

Dear Mr. Montgomery:

At your request and authorization, we have prepared an appraisal of the above referenced property.

The purpose of the appraisal assignment is to estimate the "as-is" market value of the leased fee interest of the subject property, as defined within this report. The client for this report is Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group. The intended use of this appraisal is to assist in establishing value for use by Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group for loan underwriting purposes. The intended user of this report is Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group. This appraisal is reported in an Appraisal Report that complies with the reporting requirements set forth in Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice (USPAP).

In the course of our investigation we have personally inspected the subject property, including the site and the general environment in which it is located. To estimate the "as-is" market value of the leased fee interest of the subject property, we have used the Sales Comparison and Income Approaches to value. The following pages summarize the data we have used and describes our methodology.

NOTE NO. 1: **This analysis has been made under the assumption that the subject property has reciprocal parking and access agreements with the adjacent parcels. This assumption may affect the assignment results.**

Based on our investigation and analysis, it is our opinion that the estimated "as-is" market value of the leased fee interest of the subject property, based on an estimated marketing and exposure time of three months, as of August 17, 2016, is:

TWO MILLION ONE HUNDRED THOUSAND DOLLARS
(\$2,100,000)

The conclusions contained herein are subject to the limiting conditions attached. This report has been made in conformity with and is subject to the requirements of the Code of Ethics and the Standards of Professional Practice of the Appraisal Institute, Uniform Standards of Professional Appraisal Practice ("USPAP"), and Title IX of the Federal Financial Institutions Reforms Recovery and Enforcement Act of 1989 ("FIRREA").

Respectfully submitted,

DUNN & ASSOCIATES



Michael E. Dunn, MAI, CCIM
Certified General Real Estate Appraiser
State of California #AG002882



Marco E. Cugia
Trainee Real Estate Appraiser
State of California #AT3001717

EXECUTIVE SUMMARY

Assignment:	Estimate the "as-is" market value of the leased fee interest of the subject property, as of August 17, 2016.
Property Type:	The subject 0.53 acre, or 23,261 square foot site, consisting of one rectangular shaped interior assessor's parcel, is improved with a 6,096 square foot, single story, wood frame restaurant. The subject structure was originally built in 2007 and is considered to be in good condition. The improvements cover 26% of the site. The subject property is located within the Oakley Civic Center which consists of four parcels and four buildings, three civic buildings and the subject structure. The center is improved with 29,339 square feet of total building area and 177 on-site surface parking spaces, indicating a parking ratio of 6.0 spaces per 1,000 square feet of building area. An aerial map on the facing page outlines the subject property in yellow and the complex in blue. The subject property is located on the south side of Main Street, three parcels west of Norcross Lane, in the northwest portion of the City of Oakley, Contra Costa County, California.
Location:	3201 Main Street Oakley, California
Date of Valuation:	August 17, 2016
Contra Costa County Assessor's Parcel No:	035-090-078-3
Client:	The client for this report is Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group.
Intended Use of the Appraisal:	The intended use of this appraisal is to assist in establishing value for use by Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group for loan underwriting purposes.
Intended Users:	The intended user of this report is Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group.
Zoning:	DSP-DC: Downtown Specific Plan: Downtown Core

Appraisal: 3201 Main Street, Oakley, California

Census Tract:	4040.00
Flood Zone:	According to the Federal Emergency Management Agency (FEMA), the subject property is located in Flood Zone X, which is identified as an area outside of the 100 and 500 year flood plains. Panel No.035-090-078-3, dated August 3, 2009.
Seismic Zone:	According to the California Emergency Management Agency (CEMA), the subject property is located outside the earthquake fault zone seismic study area; however, it is located in the seismic hazard zone of liquefaction.
Land Area:	0.53 acres, or 23,261 square feet
Highest & Best Use:	
As Vacant:	Hold for future development of a retail use
As Improved:	Current use
Rights Appraised:	Fee Simple and Leased Fee
Toxic Contamination:	No evidence of toxic contamination or hazardous waste was observed during our on-site inspection. However, no report on contaminants or hazardous waste was available concerning the subject site, and the appraisers are unqualified to detect or advise on such matters and offer no warranty nor opinion. This appraisal assumes that there is no toxic contamination on the subject site.
Marketing & Exposure Times:	Three months
Hypothetical Stabilized Valuation Analysis: (Fee Simple)	
Sales Comparison Approach:	\$1,700,000
Income Approach:	\$1,700,000
Hypothetical Final Value Estimate: (Fee Simple)	\$1,700,000
"As-Is" Market Value: (Leased Fee)	\$2,100,000

**Tax Rate Area 19029
Allocation of Basic 1% Property Tax
Fiscal Year 2015-2016**

COUNTY GENERAL	11.65515 %
COUNTY LIBRARY	1.90316 %
C C FLOOD CONTROL	0.22342 %
FLOOD CONTROL Z-1	2.12243 %
EAST CO CO FIRE	4.98072 %
CC RES CONSV	0.02065 %
CO CO MOSQUITO ABA	1.97079 %
IRONHOUSE SANITARY	1.02127 %
CONTRA COSTA WATER	0.35671 %
BART	0.80512 %
BAY AREA AIR MGMNT	0.23478 %
CITY OF OAKLEY	6.88294 %
OAKLEY POLICE SVC	1.20553 %
LIBERTY HIGH	17.31306 %
BRENTWOOD ELEM	2.55845 %
BYRON ELEMENTARY	1.49893 %
KNIGHTSEN ELEM	1.06947 %
OAKLEY ELEM	16.61274 %
CO SUPT SCHOOLS	2.15981 %
K-12 SCHOOLS ERAF	17.33358 %
CO CO COMM COLLEGE	5.49042 %
COMM COLLEGE ERAF	2.58087 %
TOTAL	100.00000 %

[Frequently Asked Questions](#)

Close Window

**RECORDING REQUESTED BY
AND RETURN TO:**

Attachment 4

City of Oakley, California
Attn: Libby Vreonis, City Clerk
3231 Main Street
Oakley, CA 94561

**PURCHASE AND SALE AGREEMENT
(APN 035-090-078)**

THIS AGREEMENT is made and entered into this _____ day of _____, 2016 (the "Effective Date"), by and between the CITY OF OAKLEY, acting as Successor Agency to the Oakley Redevelopment Agency (hereinafter referred to as "SELLER") and D'AMICO INVESTMENTS, LLC, (hereinafter referred to as "BUYER"). This Agreement is made with reference to the following facts:

WHEREAS, SELLER is the legal owner of real property, a former Oakley Redevelopment Agency property, located at 3201 Main Street, Oakley, California, commonly known as Contra Costa County Assessor's Parcel Number 035-090-078 (hereinafter referred to as "Seller's Parcel"); and

WHEREAS, SELLER is also the designated legal owner of a certain building and related improvements on Seller's Parcel, and

WHEREAS, a Long Range Property Management Plan required for all former Oakley Redevelopment Agency properties, was approved by the State Department of Finance on December 30, 2015 and calls for the sale of Seller's Parcel; and

WHEREAS, officers of D'Amico Investments, LLC are the owner and operators of the Delta Black Bear Diner that is currently a tenant of the Seller's Parcel; and

WHEREAS, pursuant to the Long Range Management Plan and subject to the final approval of the Oversight Board to the Successor Agency of the Oakley Redevelopment Agency, SELLER desires to sell to, and BUYER desires to purchase, for the price and under the terms and conditions specified herein, the Seller's Parcel and all improvements thereon as described in Exhibit "A".

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. Entire Contract

The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for the purchase of Seller's Parcel and shall relieve Seller of all further obligations or claims on account of the sale of the property as set forth herein.

2. SELLER shall

- A. At the close of escrow SELLER shall convey by grant deed to BUYER marketable fee simple title to the Property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, leases and taxes, in the form set forth in Exhibit "A".
- B. Convey to BUYER clear title to the building and all rights and interests to the existing water and sewer hook-ups located at the Seller's Parcel.
- C. Agree to execute a mutual and reciprocal easement agreement to confirm the existing roadway access from Main Street and the existing storm water, water and sanitary sewer line locations.

3. BUYER shall

- A. Pay the total sum of TWO-MILLION, ONE-HUNDRED THOUSAND DOLLARS and NO CENTS (\$2,100,000) ("Land Purchase Price") to SELLER for the Seller's Parcel. BUYER shall deliver Land Purchase Price to SELLER within ten (10) working days after the SELLER delivers the Grant Deed in accordance with Paragraph 2A above.
- B. Pay one-hundred percent (100%) of all recording and title insurance charges and other escrow charges, if any, incurred in this transaction.
- C. Pay one hundred percent (100%) of all closing costs including recording and title insurance charges, if any, incurred in this transaction.
- D. Execute a Parking Lot and Public Space Maintenance Agreement, a copy of which is set forth in Exhibit "B". The initial cost for the monthly maintenance charges is three-hundred and eighty dollars (\$380), but shall be adjusted from time to time per the terms and conditions of the Parking Lot and Public Space Maintenance Agreement.
- E. Agree to execute a mutual and reciprocal easement agreement to confirm the existing roadway access from Main Street and the existing storm water, water and sanitary sewer line locations.
- F. Hereby grants to the City of Oakley a first right of refusal and first option to purchase the building and property (Seller's Parcel) if ever sold by Buyer at a future date, as further explained in Section 16 of this Agreement.

4. Parcel sold "As-Is"

The acquisition price for Seller's Parcel and Other Improvements reflects the fair market value of Seller's Parcel and Other Improvements in its current "as-is" condition. BUYER indemnifies, defends, saves and holds harmless the SELLER from any and all claims, costs and liability, including reasonable attorneys' fees, for any damage, injury or death to persons or property arising directly or indirectly from or connected with the existence of any perceived or real defect and of any toxic or hazardous material on Seller's Parcel.

BUYER further agrees as part of the consideration herein that BUYER will not, use, generate, manufacture, store, dump, bury, leak or dispose of any flammable, explosive or radioactive material, toxic substance, hazardous waste, hazardous material, hazardous substance, or the equivalent on the Seller's Parcel, as those terms may now or in the future be defined by common practice or by any federal, state or local statute, ordinance or regulation or any governmental body or agency (hereinafter "Hazardous Substance"). In such event BUYER will, at its sole expense, remove, cleanup or otherwise mitigate such problem, and will further release and indemnify SELLER from any and all liability arising from such problem.

5. Escrow; Escrow Instructions.

Within five (5) business days following the Effective Date, the Parties shall open an escrow to consummate the purchase and sale of the Property pursuant to this Agreement at the office of Old Republic Title Company located at Concord, California ("Title Company" or "Escrow Agent") or such other title company as may be mutually agreed upon by the Parties. Upon the opening of escrow, the Parties shall deposit with the Escrow Agent an executed copy of this Agreement, which collectively shall serve as the joint escrow instructions of Buyer and Seller for this transaction, together with such additional instructions as may be executed by the Parties and delivered to the Escrow Agent.

6. Title Review.

(a) Title Documents.

(1) Within seven (7) days following the opening of escrow, Seller shall deliver or cause to be delivered to Buyer a preliminary title report ("Preliminary Report") on the Property issued by the Title Company, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters of record affecting Seller's title to the Property, together with copies of all documents relating to exceptions listed in the Preliminary Report ("Title Exceptions") and complete and legible copies of all instruments referred to therein, as requested by Buyer.

(2) Within ten (10) calendar days following Buyer's receipt of the Preliminary Report, Buyer shall notify Seller (the "Disapproval Notice") in writing of Buyer's disapproval of any Title Exception (the "Disapproved Exceptions"). All other Title Exceptions shall be referred to as "Permitted Exceptions". Buyer's failure to deliver a Disapproval Notice in accordance with the foregoing shall be deemed (i) Buyer's acceptance of the Preliminary Report and all Title Exceptions shall be deemed Permitted Exceptions and (ii) Buyer's waiver of its right to terminate this Agreement.

(3) Within (5) calendar days after receipt of the Disapproval Notice, Seller shall notify Buyer in writing which Disapproved Exceptions, if any, will be removed by Seller prior to the Closing. If Seller so elects to cure any such Disapproved Exceptions, the same shall be removed from record title by Seller at Seller's expense (or otherwise rendered acceptable to Buyer) prior to the Closing and such Disapproved Exceptions shall not constitute Permitted Exceptions. If Seller does not notify Buyer that Seller will remove all Disapproved Exceptions, Buyer shall deliver written notice to Seller and Escrow Agent within ten (10) calendar days of the date of delivery of the Disapproval Notice of Buyer's election to either:

(i) terminate this Agreement; or (ii) waive its right to terminate this Agreement pursuant to this Section 5(a)(3) and consummate the purchase of the Property subject to the Disapproved Exceptions that Seller has not agreed to remove without reduction in the Purchase Price and such Disapproved Exceptions shall thereafter be deemed additional Permitted Exceptions. Buyer's failure to provide the foregoing notice shall be deemed (A) Buyer's waiver of Buyer's right to terminate this Agreement under Section 5(a)(3)(i) and (B) Buyer's election to consummate the purchase in accordance with Section 5(a)(3)(ii).

(4) It shall be a condition of the Closing that Title Company shall deliver to Buyer, within five (5) days after Buyer has waived or deemed to have waived its right to terminate the Agreement under this Section 5(a)(3), and in no event later than seven (7) days prior to the Closing, a title commitment for an CLTA Title Insurance Policy ("Title Policy") to be issued by Title Company in the amount of the Purchase Price for the benefit and protection of Buyer, showing title to the Property vested in Buyer, subject only to the Permitted Exceptions, including such endorsements as may reasonably be requested by Buyer, and committing Title Company to issue the Title Policy to Buyer upon the Closing.

7. Closing Documents and Funds.

(a) SELLER.

(1) Within five (5) days prior to Closing, Seller shall deposit into escrow all of the following:

(i) a grant deed ("Grant Deed") duly executed and acknowledged, conveying to BUYER good and marketable fee simple title to the Property, subject only to the Permitted Exceptions;

(ii) Such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transaction contemplated hereby.

(2) Unless Seller elects to have the following charges deducted from the funds to be distributed to Seller at Closing, no later than five (5) business days prior to Closing, Seller shall deposit into escrow immediately available funds in the amount necessary to pay all governmental conveyance fees and transfer taxes.

(b) BUYER.

(1) Within five (5) days prior to Closing, Buyer shall deposit into escrow such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transaction contemplated hereby.

(2) No less than five (5) business days prior to the Closing, Buyer shall deposit into escrow immediately available funds in an amount is equal to:

- (i) the Purchase Price as adjusted by any prorations between the Parties; and
- (ii) the premium for the Title Policy;
- (iii) the recording fees;
- (iv) its respective notary fees; and
- (v) escrow fees.

8. Close of Escrow.

Unless this Agreement is terminated pursuant to the terms hereof or extended by mutual written consent of the Parties, the Closing shall occur within seven (7) days of the expiration of the Inspection Period provided that in no event shall Closing occur later than December 31, 2015. The Escrow Agent shall close escrow by: (i) causing the Grant Deed to be recorded in the official records of Contra Costa County, California; (ii) issuing the Title Policy and delivering same to Buyer; (iii) delivering to Seller the monies constituting the Purchase Price less prorated amounts and charges to be paid by or on behalf of Seller; and (iv) delivering to Buyer the original Grant Deed, together with a conformed copy thereof indicating recording information thereon. Possession of the Property shall be delivered to Buyer at the Closing.

9. Default.

The failure of either party to meet, comply with or perform any material covenant, agreement or obligation hereunder, within the time limits and in the manner required, either prior to or at Closing, for any reason other than the termination of this Agreement pursuant to a right to so terminate expressly set forth in this Agreement or if any representation, warranty or covenant set forth herein of either party is untrue or inaccurate in any material respect shall constitute a default under this Agreement. In the event of a default hereunder by Seller or Buyer, the defaulting party shall have five (5) days after receipt of written notice from the non-defaulting party to fully cure or remedy such default. If the defaulting party fails to cure a default within such 5-day period, the non-defaulting party as its sole remedy shall be entitled to (i) terminate this Agreement (by delivering notice to the non-defaulting party and Title Company); or (ii) treat this Agreement as being in full force and effect and pursue the specific performance of this Agreement.

10. Prorations.

At the Closing, the Escrow Agent shall make the following prorations: property taxes shall be prorated as of the Closing based upon the most recent tax bill available, including any property taxes which may be assessed after the Closing but which pertain to the period prior to the transfer of title to the Property to Buyer, regardless of when or to whom notice thereof is delivered. Buyer shall pay all escrow fees and premiums for the Title Policy and Seller shall pay any documentary transfer taxes. All other closing costs shall be apportioned according to prevailing local custom in Contra Costa County, California.

11. Buyer's Conditions to Closing.

The Closing and Buyer's obligation to purchase the Property are conditioned upon: (i) the performance by Seller of each obligation to be performed by Seller under this Agreement within the applicable time period, or the waiver by Buyer of such obligation; and (ii) the commitment by Title Company to issue and deliver the Title Policy, subject only to the Permitted Exceptions.

Should any condition to closing fail to occur, excepting any such conditions that have been waived by Buyer, Buyer shall have the right, exercisable by giving written notice to Seller, to cancel the escrow, terminate this Agreement, and recover any and all amounts paid by Buyer

to Seller or deposited with the Escrow Agent by or on behalf of Buyer. The exercise of this right by Buyer shall not constitute a waiver by Buyer of any other rights Buyer may have at law or in equity.

12. Seller's Conditions to Closing.

The Closing and Seller's obligation to sell the Property pursuant to this Agreement are conditioned upon: (i) the performance by Buyer of each obligation to be performed by Buyer under this Agreement within the applicable time period, or waiver by Seller of such obligation; and (ii) Buyer's representations and warranties contained in this Agreement being true and correct as of the Effective Date and the Closing.

13. Seller's Representations.

Seller is the owner of the Property and has all right, title and interest to transfer the same to Buyer.

14. Seller's Covenants.

Seller covenants that from the Effective Date and through the Closing, Seller: (i) shall not permit any liens, encumbrances, or easements to be placed on the Property, other than Permitted Exceptions; (ii) shall not enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Property that would be binding on Buyer or the Property after the Closing without the prior written consent of Buyer; (iii) shall not permit any act of waste or act that would tend to diminish the value of the Property for any reason, except that caused by ordinary wear and tear; and (iv) shall maintain the Property in its condition as of the Effective Date, ordinary wear and tear excepted, and shall manage the Property substantially in accordance with Seller's established practices.

15. Buyer's Representations, Warranties and Covenants.

Buyer represents, warrants and covenants that this Agreement and all other documents delivered in connection herewith, prior to or at the Closing: (i) have been duly authorized, executed, and delivered by Buyer; (ii) are binding obligations of Buyer; and (iii) do not violate the provisions of any agreement to which Buyer is a party. Buyer further represents and warrants that the persons who have executed this Agreement on behalf of Buyer have are duly authorized to do, that Buyer has the legal right to enter into this Agreement and to perform all of its terms and conditions, and this Agreement is enforceable against Buyer in accordance with its terms.

16. First Right of Refusal and First Option to Purchase Granted to the City of Oakley by Buyer.

Before Buyer may sell the Seller's parcel (the property and building at 3201 Main Street in Oakley, California) to a third party, Buyer shall first offer the property to the City of Oakley (hereinafter "CITY") following the procedures set forth in this Section, granting CITY the "first right of refusal" and "first option to purchase."

- (a) This right of first refusal or first option to purchase may only be exercised by CITY within thirty (30) days from notification by Buyer that the Buyer desires to sell the subject property. The Buyer is obligated to provide such notice in writing to CITY prior to offering the subject property to a third party. Notice shall be given to the City Manager at 3231 Main Street, Oakley, CA 94561.
- (b) In the event Buyer elects to sell and CITY desires to exercise his first refusal rights granted under the terms of this agreement, the terms of purchase shall be \$1.00 more than any bona fide offer to purchase received by Buyer from any third party.
- (c) Within fifteen (15) days after the CITY has exercised his or her right of first refusal, the Buyer shall deliver to CITY a Certificate of Title or title abstract covering the property which shall reflect that marketable fee simple title to the subject property is vested in Buyer and that same is insurable by a title insurance company licensed to do business in the State of California. Said Certificate or abstract shall be subject only to taxes for the current year, easements, and rights of way of record, and prior mineral reservations. Should said Certificate or Abstract reflect any other exceptions to the title unacceptable to CITY, the CITY shall notify the Buyer in writing of any defects within fifteen (15) days (the title review period) and the Buyer shall have a reasonable time (but not more than 25 days) in which to make the title good and marketable or insurable, and shall use due diligence in an effort to do so. If after using due diligence the Buyer is unable to make the title acceptable to CITY within such reasonable time, it shall be the option of the CITY either to accept the title in its existing condition with no further obligation on the part of the Buyer to correct any defect, or to formally decline the first right of refusal and option to purchase. If title is acceptable to CITY, the closing shall occur within ninety (90) days after expiration of the "title review period". At closing Buyer shall convey title to CITY by Warranty Deed subject only to exceptions acceptable to Purchaser.

17. Damage and Destruction.

In the event of any damage or other loss to the Property, or any portion thereof, caused by fire or other casualty prior to the Closing in an amount not exceeding \$25,000, Buyer shall not be entitled to terminate this Agreement, but shall be obligated to close the escrow and purchase the Property as provided in this Agreement, without abatement in the Purchase Price, provided that Seller shall: (i) assign and transfer to Buyer all of Seller's rights under any insurance policy covering the damage or loss, and all claims for monies payable from Seller's insurer(s) in connection with the damage or loss, and (ii) pay to Buyer at the Closing the amount of Seller's deductible under the insurance policy or policies covering the damage or loss. In the event of damage or destruction of the Property or any portion thereof prior to the Closing in an amount in excess of \$25,000, Buyer may elect either to terminate this Agreement upon written notice to Seller, or to consummate the purchase of the Property, in which case Seller shall (i) assign and transfer to Buyer all of Seller's rights under any insurance policy covering the damage or loss, and all claims for monies payable from Seller's insurer(s) in connection with the damage or loss, and (ii) pay to Buyer at the Closing the amount of Seller's deductible under the insurance policy or policies covering the damage or loss. In the event Buyer elects to terminate this Agreement, all funds and documents deposited into escrow by or on behalf of Buyer shall be returned to Buyer, and all rights and obligations hereunder shall terminate.

18. Brokers.

Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement, except for commission to be paid to George Cardinale with The Cardinale Company by Seller pursuant to a separate agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The parties acknowledge that Seller's general partner, Roy A. Cunha, holds a California real estate brokerage license; however, the parties further acknowledge and agree that Mr. Cunha is not acting in any capacity, or assisting any party hereto, as a broker in relation to this transaction. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

19. Assignment.

Buyer shall not have the right to assign any rights and obligations under this Agreement to any party without the prior written approval by Seller.

20. Notices.

Except as otherwise specified in this Agreement, 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. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

BUYER:

D'Amico Investments, LLC

XXXXXX

Oakley, California 94561

Attn: James D'Amico

Telephone: (925) XXXX

Facsimile: (925) XXX

SELLER:

Successor Agency/City of Oakley

3231 Main Street

Oakley, California 94561

Attn: Executive Director

Telephone: (925) 625-7000

Facsimile: (925) 625-9194

21. Litigation Costs.

If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged breach or default in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and other costs, in addition to any other relief to which such Party may be entitled.

22. Waivers; Modification.

No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

23. Successors.

This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assignees of the Parties.

24. Provisions.

Not Merged With Deeds. None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by the Grant Deed, and neither the Grant Deed nor any other document shall affect or impair the provisions, terms, representations, warranties and covenants contained herein. Without limiting the generality of the foregoing, Seller's representations, warranties and covenants contained herein shall survive the Closing.

25. Construction.

The section headings used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be

construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

26. Action or Approval.

Where action and/or approval by Buyer is required under this Agreement, Buyer's Executive Director may act on and/or approve such matter unless the Executive Director determines in his or her discretion that such action or approval requires referral to Buyer's Board for consideration. The time periods afforded Buyer for any event, inspection, feasibility, due diligence, escrow closing or otherwise shall not be extended by any such referral to Buyer's Board.

27. Entire Agreement.

This Agreement, including Exhibits A and B attached hereto and incorporated herein by this reference, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter thereto.

28. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

29. Severability.

If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged thereby.

30. No Third Party Beneficiaries.

Nothing in this Agreement is intended to or shall confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

31. Parties Not Co-Venturers.

Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

32. Non-Liability of Officials, Employees and Agents.

No member, official, employee or agent of Buyer shall be personally liable to Seller or its successors in interest in the event of any default or breach by Buyer or for any amount which may become due to Seller or its successors in interest pursuant to this Agreement.

33. Time of the Essence.

Time is of the essence for each condition, term, obligation and provision of this Agreement.

34. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

35. Time for Performance.

When the time for performance of any obligation under this Agreement is to be measured from another event, such time period shall include the day of the other event. If the day of the time for performance is not a regular business day, then the time for such performance shall be by the regular business day following such day.

IN WITNESS WHEREOF, the Successor Agency to the Oakley Redevelopment Agency, a public body, corporate and politic, has authorized the execution of this Agreement in duplicate by its Executive Director and attestation by its Agency Secretary under authority of Resolution No. _____, adopted by the Oakley Redevelopment Agency on the _____ day of _____, 2016, and SELLER has executed this Agreement in duplicate.

SELLER:

BUYER:

Successor Agency to the Oakley Redevelopment
Agency, a public body, corporate and politic

By: _____
Bryan H. Montgomery, Executive Director

By: _____
James D'Amico, XXX

By: _____
Brenda D'Amico, XXX

ATTEST:

Libby Vreonis, Agency Secretary

APPROVED AS TO FORM:

William R. Galstan, Special Counsel

NO OBLIGATION OTHER THAN SET FORTH HEREIN WILL BE RECOGNIZED

EXHIBIT "A"

SA RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF THE SUCCESSOR AGENCY TO
THE OAKLEY REDEVELOPMENT AGENCY APPROVING THE SALE OF THE
REAL PROPERTY LOCATED AT 3201 MAIN STREET, OAKLEY (APN 035-090-
078) TO JAMES AND BRENDA D'AMICO (DBA DELTA BLACK BEAR DINER,
INC AND/OR D'AMICO INVESTMENTS, LLC) ACCORDING TO THE TERMS
AND CONDITIONS LISTED HEREIN, AND DIRECTING THE EXECUTIVE
DIRECTOR TO PRESENT THE PROPOSED SALE TO THE OAKLEY
OVERSIGHT BOARD FOR ITS FINAL CONSIDERATION**

WHEREAS, the Successor Agency is the owner of real property, a former Oakley Redevelopment Agency property, located at 3201 Main Street, Oakley, California, commonly known as Contra Costa County Assessor's Parcel Number 035-090-078 ("the Property"); and

WHEREAS, the Successor Agency is also the designated legal owner of a certain building and related improvements on the Property, and

WHEREAS, a Long Range Property Management Plan, required for all former Oakley Redevelopment Agency properties, was approved by the State Department of Finance on December 30, 2015 and calls for the sale of the Property; and

WHEREAS, officers of D'Amico Investments, LLC are the owner and operators of the Delta Black Bear Diner that is currently the tenant of the Property; and

WHEREAS, on October 11, 2016 the Board of the Successor Agency adopted a resolution of intent to sell the Property to the current tenant of the Property; and

WHEREAS, the resolution of intent also called for any other interested party to present a sealed bid offer before 12:00pm on November 1, 2016; and

WHEREAS, an invitation to bid was noticed and published pursuant to City Code and no other bid was received; and

NOW, THEREFORE, BE IT RESOLVED by the Board of the Successor Agency to the Oakley Redevelopment Agency hereby approves the sale of the former Oakley Redevelopment Agency property located at 3201 Main Street, Oakley, California pursuant to the approved Long Range Property Management Plan and to James and Brenda D'Amico, (dba Delta Black Bear Diner Inc and/or D'Amico Investments) and subject to the following terms and conditions:

1. The purchase price shall be at least the appraised value of \$2,100,000;

2. Buyer shall enter into a Parking Lot and Public Spaces Maintenance Agreement prior to closing;
3. Buyer shall execute a mutual and reciprocal easement agreement to confirm the existing roadway access from Main Street and the existing storm water, water and sanitary sewer line locations;
4. The Buyer shall pay any and all closing costs;
5. Buyer shall grant a first right of refusal and first option to the City of Oakley.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board of the Successor Agency to the Oakley Redevelopment Agency directs the Executive Director to present the proposed sale to the Oakley Oversight Board for its final consideration. If approved by the Oversight Board, the Executive Director is authorized to execute a purchase and sales agreement on behalf of the Successor Agency.

The foregoing resolution was introduced at a regular meeting of the Board of the Successor Agency to the Oakley Redevelopment Agency held on the 8th day of November 2016, by Board member _____, who moved its adoption, which motion being duly seconded by Board member _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:
NOES:
ABSTENTION:
ABSENT:

APPROVED:

Kevin Romick, Chair

ATTEST:

Libby Vreonis, Secretary

Date