

FIRST AMENDMENT TO CONVEYANCE AGREEMENT

35331

THIS FIRST AMENDMENT TO CONVEYANCE AGREEMENT ("Amendment") is entered into on March 24, 2020, between the City of Long Beach (the "City") pursuant to a minute order adopted by its City Council on July 16, 2019, and Plenary Properties Long Beach LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Project Company" or "Developer").

RECITALS

A. The City and the Project Company are parties to that certain Conveyance Agreement dated as of April 20, 2016 (the "Conveyance Agreement"), pursuant to which the City has agreed to convey to the Project Company certain real property referred to as the "Mid-Block Site" and more particularly described therein. The Conveyance Agreement is executed in connection with that certain Project Agreement for the Design, Construction, Financing, Operation, and Maintenance of the New Long Beach City Hall, New Main Library, New Port of Long Beach Headquarters Building and Revitalized Lincoln Park by and between the City and the Project Company dated as of April 20, 2016, as the same has been amended by that certain First Amendment thereto dated as of July 18, 2017, and that certain Second Amendment thereto dated as of even date herewith (as amended, the "Project Agreement"). All initially capitalized terms used herein, which are not otherwise defined, shall have the meaning given them in the Conveyance Agreement.

B. In connection with the conveyance and development of the Site, the parties wish to amend certain provisions of the Conveyance Agreement.

SECTION 1. CONDITIONS PRECEDENT FOR THE BENEFIT OF CITY TO CONVEYANCE OF THE SITE.

Section 2.2(f) of the Conveyance Agreement is amended and restated in its entirety to read as follows:

"f. The Old City Hall Building shall have been vacated of all occupants, a demolition plan for the Old City Hall Building shall have been approved, and a demolition permit shall be ready for issuance by the City (in its regulatory capacity), subject only to the payment of fees and posting of a performance and payment bond in an amount equal to 110% of the Old City Hall Building demolition cost (including any related costs such as remediation), naming the City as beneficiary, and otherwise in form and substance reasonably acceptable to the City."

SECTION 2. CONDITIONS PRECEDENT FOR THE BENEFIT OF DEVELOPER OR APPROVED ASSIGNEE TO CONVEYANCE OF THE SITE.

Section 2.3 of the Conveyance Agreement is amended so that the following are added as additional conditions thereunder:

"j. (i) A lot line adjustment has been recorded and a certificate of compliance has been issued, (ii) a parcel map has been recorded, or (iii) a tentative tract map has been recorded, creating the Site as a separate legal lot consistent in all material respects with the description set forth in Attachment No. 2, and specifically with respect to the northern property lines of Lots 7 and 8 described therein (i.e., Lots 7 and 8 of Block 107, as per map recorded in Book 19, Pages 91 through 96 in the Official Records of Los Angeles County).

"k. City shall have obtained a "no further action" letter ("NFA Letter") from the Certified Unified Permitting Agency (CUPA) with respect to City's obligation to remediate soils on the Site as

described in Section 2.11.5, or if it is unable to obtain an NFA Letter at the time of conveyance of the Site, City shall have entered into an indemnification and reimbursement agreement with Developer or Approved Assignee.”

SECTION 4. DEVELOPER AND CITY RESPONSIBILITIES REGARDING IMPACTED SOIL.

Section 2.11.5 of the Conveyance Agreement is amended and restated in its entirety to read as follows:

“2.11.5. Impacted Soil on the Site.

“City shall, at its own cost, use its best efforts to treat or manage up to 10,000 cubic yards of impacted soil on the Site as disclosed by that certain Phase II Report dated July 13, 2015 prepared by Amec Foster Wheeler. In connection therewith, City shall, at its own cost, (a) enter into a work plan agreement (which may include indemnification and reimbursement and other details associated with the remediation) with Developer (or Approved Assignee) on or before December 31, 2019, and (b) use its best efforts to complete the foregoing remediation work and cause the issuance of a “no further action” letter (“NFA Letter”) from the Certified Unified Permitting Agency (CUPA) with respect to such impacted soil on or before March 31, 2020. If necessary, Developer or Approved Assignee shall reasonably cooperate with City so that its demolition and grading activities accommodate the City’s remediation obligations hereunder. After the Close of Escrow, and whether or not City has provided any of the disclosures set forth above, it shall be Developer’s or Approved Assignee’s (if applicable) responsibility to remedy any other environmental, soil or geologic condition at its cost.”

SECTION 5. NOTICE ADDRESSES.

Section 6.1 of the Conveyance Agreement is amended so that notices required to be given to the City shall be addressed as follows:

Office of the City Manager
City of Long Beach
411 W. Ocean Blvd., 13th Floor
Long Beach, California 90802
Telephone No.: (562) 570-6916
Fax No.: (562) 570-7650

with a copy to:

Office of the City Attorney
City of Long Beach
411 W. Ocean Blvd., 11th Floor
Long Beach, California 90802
Telephone No.: (562) 570-2200
Fax No.: (562) 436-1579

SECTION 6. ATTACHMENT NO. 6.

Attachment No. 6 to the Conveyance Agreement is amended and restated in its entirety to read as follows:

“ATTACHMENT NO. 6

“EXCERPT FROM PROJECT AGREEMENT SECTION 12.1(D)(2)

“(D) Use of Funds Received for Conveyance.

“(2) Mid-Block Site. Upon conveyance of the Mid-Block Site, the Project Company shall deposit funds, post a letter of credit issued by a Qualified Commercial Bank, or some combination thereof, in an amount equal to \$13,703,960, less any amounts paid to Design-Builder for Design-Build Work for Lincoln Park prior to conveyance of the Mid-Block Site (“Required Amount”) into an account which shall be held by the Collateral Agent and be subject to a security interest in favor of the City (the “Mid-Block Site Proceeds Account”). To the extent that net proceeds from the conveyance of the Mid-Block Site are not utilized to fund the Required Amount in accordance with the preceding sentence (either because the net proceeds exceed the Required Amount or the Project Company has elected to post a letter of credit), such proceeds shall accrue solely to the Project Company and may be disbursed or distributed by the Project Company in its sole discretion. Amounts in the Mid-Block Site Proceeds Account shall not be disbursed for any reason other than to construct the Lincoln Park without the City’s consent.”

SECTION 7. CONTINUING EFFECTIVENESS.

Except as herein amended the Conveyance Agreement shall remain unchanged and in full force and effect.

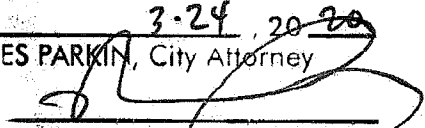
SIGNATURES APPEAR ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the parties have caused this First Amendment to Conveyance Agreement to be executed by their duly authorized representatives as of the date first written above.

CITY OF LONG BEACH

APPROVED AS TO FORM

3-24, 2020
ES PARKIN, City Attorney


RICHARD ANTHONY
DEPUTY CITY ATTORNEY

By: Rebecca G. Garner

Name:

Title: EXECUTED PURSUANT

TO SECTION 301 OF
THE CITY CHARTER

PLENARY PROPERTIES LONG BEACH LLC

By: Brian Budden

Name: Brian Budden

Title: Director

By: Stuart Marks

Name: Stuart Marks

Title: Director

A15-02510