

# 13



## Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Brian Nakamura, City Manager  
Eric S. Vail, City Attorney  
Steve Harding, Assistant City Manager

DATE: March 9, 2010

RE: Proposed third amendment to the Purchase and Sale Agreement ("PSA") between the City of Hemet and Stetson Crossing Partners, LLC ("Developer")

### **RECOMMENDATION**

Staff recommends that the City Council:

Approve the Third Amendment to Purchase and Sale Agreement ("Amendment") attached hereto as Exhibit 1 and authorize the Mayor to execute the Amendment.

### **BACKGROUND**

On February 12, 2008, the City and Developer entered into the PSA, under which the City would sell a 20.67 acre site located on the northwest corner of Sanderson Avenue and Stetson Avenue to Developer. The Developer wished to acquire the site for the construction of a retail commercial shopping center containing a gross leasable area of approximately 190,000 square feet. As required by the PSA, the Developer has already proceeded in obtaining development approvals, including a Development Agreement with the City and the "Stetson Crossing Specific Plan," for the commercial shopping center on the site.

The property currently remains in escrow, as the Riverside County Flood Control District ("RCFCD") is still reviewing the transfer of a flood control channel along Stetson Avenue that is necessary for the project and the Developer is completing financing issues.

The escrow has continued past the expectation of the parties as set forth in the PSA and two amendments to the PSA (executed September 9, 2008 and January 23, 2009), as the parties have continued to informally extend the escrow. Given the deteriorating market conditions, no other serious interest has been expressed in purchasing or developing the site. Thus, it is in the mutual interests of the parties to continue the escrow so that the Developer can commence its development as planned for the site.

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City of Hemet  
City Council Meeting of March 9, 2010

The Third Amendment would extend the Escrow until May 11, 2010, with the ability to have a brief further extension until May 24, 2010. The amendment would also clarify the status of the Developer's final deposit and the vesting of the City's right to that deposit. Finally, the amendment would ratify the informal actions of the parties in extending escrow until the present time in order to realize the intent of the parties as expressed in the PSA. Should escrow not close as required in May 2010, Staff and the Council will reevaluate market conditions and the Developer's performance at that time to determine whether subsequent extensions are appropriate.

The City Attorney's office has reviewed the Amendment and finds that it comports with the substance of the discussions held by the ad hoc committee and Developer.

**FISCAL IMPACT:**

There is no fiscal impact. The only impact is the extension of the escrow and the limitation on the City's ability to withdraw the deposit, which the City has informally committed to leaving in escrow while the parties continue working toward a close of escrow and eventual development of the project.

Respectfully submitted,  


Eric S. Vail  
City Attorney

Brian Nakamura  
City Manager



Steve Harding  
Interim Assistant City Manager

**ATTACHMENTS**

- 1) Third Amendment to Purchase and Sale Agreement

### THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT

This Third Amendment (the "Third Amendment") amends that certain Purchase and Sale Agreement with Joint Escrow Instructions (the "Original Agreement") dated as of February 12, 2008 and amended as of September 9, 2008 (the "First Amendment") and January 27, 2009, (the "Second Amendment") between the City of Hemet, a California general law city and municipal corporation formed and existing under the laws of the State of California (the "Seller") and Stetson Crossing Partners, LLC, a California limited liability company (the "Purchaser") to be effective as of the 9<sup>th</sup> day of March, 2010 (the "Effective Date").

#### RECITALS

- A. The parties have twice formally amended the Original Agreement to extend the Escrow period in order to complete the purchase and sale of the Real Property. In addition to these formal amendments, the parties have made numerous informal amendments to the Original Agreement in order to complete the transaction contemplated therein.
- B. Specifically, the Second Amendment required that the Close of Escrow occur in any event no later than August 26, 2009, but the parties extended the Escrow period by mutual consent.
- C. The parties acknowledge that the Escrow has not closed, notwithstanding the terms of the Second Amendment, and agree that they have both considered that Escrow remains open and the Original Agreement remains in full force and effect.
- D. The parties desire to ratify their informal course of conduct and to set a new date for the Close of Escrow. The parties also desire to clarify the status of the deposits into the Escrow previously made by Purchaser.

#### OPERATIVE PROVISIONS

In consideration of the foregoing and in exchange for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree that, as of the Effective Date, the Original Agreement is hereby amended by this Third Amendment as follows:

- 1. Ratification of Prior Informal Actions. The parties acknowledge that the Second Amendment required Escrow to close in any event no later than August 26, 2009. Notwithstanding the foregoing, the mutual agreement of the parties as reflected in their directions to the Escrow Agent has been to extend Escrow in order to complete the purchase and sale of the Real Property and the parties agree that Escrow has remained open up to and including the Effective Date. This Third Amendment formally ratifies those informal extensions of the Escrow.
- 2. Close of Escrow. In addition to the ratification of prior Escrow extensions, the parties agree to extend the period for Close of Escrow to May 11, 2010. Section 3.2 of the Original Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

“Term of Escrow. The Close of Escrow shall occur on May 11, 2010, unless Escrow is mutually extended in writing by the parties. Any extension of the Escrow period shall be for a reasonable time reflecting the parties’ original intent in providing for a lengthy Escrow period. Notwithstanding the foregoing, no extension arising under this Section 3.2 shall cause the Close of Escrow to occur after May 25, 2010. For purposes of this Section 3.2, Seller authorizes its City Manager to exercise his or her discretion to negotiate, agree to, and execute on behalf of Seller any reasonable extension of the Escrow period.”

3. Deposit. Purchaser made the End of Due Diligence Period deposit in the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00) as required by Section 2.2.1.5 of the Original Agreement. Pursuant to Section 2.2.3.3 of the Original Agreement, City has the right to withdraw this One Hundred Thousand Dollars and No Cents (\$100,000.00) because the conditions precedent to that withdrawal have been satisfied. Notwithstanding the foregoing, City agrees not to withdraw any portion of the End of Due Diligence Period deposit until May 25, 2010. If Escrow has not closed on that date, the parties agree that the Escrow Agent shall disburse the End of Due Diligence Period deposit to City the following day. In light of the foregoing, Section 2.2.3.3 of the Agreement is therefore amended to read as follows:

“Withdrawal following Contingency Period. In addition to the withdrawals authorized by Sections 2.2.3.1 [First Withdrawal] and 2.2.3.2 [Second Withdrawal], Escrow Agent shall disburse to Seller the additional amount of One Hundred Thousand Dollars and No Cents (\$100,000.00). The parties agree that this disbursement shall be made on May 26, 2010 without any further demand, instruction or approval by the parties.

4. All defined terms used in this Third Amendment shall have the same meaning as set forth in the Original Agreement to the extent not specifically amended hereby. All other terms and conditions of the Original Agreement shall remain in full force and effect and shall be binding upon the parties.

[signatures next page]

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective as of the Effective Date.

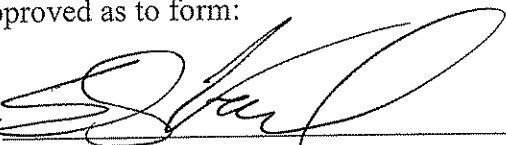
CITY OF HEMET

By \_\_\_\_\_  
Eric McBride, Mayor

Attest:

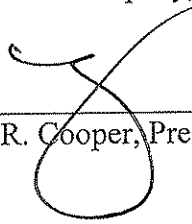
By \_\_\_\_\_

Approved as to form:

By  \_\_\_\_\_  
Eric S. Vail, City Attorney

Stetson Crossing Partners, LLC

By Cooper & Company, Inc., its Manager

By  \_\_\_\_\_  
Mark R. Cooper, President