



CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

October 15, 2012

The Honorable City Council
Palo Alto, California

Approval of Amendment No. 2 to an Agreement Between the City of Palo Alto and Casa Olga Relating to the University Avenue Area Off-Street Parking Assessment District

Background

In Fiscal Year 2000-01, a downtown parking assessment district was formed to build two new, multi-story garages in the downtown area and to refinance prior district debt. The garages (one on High Street and one on Bryant Street) were built to accommodate additional parking demand in the downtown from employees and shoppers and to alleviate parking in residential areas. Property owners within the assessment district voted to self-assess themselves under Proposition 218 guidelines in order to pay for the bonds to construct the garages.

One property owner, Casa Olga, made a reasonable claim at that time that the formula used for allocating assessment costs (requirement of 1 parking space per 250 square feet) did not properly reflect its parking needs since its building was structured as a convalescent care facility. In order to avoid litigation and allow the assessment district to move forward, the City reached a Settlement Agreement with Casa Olga providing that of the 195 spaces assessed, Casa Olga would be reimbursed on an annual basis for 117 spaces and Casa Olga would pay for 78 spaces. This Agreement was approved by Council on March 19, 2001 (CMR: 177:01). With Bond Counsel approval, the annual reimbursement to Casa Olga has been paid using proceeds from the 2001 bond issue. In 2004, the Agreement was amended in a minor respect.

Discussion

Recently, Casa Olga has entered into a 50 year lease agreement with a hotel company, Joie de Vivre, which is rehabilitating the property into an 86-room boutique hotel. In late 2010, Joie de Vivre, Casa Olga and City staff reached an agreement in principle to modify the Settlement Agreement to account for certain changes to the property. In light of the addition of 8 guest rooms, the parties agreed that the reimbursement to Casa Olga would be reduced from 117 spaces to 109 spaces and that Casa Olga's obligation would increase from 78 to 86 spaces. In

addition, the parties agreed that Joie de Vivre/Casa Olga would pay parking “in lieu” fees for 800 square feet of retail space added on the ground floor.

Subsequently, the parties began to explore whether to pay off the Settlement Agreement by using available proceeds to pay the net present value of the future stream of payments to Casa Olga. Pre-paying the obligation will eliminate the burden of administering the agreement since Casa Olga/Joie de Vivre would then pay the full annual assessment for 195 spaces.

Subject to Council approval, the parties have reached agreement on a Second Amendment to the Settlement Agreement to (1) pre-pay the full amount of the annual obligations under the original Settlement Agreement; and (2) implement the adjustments agreed to in late 2010 to account for the changes at the site due to the Joie de Vivre project. The proposed Second Amendment provides for the following payments:

- \$424,349 from the City to pre-pay the assessment obligation (funded by parking assessment bond proceeds); and
- \$486,000 in parking “in lieu” fees from Joie de Vivre, which includes five spaces eliminated by the reconstruction and three spaces for the ground-floor retail space added by the project.

The Staff recommends that the Council authorize the City Manager to execute the attached Second Amendment to the Agreement with Casa Olga.

ATTACHMENTS:

- Second Amendment to Agreement between City and Casa Olga (PDF)

Department Head: Molly Stump, City Attorney

This document is recorded for the benefit of the City of Palo Alto and is entitled to be recorded free of charge in accordance with §6103 of the Government Code

After Recordation, mail to:

Office of the City Attorney
250 Hamilton Avenue
Palo Alto, CA 94301

SECOND AMENDMENT TO AGREEMENT BETWEEN THE CITY OF PALO ALTO AND CASA OLGA RELATING TO THE UNIVERSITY AVENUE AREA OFF-STREET PARKING ASSESSMENT DISTRICT

THIS SECOND AMENDMENT ("Second Amendment") TO AGREEMENT BETWEEN THE CITY OF PALO ALTO AND CASA OLGA RELATING TO THE UNIVERSITY AVENUE AREA OFF-STREET PARKING ASSESSMENT DISTRICT (the "Second Amendment") is made and entered into this 3rd day of OCTOBER, 2012, by and among CASA OLGA, L.P., a California Limited Partnership ("Casa Olga"), AG-JdVP Casa Olga, L.P., a Delaware limited partnership ("AG-JdVP"), and the CITY OF PALO ALTO, a California-chartered municipal corporation ("City").

RECITALS:

This Amendment is entered into upon the basis of the following facts, understandings, and intentions of the parties:

A. Casa Olga and City previously entered into that certain Agreement Between the City and Casa Olga relating to the University Avenue Area Off-Street Parking Assessment District, dated March 29, 2001 (the "Agreement"), pursuant to the terms and conditions of which Casa Olga and City agreed to the payment, allocation, and reimbursement, of a parking assessment imposed by the University Avenue Area Off-Street Parking Assessment District of City on the property located at 180 Hamilton Avenue in Palo Alto ("Property").

B. The Agreement was recorded in the Santa Clara County Recorder's Office as Document No. 15625420, on April 5, 2001, and the Agreement was amended by the unrecorded Proposed Revised Letter Agreement ("First Amendment") Re: Casa Olga, dated December 29, 2004.

C. Pursuant to Section 1 of the Agreement, Casa Olga pays an assessment amount based upon a parking requirement of 195 unprovided parking spaces for the building which is part of the Property and City reimburses Casa Olga for 117 parking spaces.

D. Casa Olga has entered into a lease (the "Lease"), pursuant to the terms of which Casa Olga will lease to AG-JdVP and AG-JdVP will rent from Casa Olga the Property and under the Lease Casa Olga has assigned to AG-JdVP certain rights and responsibilities under the Agreement.

E. AG-JdVP now wishes to remodel the building on the Property to convert the building to a hotel (a use permitted under City land use regulations applicable to the Property), adding eight (8) hotel rooms, increasing retail space, and eliminating five (5) on site parking spaces, and the City wishes to pre-pay its obligations under the Agreement.

F. The parties now desire (1) to provide for the pre-payment of the City's payment obligations under the Agreement as amended by the First Amendment and (2) clarify how the current assessment will be calculated for the Property.

NOW THEREFORE, IN CONSIDERATION of the foregoing Recitals and the mutual covenants and promises of the parties contained in the Second Amendment, the parties agree to amend the Agreement as follows:

1. Assessment for 195 Spaces. City will assess the Property for 195 parking spaces under the City Council Resolution No. 9277-9279 Authorizing Refunding of Limited Obligation Improvement Bonds and Issuance of 2012 Bonds ("University Avenue Assessment District Bonds"). In no event shall the assessment under the University Avenue Assesment District Bonds be for more than 195 parking spaces. The Property owner agrees to pay these assessment amounts in a timely manner.

2. Prepayment of City Reimbursement. With the addition of 8 hotel rooms, the City would be required to reimburse the Property Owner for only 109 parking spaces, rather than 117 parking spaces. Upon the full execution of this Second Amendment, the City shall pay AG-JdVP the sum of Four Hundred Twenty-Four Thousand Three Hundred Forty-Nine Dollars and No Cents (\$424,349.00), which is the present value of the total sum owed to the Property Owner under the Agreement after the addition of the 8 additional hotel rooms. Upon payment of this sum, City shall no longer be required to reimburse the Property Owner for any portion of any future assessments under the University Avenue Assessment District Bonds.

3. Payment of In-Lieu Parking Fees. Upon the receipt of a certificate of occupancy for the remodeled hotel, AG-JdVP shall pay the City the sum of Four Hundred Eighty-Six Thousand Dollars and No Cents (\$486,000.00), which sum shall constitute an "in-lieu payment" to the City equivalent to eight (8) parking spaces at Sixty Thousand Seven Hundred Fifty Dollars and No Cents (\$60,750.00) per space (the "In-Lieu Fee"). The In-Lieu Fee shall constitute full and complete compensation to the City

for any and all amounts owed by Casa Olga and/or AG-JVP as a result of: (i) the elimination of five (5) parking spaces on the Property, which requires an in-lieu payment for five (5) parking spaces; and (ii) the addition of 800 square feet of retail space on the Property's ground floor, which requires an in-lieu payment for three (3) parking spaces.

4. Release. Except for the obligations of the parties otherwise expressed in this Second Amendment, and except for the rights, duties and obligations of Casa Olga, as Landlord, and AG-JdVP, as Tenant, under the Lease (as the same may hereinafter amended from time-to-time), all claims by and between the parties regarding the assessment of the Property under the 2001 University Avenue Assessment District Bonds shall be considered compromised and settled, without the admission of liability by any party, and each party agrees to waive and release, in favor of each other party and all employee, officers, agents, contractors and representatives of the other party, all claims, demands, causes of action, rights, damages, costs, expenses, compensation, and legal entitlements of any kind or nature (including attorney fees) arising out of or connected with the current assessment of the Property under the 2001 University Avenue Assessment District Bonds and to accept the duties and liabilities stated in this Second Amendment in full accord and satisfaction thereof. However, this Second Amendment, including without limitation, this Paragraph 4 in no way affects or binds the parties in regard to any future assessments on the Property.

5. Termination of Other Terms and Conditions. All other terms and conditions of the Agreement and First Amendment are hereby rescinded.

6. Binding on Successors. This Agreement shall be recorded and shall run with the land and shall be binding upon and inure to the benefit of the parties and their respective assigns, heirs or other successors in interest.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day in year first above written.

[signature page to follow]

CITY OF PALO ALTO

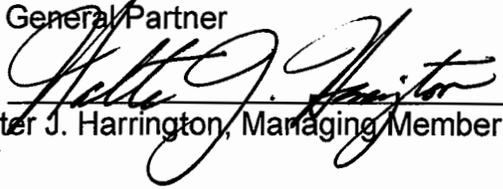
City Manager

APPROVED AS TO FORM:

Assistant City Attorney

CASA OLGA, L.P.,
a California Limited Partnership

By: COLP LLC, a California
Limited Liability Company
Its: General Partner

By: 
Walter J. Harrington, Managing Member

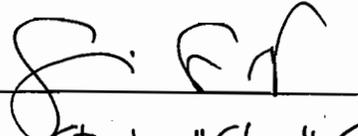
AG-JdVP CASA OLGA, L.P.,
a Delaware limited partnership

By: AG-JdVP Casa Olga GP, L.L.C.,
a Delaware limited liability company,
its general partner

By: AG-JdVP Casa Olga Parent, L.P.,
a Delaware limited partnership, its
sole member

By: AGR VIII Casa Olga GP, L.L.C.,
a Delaware limited liability
company, its general partner

By: AG Real Estate Manager, Inc.,
a Delaware corporation,
its manager

By: 

Name: Stephen "Chip" Corley

Title: Authorized Signatory

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

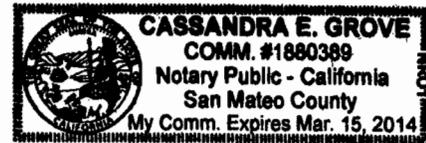
On OCTOBER 3 2012, before me, CASSANDRA E GROVE, Notary Public, personally appeared WALTER HARRINGTON, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that ~~he/she~~ executed the same in ~~his/her~~ authorized capacity, and that by ~~his/her~~ signature on the instrument the person, or the entity upon behalf of which the person 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

Cassandra E Grove



STATE OF CALIFORNIA)
) ss:
COUNTY OF Santa Clara)

On 10-5-2012, before me, Mahdee Shehadeh, Notary Public, personally appeared Stephen Conley, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that ~~he/she~~ executed the same in ~~his/her~~ authorized capacity, and that by ~~his/her~~ signature on the instrument the person, or the entity upon behalf of which the person 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

Mahdee Shehadeh

