

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: JILL SCOTT, REAL ESTATE MANAGER
SUBJECT: PUBLIC HEARING TO REVIEW EVIDENCE OF DEFAULT BY
CORNERSTONE PROPERTIES II, LLC ON THE PROPERTY
LOCATED AT 410 B STREET, SANTA ROSA, CALIFORNIA
APN 010-045-025

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by Real Estate Services that the Council: 1) conduct a public hearing to review evidence of the defaults by Cornerstone Properties II, LLC (“Cornerstone”) on the property located at 410 B Street, APN 010-045-025 (“Property”) in connection with the Agreement of Purchase and Sale for Future Infill Development and Joint Escrow Instructions (“Agreement”); and 2) by resolution, elect to repurchase the Property for the Call Purchase Price of \$1,340,000 in accordance with the terms of section 23 (d) of the Agreement to facilitate the revitalization of the City’s downtown and Council’s goal to create more housing.

EXECUTIVE SUMMARY

Under the Agreement, the City sold the property located at 410 B Street in the City of Santa Rosa (APN 010-045-025) to Cornerstone on August 27, 2021 (the “Close of Escrow”), subject to certain post-closing obligations. Under Section 23(d)(ii) of the Agreement, Cornerstone is in material default with certain post-closing obligations as described below. The City met with Cornerstone on August 26, 2024, and issued a notice of default on August 29, 2024, by certified mail and email. The Agreement stipulates that the Council hold a public hearing to review evidence of defaults by Cornerstone and may elect to repurchase the property from Cornerstone for the Call Purchase Price of \$1,340,000 (which is equal to the original purchase price) in accordance with Section 23(d) of the Agreement.

BACKGROUND

Pursuant to an Agreement of Purchase and Sale for Future Infill Development and Joint Escrow Instructions (“Agreement”), the City sold the property located at 410 B Street in downtown Santa Rosa (APN 010-045-025) (“Property”) to Cornerstone Properties II,

LLC (“Cornerstone”) on August 27, 2021, subject to the requirement that Cornerstone satisfy specific development milestones by specified deadlines. The City has granted Cornerstone two extensions of the deadlines for completion of the development milestones, totaling an additional 2.5 years. Because Cornerstone did not complete the development milestones by August 24, 2024, the second extended deadline, it is in material default of the Agreement. After meeting with Cornerstone, City staff determined that Cornerstone is not likely to move forward with the timely development of the Property even if the City further extends the milestone deadlines and issued a notice of default on August 29, 2024. The Agreement stipulates that following issuance of a notice of default, the Council must hold a public hearing to review evidence of defaults by Cornerstone and may elect to repurchase the property from Cornerstone for the Call Purchase Price of \$1,340,000 (which is equal to the original purchase price) in accordance with Section 23(d) of the Agreement if Council determines that Cornerstone is in default.

Pursuant to Section 23(a)(i) of the Agreement, Cornerstone was required to submit building plans and applications sufficient for a full plan check for the first phase of Cornerstone’s mixed-use project at 34 6th Street (the “SMART Site First Phase”) within six (6) months of the Close of Escrow for the Property. In response to Cornerstone’s request, on October 5, 2022, the City Manager issued a letter extending the deadline for compliance by an additional 18 months, resulting in a deadline for submittal of August 27, 2023. The City agreed to extend that deadline by an additional 12 months by a second extension letter dated August 24, 2023, resulting in a new deadline of August 24, 2024.

Pursuant to Section 23(a)(iii) of the Agreement, Cornerstone was required to submit all required applications for City planning and zoning entitlements to develop the Property and Cornerstone’s adjacent property with a mixed-use project as described in the Agreement that was consistent with the existing land use regulations within eighteen (18) months from the Close of Escrow. In response to Cornerstone’s first request, the City Manager’s letter dated October 5, 2022 also extended the deadline for compliance by an additional eighteen months as allowed under the terms of the Agreement. This extension resulted in an extended deadline for submission of planning and zoning entitlements to develop the Property of three years after the Close of Escrow, or August 27, 2024.

Following the City Manager’s extension letter of October 5, 2022, City staff reached out to Cornerstone to set quarterly meetings with Cornerstone’s representatives to maintain communication regarding Cornerstone’s progress on developing its properties. City staff additionally met with Cornerstone representatives and consultants monthly for several months during this period.

On August 9, 2024, 18 days before the extended deadline for submission of planning and zoning entitlements for development of the Property and Cornerstone’s adjacent property, Staff emailed Cornerstone staff to request a meeting, as the City had not received the required applications nor a request for an extension.

On August 26, 2024, City staff and Cornerstone met to discuss whether any progress had occurred on any of the developments. Staff concluded that the development of the Property was not likely to move forward even if the City Manager were to exercise her discretion under the Agreement and issue another extension.

Cornerstone did not submit an application for planning and zoning entitlements to develop the Property and Cornerstone's adjacent property prior to the extended deadline of August 27, 2024. Cornerstone also did not submit building plans and applications sufficient for a full plan check for the SMART Site First Phase prior to the extended deadline of August 24, 2024, and the deadline for meeting that milestone has expired as well. These are both defaults under the Agreement.

The City issued a notice of default to Cornerstone on August 29, 2024 (the "Notice of Default"), laying out the basis for the default and notifying Cornerstone that a public hearing would be held by the City Council on October 22, 2024 to review the default as provided for in the terms of the Agreement. On October 3, 2024, the City and Cornerstone entered into a letter agreement to defer the date of the public hearing to December 10, 2024.

PRIOR CITY COUNCIL REVIEW

On December 5, 2017, the City Council, by Resolution No. RES-2017-235 approved the first Exclusive Negotiation Agreement (ENA) with Cornerstone for the potential acquisition and development of 410 B Street.

On October 30, 2018, the City Council, by Resolution No. RES-2018-194 approved an ENA with Cornerstone, which allowed for an additional extension at the City Manager's discretion.

On April 20, 2021, the Council gave direction on price and terms in a closed session.

On May 25, 2021, the Council gave direction on price and terms in a closed session.

On June 8, 2021, Council passed Resolution No. RES-2021-090 approving the sale of the property located at 410 B Street to Cornerstone at a purchase price of \$1,340,000.

ANALYSIS

The City made clear throughout months of the original negotiations regarding the sale of the Property, and in subsequent correspondence, that one of the fundamental terms of this transaction for the City was the commitment that Cornerstone made to proceed with the development of the Ross Street Project, the SMART Site First Phase, and most importantly, the Project that included the Property, in an expeditious manner and in the

timeframes set forth in the Agreement. The City granted the previous extensions based on the understanding that these Projects would move forward and the City would receive the required applications in the very near future, certainly before the extended deadlines had passed. That has not occurred, and Cornerstone has not met the deadlines for submittals to the City for both SMART Site First Phase, and the Property, as described above.

The Agreement provides that in the event the City declares Cornerstone to be in default of the post-closing conditions set forth in Section 23 of the Agreement, the City Council will conduct a noticed public hearing to review evidence of the alleged default. Unlike most public hearings where the City is acting in its legislative or quasi-adjudicative capacity, this hearing is being held by the City in its proprietary capacity and is governed solely by the terms of the Agreement. However, since the Agreement does not contain hearing procedures, staff recommends that the City allow Cornerstone five minutes to present its evidence. Following the public hearing, the City Council may (i) find that there has been no material default; (ii) elect to purchase the property from Cornerstone for the Call Purchase Price (which is equal to the original purchase price of \$1,340,000); or (iii) establish a revised schedule for the performance of Cornerstone's obligations.

If Council elects to purchase the Property from Cornerstone, the City must issue a written notice exercising its purchase right within 10 days following Council's decision (i.e., by December 20, 2024, assuming that the City decides to repurchase at the same meeting that the public hearing is held). The sale of the Property back to the City shall be consummated through an escrow on the 30th day following the City's delivery of the notice, which means that escrow should close not later than January 19, 2024. If Cornerstone refuses to sell the Property back to the City in accordance with the Agreement, the City would need to file a court action to compel the sale. If the City were to prevail in court, it would have the right under the Agreement to recover its attorney's fees from Cornerstone.

Staff recommends that, after holding the public hearing and considering any oral or written testimony provided at or before the public hearing, the City Council elect to repurchase the Property for the Call Purchase Price of \$1,340,000, as provided for in the Agreement. Following repurchase of the Property, the City can explore other options for the use and development of the Property in furtherance of the revitalization of the City's downtown and Council's goal to create more housing.

FISCAL IMPACT

Approval of this action does not have a fiscal impact on the General Fund. The proceeds from the sale were held in the parking enterprise fund reserves, and if the property is repurchased, they will be appropriated from the same reserves.

ENVIRONMENTAL IMPACT

The proposed action is statutorily exempt from the California Environmental Quality Act pursuant to California Government Code section 65457 and CEQA Guidelines Section 15182 (c) as a residential project implementing the Downtown Station Area Specific Plan, and pursuant to California Public Resources Code section 21155.4 and CEQA Guidelines Section 15182 (b) as a mixed use project that is consistent with the local Sustainable Communities Strategy, located within a transit priority area and consistent with the Downtown Station Area Specific Plan. The Environmental Impact Report for the Downtown Station Area Specific Plan was certified by the City Council in October 2020, and no events described in CEQA Guidelines Section 15162 have occurred to require additional environmental analysis.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

On September 3, 2024, interested parties were notified directly via certified mail regarding the public hearing. Subsequently, a request to defer the public hearing was submitted to the City, and on October 3, 2024, interested parties were re-notified via email and provided with a signed agreement to confirm their acknowledgment. A notice of Public Hearing was published on November 29, 2024.

ATTACHMENTS

- Attachment 1 – Agreement of Purchase and Sale for Future Infill Development and Joint Escrow Instructions
- Attachment 2 – Extension letter 1
- Attachment 3 – Extension letter 2
- Attachment 4 – Notice of Default
- Resolution

PRESENTER

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