

- D.1 Staff Report (For Possible Action): Approval of an amendment to the Economic Development and Purchase/Sale Agreement to convey City-owned property commonly known as 0 Riverside Drive (Assessor's Parcel Numbers [APNs] 010-590- 01 and 02, 010-591-01 and 02, 010-592-01 to 06, 010-593-01 to 06, 010-594-01 to 06, 010-595-01 to 06, 010-601-01 to 06, 010-602-01 to 04, 010-603-01 to 04, and 010-604-01) adding a standdown provision and a reimbursement mechanism for work completed to date related to a quiet title action, allowing an assignment from BUILT. Investments, LLC, to Riverside Development, LLC, memorializing First Centennial for Escrow and other miscellaneous items.

STAFF REPORT

Date: August 28, 2024

To: Mayor and City Council

Through: Jackie Bryant, Interim City Manager

Subject: Staff Report (For Possible Action): Approval of an amendment to the Economic Development and Purchase/Sale Agreement to convey City-owned property commonly known as 0 Riverside Drive (Assessor's Parcel Numbers [APNs] 010-590- 01 and 02, 010-591-01 and 02, 010-592-01 to 06, 010-593-01 to 06, 010-594-01 to 06, 010-595-01 to 06, 010-601-01 to 06, 010-602-01 to 04, 010-603-01 to 04, and 010-604-01) adding a standdown provision and a reimbursement mechanism for work completed to date related to a quiet title action, allowing an assignment from BUILT. Investments, LLC, to Riverside Development, LLC, memorializing First Centennial for Escrow and other miscellaneous items.

From: Bryan McArdle, Revitalization Manager

Department: City Manager's Office

Summary:

The City of Reno is in contract with BUILT. Investments, LLC to sell the property at 0 Riverside Drive for an economic development project. However, title insurance companies have refused to provide title insurance unless the City prosecutes a quiet title action in state court to clear the many liens that remain on the title report, even after a certification from Tax Title Services stating that the County properly foreclosed on the property and notified the property owners before transferring to the City. Staff is recommending an amendment to the current Economic Development and Purchase/Sale Agreement addressing this challenge and other clean-up items. The buyer has expended costs for pre-development activities of the site including a reversion to acreage and an approved Specific Plan District (SPD). Due to the unforeseen inability to obtain a clear title, the amendment puts in place a standdown provision recognizing that the buyer shall not incur further time, and expenses related to the due diligence and development of the Property except for costs related to the demolition of the existing structure on site and adding a backflow prevention device to the stormwater outflow pipe. If the City is unable to obtain an order of quiet title from the court within 18 months the City agrees to reimburse the buyer for its expenses for work completed. The amendment allows other miscellaneous clean-ups such as memorializing First Centennial Title for escrow; allowing an assignment from BUILT. Investments, LLC to

Riverside Development, LLC; and addresses certain easements.

Alignment with Strategic Plan:

Economic and Community Development

Previous Council Action:

August 23, 2023 – Council approved a resolution establishing the fair market value of the Property and entering into an economic development agreement and purchase/sale agreement with BUILT. Investments, LLC.

June 7, 2023 – Council directed staff to negotiate an economic development agreement with BUILT. Investments, LLC.

July 20, 2022 – Council provided direction to staff to pay the back taxes to Washoe County to remove the open space deed restriction and direction to staff to proceed with a request for interests for the property.

December 11, 2019 – Council approved disposition of the property by public auction.

September 12, 2018 – Council was presented with a list of City/Redevelopment Agency (RDA) owned properties, including Assessor's Parcel Number (APN) 010-590-01 and 02 (0 Riverside Drive); APN 010-610-17 (265 Keystone Avenue); APN 007-292-14 (322 West Street); APN 007-214-26 (705 N. Virginia Street); APN 010-430-12 (0 Mayberry Drive); and APNs 082-290-70 and 71 (0 West Golden Valley Road/0 Yorkshire Drive), which could be transferred to the Community Housing Land Trust, or offered for sale to the highest bidder, or offered for sale through a Request for Proposal/Qualification (RFP/RFQ) process or any combination thereof. Council approved three parcels to the Community Housing Land Trust of APN 010-430-12, 082-290-70 and 71 for affordable housing and directed staff to sell APN 010-610-17 to the highest bidder at public auction. No direction was given on the other parcels.

August 24, 2016 – Council approved and authorized the staff to expend funds to undertake an appraisal on the property as a possible precursor to selling the property.

Background:

The property was acquired from the delinquent tax roll of the Washoe County Treasurer under Nevada Revised Statutes (NRS) 361.603, which allows for the acquisition by local government of property held in trust, to be used for public purpose as open space, without paying the delinquent taxes. Washoe County quitclaimed the property to the City of Reno on April 1, 2011, as reflected in Document No. 3989067 recorded in the Washoe County Recorder's Office. The quitclaim deed included a restriction to use the property for open space. In 2022, the City requested Washoe

County to remove the deed restriction for open space upon payment of the back taxes in the amount of \$104,086.91. The Washoe County Board of County Commissioners approved the request on September 13, 2022, and the parties recorded a Declaration of Removal of Open Space Deed Restriction on December 14, 2022.

Pursuant to the City's issuance of an RFP regarding the Property, the City voted to enter into an economic development agreement with BUILT. Investments, LLC on August 23, 2023. The City of Reno is now in contract with BUILT. Investments, LLC to sell the property for an economic development agreement, but numerous title insurance companies have stated that they will not insure the title to the property unless the City prosecutes a quiet title action in state court to clear several liens that remain on the title report.

NRS 361.590 provides that a deed to the County Treasurer after the right of redemption period has expired is a conclusive presumption of the regularity of all proceedings from the assessment to the execution of the deed and conveys the property free of all encumbrances except certain easements. Nonetheless, numerous title companies have declined to insure this property unless the City prosecutes a quiet title action to clear the liens that remain on the title report. In an effort to avoid a quiet title action, the City worked with Tax Title Services, a company specializing in tax lien foreclosures, which reviewed the foreclosure process and certified that it was done properly and that the period of redemption had long passed. Despite such certification, the title companies still refuse to insure the property unless a judicial order quieting title to the property is issued.

Discussion:

The buyer has expended costs for pre-development activities of the site including a reversion to acreage and an approved SPD totaling approximately \$275,000. Due to the unforeseen inability to obtain a clear title, the amendment puts in place a standdown provision recognizing that the buyer shall not incur further time and expenses related to the due diligence and development of the Property except for costs related to the demolition of the existing structure on site (estimated at \$60,000) and adding a backflow prevention device to the stormwater outflow pipe (estimated at \$4,000). If the City is unable to obtain an order of quiet title from the court within 18 months, the City agrees to reimburse the buyer for its expenses for work completed prior to the standdown provision. If an amendment includes a reimbursement provision that exceeds \$25,000 it requires Council approval. The amendment allows other miscellaneous clean-ups such as memorializing First Centennial Title for escrow; allowing an assignment from BUILT. Investments, LLC to Riverside Development, LLC; and addresses certain easements.

Financial Implications:

The Buyer to date has incurred approximately \$275,000 in pre-development costs and has the option to proceed with the expenses to demolish the structure on the site as well as install a backflow preventer. If after 18 months the quiet title order is not received the City will reimburse

the Buyer the costs incurred date up to \$339,000 from the Economic Development department budget. At that point, the City would retain ownership of the property, which had an appraised value of \$937,500 as of August 2023.

Legal Implications:

Legal review completed for compliance with City procedures and Nevada law.

Recommendation:

Staff recommends Council approve the proposed amendment to the Economic Development and Purchase/Sale Agreement.

Proposed Motion:

I move to approve the amendment to the Economic Development and Purchase/Sale Agreement.

Attachments:

0 Riverside Revised First Amendment and Standstill Agreement 08202024

(0 Riverside)

THIS FIRST AMENDMENT TO AGREEMENT FOR ECONOMIC DEVELOPMENT AND PURCHASE/SALE OF REAL PROPERTY (0 RIVERSIDE) (“Amendment”) is entered into effective as of the latest date executed by the Parties below (the “Effective Date”) by and between **RIVERSIDE DEVELOPMENT, LLC**, a Nevada limited liability company (“Buyer”), which is the assignee of Built Investments, LLC (“Assignee”) and **THE CITY OF RENO**, a public body, corporate and politic (“Seller”). Buyer and Seller are collectively referred to as “Parties.”

RECITALS

WHEREAS, the Parties entered into that certain Agreement for Economic Development and Purchase/Sale of Real Property (0 Riverside) dated October 24, 2023 (the “Agreement”) in response to a request for proposals issued on or about December 22, 2022;

WHEREAS, the Agreement omitted a sewer easement for the Booth Street Siphon Project, which requirement was disclosed in the request for proposals, but which is now no longer needed;

WHEREAS, Section 7.03 of the Agreement provides that:

“City agrees that Buyer may assign its rights and obligations under this Agreement to any of its members or managers; its affiliates, parents, subsidiaries, or one of a series of entities of the Buyer; or any entity in which any such member or manager holds an ownership interest of at least 25%, directly or indirectly, if (i) Buyer is not in default under this Agreement; (ii) the proposed assignee agrees to perform all obligations and duties of Buyer under this Agreement without change unless otherwise agreed by City; and (iii) the assignee posts an earnest money deposit in an amount to be agreed upon, which will be included as part of the Earnest Money Deposit and credited toward the Purchase Price at Closing, but if no agreement can be reached, then such earnest money deposit shall be the same as was initially posted by Buyer”;

WHEREAS, Buyer desires to assign its interest in the Agreement and the earnest money deposit to Riverside Development, LLC, a Nevada limited liability company which is a special purpose entity that its members and/or managers have formed, and Seller desires to accept such assignment;

WHEREAS, due to the fact that the property was conveyed from Washoe County to the City as part of a tax lien foreclosure and additional action is necessary to provide clear title, resulting in new deadlines;

WHEREAS, the Parties desire to use First Centennial as the title and escrow agent instead of Stewart Title, and the Earnest Money Deposit has been transferred from Stewart Title to First Centennial;

WHEREAS, City obtained a certification from Tax Title Services that the County had properly foreclosed on its tax liens on the Property, notified the Property owners, and subsequently transferred the Property to the City according to the procedures required by state law;

WHEREAS, in spite of such certification, First Centennial refuses to issue title insurance unless the City processes a quiet title action;

WHEREAS, the City has sought title insurance from several different title insurance companies, and all have indicated that they will not insure the property unless the City first obtains an order quieting title in the City;

WHEREAS, the City Council must first approve taking such legal action in a public meeting;

WHEREAS, such legal action will require a significant time investment during which the Parties desire that no more expenses related to development of the Property be incurred;

WHEREAS, in addition, the Truckee Meadows Flood Project has not completed its preliminary design for the flood wall to be erected on the Property;

WHEREAS, such design is necessary for the Buyer to complete its site design and requires the parties to enter into a relocatable easement pending final design;

WHEREAS, neither party wishes to incur further expenses with respect to the purchase and sale of the Property until the quiet title action and the flood wall design have been completed;

NOW, THEREFORE, the Parties hereby agree to amend the Agreement as follows:

1. Section 1.01(c) is hereby amended to read: “Cheryl Dougherty at First Centennial Title, 3700 Lakeside Drive, Suite 110, Reno, Nevada 89509; phone: 775.689.1810; email: cheryld@fctnv.com”.
2. Article 2, Section C is amended to read: “As a condition of the sale, City needs to retain an easement for flood mitigation, subject to the terms and conditions of the easement agreement in Attachment C (the "Easement Agreement"), **and to reserve the easements previously recorded in Tract Map 4795 in the Office of the Washoe County Recorder, and to reserve a fifteen-foot wide sewer easement; which sewer easement was previously recorded as ten feet wide in Document Nos. 235239, 235240 and 362408.**”
3. Article 4, Section 4.03 is amended to add a subsection “f”, which provides:
 - f. Stand Down Provision. The Parties agree that Buyer shall not incur further time and expenses related to the due diligence and development of the Property from the Effective Date of this First Amendment until an order quieting title in the City has been issued from the Second Judicial District Court. In the event that the City is unable to obtain such an order within 18 months from the Effective Date of this First Amendment, City agrees to reimburse Buyer for its expenses in performing the work

contemplated in the Request for Proposal regarding the Property from the Effective Date of the Economic Development and Purchase/Sale Agreement through July 24, 2024, in an amount not to exceed Two Hundred Seventy-Five Thousand Dollars (\$275,000) (the “Reimbursement Costs”). In the event that the City is unable to obtain an order quieting title within the time frame above, it shall pay interest on the Reimbursement Costs from the Effective Date of this Agreement at a rate of ten percent (10%) per annum, simple interest.

g. Exception to Stand Down Provision. The Parties agree that work may continue on the Property for the following:

(i) Demolition and removal of existing structures on the Property. This work shall be reimbursed to Buyer at actual cost if the sale fails to close because of the failure to obtain a quiet title judgment.

(ii) Replace an internal low pressure check valve in the existing stormwater outflow pipe, located on Riverside Drive approximately 175 feet west of the Riverside Drive and Booth Street intersection, that discharges to the Truckee River. This work shall be reimbursed to Buyer at actual cost from the sale price proceeds if the sale closes, or directly from the City if the sale fails to close because of the failure to obtain a quiet title judgment.

(iii) The total cost for both items shall not exceed One Hundred Thousand Dollars (\$100,000).

4. Section 4.06(e) is amended to read: Easement Agreement Location. ~~No later than 30 days after the Effective Date, the Seller will provide to Buyer the proposed location of the easement to be granted in the Easement Agreement (“Easement Location”).~~ On or prior to the date that is five (5) business days prior to the Due Diligence Deadline, the parties will agree to **the proposed location of the easement to be granted in Exhibit C (“Easement Location”); however, it is recognized that the final location is dependent on finalization of a preliminary design and alternatives analysis that may not be complete by the closing deadline, which will require the easement to be relocatable.**
5. Section 4.08(a) is amended to read: (xii). **Intentionally deleted.** ~~Seller has completed the Booth Street siphoning project, which is intended to be located on or adjacent to the Property and will prevent or reduce the backup or backflow of water onto the Property during a storm event from the storm drain located on or adjacent to the Property.~~
6. Page 24 of the Agreement is amended to read:
“Attachments
A. Property Description
B. Schedule

C. Easement Agreement

D Consent to Assignment and Assumption”

7. Attachment B is amended to read:

Description	Reference	Date
a. Approval Date		Last date this Agreement for Economic Development and Purchase/ Sale of Real Property is duly executed by all of the parties.
b. Open Escrow; Deposit Earnest Money	§4.02	Five business days after Approval Date
c. Application for Reversion to Acreage	§4.08	150 calendar days after Approval Date
d. Application for SPD	§4.08	150 calendar days after Approval Date
e. Due Diligence Deadline and Notice to Terminate Deadline	§4.03	90 calendar days following the final approval of the SPD, provided, however, that such deadline is suspended from the date of this Amendment until the date of issuance of an order quieting title in the City.
f. Closing Date	§4.02	90 calendar days after the issuance of an order quieting title in the City, or such date as the parties may agree in writing.

8. Attachment D is hereby added to the Agreement as follows:

ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT

(0 Riverside)

THIS ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT (0 RIVERSIDE) (“Agreement”) is entered into effective as of the latest date executed by the Parties below (the “Effective Date”) by and between **BUILT INVESTMENTS, LLC**, a Nevada limited liability company (“Assignor”), **RIVERSIDE DEVELOPMENT, LLC**, a Nevada limited liability company (“Assignee”), and **THE CITY OF RENO**, a public body, corporate and politic (“Seller”). Assignor, Assignee and Seller are collectively referred to as “Parties.”

Recitals

A. Assignor originally entered into that certain Agreement for Economic Development and Purchase/Sale of Real Property (0 Riverside) dated October 24, 2023 (“Economic Development Agreement”) with Buyer for the purchase and economic development of the real property commonly known as 0 Riverside.

B. Assignor desires to assign its interest and rights and delegate its obligations pursuant to section 7.03 of the Economic Development Agreement.

C. Assignee desires to assume Assignor’s interest, rights and obligations under the Economic Development Agreement.

D. Seller agrees to consent to the assignment and to allow the assumption of obligations by Assignee and to release Assignor from any future obligations that may arise from the Economic Development Agreement, on the conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants, releases and undertakings herein, the Parties agree as follows.

1. **Recitals.** Assignor and Assignee hereby agree that each of such parties are informed and believe that the recitals set forth hereinabove are true and correct and are incorporated into this Agreement.

2. **Assignment and Assumption.** Effective as of the Assignment Date, Assignor hereby grants, transfers, assigns and delegates to Assignee all of its right, title and interest and obligations of Assignor under the Economic Development Agreement, and Assignee accepts such assignment and delegation above, assumes the Economic Development Agreement, and agrees to observe and perform directly to Seller, all of the other covenants, agreements and obligations to be observed and/or performed by the Buyer under the Economic Development Agreement from and after the date hereof. Assignee has inspected the Premises and knows the

present condition thereof and confirms that neither Seller nor any officer, director, employee, agent or beneficiary of Seller has made any representation or warranty to Assignee concerning the Premises, or otherwise, expressed or implied, and that Assignee does not accept the Premises in reliance upon any such representation or warranty.

3. Representations and Warranties. Assignor and Assignee represent and warrant to Seller that:

a. The Economic Development Agreement, as amended by that First Amendment to Agreement for Economic Development and Purchase/Sale of Real Property (0 Riverside) is in full force and effect, has been duly executed and delivered by Assignor and is a valid, legal and binding obligation of Assignor and Assignee, as assignee of Assignor, enforceable in accordance with its express terms;

b. There exists no default, breach, failure of condition or event of default under the Economic Development Agreement, nor any event or condition which, with notice or the passage of time or both, would constitute a default, breach, failure of condition or event of default thereunder, and Assignor has, as of the date hereof, complied with all of the terms and conditions of the Economic Development Agreement, as amended;

4. Indemnification by Assignor. Assignor agrees to protect, hold harmless, defend and indemnify Assignee from and against any and all claims, judgments, damages, liabilities, costs and expenses, including, without limitation, reasonable attorney's fees and costs, accruing under the Economic Development Agreement prior to the Assignment Date in connection with the obligations of Assignor thereunder.

5. Indemnification by Assignee. Assignee agrees to protect, hold harmless, defend and indemnify Assignor from and against any and all claims, judgments, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, accruing under the Economic Development Agreement on or after the Assignment Date in connection with the obligations of Assignee thereunder.

6. Assignee's Continuing Obligations to Seller. Assignee hereby covenants and warrants that Seller's consent to this assignment shall not in any manner affect Seller's ability to proceed against Assignee for any failure by Assignee to perform any of its obligations under the Economic Development Agreement, as amended, nor shall any such consent be construed as a waiver by Seller of any of its rights or remedies under the Economic Development Agreement, as amended.

7. **Attorney's Fees; Counterparts.** If Assignor or Assignee bring any action against the other for the enforcement or interpretation of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together be deemed one document.

8. **General Provisions.**

a. Time is of the essence in the performance of the parties' respective obligations set forth in this Agreement.

b. Assignee's address for notices shall be as follows unless changed in accordance with the Economic Development Agreement:

Riverside Development, LLC
3600 Mayberry Drive
Reno, Nevada 89509

c. If for any reason, any provision of this Agreement shall be held to be unenforceable, it shall not affect the validity or enforceability of any other provision of this Agreement and to the extent any provision of this Agreement is not determined to be unenforceable, such provision, or portion thereof, shall be, and remain, in full force and effect.

d. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada.

e. This Agreement, including addenda, if any, expresses the entire agreement of the parties and supersedes any and all previous agreements between the parties with regard to the subject terms, and there are no warranties or representations of any kind or nature whatsoever, either expressed or implied, except as may be set forth herein. Any and all future modifications of this Agreement or the Economic Development Agreement will be effective only if they are in writing and signed by the parties hereto. The terms and conditions of any and all future modifications of this Agreement shall supersede and replace any inconsistent provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Assignment Date.

Assignor:

Built Investments, LLC, a Nevada limited liability company

By: _____

Its: _____

Date: _____

Assignee:

Riverside Development, LLC, a Nevada limited liability company

By: _____

Its: _____

Date: _____

Consent of Seller to Assignment and Assumption Agreement:

Seller hereby consents to the Agreement and assignment, acceptance and assumption made therein; provided, that notwithstanding such consent:

(i) Assignor is not and shall not be released or discharged from any liability or obligation under the Economic Development Agreement arising prior to the Assignment Date;

(ii) Assignee agrees to defend, indemnify, protect and hold harmless the Seller from, regarding and against any and all liabilities and obligations, together with fees, including, without limitation, reasonable attorneys' fees and experts' and consultants' fees, whenever

arising, related to Assignor's acts or omissions under the Economic Development Agreement arising prior to the Assignment Date.

(iii) Seller does not waive any claims, rights, suits or actions against Assignor for liabilities or obligations arising prior to the Assignment Date under the Economic Development Agreement;

Seller:

CITY OF RENO

By: _____

Its: _____

Date: _____