
Successor Agency/City Council Special Meeting Agenda

Thursday, March 6, 2014
11:30 a.m.

City Hall Council Chambers/Executive Conference Room
at 44-950 Eldorado Drive, Indian Wells



Indian Wells City Hall

WELCOME TO A SPECIAL MEETING OF THE SUCCESSOR AGENCY/CITY COUNCIL. ALL PERSONS WISHING TO ADDRESS THE SUCCESSOR AGENCY/CITY COUNCIL SHOULD FILL OUT A BLUE PUBLIC COMMENT FORM BEFORE THE MEETING BEGINS AND GIVE IT TO THE SECRETARY. WHEN THE CHAIR HAS RECOGNIZED YOU, PLEASE COME FORWARD TO THE PODIUM AND STATE YOUR NAME FOR THE RECORD. A 3-MINUTE TIME LIMIT IS CUSTOMARY. PLEASE NOTE THAT YOU MAY ADDRESS THE SUCCESSOR AGENCY/CITY COUNCIL ON AN AGENDA ITEM AT THE TIME IT IS DISCUSSED, BUT ONLY AFTER BEING RECOGNIZED BY THE CHAIR. ANY PUBLIC RECORD, RELATING TO AN OPEN SESSION AGENDA ITEM, THAT IS DISTRIBUTED WITHIN 72 HOURS PRIOR TO THE MEETING IS AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL RECEPTION AREA 44-950 ELDORADO DRIVE, INDIAN WELLS DURING NORMAL BUSINESS HOURS.

1. CONVENE THE SUCCESSOR AGENCY/CITY COUNCIL, PLEDGE OF ALLEGIANCE AND ROLL CALL

MAYOR TED J. MERTENS
MAYOR PRO TEM TY PEABODY
COUNCIL MEMBER PATRICK MULLANY
COUNCIL MEMBER DOUGLAS HANSON
COUNCIL MEMBER MARY T. ROCHE

2. APPROVAL OF THE FINAL AGENDA

3. PUBLIC COMMENTS

ALLOWED FOR ONLY THE LISTED ITEMS ON THE SPECIAL MEETING AGENDA

ALL PERSONS WISHING TO ADDRESS THE SUCCESSOR AGENCY SHOULD FILL OUT A BLUE PUBLIC COMMENT FORM IN ADVANCE AND HAND IT TO THE CITY CLERK. PLEASE NOTE THAT YOU MAY ADDRESS THE SUCCESSOR AGENCY ON AN AGENDA ITEM LISTED ON THE SPECIAL MEETING AGENDA ONLY, BUT ONLY AFTER BEING RECOGNIZED BY THE MAYOR. AT THE APPROPRIATE TIME, PLEASE COME FORWARD TO THE PODIUM AND STATE YOUR NAME FOR THE RECORD. A THREE-MINUTE LIMIT IS CUSTOMARY. NOTWITHSTANDING THE FOREGOING, SUCCESSOR AGENCY MEMBERS AND STAFF MAY BRIEFLY RESPOND TO STATEMENTS MADE OR QUESTIONS POSED DURING PUBLIC COMMENTS, AS LONG AS SUCH RESPONSES DO NOT CONSTITUTE ANY DELIBERATION OF THE ITEM.

4. SUCCESSOR AGENCY GENERAL BUSINESS

- A. Affirm Consent to Assignment and Assumption Agreement for Miles Crossing Retail LLC's Interest to Brixton IWC, LLC; and Authorize and Direct the Executive Director to Execute Same. Page 6.

RECOMMENDED ACTIONS:

SUCCESSOR AGENCY **AFFIRMS** ITS CONSENT TO THE ASSIGNMENT AND ASSUMPTION AGREEMENT FOR MILES CROSSING RETAIL LLC'S INTEREST IN THE DISPOSITION AND DEVELOPMENT AGREEMENT TO BRIXTON IWC, LLC; AND

AUTHORIZES AND **DIRECTS** THE SUCCESSOR AGENCY EXECUTIVE DIRECTOR TO EXECUTE THE ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN MILES CROSSING RETAIL, LLC AND BRIXTON IWC, LLC IN SUBSTANTIALLY THE FORM ENCLOSED WITH THIS STAFF REPORT, TO CONFIRM THE SUCCESSOR AGENCY'S CONSENT.

5. CITY COUNCIL CLOSED SESSION

- A. Conference with Legal Counsel Regarding Anticipated Litigation. Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2). Number of Potential Cases: 2.

- B. Conference with Legal Counsel Regarding Anticipated Litigation. Initiation of Litigation Pursuant to Government Code Section 54956.9(d)(4). Number of Potential Cases: 1.

6. ADJOURNMENT

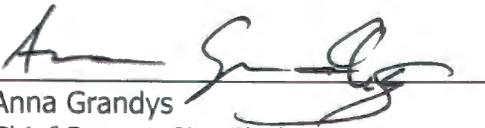
TO A REGULARLY SCHEDULED MEETING OF THE CITY COUNCIL TO BE HELD AT 1:30 P.M. ON MARCH 6, 2014 IN THE CITY HALL COUNCIL CHAMBERS.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CITY CLERK AT (760) 346-2489. NOTIFICATION 48 HOURS PRIOR TO THE MEETING WILL ENABLE THE CITY TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING. 128 CFR 35.102.35.104 ADA TITLE III

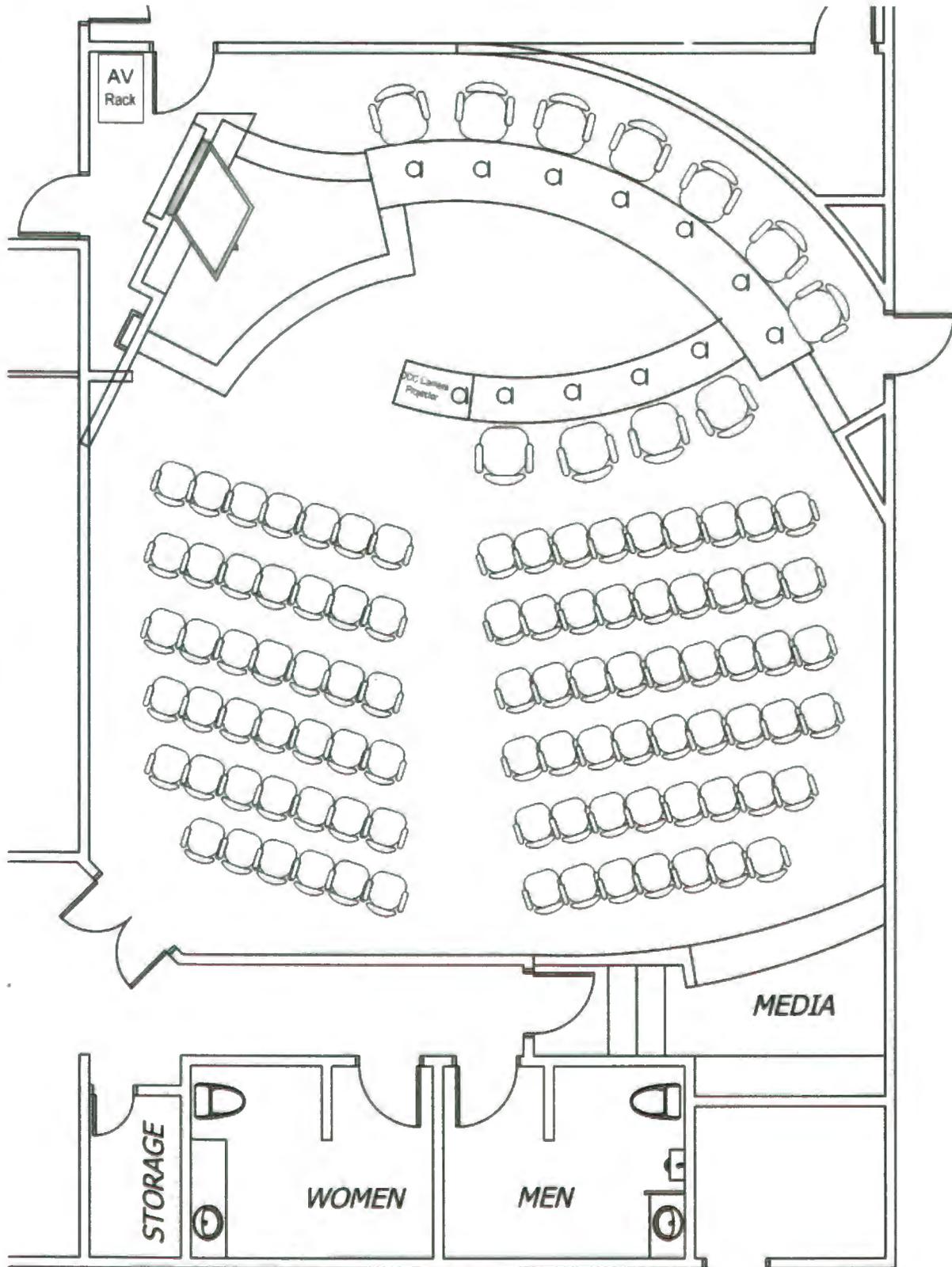
AFFIDAVIT OF POSTING

I, Anna Grandys, certify that on March 4, 2014, I caused to be posted a notice of a Successor Agency/City Council Special Meeting to be held on Thursday, March 6, 2014 at 12:30 p.m. in the City Hall Council Chambers.

Notices were posted at Indian Wells Civic Center, Village 1 [Ralph's], and Indian Wells Plaza [Indian Wells Chamber of Commerce], and were delivered to all Successor Agency and City Council members.



Anna Grandys
Chief Deputy City Clerk



Successor Agency

March 6, 2014

Staff Report – Community Development

Affirm Consent to the Assignment and Assumption Agreement for Miles Crossing Retail LLC's Interest to Brixton IWC, LLC; and Authorize and Direct the Executive Director to Execute Same

RECOMMENDATIONS:

Successor Agency **AFFIRMS** its consent to the Assignment and Assumption Agreement for Miles Crossing Retail LLC's interest in the Disposition and Development Agreement (DDA) to Brixton IWC, LLC; and

AUTHORIZES and **DIRECTS** the Successor Agency Executive Director to execute the Assignment and Assumption Agreement between Miles Crossing Retail LLC and Brixton IWC, LLC in substantially the form enclosed with this staff report, to confirm the Successor Agency's consent.

DISCUSSION:

Background:

The Redevelopment Agency entered into a Disposition and Development Agreement (the "DDA") with Jerson Investments, LLC ("Jerson") that has been modified several times. Through one of the modifications, Jerson assigned certain interests to Miles Crossing Retail LLC (another entity controlled by Jerson) to develop the Indian Wells Crossing retail project. However, Miles Crossing Retail LLC has not been in a position to develop the approved retail project, and is currently in default under a promissory note and deed of trust securing the property in favor of the Housing Authority. In late 2013, Excel Trust, L.P. ("Excel") showed interest in acquiring the property on which the Indian Wells Crossing Retail project is located. After investigating Excel's background and the company's proposal, the Successor Agency approved the reassignment of the Disposition and Development Agreement (DDA) to Excel Indian Wells, LLC on December 19, 2013. Excel has since withdrew their interest in the project and the reassignment agreement was never executed.

Brixton Capital ("Brixton"), an investment firm based in San Diego has informed the City it is ready to proceed in acquiring the Indian Wells Crossing project and is requesting the Successor Agency's consent to the reassignment of the DDA. Section 603.1 of the DDA requires that before Miles Crossing can transfer the property or assign its rights under the DDA, the Successor Agency must approve of that assignment in writing.

Summary:

The Indian Wells Crossing Subcommittee has met with Brixton and believes that Brixton has the financial wherewithal to move this project forward and develop the retail portion of Indian Wells Crossing project. The following must happen prior to execution of the Assignment and Assumption Agreement:

- Brixton requires assurances from the Successor Agency that it consents to the assignment of the DDA from Miles Crossing Retail LLC to Brixton IWC, LLC.
- Brixton must pay off the outstanding promissory note in the amount of \$2,292,406 no later than March 7, 2014 to avoid the default deadline.
- City must receive confirmation of the payment of the outstanding promissory note no later than March 7, 2014 or the default sale of the property proceeds on March 10, 2014.

In order for Brixton to acquire the retail property from Miles Crossing Retail LLC and assume Miles Crossing Retail's rights and obligations under the DDA, the Successor Agency Board must consent to the assignment of Miles Crossing Retail LLC's interest in the DDA to Brixton IWC, LLC, and authorize the Successor Agency Executive Director to execute an Assignment and Assumption Agreement between Miles Crossing Retail LLC and Brixton IWC, LLC in substantially the form attached with this staff report, to confirm the Successor Agency's consent.

The reassignment of the DDA is one of the necessary steps for the ultimate development of Indian Wells Crossing commercial site which is the City Council's highest priority goal, moving economic development projects forward.

ATTACHMENTS:

1. Agreement Summary
2. Assignment and Assumption Agreement

AGREEMENT SUMMARY

ASSIGNMENT AND ASSUMPTION AGREEMENT MILES CROSSING RETAIL—PHASE 1 COMMERCIAL PROPERTY

Parties: Miles Crossing Retail, LLC (Miles Crossing)
Brixton IWC, LLC (Brixton)
Successor Agency to the Indian Wells Redevelopment
Agency (Successor Agency) [***signing only to consent to
the assignment, not as a party***]

Responsible
Department(s): City Manager/City Attorney/Community Development

Background:

The Redevelopment Agency of the City of Indian Wells (RDA) and Jerson Investments entered into a Disposition and Development Agreement (DDA) for the development of the Indian Wells Crossing project. The DDA was modified several times, and as part of one of the modifications, portions of the DDA were assigned to various limited liability companies. The obligations to construct Phase 1 of the retail portion of the proposed development were assigned to Miles Crossing Retail, LLC. Pursuant to the DDA, the Phase 1 retail property was conveyed to Miles Crossing in exchange for a promissory note and deed of trust for the purchase price of the Phase 1 retail property.

Miles Crossing intends to sell the Phase 1 retail property to Brixton. If Brixton acquires the property, it must also assume Miles Crossing's responsibilities under the DDA. Section 603.1 of the DDA states that the RDA must consent in writing to any transfer of rights or property covered by the DDA.

Contract Terms:

- Miles Crossing assigns all its rights and obligations under the DDA to Brixton, and Brixton assumes all of those rights and obligations. This means that Brixton essentially steps into the shoes of Miles Crossing, and is required to proceed with the development of the Phase 1 retail property according to the terms and conditions of the DDA.
- The Successor Agency is the successor in interest to the RDA, and is executing the Assignment and Assumption Agreement to affirm its consent to the assignment by Miles Crossing of its rights and obligations under the DDA, in compliance with Section 603.1. The Successor Agency is not a party to this Agreement, and is only signing to demonstrate its consent to the assignment.

When Recorded Mail to:

Brixton IWC, LLC
4435 Eastgate Mall, Suite 300
San Diego, CA 92121
Attn: Travis King

ASSIGNMENT AND ASSUMPTION AGREEMENT

(Interest of Miles Crossing Retail LLC in that certain Disposition and Development Agreement (Jerson Investments, LLC), as modified by Modification Nos. 1-7)

This ASSIGNMENT AND ASSUMPTION AGREEMENT (“Agreement”) is entered into as of _____, 201_ by and between MILES CROSSING RETAIL, LLC, a California limited liability company (“Assignor”), and BRIXTON IWC, LLC, a Delaware limited liability company (“Assignee”), and is consented to by the SUCCESSOR AGENCY TO THE INDIAN WELLS REDEVELOPMENT AGENCY, a public body, corporate and politic (“Successor Agency”).

RECITALS

A. On May 6, 2004, the Indian Wells Redevelopment Agency, a public body, corporate and politic (the “Agency”) and Jerson Investments, LLC, an Illinois limited liability company (“Jerson”) entered into a Disposition and Development Agreement (the “DDA”) relating to certain real property located in the City of Indian Wells. The Agency and Jerson entered into seven separate modifications of the DDA between August 17, 2004 and January 29, 2008. Concurrent with entering into Modification No. 6 on or about January 29, 2008, certain obligations as set forth in the DDA as modified were assigned to and assumed by Miles Lodge, L.L.C., a California limited liability company, Miles Accent Homes, L.L.C., a California limited liability company (“Miles Lodge”) and Miles Crossing Retail, L.L.C., a California limited liability company (“Miles Crossing Retail”) and Miles Crossing Retail 2, L.L.C., a California limited liability company (“Miles Crossing Retail 2”). The DDA was then further modified a seventh time on or about December 20, 2010.

B. Pursuant to Modification No. 6 to the DDA, certain rights and obligations set forth in the DDA were assigned to and assumed by Miles Crossing Retail LLC related to the acquisition and development of that certain property referred to in the DDA as the “Phase 1 Commercial Property,” as more specifically described in Exhibit A to this Agreement.

C. Subsequent to entering into Modification No. 6, the Agency conveyed the Phase 1 Commercial Property to Miles Crossing Retail pursuant to the terms and conditions of the DDA. Miles Crossing Retail is the current owner of the Phase 1 Commercial Property

D. On February 1, 2012, pursuant to the requirements of AB 1X 26, the Agency was dissolved by operation of law. All authority, rights, powers, duties, and obligations previously vested with the Agency were transferred to the Successor Agency, with the exception of that authority, rights, powers, duties and obligations related to the Agency’s housing assets. The

Successor Agency therefore assumed the former Agency's rights and obligations related to the implementation of the DDA.

E. Assignee desires to acquire the Phase 1 Commercial Property from Assignor, and Assignor desires to convey the Phase 1 Commercial Property to Assignee. In connection with such conveyance, Assignor desires to assign to Assignee all its rights and obligations under the DDA as modified, and Assignee desires to accept the assignment of such rights and obligations, on the terms and conditions set forth herein.

F. Section 603.1 of the DDA provides that the property that is the subject of the DDA shall not be sold, transferred, conveyed, assigned, subdivided or leased in whole or in part without the prior written approval of the Agency (now the Successor Agency) which shall not be unreasonably withheld. The Successor Agency desires to provide its consent to the transfer of the Phase 1 Commercial Property and the assignment of the Assignor's rights and obligations under the DDA through its consent to this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Effective Date. All terms and provisions of this Agreement shall become effective upon execution of this Agreement by all parties (the "Effective Date").

2. Assignment of Rights and Assumption of Obligations. Assignor hereby assigns and delegates to Assignee, and Assignee accepts such assignment and delegation from Assignor, of all rights and obligations of Assignor under the DDA.

3. Consent to Assignment and Transfer of Property. The Successor Agency hereby consents to the assignment and assumption of obligations as set forth in Section 2 herein, and to the transfer of the Phase 1 Commercial Property from Assignor and Assignee.

4. Indemnity. Assignee agrees to protect and indemnify Assignor and Successor Agency from and against any and all claims, losses, or expenses that arise from any failure by Assignee to comply with the terms and provisions of this Agreement.

5. Attorneys' Fees. In any legal action or other proceeding brought by any party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorney's fees and any other costs incurred in that proceeding in addition to any other relief to which it is entitled.

6. No Modification. No addition to or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by both Assignor and Assignee and approved in writing by the Agency.

7. Successors and Assigns. Except as otherwise specifically set forth herein, (i) this Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns, (ii) all of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, Civil Code Section 1468 and (iii) each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Property, as appropriate, runs with the Transfer Property, and is binding upon and for the benefit of the owner of all or a portion of the Transfer Property and each successive owner during its ownership of such property.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of California.

9. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or constraining the terms, covenants or conditions of this Agreement.

10. Further Assurances. The parties hereto shall execute and deliver, upon demand by the other party or Agency, such further documents, instruments, and conveyances, and shall take such further actions as such other party may request from time to time to document the transactions set forth herein.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Assignor and Assignee and consented to by Successor Agency as of the day and year first above written.

[Signatures on following pages]

SIGNATURE PAGE
TO
ASSIGNMENT AND ASSUMPTION OF AGREEMENT

ASSIGNOR:

MILES CROSSING RETAIL, LLC, a California
limited liability company

By: _____
Its: _____

By: _____
Its: _____

SIGNATURE PAGE
TO
ASSIGNMENT AND ASSUMPTION OF AGREEMENT

ASSIGNEE:

BRIXTON IWC, LLC
a Delaware limited liability company

By: _____
Its: _____

SIGNATURE PAGE
TO
ASSIGNMENT AND ASSUMPTION AGREEMENT

ACKNOWLEDGED AND ACCEPTED:

**SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY
OF INDIAN WELLS**

By: _____

Executive Director

Attest:

Authority Secretary

Approved As To Form:

Best Best & Krieger LLP

Successor Agency Counsel

EXHIBIT A
TO
ASSIGNMENT AND ASSUMPTION AGREEMENT
Legal Description of Property

[attached behind this cover page]