



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of February 24, 2018

DATE: February 14, 2018

SUBJECT: Amendment to Agreement of Sale Between Michael 905 S. 20th Street, LLLP and the County Board of Arlington County, Virginia for the Purchase of 905 20th Street South and the Adjacent Vacant Lot (RPC#s 36-007-010 and 36-007-017)

C. M. RECOMMENDATIONS:

1. Approve the attached Amendment to Agreement of Sale (“Amendment”) between Michael 905 S. 20th Street, LLLP (“Seller”) and the County Board of Arlington County, Virginia (“County Board”) for the purchase of 905 20th Street South and the adjacent vacant lot (RPC#s 36-007-010 and 36-007-017) (together, the “Property”).
2. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute the Amendment to Agreement of Sale and all related documents necessary for the acquisition of the Property, subject to approval as to form of all documents by the County Attorney.

ISSUES: There are no outstanding issues as of the date of this report.

SUMMARY: The Seller intends to complete the purchase of the Property as part of a tax deferred exchange transaction pursuant to Internal Revenue (IRS) Code Section 1031. The Agreement of Sale must be amended to acknowledge the Seller’s intentions and extend the settlement date.

BACKGROUND: The acquisition of the Property was brought to the County’s attention by members of the Aurora Highlands Civic Association. At its December 19, 2017 Recessed Meeting, the County Board approved the Agreement of Sale (“Agreement of Sale”) between the County Board and the Seller for the purchase of the Property. The purchase price for the acquisition is \$1,235,000.00. The County executed the Agreement of Sale on December 22, 2017. Under the terms of the Agreement of Sale, settlement of the purchase is to occur not more than 45 days after the date of the County’s execution of the Agreement of Sale. Seller has decided to complete the transaction as part of a tax deferred exchange under IRS Code Section

County Manager:

mga/cgm

County Attorney:

[Signature]

BAH

17.

Staff: Maxine Cholmondeley DES/REB; Tina Chiappetta DES/REB

1031. The Agreement of Sale must be amended to (i) extend the settlement date (ii) and acknowledge that Seller will complete the purchase under IRS Code Section 1031.

DISCUSSION: Under the terms of the Agreement of Sale, settlement of the purchase is to occur no later than 45 days after the County's execution of the Agreement of Sale, i.e., no later than February 5, 2018. In addition to needing the County's agreement to participate in the tax deferred exchange transaction, the settlement date must be extended to allow Seller sufficient time to complete the transaction. Upon approval of the Amendment, (i) the settlement will be extended by an additional thirty (30) days; and (ii) the County agrees to cooperate with Seller in the exchange transaction as long as it does not cause additional expense or create additional liability to the County. All other provisions of the Agreement will remain unchanged.

PUBLIC ENGAGEMENT: None.

FISCAL IMPACT: There will be no fiscal impact from the approval and execution of the attached Amendment.

AMENDMENT TO AGREEMENT OF SALE
905 20th Street South, Arlington, VA
and adjacent vacant lot (RPC#s 36-007-010 and 36-007-017)

This **AMENDMENT TO AGREEMENT OF SALE** (the "Amendment") is made on _____, 2018 among **MICHAEL 905 S. 20TH STREET, LLLP**, a Virginia limited liability limited partnership ("Seller"), and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic ("Purchaser").

RECITALS:

A. Seller and Purchaser entered into an Agreement of Sale dated December 22, 2017 (the "**Agreement**"), for the sale and purchase of the real property and improvements located at 905 20th Street South and an adjacent vacant lot in Arlington, Virginia, as more particularly described in the Agreement (the "**Property**"); and

B. Seller now desires to transfer the Property by utilizing an Internal Revenue Code (IRC) Section 1031 tax-deferred exchange; and

C. Purchaser agrees to cooperate with Seller, as long as it does not cause additional expense or create additional liability to the Purchaser; and

D. Seller will need additional time to complete settlement.

NOW, THEREFORE in consideration of the mutual covenants herein contained, the mutual receipt and legal sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Recitals. The foregoing recitals are incorporated herein by this reference as if fully set forth at this point in the text of this Amendment.

2. Integration. The recitals and following terms and conditions shall constitute part of the Agreement and be incorporated therein by reference.

3. Subparagraph 3.a. of the Agreement is hereby deleted in its entirety and replaced with the following new subparagraph 3.a.:

“a. The settlement of the sale of the Property in accordance with this Agreement (the "Settlement" or "Settlement Date") shall take place on a date mutually agreed upon

by the parties, provided that the Settlement shall occur no later than March 9, 2018, unless extended to meet the conditions and requirements of paragraph 5 (Title), paragraph 10 (Hazardous Materials), paragraph 11 (Survey), or as provided in paragraph 3.b.”

4. IRC Section 1031 Exchange. The Agreement is hereby amended by adding the following new paragraph 19:

“19. Purchaser acknowledges that Seller intends to complete a tax-deferred exchange transaction pursuant to Internal Revenue Code Section 1031. Purchaser agrees to cooperate with Seller as long as it does not cause additional expense or create additional liability to Purchaser. Purchaser acknowledges that Seller will assign the rights (but not obligations) of this Agreement to a qualified intermediary for the purpose of completing Seller's 1031 Exchange transaction.”

5. Ratification. The terms of the Agreement, except as expressly modified hereby, shall remain in full force and effect.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

WITNESS the following signatures:

SELLER:

MICHAEL 905 S. 20TH STREET, LLLP,
a Virginia limited liability limited partnership

By: _____
Dorene M. Castell
General Partner, Michael 905 S. 20th Street, LLLP

By: _____
David M. Castell
General Partner, Michael 905 S. 20th Street, LLLP

PURCHASER:

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM

County Attorney