



CITY OF LONG BEACH

OFFICE OF THE CITY MANAGER

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HENRY TABOADA
CITY MANAGER

December 20, 2000

DDR OliverMcMillan LP
4350 Executive Drive, Suite 300
San Diego, California 92121
Attn: Morgan Dene Oliver

Queensway Bay Partners, LLC
c/o MacFarlane Urban Realty Company, LLC
100 Bush Street, Suite 1450
San Francisco, CA 94101
Attn: Victor MacFarlane

Gentlemen:

The date for satisfying the conditions of the Disposition and Development Agreement between you and the City of Long Beach regarding development of a Project on property located in Queensway Bay was to have been December 31, 1999. Upon the evidence presented by you in late December 1999 that the plan of the Project was progressing and that additional time was needed to finish what was in the process of completion, the date of December 31, 1999, was extended by the Amended and Restated Disposition and Development Agreement to March 31, 2000. The conditions were not satisfied by the extended date. We have been informed that implementation of the Project, for which the extended time was needed, is no longer feasible within a time frame acceptable to the City.

We have also been informed that tenants who have been identified in the Leasing Plan as committed to the Project have withdrawn. Our understanding is that the Financing Plan, and the potential sources of both loan and equity financing, relied on the maintenance of the essential components of the Leasing Plan. Under these circumstances, the Leasing Plan and the Financing Plan submitted to the City appear not to be currently accurate and should have been updated.

We have been informed that DDR OliverMcMillan LP has assigned its interests as Developer under the DDA to Queensway Bay Partners, and that neither OliverMcMillan nor its managing principals are or will be managers or members of Queensway Bay Partners. We have not received any written confirmation that an assignment has been implemented or that Queensway Bay Partners is empowered or willing to undertake the Project development.

DDR OliverMcMillan
Attn: Morgan Denc Oliver
Attn: Gerald I. Solomon
December 20, 2000
Page 2

Efforts to implement the Project appear to have ceased, and all recent information available to the City is to the effect that the Project will not proceed in an acceptable time frame.

We have concluded that the earlier efforts to bring this Project to a successful and timely conclusion have failed. This letter is to notify you that despite the extension of additional time, a number of conditions have still not been satisfied and the successful consummation of the transaction is not assured. **This notice requires that the unsatisfied conditions be cured not later than January 25, 2001**, that thereafter there be a successful Closing of escrow contemplated by the Amended DDA, and that development of the project as contemplated by the Amended DDA commence as agreed, with all conditions satisfied. If the conditions are not satisfied, the City intends to terminate the Amended DDA.

The primary unsatisfied condition to be satisfied is the condition that the Developer shall submit to the City evidence reasonably satisfactory to the City that any conditions to the issuance of the Bonds and the closing of any other loans to fund construction of the applicable Improvements, as described in the applicable approved Financing Plan have been met or will be met at the Closing. No such evidence has been submitted to the City. The Financing Plan is to include, among other matters, a copy of all applicable commitments and letters of interest obtained by the Developer for construction financing, permanent financing, and other financing from external sources to assist in financing the development of the applicable Improvements and a financial statement or other evidence in form reasonably satisfactory to the City demonstrating that the Developer has sufficient additional capital funds or sources of funds available to cover the difference, if any, between costs of development of the applicable Improvements and the amount available to the Developer from external sources. The City is to review and approve the loan documents obtained by Developer for the construction financing, permanent financing and other financing from external sources. We have been informed that no such financing or evidence of it is available or forthcoming. With any evidence you do submit, if you choose to do so, please submit an updated Leasing Plan and Financing Plan, reflecting the current status of both Plans.

Conditions precedent to a Closing that, without limitation, have not been satisfied, include the following:

1. City is to receive the loan documents (the promissory note or other evidence of indebtedness, deed of trust, mortgage, and any other instruments executed by Tenant in connection with a Permitted Mortgage) from the lenders who are to provide the loans which are to finance the Project. Developer has not submitted copies of all applicable commitments and letters of interest obtained by the Developer for construction financing, permanent financing and other financing from external sources to assist in financing the development of the

applicable Improvements, certified by the Developer to be true and correct, that are currently effective or satisfactory.

2. Developer is to submit a certified (by Developer's Chief Financial Officer or accountant) financial statement or other evidence in form reasonably satisfactory to the City demonstrating that the Developer has sufficient additional capital funds or sources of funds available to cover the difference, if any, between costs of development of the applicable Improvements and the amount available to the Developer from external sources. Developer has not made such submission.
3. Developer is to submit evidence reasonably satisfactory to the City that any conditions to the issuance of the Bonds and the closing of any other loans to fund construction of the applicable Improvements, as described in the applicable approved Financing Plan have been met or will be met at the Closing. Such evidence has not been submitted.
4. The City is to receive satisfactory evidence that all permits, approvals, and entitlements for the work of demolition, grading, remediation and other site preparation and for the foundations of the Retail Improvements (other than "building permits" for the structures to be constructed) and the Bond Improvements have been issued or are available to Developer to permit the development of the Property in accordance with the Final Construction Plans and the provisions of this Amended DDA and the Ground Lease. City has not received such evidence.
5. The City is to receive satisfactory evidence that the financing necessary for the development of the Project (as reflected in the approved Financing Plan and including the provision of Mello Roos Bonds on terms satisfactory to City) will close concurrently with the Closing and execution and delivery of the Ground Lease, and that construction of the Improvements will proceed promptly upon such delivery, and that any required equity is available for such purposes, as provided in the approved Financing Plan. City has not received such evidence.
6. The City is to receive satisfactory evidence that the Developer has entered into a construction contract with a licensed general contractor(s) for the construction of the Retail Improvements, which construction contract is consistent with the requirements of this Amended DDA and the Ground Lease; and satisfactory evidence of the existence of unsigned construction contracts (to be executed following the Closing) to ensure completion of the

DDR OliverMcMillan
Attn: Morgan Dene Oliver
Attn: Gerald I. Solomon
December 20, 2000
Page 4

- Bond Improvements to be financed by the Mello Roos Bonds. City has not received such evidence.
7. The City is to receive and approve schematics and working drawings for the Project. City has not received such drawings for Building F, the National Sports Grill, the carousel building, and for Second Phase Parcel Buildings G, H and J.
 8. The City is to receive satisfactory evidence that all conditions imposed upon the Coastal Development Permit have been satisfied so that such Coastal Development Permit may be obtained. City has not received such evidence.

The matters referred to in this letter are not intended to be exhaustive. The City reserves all claims, demands and rights it has, or may have, under the Amended DDA, including, but not limited to, the matters referred to in this Notice. The fact that a failure of a condition, a breach of or default under the Amended DDA or other matter is not mentioned in this letter is not a waiver or attempt to waive any such failure, breach, default or other matter. City reserves the right to deliver further notices, to make other claims and to take such further actions as it may deem appropriate.

Yours very truly,



Henry Taboada,
City Manager