



Staff Report

TO: Board of Harbor Commissions
FROM: James B. Pruett, General Manager
DATE: December 29, 2023
SUBJECT: Purchase Sale Agreement Modifications

Issue:

Extending the Purchase Sale Agreements beyond December 31, 2023 and increasing the purchase price for each property.

Recommendation/Motion:

Recommendation: Approve extensions to the purchase and sale agreements and escrow instructions:

- By and between the San Mateo County Harbor District and Charles J. Viso and Cherry L. Viso, Trustees of the Viso Living Trust dated October 22, 1998.
- By and between the District and Joe Amaral, LLC,
- By and between the District and the Viso 1990 Revocable Trust dated March 29, 1990
- By and between the District and Prafulaben Patel

Approve an increase to the purchase price for each property in a total amount not to exceed \$150,000,

Approve an appropriation to capital expenditures in an amount not to exceed \$150,000 from available working capital.

Authorize General Manager to execute such agreements necessary to effectuate the above modifications, in the forms on file with the District Deputy Secretary, with such changes and additions as the General Manager deems appropriate.

Background:

The District, on November 20, 2023, entered into purchase and sale agreements (PSA) with the Viso Living Trust dated October 22, 1998, Joe Amaral, LLC, the Viso 1990 Revocable Trust dated March 29, 1990, and Prafulaben Patel to purchase certain real property. The PSAs were specially negotiated to close prior to December 31-2023 to avoid an additional tax burden of 1.1% on the sellers.

In mid-December 2023, the escrow/title company's computer system went offline, and prevented the closing of the purchase prior to December 31, 2023.

Discussion:

In order to keep the PSAs valid beyond December 2023, the parties must agree to an addendum to the PSAs, extending the agreements beyond 2023. The sellers also requested an increase to the purchase price to offset their additional tax burden of 1.1% of the sale price.

The attached addendum and amendment each extend the PSAs until January 31, 2024, and provide authority to increase the purchase prices to cover the 1.1% tax liability caused by closing after December 31, 2023.

**FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS
[APN 047-252-240 PRAFULABEN PATEL]**

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS [APN 047-252-240 PRAFULABEN PATEL] (“Amendment”) is entered into as of December 29, 2023, by and between **SAN MATEO COUNTY HARBOR DISTRICT** (the “**Buyer**”), and **PRAFULABEN PATEL**, (the “**Seller**”).

RECITALS

A. Buyer and Seller are parties to the certain Purchase and Sale Agreement and Escrow Instructions [APN 047-252-240 Prafulaben Patel] dated November 20, 2023 (the “**Agreement**”).

B. Buyer and Seller desire to amend the Agreement as hereinafter set forth.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual terms set forth below and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Buyer and the Seller agree as follows:

1. **Purchase Price.** The purchase price set forth in Section 3(a) of the Agreement is amended to read as follows:

“The purchase price for the Property to be paid by the Buyer is the sum of One Million Four Hundred Eighty-Six Thousand One Hundred Seventy Dollars (\$1,486,170.00).”

2. **Extension of Outside Closing Date.** The last sentence of Section 2 of the Agreement is amended to read as follows:

“The Close of Escrow shall occur on or before January 31, 2024, unless extended in writing by the mutual agreement of the Buyer and the Seller (the “Closing Date”).”

3. **Limit of Amendment.** Except as expressly amended as set forth above, all other terms and provisions of the Agreement shall remain in full force and effect.

4. **Execution in Counterparts.** This Amendment may be executed in counterparts, which counterparts shall be construed as a single document and have the same effect as if all of the parties had executed the same instrument.

IN WITNESS WHEREOF, the Buyer and the Seller have executed this Amendment as of the date first written above.

BUYER:

**SAN MATEO COUNTY HARBOR
DISTRICT**

By: _____
Name: James B. Pruett
Title: General Manager

SELLER:

By: _____
Name: Prafulaben Patel

AGREEMENT REGARDING MODIFICATIONS TO THE TERMS OF THE PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS [APN 047-252-230] BY AND BETWEEN THE SAN MATEO COUNTY HARBOR DISTRICT (“DISTRICT”) CHARLES J. VISO AND CHERRY L. VISO, TRUSTEES OF THE VISO LIVING TRUST DATED OCTOBER 22, 1998 (“VISO LIVING TRUST PSA”); THE PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS [APN 047-252-390] BY AND BETWEEN THE DISTRICT AND JOE AMARAL, LLC (“AMARAL PSA”); AND THE PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS [047-252-360 AND 047-252-220] BY AND BETWEEN THE DISTRICT AND THE VISO 1990 REVOCABLE TRUST DATED MARCH 29, 1990, AS AMENDED AND RESTATED (“VISO REVOCABLE TRUST PSA”)

RECITALS

- A. District is the “Buyer” under the Viso Living Trust PSA, the Amaral PSA and the Viso Revocable Trust PSA.
- B. Charles J. Viso and Cherry L. Viso, as Trustees of the Viso Living Trust dated October 22, 1998, are the “Seller” under the Viso Living Trust PSA.
- C. Joe Amaral, LLC is the “Seller” under the Amaral PSA.
- D. Charles J. Viso, Jessica Viso Kull and Joseph J. Viso, each as Successor Trustees of the Viso 1990 Revocable Trust, dated March 29, 1990 as amended and restated, are the “Seller” under the Viso Revocable Trust PSA.
- E. The District and the Sellers as to their respective PSA’s desire to extend the outside closing date and provide for the adjustment of the purchase price described in the PSAs.

NOW, THEREFORE, in consideration of the mutual terms set forth below and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Extension of Close of Escrow. The Closing Dates, as described in Section 2 of each of the Viso Living Trust PSA, the Amaral PSA and the Viso Revocable Trust PSA are hereby extended to January 31, 2024.
2. Increase in Purchase Price. The Purchase Price, as described in Section 3(a) of each of the Viso Living Trust PSA, the Amaral PSA and the Viso Revocable Trust PSA are to be adjusted by the increase in California State taxes payable by each Seller resulting from the sale of the properties in calendar year 2024 instead of calendar year 2023, but in an aggregate amount not to exceed One Hundred Thousand Dollars (\$100,000.00). The amount of such increase and the allocation thereof to the Purchase Price of each of the PSAs shall be determined solely by and among the Sellers, and the District shall have no responsibility or liability with respect thereto. The aggregate of the amount of such increase and the amounts to be allocated to the Purchase Price of each PSA shall be provided to the District and First American Title Insurance Company (as Escrow Holder under the PSA’s) in writing and signed by each of the Sellers at least five (5) working days prior to the Closing Date as extended in Section 1 above.

3. Execution in Counterparts. This Agreement may be executed in counterparts, which counterparts shall be construed as a single document and have the same effect as if all of the parties had executed the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of December 29, 2023.

**SAN MATEO COUNTY HARBOR
DISTRICT**

By: _____
Name: James B. Pruett
Title: General Manager

VISO LIVING TRUST

By: _____
Name: Charles J. Viso
Title: Trustee

By: _____
Name: Cherry L. Viso
Title: Trustee

JOE AMARAL, LLC,
a California limited liability company

By: _____
Name: Joseph J. Viso
Title: Managing Member

By: _____
Name: Vanessa Viso
Title: Managing Member

**VISO 1990 REVOCABLE TRUST DATED
MARCH 29, 1990, AS AMENDED AND
RESTATED**

By: _____
Name: Charles J. Viso
Title: Successor Trustee

By: _____
Name: Jessica Viso Kull
Title: Successor Trustee

By: _____
Name: Joseph J. Viso
Title: Successor Trustee