



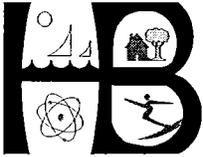
**CITY OF HUNTINGTON BEACH
SUPPLEMENTAL COMMUNICATION
Joan L. Flynn, City Clerk
Office of the City Clerk**

TO: Honorable Mayor and City Council
FROM: Joan L. Flynn, City Clerk 
DATE: January 31, 2012
**SUBJECT: SUPPLEMENTAL COMMUNICATION TO THE CITY COUNCIL FOR THE
JANUARY 31, 2012, SPECIAL CITY COUNCIL/RDA/PFA MEETING**

Attached is the Supplemental Communication to the City Council (received after distribution of the Agenda Packet):

Consent Calendar

#1. Communication received from Bob Hall, Deputy City Manager/Director of Economic Development, dated January 31, 2012, entitled *Supplemental Information – City Council Agenda Item #1 Amendment to Purchase and Sale Agreement and Joint Escrow Instructions with Campbell Lodging, Inc. for 7872 Edinger Avenue.*



CITY OF HUNTINGTON BEACH

Interdepartmental Memo

TO: Honorable Mayor and Members of the City Council

VIA: Fred A. Wilson, City Manager

FROM: Bob Hall, Deputy City Manager/Director of Economic Development 

DATE: January 31, 2012

SUBJECT: **Supplemental Information – City Council Agenda Item #1
Amendment to Purchase and Sale Agreement and Joint Escrow
Instructions with Campbell Lodging, Inc. for 7872 Edinger
Avenue**

Attached for City Council consideration is the Amendment to the Purchase and Sale Agreement for 7872 Edinger Avenue.

The following summarizes the proposed changes in the Agreement:

- Reduce the non-refundable buyer deposit from \$10,000 to \$2,500.
- Buyer shall have a 60-day due diligence period.
- City shall provide Buyer all environmental documentation relating to the site for review and approval.
- If the City cannot provide a title free of any leases (Big O Tire Tenant) or easement detrimental to the proposed hotel development project at closing, Buyer shall have the right to cancel escrow and receive a full reimbursement of its initial deposit.
- With City approval, Buyer shall have the ability to transfer or assign its rights to the property prior to Certificate of Occupancy.
- If the City defaults on its contractual obligation (determines that the City does not want a hotel on the site) Campbell Lodging would be entitled to the return of the closing funds and return of its reasonable out-of-pocket expenses incurred in connection with the transaction in an amount not to exceed One Hundred and Fifty Thousand, \$150,000. Failure to approve the entitlements for the project does not constitute a default.
- The City and Campbell has a cure process for any unmet obligations.

SUPPLEMENTAL COMMUNICATION

Supplemental Communication Campbell Meeting Date: 1-31-2012

1/31/2012 12:29:00 PM

Agenda Item No. 1

**AMENDMENT TO PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
(7872 Edinger)**

This Amendment to Purchase and Sale Agreement and Joint Escrow Instructions (the "Amendment to Purchase Agreement") is dated as of _____, 2012 by the CITY OF HUNTINGTON BEACH, a municipal corporation ("Seller") and CAMPBELL LODGING, INC., a California corporation (the "Buyer"). Seller and Buyer are collectively referred to herein as the "Parties."

I. [§100] PURPOSE OF AMENDMENT TO PURCHASE AGREEMENT

The Seller and Buyer entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated January 27, 2012 (the "Purchase Agreement") relating to the sale by Seller to Buyer of certain real property in the City of Huntington Beach described as set forth in Attachment No. 1 attached hereto and incorporated herein by this reference (the "Property") and Buyer's development thereon of a hotel project in accordance with the terms and conditions contained in the Purchase Agreement. Any capitalized term not defined herein shall have the meaning ascribed to such term in the Purchase Agreement.

The purpose of this Amendment to Purchase Agreement is to provide for the following revisions to the Purchase Agreement: (1) reduce the amount of the Buyer Deposit which automatically becomes non-refundable upon Buyer's execution of the Purchase Agreement from "\$10,000" to "\$2,500" and amend the time during which such amount becomes non-refundable to ten (10) days after Buyer's execution of this Amendment to Purchase Agreement ; (2) provide Buyer the right to reasonably determine, without the approval of the City Council of the City of Huntington Beach, whether or not (a) the actual construction costs and fees for the project make the project economically infeasible and (b) the availability of hotel brands from major franchisors are acceptable to Buyer; (3) provide Buyer with a 60 day due diligence period to review all Due Diligence Materials; (4) provide express language allowing Buyer to terminate the Purchase and Sale Agreement and cancel the pending escrow in the event Seller does not terminate the Lease on or prior to the scheduled Close of Escrow, including any extensions thereto; (5) provide express language allowing Buyer to terminate the Purchase and Sale Agreement and cancel the pending escrow, on or prior to the scheduled Close of Escrow, including any extensions thereto, in the event Seller does not vacate or cause the vacation of certain easements listed on the Preliminary Title Report which are detrimental to and prohibit the development of the Hotel Project; (6) permit Buyer to assign its rights and obligations under the Purchase and Sale Agreement prior to the issuance of a permanent certificate of occupancy for the Hotel Project to a Permitted Transfer (as defined below); and (7) clarify and/or update certain other provisions contained in the Purchase Agreement.

II. [§200] EFFECT OF AMENDMENT TO PURCHASE AGREEMENT

Except as expressly provided otherwise in this Amendment to Purchase Agreement, the Purchase Agreement remains in full force and effect, enforceable in accordance with its terms, without diminution or waiver of any kind of any right or remedy of the Seller thereunder.

III. [§300] TERMS AND CONDITIONS

A. Buyer Deposit. The second sentence of Paragraph 3.a. of the Purchase Agreement (Buyer Deposit) commencing with the words, "A portion of the Buyer Deposit" and ending with the words, "the Close of Escrow contemplated herein occurs," is hereby deleted in its entirety and replaced with the following sentence:

"A portion of the Buyer Deposit in the amount of One Hundred Thousand Dollars (\$100,000) (the "\$100,000 Non-Refundable Portion of Buyer Deposit") shall be non-refundable (\$2,500 of the \$100,000 Non-Refundable Portion of Buyer Deposit shall automatically become non-refundable within ten (10) business days of Buyer's execution of the Amendment to Purchase and Sale Agreement and Joint Escrow Instructions and the remaining \$97,500 of the \$100,000 Non-Refundable Portion of Buyer Deposit shall automatically become non-refundable sixty (60) days after Seller's execution of this Agreement) and retained by the Seller as the Seller's property whether or not the Close of Escrow contemplated herein occurs."

B. Permits; Entitlements. The last paragraph in Paragraph 4.c. of the Purchase Agreement (Permits; Entitlements) is hereby amended to add the following sentence at the end of such paragraph:

"Buyer hereby acknowledges and agrees that Buyer's failure to obtain all permits and entitlements necessary for the development of the Hotel Project within the time periods set forth in the Schedule of Performance due to a disapproval of such permits and entitlements by the City Council of the City of Huntington Beach shall not constitute a default by Seller under this Agreement."

C. Due Diligence Period. Paragraph 6.a. c. of the Purchase Agreement (Due Diligence Period) is hereby deleted in its entirety and replaced with the following paragraph:

"c. Buyer shall have a 60 day period (the "Due Diligence Period") commencing on the date the Amendment to Purchase and Sale Agreement and Joint Escrow Instructions is executed by Buyer, to conduct all due diligence research and inspections as it deems necessary for purposes of approving (i) conditions of title pursuant to Paragraph 7 below, (ii) the Due Diligence Materials, and (iii) to determine, in its reasonable discretion, whether or not (1) the actual construction costs and fees for the development of the Hotel Project are "economically infeasible" or (2) the availability of hotel brands from major franchisors are acceptable to Buyer. In the event Buyer disapproves of any of the items set forth under clauses (i), (ii) or (iii) prior to the expiration of the Due Diligence Period, subject to the terms and provisions set forth in Paragraph 8.a. (2) below, Buyer shall have the right to terminate this Agreement. Buyer shall notify Seller and Escrow Holder of such intent to terminate in writing prior to expiration of the Due Diligence Period. Thereafter, Buyer and Seller shall have no obligation to each other (except as otherwise set forth herein), the Buyer Deposit, excluding \$2,500 of the \$100,000 Non-Refundable Portion delivered to Seller, shall be returned to Buyer immediately and this Agreement shall terminate. In the event of a cancellation of Escrow, Buyer and Seller shall each bear one-half of any Escrow cancellation fees."

D. Delivery of Due Diligence Materials/Title. The introductory phrase in Paragraph 8.a. (1) of the Purchase Agreement (Delivery of Due Diligence Materials/Title), commencing with the words, “Buyer and Seller hereby acknowledge,” and ending with the words, “extent such items are in Seller’s possession:” is hereby deleted in its entirety and replaced with the following phrase, “Within ten (10) business days of Buyer’s execution of the Amendment to Purchase and Sale Agreement and Joint Escrow Instructions, Seller will deliver to Buyer copies of the following items, if and to the extent such items are in Seller’s possession.”

E. Review and Approval of Documents and Materials. Paragraph 8.a. (2) of the Purchase Agreement (Review and Approval of Documents and Materials) is hereby amended as follows:

1. The first paragraph is hereby deleted in its entirety and replaced with the following paragraph:

“Prior to the expiration of the Due Diligence Period, Buyer shall have the right to review and approve or disapprove, at Buyer’s sole cost and expense, any environmental reports, soils inspection, conditions of title, zoning, surveys, all physical inspections of the Property, Due Diligence Materials, and all other reports or inspections as Buyer may deem necessary or appropriate in connection with this Agreement. Failure of Buyer to give written disapproval of the Due Diligence Materials on or before the expiration of the Due Diligence Period shall be deemed to constitute Buyer’s approval of all Due Diligence Materials. If Buyer disapproves or conditionally approves any matters of title shown in the preliminary title report, then Seller may, within fourteen (14) business days after its receipt of Buyer’s written notice of disapproval of the Due Diligence Materials, elect, with no obligation to do so, to eliminate or ameliorate to Buyer’s satisfaction the disapproved or conditionally approved title matters. Seller shall thereupon give Buyer written notice of those disapproved or conditionally approved title matters, if any, which Seller agrees to either eliminate from the Title Policy as exceptions to title to the Property or to ameliorate to Buyer’s satisfaction by the Closing Date as a condition to the Close of Escrow. If Seller does not elect to eliminate or ameliorate to Buyer’s satisfaction any disapproved or conditionally approved title matters, or if, despite its best commercial efforts, Seller is unable to eliminate or ameliorate to Buyer’s satisfaction all such disapproved matters prior to the Closing Date, then Buyer shall have the right to, by a writing delivered to Seller and Escrow Holder: (i) waive its prior disapproval, in which event the disapproved matters shall be deemed approved; or (ii) terminate this Agreement and the Escrow created pursuant thereto, in which event Buyer shall be entitled to the return of all monies previously deposited with Escrow Holder or released to Seller pursuant to this Agreement, and the Escrow and the rights and obligations of the parties hereunder shall thereafter terminate.”

2. The last sentence in the second paragraph commencing with the words, “In the event Seller is unable to,” and ending with the words, “vacated possession of the Property” is hereby deleted in its entirety and replaced with the following sentence:

“In the event Seller is unable to obtain possession of the Property from the Tenant prior to the scheduled Closing Date, the scheduled Closing Date shall automatically extend an

additional thirty (30) days to permit Seller to terminate and/or cause the termination of the Lease.”

3. The second paragraph is hereby amended to add the following sentence to the end of the paragraph:

“Seller agrees that if it is unable to deliver title to the Property free of the Lease and that Tenant has not vacated the Property as of the scheduled Closing Date, including any extensions thereto, then Buyer shall have the option by delivering written notice to Seller to cancel the Escrow created pursuant to this Agreement, in which case the entire Buyer Deposit (to the extent such funds have been received by the Seller or delivered into Escrow) shall be immediately refunded to Buyer, including the \$2,500 portion considered non-refundable, and the rights and obligations of the parties hereunder shall thereafter terminate.”

F. Vacation of Easements. Paragraph 8. a. (6) of the Purchase Agreement (Vacation of Easements) is hereby deleted in its entirety and replaced with the following paragraph:

“(6) Vacation of Easements. Seller shall use commercially reasonable efforts to vacate or cause the vacation of those property easements as permitted by the dominant tenement listed on the Preliminary Title Report and identified by Seller in writing which are detrimental to and prohibit the development of the Hotel Project (the “Detrimental Easements”). In the event Seller is unable to deliver title to the Property free of the Detrimental Easements as of the scheduled Closing Date, the scheduled Closing Date shall automatically extend an additional thirty (30) days to permit Seller to vacate or cause the vacation of such Detrimental Easements. Seller agrees that if it is unable to deliver title to the Property free of the Detrimental Easements as of the scheduled Closing Date, including any extensions thereto, then Buyer shall have the option by delivering written notice to Seller to cancel the Escrow created pursuant to this Agreement, in which case the entire Buyer Deposit (to the extent such funds have been received by the Seller or delivered into Escrow) shall be immediately refunded to Buyer, including the \$2,500 portion considered non-refundable, and the rights and obligations of the parties hereunder shall thereafter terminate.”

G. Assignment. Paragraph 21 of the Purchase Agreement (Assignment) is hereby amended as follows:

1. Paragraph 21.d is hereby deleted in its entirety and replaced with the following paragraph:

“d. Except for a Permitted Transfer (defined below), Buyer represents and agrees for itself and any successor in interest that prior to the issuance of the permanent Certificate of Occupancy by the Seller for the Hotel Project, without the prior written approval of the Seller, there shall be no significant change in the ownership of Buyer or in the relative proportions thereof, or with respect to the identity of the parties in control of Buyer or the degree thereof, by any method or means. The term “Permitted Transfer” used herein shall mean an assignment of this Agreement and all of Buyer’s interests in the Property to a limited liability company or limited partnership and Buyer, with Jack B. Campbell, J. Alan Campbell, and Martin A.

Campbell as the principal owners (collectively the "Principals"), collectively or individually, shall enter into a management agreement, subject to the reasonable written approval of the City Manager or designee for the limited purpose of ensuring compliance with the terms and conditions of this paragraph, with assignee to develop, manage and operate the Hotel Project (the "Management Agreement"); provided, however that such Principals have power and control over management and development of the Hotel Project and further provided that such assignment is memorialized in an assignment and assumption agreement the form and content of which is first approved in writing by the City Manager or designee. The documentation evidencing any such transfer shall be subject to the reasonable approval of the City Manager or designee in accordance with the standards set forth in the respective provisions of this Agreement. Any change in the identity of the management company designated in the Management Agreement, including any amendments thereto, shall be first approved in writing by the City Manager or designee, in the City Manager or designee reasonable discretion."

2. The penultimate sentence of Paragraph 21. e, is hereby amended to add the following, "except in the event of a Permitted Transfer," to the end of such sentence.

H. Legal and Equitable Enforcement of this Agreement. Paragraph 22 of the Purchase Agreement (Legal and Equitable Enforcement of this Agreement) is hereby amended as follows:

1. The first sentence of Paragraph 22. a. is hereby amended to delete all reference to the not to exceed dollar amount of "FIFTY THOUSAND DOLLARS \$50,000" and replace with the not to exceed dollar amount of "ONE HUNDRED AND FIFTY THOUSAND DOLLARS."

2. Paragraph 22 is hereby amended to add the following subparagraph b.1. immediately after the existing Paragraph 22.b.:

" b.1. Notice and Cure Periods Prior to Close of Escrow.

Prior to the Close of Escrow, if a monetary event of default occurs, prior to exercising any remedies set forth in Paragraphs 22a. and 22 b. above, as applicable, the non-defaulting party shall give the party in default written notice of such default. The party in default shall have a period of ten (10) business days after such notice is given within which to cure the default prior to exercise of the applicable remedies set forth in Paragraphs 22 a. and 22 b. above by the injured party.

Prior to the Close of Escrow, if a non-monetary event of default occurs, prior to exercising any remedies set forth in Paragraphs 22a. and 22 b. above, as applicable, the non-defaulting party shall give the party in default written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the party in default shall have such period to effect a cure prior to exercise of remedies by the non-defaulting party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in default (i) initiates corrective action within said thirty (30) day period, and

(ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the non-defaulting party, but in no event shall such period exceed sixty (60) days from the date such notice is received or deemed received. In no event shall the non-defaulting Party be precluded from exercising the remedies set forth in Paragraphs 22 a. and 22 b. above, as applicable, if its security becomes or is about to become materially jeopardized by any failure to cure a default.”

3. The introductory heading and phrase of Paragraph 22. c. of the Purchase Agreement (Default by Buyer After the Close of Escrow) shall be deleted in its entirety and replaced with the following:

“ c. Default After the Close of Escrow. The Parties hereto acknowledge and agree that the following terms and provisions shall apply in connection with an event of default pursuant to this Agreement that occurs after the Close of Escrow:”

IV. [§400] NOTICE OF CANCELLATION RESCINDED

Buyer acknowledges and agrees that by executing this Amendment to Purchase Agreement, (i) Buyer’s purported notice of cancellation of the Purchase Agreement set forth in that certain letter dated January 30, 2012 and addressed to Seller, and (ii) Buyer’s proposed Amendment #1 to Purchase and Sale Agreement and Joint Escrow Instructions (7872 Edinger Ave. Huntington Beach) dated January 30, 2012 and attached to such letter, are each hereby immediately rescinded in their entirety and of no further force and effect.

V. [§500] DUPLICATE ORIGINALS

This Amendment to Purchase Agreement may be signed in counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURES ON FOLLOWING PAGE]

“BUYER”

CAMPBELL LODGING, INC., a California
corporation

By: _____
Martin A. Campbell
Vice-President/Chief Development Officer

ATTACHMENT NO. 1

LEGAL DESCRIPTION

Real property in the City of Huntington Beach, Orange County, State of California, described as follows:

Lots 19 and 20 in Tract No. 417, as per map recorded in Book 16, Page 47 of Miscellaneous Maps, in the office of the County Recorder of Orange County.

Expecting therefrom the North 20 feet thereof

APN: 142-081-06

Lots 24, 25, 26, 27 and 28 of Tract No. 417, as per map recorded in Book 16, Page 47 of Miscellaneous Maps, in the office of the County Recorder of Orange County.

Expecting therefrom all water and water rights as conveyed to Boulevard Gardens Water Company, a Corporation by Deed recorded February 11, 1925 in Book 561 page 287, of Deeds.

APNs: 142-081-09, 142-081-10, 142-081-11, 142-081-12

Lots 21, 22 and 23 of Tract No. 417, as per map recorded in Book 16, Page 47 of Miscellaneous Maps, in the office of the County Recorder of Orange County.

Expect all oil, minerals and other hydrocarbon substances without right of surface entry thereto above a depth of above 500 feet from the surface thereof, as revised in the deed from Beulah H. Finley, recorded December 14, 1960 in book 5548 Page 385, official records.

APN: 142-081-28