



## Legislation Text

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File #: EDA M2020-001, Version: 1

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**DATE:** January 23, 2020

**TO:** Members of the Economic Development Authority

**FROM:** Nate Carlson, Economic Development Coordinator

Second Amendment to Purchase Agreement for 510 Washington Street

### **SUMMARY AND ACTION REQUESTED:**

The EDA shall make a motion to approve the Second Amendment to the Purchase Agreement for 510 Washington Street.

### **BACKGROUND:**

The EDA approved a purchase agreement on October 24, 2019 with Rebound Stencil Development, LLC to sell 510 Washington Street for the 5<sup>th</sup> Street Lofts project. The EDA approved a First Amendment to the Purchase Agreement on December 19, 2019 to extend the period for closing to March 31, 2020. As the developer is finalizing the financing for the project, the lender is reviewing City and EDA legal documents as well.

A second amendment to the purchase agreement has been proposed by the lender's legal team to protect the interests of the lender. At this time, the developer has formally requested that the EDA amend the purchase agreement to include the following language. City Attorney has drafted the amendment and the developer has agreed to the amendment.

### **Proposed Language Amendment (Section 3 of Purchase Agreement)**

**3. CLOSING AND POSSESSION.** The closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur on a date mutually acceptable to Seller and Buyer, but no later than December 31, 2019 (the "Closing Date"). The Seller agrees to deliver possession not later than the Closing Date provided that all the contingencies and other terms and conditions contained in this Agreement have been complied with and satisfied. The Closing shall take place at Northfield City Hall or the Title Company, as hereinafter defined, or at such other place as may be agreed to mutually by the Parties.

- a. **Seller's Closing Documents.** On the Closing Date, Seller shall execute and/or deliver to Buyer the following (collectively, "Seller's Closing Documents"):
  - i. Quit Claim Deed. Attached hereto and made a part hereof as Exhibit B is the required Quit Claim Deed containing the terms, covenants, and conditions upon which the sale of the Real Property is based. The Quit Claim Deed shall contain the following restrictions, covenants, and conditions:

1. The Real Property herein conveyed shall be devoted to the following use:  
residential use.
2. The Real Property shall be devoted to such intended use in accordance with the provisions of the Deed.
3. The Buyer shall (a) commence work on the improvements within one year from the date the deed is recorded with the Office of the Rice County Recorder, or on or before December 31, 2020, whichever occurs first, and (b) shall devote the Real Property to its intended use, and (c) shall devote the Real Property to its intended use by May 31, 2021. If the Buyer fails to commence work on time or fails to devote the Real Property to its intended use, or fails to devote the real property to its intended use on time, title to the real property shall revert to Seller, at Seller's election, and, in that event, Buyer shall promptly offer a deed to the Real Property legally described herein to Seller, who will then refund to Buyer the amount of the Purchase Price paid by Buyer to Seller, without interest, less any taxes and other encumbrances affecting marketability of title. Notwithstanding the foregoing, Seller may, at its option, consider an extension of time for good cause shown by Buyer. In the event an extension is granted, such extension (a) shall be to a date certain, (b) may be conditioned by Seller to protect the public interest, and (c) during the period Buyer shall not transfer title to the Real Property without the express written consent of Seller.

After the Buyer has devoted the Real Property to its intended use in accordance with approved plans and specifications for the development of the Real Property submitted to the Seller, the Seller shall provide to Buyer a certificate of compliance / completion in recordable form within 30 days from the determination thereof by Seller, which certificate shall release all of Seller's reversionary rights in the Real Property.

4. Incorporated herein by reference are all of the conditions of Minnesota Statutes, Sections 469.090 to 469.108, and all of said conditions and the conditions stated herein relative to the use of the Real Property are covenants running with the land.
5. The Buyer shall not transfer title to the Real Property within five (5) years after the date of this Deed without the express written consent of the Seller; provided, however, that this restriction shall not apply to, nor shall the Seller have the right to approve, any transfer of title to the Real Property occurring as a result of the foreclosure of a mortgage lender's interest in the Real Property or a mortgage lender's acceptance of a deed in lieu of foreclosure from Buyer.

#### ANALYSIS:

The proposed language allows the bank to receive the EDA property should the project result in foreclosure following the completion of construction. However, 510 Washington would revert to EDA ownership should the project not materialize.

If the EDA does not approve the amendment, the developer will be unable to finalize the required financing for the project.

**OPTIONS:**

The EDA has the following options:

- Make a motion to approve the amendment to the purchase agreement.
- Take no action.

**RECOMMENDATION:**

Staff recommends approval of the Second Amendment to the Purchase Agreement of 510 Washington Street.