



# City of Delray Beach

100 N.W. 1st Avenue  
Delray Beach, FL 33444

## Legislation Text

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**File #:** 18-0083 CRA, **Version:** 1

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**TO:** **CRA Board of Commissioners**  
**FROM:** **Jeff Costello, CRA Executive Director**  
**DATE:** **August 15, 2018**

RESOLUTION NO. 2018-15 AND AGREEMENT WITH PURCHASE AND SALE WITH UPTOWN ATLANTIC, LLC (FORMERLY EQUITY DELRAY, LLC) - SW 600-800 BLOCKS - WEST ATLANTIC AVENUE.

**Recommended Action:**

Approve Resolution No. 2018-15 authorizing the sale and conveyance of real property to Uptown Atlantic, LLC; providing for findings and determinations as required by Section 163.380(2), Florida Statutes that the conveyance of the subject property is for fair value; authorizing the proper person(s) designated therein to execute the agreement for purchase and sale, and all necessary conveyance documents including but not limited to instruments of conveyance and closing documents; providing for conflicts; providing for severability; providing for an effective date.

**Background:**

At the May 7<sup>th</sup> CRA Board Meeting, the CRA Board directed CRA staff and the CRA Board Attorney to enter into negotiations with Uptown Atlantic, LLC ("Uptown") for a new purchase and sale agreement. At the same meeting the Board directed staff to publish a new thirty (30) day Notice as required by Florida Statutes Chapter 163.380(3)(a). The 30-day Notice was published on May 11<sup>th</sup> and thereafter six (6) Letters of Interest were received by June 11<sup>th</sup>.

At the July 12<sup>th</sup> CRA Board Meeting, the CRA Board considered the next steps in the development of SW 600-800 Blocks - West Atlantic Avenue ("Project").

At the July 12<sup>th</sup> meeting, the CRA Board voted to proceed in the following manner:

1. Engage in negotiations with Uptown Atlantic subject to the following as part of the negotiations: an increase to the purchase price, modifications to the approved architectural elevations, and additional community benefits, including requirements for a full-service grocery store, space for local small businesses at a reduced rent, and local participation by subcontractors and laborers with a mutually agreed upon Purchase and Sale Agreement by August 3, 2018;
2. Reject the six (6) Letters of Interest; and,
3. Directed CRA Staff to prepare a Request for Proposals for redevelopment of the CRA-owned properties within the Southwest 600, 700, and 800 Blocks of West Atlantic Avenue, between SW 6th and 9th Avenues, for consideration at the August 15, 2018 CRA Board meeting.

As directed by the Board, the Chair of the CRA, the Executive Director and the CRA General Counsel have held several meetings with Uptown regarding the terms of a Purchase and Sale Agreement for the West Atlantic Property. Based on the negotiations, the CRA and Uptown finalized negotiations on August 3rd and Uptown has proposed a Purchase and Sale Agreement for the Project, subject to final approval by the CRA Board.

**Purchase & Sale Agreement Overview:**

The attached Purchase and Sale Agreement includes various terms and conditions.

**Definition of the Project:**

Section 2.13, definition of Project of the agreement outlines the project as follows:

*Project means the development of the Property consisting of the following improvements, as may be modified at the request of Purchaser and subject to the approval of Seller, which approval shall not be unreasonably withheld:*

- a) *Three (3) mixed use buildings fronting West Atlantic Avenue consisting of a total of 50,830 square feet of retail space (including the space for the Full-Service Grocery Store) and 23,000 square feet of class A office space. In any office space developed, up to twenty percent (20%) of the square footage of such space, shall be allocated to start-up and incubator business purposes, which shall be coordinated through the cooperation of the Purchaser and the Seller.*
- b) *No less than One Hundred Twelve (112) multifamily residential units of which Thirty-Nine (39) shall be located in townhouse-style structures, based upon the current site plan for the Project; provided, however, it is understood and agreed that the number of residential units may be adjusted depending upon the parking requirements for the proposed Full-Service Grocery Store.*
- c) *Twenty percent (20%) of the total multifamily residential units shall be set aside for below market workforce housing as defined in the City's workforce housing ordinance. (It noted, per the development approval, 22 workforce housing units are proposed).*
- d) *The Purchaser shall undertake diligent efforts to locate, in its normal course of business, acceptable bank and pharmacy tenants for the Project, it being understood, however, that the Purchaser shall have no liability in the event that such tenants cannot be located.*

Per Section 2.9, *Full Service Grocery Store* is defined as a retail operation affiliated with a recognized grocery chain and consisting of no less than 22,000 square feet of retail space (unless the grocery tenant requests less space, in which event the square footage shall be reduced accordingly) to be located in the 600 block of West Atlantic Avenue, offering to the general public, but not limited to, the sale of fresh fruits and fresh vegetables, dairy products, meat products, frozen food and vegetables, bakery items, and toiletries.

**Purchase Price and Development Infrastructure Assistance Program:**

The Agreement calls for a purchase price of \$2,000,000.00, with an earnest money deposit of \$120,000.00, due upon approval of the agreement. The earnest money will be held by the CRA's General Counsel acting as escrow agent. The balance of the Purchase Price, in the amount of \$1,880,000.00 shall be paid at the Closing.

Prior to the expiration of the Inspection Period, Seller and Purchaser shall negotiate and enter into an Agreement for Development of Property (Development Infrastructure Assistance Program) (the "DIA Agreement"), which shall set forth the Purchaser's obligations for the construction of certain infrastructure improvements for the Project and its efforts to hire local contractors and residents to perform work associated with the Project. The DIA Agreement shall also provide that: (a) subject to the Purchaser's compliance with its infrastructure construction obligations, the CRA shall reimburse the Purchaser the minimum sum of \$250,000.00, and (b) subject to the Purchaser's compliance with its local hiring obligations, the CRA shall separately reimburse the Purchaser the minimum sum of \$150,000.00, all as set forth in the DIA Agreement.

**Key Dates:**

Closing shall take place thirty (30) days from and after the Permit Date, which means the date on which the

last one of all required permits, authorizations and approvals as necessary to commence construction of the physical buildings within the Project (Sections 2.3 & 2.12). A schedule of the milestones outlined in the agreement is included below.

Inspection Period	90 days from the Effective Date of the Agreement
Application for all government approvals	120 days from expiration of Inspection Period
Termination Date (This affords the purchaser 205 days to obtain building permits after approvals, as well as the previously specified 30 days to close)	720 days from the Effective Date of the Agreement
CRA's Right to Repurchase in the event that Purchaser fails to commence construction of the Project. The term "commence construction" shall mean the initiation by Purchaser of site preparation work for the Project which shall include excavation, fencing of the Project site, installation of the construction trailer, the clearing of the Property and the pouring of the foundation for the first building within the Project.	Within 300 days from Closing Date

In addition to the timeline commitments outlined above, there are a number of financial commitments included in the agreement that help ensure the successful completion of the project as proposed. First, prior to commencement of construction, the Purchaser shall obtain a Financial Commitment for the funding of not less than sixty percent (60%) of the estimated acquisition, development, and construction costs required to complete that portion of the Project of which the Purchaser is prepared to commence construction (Section 14). Second, Prior to the commencement of construction of any material portion of the Project, Purchaser shall cause its construction contractor to obtain from a surety licensed in the State of Florida, and deliver to Purchaser and Seller, a performance bond in the amount of the contract for such construction, naming Purchaser as obligee, and Seller as co-obligee thereunder, in form and substance reasonably satisfactory to Seller and Purchaser (Section 15).

Public Benefits:

The Agreement also includes Public Benefits provisions (Section 17) related to local hiring of 6 subcontractors and 30 skilled and unskilled laborers from City of Delray Beach zip codes and requirements for job fairs. In addition, Section 21 (Relocation of Tenant) addresses the opportunity for the 2 long-term tenants located at 700 W. Atlantic Avenue (Blanc Fresh Cut Barber Shop and Klein's Tax America) to relocate into the Project (800 square feet each) at a reduced rate of \$24 per square foot. Further, the Purchaser shall permit a third local tenant to lease a minimum 800 square feet for a retail business or restaurant in the Project.

The purchase price contained in the contract is \$2,000,000 subject to the terms referenced above. Florida Statutes 163.380(2) which governs CRA's disposal of property allows for property to be transferred "at a value determined to be in the public interest for uses in accordance with the community redevelopment plan." In determining the value, the CRA shall take into account and give consideration to the long-term benefits to be achieved by the Agency incurring short-term losses or costs in the disposal of such real property; the uses provided in such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the purchaser or lessee or by the Agency retaining the property; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. In this case, the public value to be realized is through the redevelopment of the CRA Property in a manner that helps to further the Goals and Objectives of the Community Redevelopment Plan for the revitalization of the West Atlantic Avenue Redevelopment Area, as well as the economic impacts outlined in the attached PMG Associates, Inc. report (Exhibit C). Thus, a finding can be made that the property is being disposed of for "fair value." If the board determines otherwise, City

Commission approval is required to authorize the sale. CRA Resolution No. 2018-15 is before the Board for consideration and outlines the applicable positive findings with regard to the conveyance of the property.

**Alternative Actions:**

1. Approve Resolution No. 2018-15 authorizing the sale and conveyance of the subject property to Uptown Atlantic, LLC;
2. Continue with the negotiations with Uptown Atlantic, LLC.
3. Disapprove Resolution No. 2018-15 authorizing the sale and conveyance of the subject property to Uptown Atlantic, LLC and direct staff to issue a Request for Proposals for CRA-Owned properties in the SW 600-700-800 Blocks.

Attachments: Location Map; Exhibit A - Resolution 2018-15; Exhibit B - Uptown Atlantic P&S Agreement; Exhibit C - PMG Associates Report

**CRA Attorney Review:**

The CRA Attorney has reviewed the Purchase and Sale Agreement to form and determined it to be acceptable.

**Finance Review:**

N/A

**Funding Source/Financial Impact:**

N/A

**Timing of Request:**

N/A