

**REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND
AGENDA REPORT**

OFFICE OF THE CITY CLERK
2006 JUL 11 AM 10:58

TO: Office of the Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: July 11, 2006

RE: Resolutions Authorizing: 1) an Amendment to an Owner Participation Agreement with East End Oakland I, LLC, for 1100 Broadway to Provide the Agency Greater Review and Approval Authority over the Development of a Mixed-Use Project for the 1100 Broadway Site, Restrict Transfer of the Project Property Prior to Completion of the Development, and Expand the Agency's Remedies in the Event East End Oakland Defaults on its Obligations to Develop the Project; and 2) the Sale of the Public Parking Garage at 1111 Franklin Street by the Agency to East End Oakland I, LLC, for a price of \$4,350,000

SUMMARY

The purpose of this report is to request that the Redevelopment Agency approve resolutions authorizing the Agency Administrator to negotiate and execute 1) an amendment to an existing Owner Participation Agreement ("OPA") between East End Oakland I, LLC¹ ("East End") and the Agency related to the mixed-use development of the vacant lot and adjacent Key System building located at 1100 Broadway between 11th and 12th Streets (the "Property"), and 2) a purchase and sale agreement with East End for East End's purchase of Agency condominium rights consisting of a 145-space parking garage located within the building located at 1111 Franklin Street ("UCOP Parking") for an initial price of \$4,350,000. This price would escalate 5% annually on a prorated basis from the date a purchase and sale agreement was signed until close of escrow on the purchase.

The amendment to the OPA would expand the OPA to provide the Agency greater development controls for the site, as well as granting the Agency the right to repurchase the Property in the event East End does not perform as agreed. The proposed sale of the Agency's condominium parking interest to East End will enhance the feasibility of East End's current proposal to construct an 11-story office tower (the "Project") and facilitate East End's development of the maximum amount of retail space in the Project.

FISCAL IMPACT

The proposed resolutions will not have a negative fiscal impact on the City or Agency. The Agency will receive net sales proceeds of approximately \$4,317,375 after payment of one-half of

¹ East End Oakland I, LLC is a joint venture of Swinerton Builders, Eastmont Properties Company, the developers of Eastmont Town Center, and Townsend, a wholly owned subsidiary of Swinerton.

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the City's real estate transfer tax, the Agency's only sales expense. The sales price of the UCOP Parking will increase by 5% annually prorated on a daily basis for each day between the date of execution of a purchase and sale agreement, and close of escrow on the purchase. This 5% annual increase equates to a daily rate of \$604.17 based upon the initial sale price of \$4,350,000 and a 360 day year.

The net proceeds from the UCOP Parking sale shall be deposited into 1986 Bonds Fund (9504), General Ledger Organization (08222), Miscellaneous Sales Revenue Account (48119) for subsequent appropriation to 1986 Bonds Fund (9504), Capital Improvement - Economic Development Organization (94800), Structures & Improvement Account (57311) in a project to be determined later. Any applicable liquidated damages received by the Agency, up to \$750,000, would be deposited into Unrestricted Land Sales Proceeds Fund (9553), Capital Improvement Projects – Economic Development Organization (94800), Keystone Hotel Project (P127010).

Upon its transfer to private ownership and placement on the tax roll, the UCOP Parking is expected to generate approximately \$25,211 in net tax increment revenue to the Agency in FY 2007-08 (after deducting all pass-throughs to other taxing agencies and set-asides), approximately \$3,565 as the City's share of the pass-through, and an approximately \$12,805 set-aside for the Low and Moderate Income Housing Fund during its first year on the rolls. During the 15-year period the Property is expected on the tax roll before the expiration of the Central District Redevelopment Plan in 2022, it is expected to generate \$435,986 of cumulative net tax increment with a net present value (NPV) of \$299,510, \$221,448 of cumulative Low and Moderate Income Housing Fund dollars with a NPV of \$152,128, and \$61,651 of cumulative City pass-through revenue with a NPV of \$42,352 (See Attachment C, Tax Increment Analysis).

The Agency is expected to earn approximately \$166,219 of interest income during the first full year following close of the sale based upon the 3.85% average annual yield on the Agency's pool investments over the past year, and the initial \$4,350,000 purchase price and resulting \$4,317,375 net proceeds described below.

BACKGROUND

Expanded OPA

On April 13, 2000, Amin-Broadway LLC entered into a Disposition and Development Agreement with the Redevelopment Agency ("Amin-Broadway DDA") for the the sale of the vacant portion of the Property and the construction of a 214-room Hilton Garden Inn hotel. In July 2002, the Agency placed Amin-Broadway in default for failure to complete the project according to schedule.

In May 2002, Swinerton & Walberg, the general building contractor for the project, filed a mechanics lien and breach of contract action against Amin-Broadway, naming the Agency as well, for recovery of \$1 million it spent on project design and construction. The Agency was

dismissed from the lawsuit pursuant to a settlement agreement approved by the Agency on July 6, 2004. Under the terms of the settlement, the Agency agreed to remove the Amin-Broadway DDA from the Property and replace it with a basic OPA, if Swinerton, or a new business entity it proposed to create, acquired title to the Property.

East End, which was subsequently formed by Swinerton, took title to the Property in November 2004, subject to the basic OPA currently in force. The terms of the existing OPA obligate East End to commence construction on a redevelopment project on the Property before November 8, 2007. The basic OPA does not specify the nature of the project, except that any new construction on the vacant parcel must have a minimum overall Floor-Area-Ratio of 4.0, and any project must include rehabilitation of the Key System building. If East End fails to commence construction on a project by November 8, 2007, or fails to pursue such project to completion, East End would pay \$400,000 to the Agency in liquidated damages.

As part of the sale of the Property to East End, the Agency agreed to release Amin-Broadway from liability for accrued liquidated damages under the Amin-Broadway DDA for the failed Keystone Hotel project, on the condition that: (1) \$50,000 of the \$400,000 in liquidated damages owed to the Agency be paid immediately, and (2) the remaining \$350,000 be placed into escrow pending negotiations over an expanded OPA, with instructions that these funds would be released to the Agency unless the Agency and East End agreed to go forward with an expanded OPA. These instructions have been amended to extend the date for execution of the expanded OPA to August 15, 2006.

Sale of Agency Parking

The Agency owns a condominium interest consisting of a 145-space public parking garage located within portions of the ground floor and basement levels of the UCOP building at 1111 Franklin Street. The Agency paid \$2,419,000 for the garage pursuant to the terms of the 1996 Disposition and Development Agreement between the Agency and Oakland Developments, LLC for development of the UCOP building (“UCOP DDA”). An informational report to Council dated July 9, 1996, stated that the Agency parking in the UCOP building “will allow for connection with a future Broadway parcel development, thereby anticipating the parking needs of that parcel.” The Broadway parcel referred to in the July 9, 1996 staff report is identical to the Property as defined in this report.

During the spring of 2005, East End inquired whether the Agency would consider selling 145-space garage. East End explained that its acquisition of these parking spaces would enhance the development feasibility of the Property and eliminate East End’s need to build parking in the Project. Specifically, elimination of parking in the Project would allow for greater retail use of ground floor and potentially second floor space. East End also indicated that the removal of parking in the Project would facilitate the restoration and integration of the Key System Building into the new building.

KEY ISSUES AND IMPACTS

The first key issue is whether it is more beneficial for the Agency to receive the \$350,000 of liquidated damages now in escrow and keep the minimal development controls contained within the existing OPA, or have the option of returning the \$350,000 to East End upon its commencement of construction of the Project, in exchange for East End's execution of an expanded OPA which gives the Agency greater development controls and rights, as more particularly described below.

Expanded OPA

If the expanded OPA is approved, the \$350,000 in liquidated damages previously paid by East End on behalf of Amin-Broadway would be returned to East End provided East End commences construction of the Project by November 17, 2007 and meets earlier deadlines for submission of design and final construction plans. The \$350,000 is currently in escrow and is scheduled to be automatically released to the Agency on August 15, 2006, if the Agency does not approve and East End does not execute an expanded OPA containing the additional provisions highlighted in the table below.

The Project as currently planned satisfies the development size requirement of the expanded OPA. However, execution of the expanded OPA would assure that if the current Project did not move forward for some reason, any other project developed on the Property would have to meet the minimum size standards specified. Assuring that any alternate development meets the expanded OPA size standards would guarantee the generation of a much larger amount of tax increment, sales tax, business license tax, and other economic revenues and benefits than would be generated from the project developed according to the requirements of the basic OPA currently in force. The basic OPA only requires that East End construct a building with a minimum Floor-Area-Ratio ("FAR") of 4.0. This means that East End in theory could construct a building with as little as 66,000 square feet given the 16,500 square foot footprint of the vacant portion of the Property

The following matrix summarizes the differences between the existing basic OPA and the proposed expanded OPA:

PROVISIONS	BASIC OPA	EXPANDED OPA
Vacant site development obligations	Must develop a new project with a minimum Floor Area Ratio (FAR) of 4.0 (i.e. 66,000 SF). No uses specified. (However zoning requires ground floor retail.)	Must develop a new project with at least 125,000 SF of office space or 125 residential units, plus at least 10,000 SF of ground floor retail.
Key System building obligations	Key System building must be rehabilitated. Demolition of exterior is prohibited.	Key System building must be rehabilitated. Demolition of its exterior is prohibited.
Review of plans and specs	No Agency review.	Agency to review and approve plans and specs.
Other Agency review	No Agency review.	Agency to review and approve project finances and construction contract.
Project commencement date	Three years from OPA date, November 8, 2004.	Earlier of three years from OPA date or two years from the date UCOP selects a developer.
Preconstruction obligations of developer	None.	Must perform regular maintenance on the site.
Transfer restrictions	None.	Property transfers prior to project completion subject to Agency approval.
Remedies for developer default	Payment of \$400,000 in liquidated damages for developer's failure to commence construction and diligently pursue completion of a minimum project as delineated above. However, there is no security to guarantee developer's payment of these damages.	(1) Payment of \$400,000 in liquidated damages for failure to submit predevelopment documentation, commence construction, or complete construction of Project. Payment of these damages to be secured by an irrevocable letter of credit or bond; (2) Payment of \$350,000 in liquidated damages for failure to commence construction, to be held in escrow until commencement of construction; and (3) Agency option to repurchase the Property at fair market value.

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Sale of Agency Parking

East End is proposing to pay to the Agency \$4,350,000 for the UCOP parking if the sale were to close on the date of execution of the Purchase and Sale Agreement (PSA). Since the PSA must be executed no later than 90 days following Council authorization of the sale, it is not likely that East End will be able to meet the conditions for closing of the sale transaction described below within 90 days of Council approval. Therefore it is likely that the purchase will increase by \$604.17 per day for each day past the date that the PSA is executed as required by the price escalation provision described below.

Current Revenue and Opinion of Value

The public parking garage in the UCOP generated \$142,138 of net revenue to the Agency on gross revenue of \$296,459 during the fiscal year that ended June 30, 2005. It should be noted that \$36,502 of operating expenses in FY05 were paid by the garage operator to the City in the form of parking taxes. The garage's current rates of \$1 per half hour, \$12.75 per day, and \$134 per month are in the upper tier of rates for downtown parking garages

On May 25, 2006, the City's Real Estate Services Division gave a preliminary value opinion of approximately \$2,000,000 for the Agency's UCOP parking based *only* on an income approach to value. This opinion was developed using a capitalization rate of 7.5% on the \$148,504 of net operating income over the previous 12 months, and a capitalization rate of 9% on \$179,143 of net operating income *projected* for the next 12 months. East End is willing to pay over twice the parking's estimated Fair Market Value only because of its unique value to East End related to its development of 1100 Broadway. Moreover, East End is aware of the Agency's need to replace any lost parking in downtown and the cost associated therewith, which exceed the value of the garage based on an income approach to value. The negotiated price is based on the estimated replacement cost of structured parking.

Key Terms of Sale

a) Initial Purchase Price

The full purchase price would be \$4,350,000 cash. A \$100,000 non-refundable good faith deposit would be due to the Agency from East End upon execution of a purchase and sale agreement for the UCOP parking. This deposit would apply to the purchase price, but if the sale of the parking were not completed within one year of the date of execution of an agreement for the UCOP parking, then the \$100,000 deposit would be retained by the Agency as liquidated damages.

b) Escalation of Initial Purchase Price

The \$4,350,000 purchase price will be increased by 5% annually on a prorated basis for the number of days after execution of the purchase and sale agreement that escrow closes. This 5% annual rate is equivalent to \$604.17 per day. This 5% price escalation rate was derived from the 5-year average construction cost inflation rate for San Francisco prepared by McGraw Hill Construction. The 3.6% 5-year McGraw Hill average rate was bumped up approximately 40% to take account of the fact that its construction cost inflation rates were much higher the past two years.

c) Conditions for Close of Escrow

Escrow for purchase of the UCOP parking will not close until East End has: 1) procured all approvals and permits necessary to start construction of the Project; 2) provided documentation that all debt and equity financing necessary for completion of the Project is committed and available; and 3) issued a notice to proceed to its contractor for construction of the Project. Notwithstanding the above closing conditions, escrow shall close within 360 days of the date of execution of PSA by East End and the Agency, or the Agency shall retain the \$100,000 good faith deposit as liquidated damages. It is proposed that the Agency Administrator may extend this deadline up to a maximum of 180 days at her sole discretion upon the request of East End and her determination that East End is making good faith efforts, based on verifiable evidence, to meet the closing conditions listed above.

d) Continued Operation of Public Parking

East End would be obligated to maintain public use of the parking as described above until it receives a temporary certificate of occupancy for the Project.

e) Amendment of OPA to Require Minimum Retail Use

Close of escrow on East End's purchase of the UCOP parking would be contingent upon recordation of an amendment to the basic OPA, if has not already been replaced by the expanded OPA, which requires East End to include at least 10,000 square feet of retail space on the ground floor of the Project.

Attachment A contains a more comprehensive list of the terms staff has negotiated with East End for purchase of the UCOP parking.

Benefits to Agency

The sale of the Agency's public garage is expected to eliminate the need for East End to provide parking in the new building. This will produce the following benefits:

a) Increase in Retail Uses in the Project

The S-8 zoning designation for the Property specifies that retail use on the ground floor must extend back a minimum of 25 feet from the street frontage. East End will have the ability to accommodate even more retail in the new office tower if it does not have to provide parking within it. If parking has to be provided in the new building, access ramps to that parking would reduce the ground floor space available for additional retail use by approximately 3,000 square feet. It would also eliminate the possibility of creating approximately 1,200 square feet of rentable conference room space at the rear of the new office tower as currently contemplated by East End. An increase in retail space in the Project will increase the options for the type and size of retail uses consistent with the Agency's Central District plan.

b) Increase in Feasibility of the Project

If East End were required to build the same number of parking spaces it is purchasing from the Agency in the new building, it contends that the feasibility of the Project would be put in jeopardy. Besides losing ground floor space for access ramping, the Project would also lose rentable space on several of the upper floors which would force rents to a level that the office market might not support. Constructing some or all of the needed parking below grade would be much more expensive and present numerous engineering challenges due to the proximity of the BART tunnel under Broadway.

Replacement of Agency Public Parking

Because of the scarcity of parking downtown, staff negotiated a purchase price with East End which will be sufficient for the Agency to pay the cost of constructing an equal number of spaces somewhere else downtown. This will allow overall parking to be increased downtown, versus the alternative of the Agency retaining ownership of the UCOP Parking. Because a specific site has not yet been identified, the estimated cost to create these replacement spaces was conservatively calculated based upon the assumption that the replacement spaces would likely be constructed within the confines of a new office or mixed-use building. Construction of parking within an office or mixed-use building is inherently more expensive on a per-space-basis because more square feet per space are required to account for layout and circulation inefficiencies. These inefficiencies are the result of having to design parking spaces and ramps within a typically limited area and around a building's structural and mechanical systems.

The \$4,350,000 estimated cost to replace the 145 spaces the Agency is proposing to sell was calculated by adjusting the actual cost per space of a new free-standing garage currently under construction in San Jose. First, an adjustment was made to increase the per space cost of the San Jose garage by a factor which reflects the comparatively higher amount of square feet required per space in the UCOP garage. This adjustment is based on the conservative assumption that the Agency's replacement parking might very well have to be constructed within an office or mixed-use building with similar design constraints as the UCOP building. Second, an adjustment was made to account for the estimated inflation in construction costs from the time the San Jose garage was bid until the present. The increase in the ENR Construction Cost Index for San Francisco from December 2003 through December 2005 was applied to the previously adjusted per space cost of the San Jose garage.

In order to hedge against construction cost increases from now until East End is able to close escrow on the purchase, staff followed the direction given by Council to provide for an escalation in the initial purchase price as described above.

Interim Use as Public Parking

Even upon sale of the UCOP parking to East End, East End would be obligated to maintain that parking for public use without preferences or restrictions on a monthly or daily basis at prevailing parking rates for similar parking facilities in downtown Oakland, until a temporary or final certificate of occupancy was issued by the City for the Project. East End would be entitled to all revenues from such interim use of the UCOP Parking. However, the Agency will receive revenue equal or greater to the foregone parking revenue by placing the sale proceeds in an interest-bearing account.

CEQA Review

An Environmental Impact Report ("EIR") was prepared for a 150-room hotel by the Community and Economic Development Agency and certified on April 24, 1998. This EIR included thorough analysis of several alternatives including a 240-room hotel and a 300,000 square-foot office building.

The amended and restated OPA would require East End to develop either a 125,000 square foot office building with a minimum of 10,000 square foot of retail, a residential building with at least 125 residential units with a minimum of 10,000 square foot of retail, or a combination of office and residential, where 1 unit of residential equals 1,000 gross square feet of office space.

Planning and Zoning staff has reviewed the project descriptions for the three proposed alternatives based on the environmental documents and has determined that the proposed alternatives will be expected to result in the same or reduced environmental effects as the projects analyzed in the EIR pursuant CEQA Guideline Sections 15162 and 15163. Specifically, there are no substantial changes between the proposed project and those studied in the EIR that

would cause substantial new effects or a substantial increase in severity of the previously identified impacts. The proposed office building alternative is within the scope of the 300,000 square foot office alternative analyzed in the EIR. The 125 unit residential alternative is within the scope of the 240 hotel room alternative also analyzed in the EIR.

In addition, there have been no substantial changes between the proposed project and those studied in the EIR regarding the circumstances under which the project was analyzed that would cause new environmental impacts or an increase in the severity of the impacts. All recently approved development projects are within the City's residential and commercial projections. For instance, the projected size of the City Center project was smaller than previously approved with the recent approval of the Olson Company's residential project at the City Center T-10 site. Also according to trip generation methodologies and subsequently air quality and noise impacts, traffic from the proposed alternatives is well under trip generations analyzed for the alternatives in the EIR. Furthermore, there has been no new information of substantial importance that would result in the project having new significant effects, showing that previously examined impacts would be made more severe, or that the mitigation measures in the EIR would be infeasible.

The alternatives in the EIR represent the maximum amount of square footage and units that the proposed project would be permitted without certification of a subsequent EIR. Once East End has submitted a formal application to the Planning and Zoning department, staff will review the proposal in detail and determine whether the project conforms to the certified EIR.

SUSTAINABLE OPPORTUNITIES

Negotiation and execution of an expanded OPA and sale of the UCOP Parking as proposed is expected to create the following sustainable opportunities:

Economic

Approval of the expanded OPA would provide assurance of the minimum development of an office/retail, residential/retail or office/residential/retail project with at least 125,000 square feet of office space, or 125 residential units, or an equivalent combination of office and residential use, and at least 10,000 square feet of retail use. Such minimum development would be expected to generate various tax revenue, employment, and secondary economic activity which will sustain and enhance Downtown and City-wide economic activity. Sale of the UCOP Parking, even absent execution of the expanded OPA would still insure at least 10,000 square feet of retail use and enhance the potential for the Project to meet or exceed the development thresholds described above. Completion of the development of the Project as currently proposed within two years of the November 2007 commencement deadline, and the sale and placement of the UCOP Parking on the tax roll by November 2007 are expected to generate approximately \$3,358,000 of cumulative property tax increment to the Agency, approximately \$543,000 of pass through increment to the City, and approximately \$1,950,000 of Low and Moderate Income Housing Funds until the expiration of the Central District Plan in 2022 (See Attachments B and C).

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Environmental

The expanded OPA will require the developer to work with the Mayor's Office of Environmental Sustainable Development to formulate appropriate sustainable building goals and strategies for the Project. To the extent that such goals and strategies are commercially feasible, the developer will be encouraged to incorporate green building techniques, such as energy-conserving design and appliances, water-conserving fixtures and landscape, recycled content building materials and low waste construction techniques into the final construction plans for the Project.

Social Equity

Completion of the Project as currently proposed within two years of a November 2007 commencement and the sale and placement of the UCOP Parking on the tax roll by November 2007 are expected to generate approximately \$1,729,000 and \$221,000 respectively of cumulative Low and Moderate Income Housing Set-Aside funds before expiration of the Central District Plan in 2022. The additional 3,000 square feet of retail space which will be required through the expanded OPA and sale of the UCOP Parking would be expected to provide approximately 6-7 jobs based upon standard job per retail square footage ratios. It is likely that a number of these jobs would be available to low and moderate income individuals.

DISABILITY AND SENIOR CITIZEN ACCESS

The Project, which will be enhanced by the expanded OPA and sale of the UCOP Parking, will comply with all applicable local, state and federal regulations including those pertaining to disabled and senior citizen access, including American with Disabilities Act and Title 24 regulations.

RECOMMENDATION(S) AND RATIONALE

Expanded OPA

It is recommended that the Redevelopment Agency authorize the Agency Administrator to negotiate and execute an amendment to the OPA with East End that provides for: 1) the project development parameters described earlier in this report; 2) the Agency's review and approval of project plans and specifications; 3) East End's regular maintenance of the Property prior to construction commencement; 4) Agency prior approval of transfer of the Property by East End; 5) East End's payment of liquidated damages of \$750,000 if it defaults on commencing and diligently pursuing completion of the Project or an alternate project; 6) East End's guarantee of \$400,000 of these liquidated damages with a 5-year letter of credit or bond in favor of the Agency; 7) the Agency's option to repurchase the Property at FMV in the event of East End's default referenced in provision number 5 above; and 8) the Agency's release back to East End of

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\$350,000 of liquidated damages paid into escrow by East End if it commences the Project or an alternate approved project by November 17, 2007.

The negotiation of an expanded OPA that includes the terms listed above will provide the Agency with *valuable development controls and protections to assure that a project consistent and supportive of the Agency's Downtown development strategy is completed in a timely manner.* If East End completes the Project as currently proposed, then East End will exceed the development parameters laid out in the proposed expanded OPA. Nevertheless, negotiation and execution of an expanded OPA would give the Agency the option of reacquiring the Property and bringing on a new developer in the event East End is not successful in developing the Project, and unable to initiate construction on an alternate development by November 17, 2007 and diligently pursue its completion. This repurchase option provides some assurance that the site will not remain an undeveloped blight on the downtown indefinitely.

Also, under the expanded OPA if East End does not commence or pursue completion of the Project or alternate project, the Agency would still be able to collect the \$350,000 of liquidated damages in escrow plus another \$400,000 of liquidated damages. The collection of the additional \$400,000 of liquidated damages would also be enhanced by an irrevocable letter of credit or bond from East End to the Agency. Thus the Agency, though giving up immediate access to the \$350,000 of liquidated damages now in escrow, would still be able to recover those damages plus \$400,000 in additional damages if East End were to default on performance of its development obligations under the expanded OPA.

Furthermore, even though East End has won the right to construct an expansion building for UCOP through its RFP process, an expanded OPA as proposed above would give the Agency some real control of the building design through the review and approval rights provided for in the OPA.

In summary, staff believes that the extra rights and protections that an expanded OPA would provide give more benefit to the Agency than the Agency's immediate receipt of the \$350,000 of liquidated damages currently held in escrow.

Sale of Agency Parking

It is recommended that the Redevelopment Agency authorize the Agency Administrator to negotiate and execute a purchase and sale agreement with East End for the sale of the Agency's condominium interest in the 145-space public parking facility within the UCOP building according to the terms outlined above and in Attachment A, and earmark the sale proceeds for development of public parking downtown. The sale of this parking to East End will enhance the feasibility of East End's development of the Project and maximize the retail usage within the Project, while providing sufficient sale proceeds for the Agency to replace the parking sold with an equivalent number of parking spaces in a mixed-use development downtown.

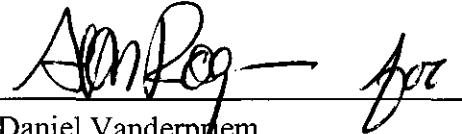
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ACTION REQUESTED OF THE AGENCY

The Agency is requested to approve the attached resolutions authorizing the Agency Administrator to negotiate and execute the amendment to the OPA and sell the Agency parking in the UCOP building upon the terms described above and in Attachment A.

Respectfully submitted,



Daniel Vanderpuiem

Director of Redevelopment, Economic
Development, Housing and Community
Development

Prepared by:
John Quintal
Economic Development Analyst

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:



OFFICE OF THE AGENCY ADMINISTRATOR

ATTACHMENT A

Proposed Term Sheet Sale of UCOP Parking to East End Oakland, LLC

1. PRICE: The initial purchase price to be the cash sum of \$4,350,000. The initial price to be increased by a 5% annual rate prorated daily from the date of execution of the Purchase and Sale Agreement for sale of the Property as described below to the close of the Property purchase transaction.
2. TERMS OF PAYMENT: Purchase price to be due and payable in cash at the close of escrow.
3. ENVIRONMENTAL REVIEW AND SITE CONDITIONS: East End to bear costs, if any, associated with assessment of the environmental condition of the Property. East End to bear costs, if any, associated with remediation of hazardous materials contamination on the Property. East End to release the Agency and City from any liability for contamination on the Property. It is understood that East End is purchasing the Property on a “as is, where is” basis in its current condition. However, the Agency shall complete any regularly scheduled maintenance prior to conveyance.
4. PROPERTY DESCRIPTION: UCOP Parking is composed of the real property described in Exhibit A, as well as equipment, fixtures and other personal property appurtenant to the parking operations. The UCOP Parking currently provides 145 automobile parking spaces and ramps which provide access to the parking spaces.
5. DOCUMENTATION: Following the expiration of the Property Approval Period (as defined below), but within 90 days of Agency/Council approval of the sale of the Property, the Agency and East End to enter into a Purchase and Sale Agreement (“PSA”) consistent with the terms of this Letter of Intent and including such other reasonable and customary terms (including due diligence contingencies and preconveyance conditions) as are mutually acceptable. The execution of the PSA to be subject

to prior Agency/Council authorization. PSA to specify condition of title to be conveyed by the Agency. Title to be free and clear of all encumbrances except for specific matters provided in the PSA. Agency to assign parking licenses and other contracts related to parking and other operations on the Property to East End as part of the transaction, other than those that East End has not agreed to assume.

6. PUBLIC PARKING:

Conveyance of title to the Property to East End to be subject to East End's obligation to maintain and operate the UCOP Parking as parking available to the general public following East End's purchase until a Temporary Certificate of Occupancy is issued for the mixed-use development East End is developing on the site immediately adjacent to the UCOP Building ("Project"). East End to be allowed to close off parking spaces to public parking if necessary for construction access to the adjacent development, subject to reasonable Agency approval of closure.

7. GOOD FAITH DEPOSIT:

East End to make a Good Faith Deposit of \$100,000 into escrow upon execution of the PSA. Deposit and any interest thereon to be applied towards the purchase price at closing.

If the purchase and sale of the Property is not completed after execution of the PSA by the close of escrow date due to an uncured breach or default by East End under the PSA, then the Good Faith Deposit and all interest accrued thereon will be retained by the Agency. Interest will accrue at the market rate of the escrow company's interest bearing account and will belong to East End. If sale is not completed due to any reason other than an uncured breach or default by East End, then the Good Faith Deposit and interest to be returned to East End.

8. PROPERTY APPROVAL PERIOD:

Commencing on the date of this Letter of Intent and ending on the later of (i) 120 days from the date of this Letter of Intent; or (ii) Agency/City Council authorization of the PSA (the "Property Approval Period"), East End to review and investigate the

economic, physical, environmental and title condition of the Property. East End to determine whether or not the Property is acceptable within the Property Approval Period.

9. APPROVALS: Transaction subject to the discretionary approval of the City Council acting as the Agency's governing body.
10. OPEN & CLOSE OF ESCROW: Upon signing of this Letter of Intent, escrow to be opened at a title company in Oakland mutually acceptable to the parties. Close of escrow shall occur no sooner than the occurrence of all of the following events: a) East End's procurement of all approvals and permits to necessary start construction of the Project; b) East End's documentation that all debt and equity financing is committed and available for construction of the Project; and c) East End's issuance of a notice to proceed to its contractor for construction of the Project. Also, close of escrow shall occur no later than 360 days after the discretionary approval of the transaction by the Agency/City Council as provided above and execution of the PSA by the Agency and East End.
11. TITLE INSURANCE: East End to secure title insurance policy, if desired, at its own expense.
12. CLOSING COSTS: East End to bear all title and escrow fees and closing costs. East End to pay Alameda County transfer tax. East End and the Agency to share City of Oakland transfer tax equally.
13. STUDIES AND REPORTS: Within 30 days of executing this Letter of Intent, the Agency to provide copies of any studies or reports relating to the Property including soils tests, surveys, regulatory reviews, engineering studies, complete copies of all reciprocal easements or other regulatory agreements with UCOP.
14. RIGHT OF ENTRY: The Agency to grant a right of entry to East End to conduct tests and other feasibility studies during the Property Approval Period. East End to indemnify the Agency and City for entry.

15. BROKER'S COMMISSION: East End represents that no brokers have acted on its behalf in connection with the Property.

16. RETAIL USE Prior to closing of the purchase of the Property, East End shall execute an amendment to the Basic Owner Participation Agreement which will require that a minimum 10,000 square feet of ground floor retail space be included in the Project.

Attachment B

**1100 BROADWAY - KEY SYSTEM BUILDING PROJECT
TAX INCREMENT ANALYSIS
\$40 MILLION PROJECT VALUE**

Year	Project Assessed Value	Applicable Tax Rate	Tax Increment	Pass Through 20%	City Portion 20% Pass Through	ERAF 5.78%	Housing Set-a-side 25%	Net Tax Increment
2007-08	\$0	1.1775%	\$0	\$0	\$0	\$0	\$0	\$0
2008-09	\$0	1.1775%	\$0	\$0	\$0	\$0	\$0	\$0
2009-10	\$40,000,000	1.1775%	\$471,000	-\$94,200	-\$32,782	-\$27,224	-\$117,750	\$199,045
2010-11	\$40,800,000	1.1775%	\$480,420	-\$96,084	-\$33,437	-\$27,768	-\$120,105	\$203,025
2011-12	\$41,616,000	1.1775%	\$490,028	-\$98,006	-\$34,106	-\$28,324	-\$122,507	\$207,086
2012-13	\$42,448,320	1.1775%	\$499,829	-\$99,966	-\$34,788	-\$28,890	-\$124,957	\$211,228
2013-14	\$43,297,286	1.1775%	\$509,826	-\$101,965	-\$35,484	-\$29,468	-\$127,456	\$215,452
2014-15	\$44,163,232	1.1775%	\$520,022	-\$104,004	-\$36,194	-\$30,057	-\$130,006	\$219,761
2015-16	\$45,046,497	1.1775%	\$530,422	-\$106,084	-\$36,917	-\$30,658	-\$132,606	\$224,157
2016-17	\$45,947,427	1.1775%	\$541,031	-\$108,206	-\$37,656	-\$31,272	-\$135,258	\$228,640
2017-18	\$46,866,375	1.1775%	\$551,852	-\$110,370	-\$38,409	-\$31,897	-\$137,963	\$233,212
2018-19	\$47,803,703	1.1775%	\$562,889	-\$112,578	-\$39,177	-\$32,535	-\$140,722	\$237,877
2019-20	\$48,759,777	1.1775%	\$574,146	-\$114,829	-\$39,961	-\$33,186	-\$143,537	\$242,634
2020-21	\$49,734,972	1.1775%	\$585,629	-\$117,126	-\$40,760	-\$33,849	-\$146,407	\$247,487
2021-22	\$50,729,672	1.1775%	\$597,342	-\$119,468	-\$41,575	-\$34,526	-\$149,335	\$252,437

Total Pass-Throughs to Other Taxing Entities
City's Total Portion of Pass-Through (34.8%)
NPV of City Portion

\$1,382,887
\$481,245
\$252,016

Total for the Agency's Low- & Moderate-Income Housing Set-A-Side
NPV of Total Low- & Mod Housing Set-A-Side Discounted at 4.85%

\$1,728,609
\$1,131,607

Cummulative Tax Increment to Agency FY2007-22 Net of Pass-Throughs, Set-a-sides, Etc.
NPV of Total Agency Increment Discounted at 4.85%

\$2,922,041
\$1,912,869

Attachment C

**UCOP GARAGE
TAX INCREMENT ANALYSIS
\$4,350,000 INITIAL VALUE**

Year	Project Assessed Value	Applicable Tax Rate	Tax Increment	Pass Through 20%	City Portion 20% Pass Through	ERAF 5.78%	Housing Set-a-side 25%	Net Tax Increment
2007-08	\$4,350,000	1.1775%	\$51,221	-\$10,244	-\$3,565	-\$2,961	-\$12,805	\$25,211
2008-09	\$4,437,000	1.1775%	\$52,246	-\$10,449	-\$3,636	-\$3,020	-\$13,061	\$25,715
2009-10	\$4,525,740	1.1775%	\$53,291	-\$10,658	-\$3,709	-\$3,080	-\$13,323	\$26,230
2010-11	\$4,616,255	1.1775%	\$54,356	-\$10,871	-\$3,783	-\$3,142	-\$13,589	\$26,754
2011-12	\$4,708,580	1.1775%	\$55,444	-\$11,089	-\$3,859	-\$3,205	-\$13,861	\$27,289
2012-13	\$4,802,751	1.1775%	\$56,552	-\$11,310	-\$3,936	-\$3,269	-\$14,138	\$27,835
2013-14	\$4,898,807	1.1775%	\$57,683	-\$11,537	-\$4,015	-\$3,334	-\$14,421	\$28,392
2014-15	\$4,996,783	1.1775%	\$58,837	-\$11,767	-\$4,095	-\$3,401	-\$14,709	\$28,960
2015-16	\$5,096,718	1.1775%	\$60,014	-\$12,003	-\$4,177	-\$3,469	-\$15,003	\$29,539
2016-17	\$5,198,653	1.1775%	\$61,214	-\$12,243	-\$4,261	-\$3,538	-\$15,304	\$30,130
2017-18	\$5,302,626	1.1775%	\$62,438	-\$12,488	-\$4,346	-\$3,609	-\$15,610	\$30,732
2018-19	\$5,408,678	1.1775%	\$63,687	-\$12,737	-\$4,433	-\$3,681	-\$15,922	\$31,347
2019-20	\$5,516,852	1.1775%	\$64,961	-\$12,992	-\$4,521	-\$3,755	-\$16,240	\$31,974
2020-21	\$5,627,189	1.1775%	\$66,260	-\$13,252	-\$4,612	-\$3,830	-\$16,565	\$32,613
2021-22	\$5,739,733	1.1775%	\$67,585	-\$13,517	-\$4,704	-\$3,906	-\$16,896	\$33,266

City's Total Portion of Pass-Through (34.8%)
NPV of City Portion

\$61,651
\$42,352

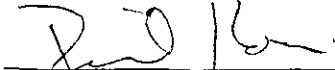
Total for the Agency's Low- & Moderate-Income Housing Set-A-Side
NPV of Total Low- & Mod Housing Set-A-Side Discounted at 4.85%

\$221,448
\$152,128

Cummulative Tax Increment to Agency FY2007-22 Net of Pass-Throughs, Set-a-sides, Etc.
NPV of Total Agency Increment Discounted at 4.85%

\$435,986
\$299,510

2006 JUN 28 PM 3: 57


AGENCY COUNSEL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. _____ C.M.S.

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE OWNER PARTICIPATION AGREEMENT WITH EAST END OAKLAND I, LLC, FOR 1100 BROADWAY TO PROVIDE THE AGENCY GREATER REVIEW AND APPROVAL AUTHORITY OVER THE DEVELOPMENT OF A MIXED-USE PROJECT FOR THE 1100 BROADWAY SITE, RESTRICT TRANSFER OF THE PROJECT PROPERTY PRIOR TO COMPLETION OF THE DEVELOPMENT, AND EXPAND THE AGENCY'S REMEDIES IN THE EVENT EAST END OAKLAND DEFAULTS ON ITS OBLIGATIONS TO DEVELOP THE PROJECT

WHEREAS, pursuant to Agency Resolution No. 2004-30 C.M.S., the Redevelopment Agency and East End Oakland I, LLC, a California limited liability company ("East End") entered into an Owner Participation Agreement on November 8, 2004, (the "OPA") providing for redevelopment of a vacant lot and the preservation and rehabilitation of the Key System building at 1100 Broadway (the "Property") in the Central District Redevelopment Project Area; and

WHEREAS, as part of the purchase of the Property by East End, and as a condition of the termination of the previous Disposition and Development Agreement for the Keystone Hotel project, East End placed \$350,000 into escrow in satisfaction of the liquidated damages that accrued to the Agency pursuant to said Disposition and Development Agreement; and

WHEREAS, East End and the Agency wish to amend the OPA to revise provisions related to project development, Property transfers, and remedies; and

WHEREAS, to this end, East End and Agency staff have negotiated an Amended and Restated Owner Participation Agreement which modifies the original OPA as follows:

- Provides that East End must develop a project of at least 125,000 square feet of office space or 125 residential units, plus at least 10,000 square feet of ground floor retail.
- Provides for Agency review and approval of project plans and specifications, financing, and construction contract.

- Revises the project commencement date to be the earlier of three years from the OPA date or two years from the date the University of California Office of the President selects a developer for its office expansion project.
- Requires East End to perform regular predevelopment maintenance of the Property.
- Requires Agency approval of Property transfers prior to project completion.
- Grants the Agency an option to repurchase the Property at fair market value if East End defaults on its development obligations.
- Provides for liquidated damages to the Agency of \$750,000 if East End defaults on its development obligations, with the \$350,000 now in escrow to be released to East End if it meets the project commencement date.

and

WHEREAS, an Environmental Impact Report ("EIR") (certified by the Planning Commission on April 24, 1998) was prepared for a 150 room hotel, as previously proposed, by the Community and Economic Development Agency, and has been independently reviewed and considered by the Agency in evaluating the project parameters set forth in the proposed Amended and Restated Owner Participation Agreement, in compliance with CEQA Guidelines Sections 15162 and 15163; and

WHEREAS, none of the circumstances necessitating preparation of a subsequent or supplemental EIR are present; and

WHEREAS, specifically, there are no new substantial changes to the project or the circumstances surrounding the project and no new information of substantial importance that will involve new significant impacts or an increase in the severity of previously identified impacts, and all potentially significant impacts (with the possible exception of visual quality and architectural resources that were fully analyzed in the EIR) will be reduced to a less than significant level by conditions of approval and implementation of the adopted Mitigation Monitoring Program imposed on the project; now, therefore, be it

RESOLVED: That the Agency Administrator is hereby authorized to negotiate and enter into an Amended and Restated Owner Participation Agreement with East End for the 1100 Broadway project consistent with the terms set forth above; and be it further

RESOLVED: That any of the \$350,000 of liquidated damages released to the Agency from the current escrow and any liquidated damages received by the Agency under the provisions of the Amended and Restated Owner Participation Agreement totaling up to \$750,000 shall be deposited into Unrestricted Land Sale Proceeds Fund (9553), Capital Improvement Projects – Economic Development Organization (94800), Keystone Hotel Project (P127010); and be it further

RESOLVED: That the Agency Administrator is authorized to take whatever action is necessary with respect to the Amended and Restated Owner Participation Agreement and the project consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND CHAIRPERSON
 DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
 LATONDA SIMMONS
 Secretary of the Redevelopment Agency
 of the City of Oakland

2006 JUN 28 PM 3: 58

APPROVED AS TO FORM AND LEGALITY



AGENCY COUNSEL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. _____ C.M.S.

A RESOLUTION AUTHORIZING SALE OF THE PUBLIC PARKING GARAGE AT 1111 FRANKLIN STREET BY THE AGENCY TO EAST END OAKLAND I, LLC, FOR A PRICE OF \$4,350,000

WHEREAS, In May 1998 the Agency purchased a condominium interest in real property consisting of a public parking garage with 145 parking spaces and ramps located within portions of the ground floor and basement levels of the UCOP building at 1111 Franklin Street (the "Property"); and

WHEREAS, East End Oakland I, LLC ("East End") has approached the Agency and offered to purchase the Property for an initial price of \$4,350,000, which exceeds the Property's fair market value, to support East End's development of the real property at 1100 Broadway including the historic Key System Building (the "Project"); and

WHEREAS, the Agency has determined that the initial sales price and escalation provision should be sufficient to provide funds to construct similar replacement parking in the downtown Central District; and

WHEREAS, the Property was originally purchased with the intent of supporting development of the Project site; and

WHEREAS, the Agency has determined that sale of the Property to East End will increase the amount of retail space in the Project and thereby provide direct and indirect benefits to the Central District and the City of Oakland; and

WHEREAS, an Environmental Impact Report ("EIR") (certified by the Planning Commission on April 24, 1998) was prepared for a 150 room hotel at 1100 Broadway, as previously proposed, by the Community and Economic Development Agency, and has been independently reviewed and considered by the Agency in evaluating the sale of the Property to facilitate the Project, in compliance with CEQA Guidelines Sections 15162 and 15163; and

WHEREAS, none of the circumstances necessitating preparation of a subsequent or supplemental EIR are present; and

WHEREAS, specifically, there are no new substantial changes to the Project or the circumstances surrounding the Project and no new information of substantial importance that will involve new significant impacts or an increase in the severity of previously identified impacts, and all potentially significant impacts (with the possible exception of visual quality and architectural resources that were fully analyzed in the EIR) will be reduced to a less than significant level by conditions of approval and implementation of the adopted Mitigation Monitoring Program imposed on the Project; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970 ("CEQA"), the CEQA Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have also been satisfied because this transaction is exempt from CEQA under section 15312 of the CEQA Guidelines (sale of surplus government property); and

WHEREAS, Health and Safety Code Sections 33430 and 33431 authorize a redevelopment agency to sell real property after a public hearing, notice of which has been given by publication before the hearing once a week for two weeks; and

WHEREAS, the Agency held a noticed public hearing on the proposed sale on July 18, 2006; now, therefore, be it

RESOLVED: That the Agency hereby authorizes the sale of the Property to East End Oakland I, LLC; and be it further

RESOLVED: That the Agency Administrator is hereby authorized to negotiate and enter into a Purchase and Sale Agreement ("PSA") with East End for the sale and purchase of the Property consistent with the following terms and conditions:

- 1) The initial purchase price to be \$4,350,000, increased by a 5% annual rate prorated daily from the date of execution to the close of escrow.
- 2) East End to bear the costs of assessment of the environmental condition and remediation of hazardous materials contamination on the Property.
- 3) Conveyance of title to the Property to East End to be subject to East End's obligation to maintain and operate the UCOP parking as parking available to the general public following East End's purchase until completion of the Project. East End to be allowed to close off parking spaces to public parking if necessary for construction access to the Project site, subject to reasonable Agency approval of closure.
- 4) East End to make a Good Faith Deposit of \$100,000 into escrow upon execution of the PSA.

- 5) Close of escrow to occur no sooner than: a) East End's procurement of all approvals and permits necessary to start construction of the Project; b) East End's documentation that all debt and equity financing is committed and available for construction of the Project; and c) East End's issuance of a notice to proceed to its contractor for construction of the Project. Also, close of escrow to occur no later than 360 days after the date of approval of this Resolution.
- 6) Prior to closing, East End to execute an amendment to the Owner Participation Agreement ("OPA") that requires a minimum 10,000 square feet of ground floor retail space be included in the Project, if an expanded OPA containing this requirement has not already been executed.
- 7) In the event East End is not able to initiate construction of the Project and close escrow on the purchase of the Property, East End to have the right to assign its rights under the PSA to another qualified developer upon the discretionary approval of the Agency Administrator, and under the same terms and conditions contained in this Resolution and the PSA.

and be it further

RESOLVED: That all proceeds from sale of the Property received by the Agency shall be deposited into 1996 Bonds Fund (9504), General Ledger Organization (08222) Miscellaneous Sales Revenue Account (48119) for subsequent appropriation to 1986 Bonds Fund (9504), Capital Improvement Projects– Economic Development Organization (94800), Structures & Improvements Account (57311) in a project to be determined later for use in the development and construction of replacement parking in the Central District; and be it further

RESOLVED: That the Agency Administrator is authorized to take whatever action and execute all documents for the sale consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND CHAIRPERSON
 DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
 LATONDA SIMMONS
 Secretary of the Redevelopment Agency
 of the City of Oakland