

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

OFFICE OF THE CITY CLERK  
2006 NOV 15 PM 5:32

TO: Office of the Agency Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: November 28, 2006

**RE: Resolution Authorizing the Sale of the Public Parking Garage at 1111 Franklin Street by the Agency to East End Oakland I, LLC, for an Initial Price of \$4,350,000, and an Amendment to the Owner Participation Agreement with East End for the 1100 Broadway Project Providing for Greater Agency Review and Approval Authority over the Project, Restricting Transfer of the Project Property prior to Completion, Expanding the Agency's Remedies, and Revising the Development Schedule**

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**SUMMARY**

This report requests that the Redevelopment Agency approve a resolution authorizing the sale to East End Oakland I, LLC<sup>1</sup> ("East End") of the Agency-owned parking garage located within the University of California Office of the President building at 1111 Franklin Street ("UCOP Parking") for an initial price of \$4,350,000. The proposed sale will enhance the financial feasibility of East End's current proposal to construct an 11-story mixed use office and retail tower on the adjacent vacant site located at 1100 Broadway between 11<sup>th</sup> and 12<sup>th</sup> Streets and renovate the Key System Building, and will facilitate East End's development of the maximum amount of retail space in the project. The vacant site located at 1100 Broadway and the adjacent Key System Building are referred to collectively as the Property.

As a condition of the sale of the parking, the Agency and East End will enter into an amendment to an existing Owner Participation Agreement ("OPA") between East End and the Agency for the 1100 Broadway project. The amendments to the OPA would expand the OPA to provide the Agency greater control over the project, restrict project transfer prior to completion, provide for stronger Agency remedies in the event East End or an approved transferee does not perform as agreed, and revise the project schedule. Lastly, East End intends to sell all or a substantial share of its interest in the 1100 Broadway and the Key System Building to a new entity controlled by SKS Investments, an experienced commercial real estate developer and investment company, prior to the start of construction. East End has requested that the Agency pre-approve this transfer, as well as the assignment to this entity of East End's rights and obligations under the proposed sale of the UCOP Parking.

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<sup>1</sup> East End Oakland 1, 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.

**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 \$4,864,842 after payment of one-half of the City's 1.5 percent real estate transfer tax, the Agency's only significant sales expense, if the sale of the UCOP Parking were to close on November 30, 2008, which is 5 days after the November 25, 2008 Project commencement deadline. The initial sales price of the UCOP Parking of \$4,350,000 will increase by 5 percent annually prorated on a daily basis for each day between May 31, 2006, and any close of escrow on the purchase that occurs by the deadline of November 30, 2008. This 5 percent 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. If the close of escrow occurs after November 30, 2008, then the rate of increase after this date will be the greater of 5 percent, or the increase in the McGraw-Hill Construction Cost Index for the previous two-year period.

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 \$790,000, will be deposited into Unrestricted Land Sales Proceeds Fund (9553), Capital Improvement Projects – Economic Development Organization (94800), Lawsuit Settlement Account (48412), Keystone Hotel Project (P127010).

If transferred to private ownership and placed on the tax roll by the end of 2008, the UCOP Parking would be expected to generate approximately \$453,788 in net tax increment revenue to the Agency (after deducting all pass-throughs to other taxing agencies and set-asides), approximately \$64,168 as the City's share of the pass-through increment, and approximately \$230,489 of set-aside for the Low and Moderate Income Housing Fund through the expiration of the Central District tax increment authority in 2022(See Attachment A). The Agency would also receive approximately \$3,451,741 of cumulative net tax increment from the new Project through 2022 assuming the Project was completed in early 2010. Receipt of another \$1,753,221 of cumulative Low and Moderate Income Housing Funds and \$488,097 of cumulative City pass-through is also projected through 2022 (See Attachment B).

The Agency would earn approximately \$187,300 of interest income per year as long as the estimated proceeds from a November 30, 2008 sale of the UCOP Parking remained unspent by the Agency on a new replacement garage. This \$187,300 of interest income should offset the loss of net revenue to the Agency from the UCOP Parking after its sale. In the fiscal year ended June 30, 2006, the UCOP Parking generated only \$130,475 of net revenue for the Agency.

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## **BACKGROUND**

### **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”). It has long been contemplated that the Agency might sell the parking garage to facilitate the project; 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 the 1100 Broadway site.

During the spring of 2005, East End inquired whether the Agency would consider selling the 145-space garage. East End explained that its acquisition of these parking spaces would enhance the development feasibility of the 1100 Broadway project 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 1100 Broadway project would facilitate the restoration and integration of the Key System Building into the new building.

### **Amended OPA**

On April 13, 2000, Amin-Broadway LLC entered into a Disposition and Development Agreement with the Redevelopment Agency (“Amin-Broadway DDA”) for 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. The basic OPA does not specify any benchmarks that would constitute diligent pursuit of a project to completion.

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 by March 5, 2005. The \$400,000 of liquidated damages was deposited into escrow in early November 2004, and \$50,000 of those damages was released to the Agency a few days later when East End closed on the purchase of the Property. After several extensions of the original March 5, 2005 deadline for East End to agree to go forward with an expanded OPA, East End authorized release of the \$350,000 balance of liquidated damages in escrow to the Agency on October 9, 2006 as a condition for the Agency to consider sale of the UCOP Parking, and extending the deadlines to commence construction of the Project and close the purchase of the UCOP Parking. The City's Treasury Division confirmed receipt of the \$350,000 balance of liquidated damages on October 9, 2006.

## **KEY ISSUES AND IMPACTS**

The key issue is whether to enter into an agreement with East End to sell the UCOP Parking on the proposed terms in conjunction with East End's execution of an amended OPA that gives the Agency greater development controls and rights, as more particularly described below:

### **Sale of Agency Parking**

East End is proposing to pay to the Agency an initial price of \$4,350,000, or \$30,000 per parking space, for the UCOP Parking. It is proposed that the price shall be increased by an annual rate of 5 percent prorated from May 31, 2006 until the close of escrow that occurs by November 30, 2008. The daily rate of increase in the purchase price is \$604.17. If the sale of the UCOP Parking were to close on November 30, 2008, 95 days after the August 27, 2008, project commencement deadline, then the purchase price will be \$4,901,604. If the deadline for purchase of the UCOP Parking were to be extended beyond November 30, 2008, then the rate of increase in the purchase price could change as provided below. Sale of the UCOP Parking would be contingent on the commencement of Project construction, and East End's or its approved assignee's satisfactory completion of the Project's Foundation Benchmark Activities as defined below. The initial sale price and the price escalation provisions were created to insure that the Agency would receive adequate proceeds from the sale to construct equivalent parking as discussed below.

### Current Revenue and Opinion of Value

The public parking garage in the UCOP building generated \$130,475 of net revenue to the Agency on gross revenue of \$295,277 during the fiscal year that ended June 30, 2006. It should be noted that \$45,991 of operating expenses in FY05-06 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, \$13 per day, and \$142 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 UCOP's Parking's estimated Fair Market Value only because of its unique value to East End, as 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 exceeds the value of the UCOP Parking 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 and Deposit

The full purchase price would be \$4,350,000, increased by the annual rate of 5 percent as provided below. The purchase price shall be paid in cash. A \$100,000 non-refundable good faith deposit would be due to the Agency from East End upon execution of the Purchase and Sale Agreement ("PSA") for the UCOP Parking. This deposit would apply to the purchase price, but if the sale of the parking were not completed by November 30, 2008, then the \$100,000 deposit would be retained by the Agency as liquidated damages. If the Agency Administrator agreed to extend the deadline for purchase of the UCOP Parking by up to another year, then East End or its assignee would be required to make a second good faith deposit of \$100,000 upon the same terms and conditions as the initial deposit.

#### b) Escalation of Initial Purchase Price

The \$4,350,000 purchase price will be increased by 5 percent annually on a prorated basis beginning May 31, 2006 to close of escrow that must occur by November 30, 2008, the date that is 5 days after the November 25, 2008 commencement of construction deadline. This 5 percent annual rate is equivalent to \$604.17 per day. This 5 percent price escalation rate was derived from the 5-year average construction cost inflation rate for San Francisco, prepared by McGraw Hill Construction from December 2001 through December 2005. The 3.6 percent 5-year McGraw Hill average rate was bumped up approximately 40 percent to take

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account of the fact that construction cost inflation rates were higher during the past two years. It is also proposed that in the event East End does not close escrow on its purchase of the UCOP Parking by November 30, 2008, and the Agency agrees to extend the purchase deadline for up to another year, then the annual rate of increase in the purchase price after November 30, 2008 would be the greater of 5 percent or the average increase in the McGraw-Hill Construction Cost Index for the Bay Area from August 1, 2006 to August 1, 2008.

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; 3) issued a notice to proceed to its contractor for construction of the Project; and 4) completed the Foundation Benchmark Activities. Notwithstanding the above closing conditions, escrow must close by November 30, 2008, or the Agency will 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 365 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) Execution of Amended OPA

Close of escrow on East End's purchase of the UCOP parking would also be contingent upon recordation of the amended OPA described below. It is contemplated that the amended OPA will be executed and recorded at the same time as the PSA for the parking sale is executed.

Attachment C contains a 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 1100 Broadway 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. 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 Redevelopment Plan.

b) Increase in Feasibility of the Project

East End has argued that if it were required to build the same number of parking spaces it is purchasing from the Agency in the new building, the financial 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 in another downtown location. 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 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 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 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 1100 Broadway 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.

#### **Amended OPA**

The 1100 Broadway project as currently planned satisfies the development size requirement of the amended OPA. However, execution of the amended OPA would ensure that if the current project did not move forward for some reason, any other project developed on the Property would have to meet the revised 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 current 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 amended OPA on the other hand will require the development of a minimum of 125,000 square feet of office space, or 125 residential units, or a combination of office space and residential units where one residential unit could be substituted for 1,000 square feet of office space. Along with either of the minimum office, residential or combination office and residential development requirements, the amended OPA will also require the development of a minimum of 10,000 square feet of ground floor retail space.

The amended OPA would also extend the current November 15, 2007 deadline for commencement of construction of the project to November 25, 2008. This extension would bring the deadline for commencement of construction in line with the deadline for expiration of the project’s planning entitlements. It is also proposed that the Agency Administrator be authorized



to extend this new deadline for construction commencement by up to one year provided that East End or its assignee has made reasonable progress toward achieving prerequisites for commencement of construction. The amended OPA will define the commencement of construction of the Project to be 1) East End's procurement of all approvals and permits necessary to commence construction of the Project; and 2) completion of all of the following activities:

- Grading of the entire project site.
- Driving of all piles on the project site.
- Installation of all forms and steel necessary for pouring of the new building foundation.
- First pour of concrete for the new building foundation.

All of these activities shall be collectively referred to as the Foundation Benchmark Activities.

The following matrix summarizes the major differences between the current basic OPA and the proposed amended OPA:

<b>PROVISIONS</b>	<b>CURRENT OPA</b>	<b>AMENDED OPA</b>
<b>Vacant site development obligations</b>	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.
<b>Review of plans and specifications</b>	No Agency review.	Agency to review and approve plans and specs at 50% and 100% of design completion.
<b>Other Agency review</b>	No Agency review.	Agency to review and approve project finances and construction contract.
<b>Project commencement date</b>	Three years from the current OPA date of November 8, 2004.	November 25, 2008, with a provision for up to a one-year extension upon Agency determination that reasonable progress is being made.
<b>Definition of commencement of Project construction</b>	The permanent installation of physical improvements on the Property, not including subsurface piles currently installed on the Property.	1) East End's procurement of all approvals and permits necessary to commence construction of the Project; 2) completion of the Foundation Benchmark Activities.

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<b>PROVISIONS</b>	<b>CURRENT OPA</b>	<b>AMENDED OPA</b>
<b>Preconstruction obligations of developer</b>	None.	Must perform regular maintenance on the site.
<b>Transfer restrictions</b>	None.	Transfer by East End of the Property and the right to purchase the UCOP Parking to an entity controlled by SKS Investments to be pre-approved by Council when it approves the sale of UCOP Parking to East End, and revisions to the existing OPA. Any subsequent transfers of the Property subject to Agency approval of the proposed transferee's financial and development capacity to complete Project, and transferee's express assumption of all obligations of East End under the new OPA and PSA.
<b>Remedies for developer default</b>	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.	Payment of \$440,000 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.

#### Assignment to New Entity Controlled by SKS Investments

East End intends to transfer all or a substantial share of its interest in the 1100 Broadway property and Key System Building, as well as its rights and obligations under the amended OPA and the PSA to purchase the UCOP Parking to a new entity controlled by SKS Investments, an experienced commercial real estate developer and investment company, prior to construction of the Project. SKS is a 14-year old real estate development and investment firm located in San Francisco. The company and its principals have broad expertise in land development, entitlement, and construction, and the redevelopment of existing property and the repositioning

of underperforming existing property. Most of SKS's work has been in San Francisco, particularly in the South of Market area. During the past ten years, SKS has acquired, market re-positioned, substantially upgraded, and sold six commercial properties in the South of Market and Mission/Protrero Hill districts totaling 725,000 square feet. It also developed 260,000 square feet of Class A office space on the entire block bounded by 16<sup>th</sup>, 17<sup>th</sup>, Rhode Island, and Kansas Streets in the Protrero Hill district. SKS is currently developing a 450,000 square-foot life science, office and retail complex at 16<sup>th</sup> and Illinois Streets in Mission Bay, San Francisco's burgeoning life science and commercial district.

SKS has been implementing "green" building practices in each of its developments for over a decade. For example, all of SKS's projects, whether new construction or adaptive reuse, have been designed to maximize daylighting, optimize energy performance and use recycled building material as much as possible. SKS is an active member of the United States Green Building Council (USGBC) and the San Francisco Planning + Urban Research Association's (SPUR) sustainable development initiative.

#### 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

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the recent approval of the Olson Company's residential project at the City Center T-10 site, the northern portion of the block bounded by MLK Jr. Way, and Jefferson, 12<sup>th</sup> and 14<sup>th</sup> Streets. Also according to trip generation methodologies and subsequent 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 ensure 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. If it is assumed that development of the Project as currently proposed will be completed in early 2010, approximately 15 months after the November 2008 commencement deadline, then the Project would be expected to generate approximately \$3,451,741 of cumulative property tax increment to the Agency until the expiration of the Central District Plan in 2022 (See Attachment B). This amount does not include another \$1,753,221 of Agency Low and Moderate Income Housing Funds and \$488,097 of City pass-through funds expected to be generated through 2022.

Similarly, if it is assumed that the UCOP Garage is sold and returned to the tax roll at the end of 2008, it would generate an estimated \$453,788 of cumulative tax increment to the Agency, \$230,489 of Agency Low and Moderate Income Housing Funds, and \$64,168 of City pass-through funds until the 2022 expiration of the Central District Plan. (See Attachment A)

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. East End and SKS Investments have both expressed their intent to design and develop a LEED certified building and anticipate that the building would qualify for at least a Silver rating

Social Equity

Completion of the Project as currently proposed within two years of a November 2008 commencement and the sale and placement of the UCOP Parking on the tax roll by November 2008 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****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 C, 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 1100 Broadway 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. It is further recommended that the Redevelopment Agency authorize the assignment by East End of the right to purchase the UCOP Parking to a new entity controlled by SKS

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Investments, subject to that new entity's express assumption of all obligations of East End under the PSA for the purchase of the UCOP Parking, and the amended OPA. Subsequent assignment of the UCOP Parking purchase rights shall be subject to the proposed assignee's demonstration to the Agency Administrator's reasonable satisfaction that the assignee has the financial capacity and development experience to complete the Project and fulfill the terms of the amended OPA and the PSA.

### **Amended 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 and assignment of the OPA by East End to a new entity to be controlled by SKS Investments, LLC, and authorization of the Agency Administrator to approve subsequent transfers of the Property and assignment of the amended OPA to transferees with demonstrated financial capacity and development experience to complete the Project; 5) East End's payment of liquidated damages of \$440,000 if it defaults on commencing and diligently pursuing completion of the Project or an alternate project; 6) East End's guarantee of this \$440,000 of liquidated damages with a 5-year letter of credit or bond in favor of the Agency; 7) extension of the date to commence construction of the Project to November 25, 2008; and 8) authorization of the Agency Administrator to further extend the Project commencement and UCOP Parking purchase deadlines up to one year at her sole discretion.

The negotiation of an expanded OPA that includes the terms listed above will provide the Agency with valuable development controls and protections to ensure 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.


However, under the expanded OPA if East End does not commence or diligently pursue completion of the 1100 Broadway project or alternate project, the Agency would be able to collect \$440,000 of liquidated damages. The collection of the additional \$440,000 of liquidated damages would also be enhanced by an irrevocable letter of credit or bond from East End to the Agency.

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 amended OPA would provide give substantial benefit to the Agency.

**ACTION REQUESTED OF THE AGENCY**

The Agency is requested to approve the attached resolution 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 C.

Respectfully submitted,

  
\_\_\_\_\_  
for Daniel Vanderpriem  
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

**UCOP GARAGE  
TAX INCREMENT ANALYSIS  
\$4,350,000 INITIAL VALUE INCREASED 5% PER ANNUM  
FROM MAY 31, 2006 TO ESTIMATED JUNE 30, 2008 COE**

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		1.1775%	\$0	\$0	\$0	\$0	\$0	\$0
2008-09	\$4,901,604	1.1775%	\$57,716	-\$11,543	-\$4,017	-\$3,336	-\$14,429	\$28,408
2009-10	\$4,999,636	1.1775%	\$58,871	-\$11,774	-\$4,097	-\$3,403	-\$14,718	\$28,976
2010-11	\$5,099,629	1.1775%	\$60,048	-\$12,010	-\$4,179	-\$3,471	-\$15,012	\$29,556
2011-12	\$5,201,621	1.1775%	\$61,249	-\$12,250	-\$4,263	-\$3,540	-\$15,312	\$30,147
2012-13	\$5,305,654	1.1775%	\$62,474	-\$12,495	-\$4,348	-\$3,611	-\$15,619	\$30,750
2013-14	\$5,411,767	1.1775%	\$63,724	-\$12,745	-\$4,435	-\$3,683	-\$15,931	\$31,365
2014-15	\$5,520,002	1.1775%	\$64,998	-\$13,000	-\$4,524	-\$3,757	-\$16,250	\$31,992
2015-16	\$5,630,402	1.1775%	\$66,298	-\$13,260	-\$4,614	-\$3,832	-\$16,574	\$32,632
2016-17	\$5,743,010	1.1775%	\$67,624	-\$13,525	-\$4,707	-\$3,909	-\$16,906	\$33,285
2017-18	\$5,857,871	1.1775%	\$68,976	-\$13,795	-\$4,801	-\$3,987	-\$17,244	\$33,950
2018-19	\$5,975,028	1.1775%	\$70,356	-\$14,071	-\$4,897	-\$4,067	-\$17,589	\$34,629
2019-20	\$6,094,528	1.1775%	\$71,763	-\$14,353	-\$4,995	-\$4,148	-\$17,941	\$35,322
2020-21	\$6,216,419	1.1775%	\$73,198	-\$14,640	-\$5,095	-\$4,231	-\$18,300	\$36,028
2021-22	\$6,340,747	1.1775%	\$74,662	-\$14,932	-\$5,196	-\$4,315	-\$18,666	\$36,749
Total Pass-Throughs to Other Taxing Entities				\$184,392				
City's Total Portion of Pass-Through (34.8%)					\$64,168			
NPV of City Portion					\$43,031			
Total for the Agency's Low- & Moderate-Income Housing Set-A-Side							\$230,489	
NPV of Total Low- & Mod Housing Set-A-Side Discounted at 4.85%							\$154,566	
Cumulative Tax Increment to Agency FY2008-22 Net of Pass-Throughs, Set-a-sides, Etc.								\$453,788
NPV of Total Agency Increment Discounted at 4.85%								\$304,309

Note - It is assumed that the sale of the UCOP garage will not occur until November 2008, the beginning of the 2008-09 tax year.



**Attachment B**

**1100 BROADWAY - KEY SYSTEM BUILDING PROJECT  
TAX INCREMENT ANALYSIS  
\$42 MILLION PROJECT VALUE**

Year	Project Assessed Value	Applicable Tax Rate	Tax Increment	Pass Through 20%	City Portion of 20% Pass Through	ERAF 5.78%	Housing Set-a-side 25%	Net Tax Increment
2007-08		1.1775%	\$0	\$0	\$0	\$0	\$0	\$0
2008-09		1.1775%	\$0	\$0	\$0	\$0	\$0	\$0
2009-10	\$42,000,000	1.1775%	\$247,275	-\$49,455	-\$17,210	-\$14,292	-\$61,819	\$121,709
2010-11	\$42,840,000	1.1775%	\$504,441	-\$100,888	-\$35,109	-\$29,157	-\$126,110	\$248,286
2011-12	\$43,696,800	1.1775%	\$514,530	-\$102,906	-\$35,811	-\$29,740	-\$128,632	\$253,252
2012-13	\$44,570,736	1.1775%	\$524,820	-\$104,964	-\$36,528	-\$30,335	-\$131,205	\$258,317
2013-14	\$45,462,151	1.1775%	\$535,317	-\$107,063	-\$37,258	-\$30,941	-\$133,829	\$263,483
2014-15	\$46,371,394	1.1775%	\$546,023	-\$109,205	-\$38,003	-\$31,560	-\$136,506	\$268,753
2015-16	\$47,298,822	1.1775%	\$556,944	-\$111,389	-\$38,763	-\$32,191	-\$139,236	\$274,128
2016-17	\$48,244,798	1.1775%	\$568,082	-\$113,616	-\$39,539	-\$32,835	-\$142,021	\$279,610
2017-18	\$49,209,694	1.1775%	\$579,444	-\$115,889	-\$40,329	-\$33,492	-\$144,861	\$285,202
2018-19	\$50,193,888	1.1775%	\$591,033	-\$118,207	-\$41,136	-\$34,162	-\$147,758	\$290,906
2019-20	\$51,197,766	1.1775%	\$602,854	-\$120,571	-\$41,959	-\$34,845	-\$150,713	\$296,725
2020-21	\$52,221,721	1.1775%	\$614,911	-\$122,982	-\$42,798	-\$35,542	-\$153,728	\$302,659
2021-22	\$53,266,155	1.1775%	\$627,209	-\$125,442	-\$43,654	-\$36,253	-\$156,802	\$308,712

Total Pass-Throughs to Other Taxing Entities \$1,402,577

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

\$488,097
\$315,861

NPV of City Portion

Total for the Agency's Low- & Moderate-Income Housing Set-A-Side

\$1,753,221
\$1,134,557

NPV of Total Low- & Mod Housing Set-A-Side Discounted at 4.85%

Cummulative Tax Increment to Agency FY2008-22 Net of Pass-Throughs, Set-a-sides, Etc.

\$3,451,741
\$2,233,715

NPV of Total Agency Increment Discounted at 4.85%

**Note: - Project is assumed to be completed in Spring of 2010 approximately midway through the 2009-10 property tax year, and so only generate approximately 50% of annual tax increment for that tax year.**

## ATTACHMENT C

### Proposed Term Sheet Sale of UCOP Parking to East End Oakland I, LLC ("East End")

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 May 31, 2006, to the sooner of the date of the close of the Parking Property purchase transaction ("Closing Date"), or November 30, 2008. From August 27, 2008 to the Closing Date the rate of increase in the purchase price shall be the greater of 5% per annum, or the increase in the McGraw-Hill Construction Cost Index from August 1, 2006 to August 1, 2008.
2. TERMS OF PAYMENT: Purchase price to be due and payable in cash at the close of escrow.
3. NEW ENTITY: Pursuant to a pre-approved transfer, as stated below, East End may transfer its rights to a new entity, controlled by SKS Investments ("New Entity") to hold title to and develop the Project Property as defined below, and purchase the Parking Property
4. 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 Parking Property. East End to release the Agency and City from any liability for contamination on the Parking Property. It is understood that East End is purchasing the Parking Property on a "as is, where is" basis in its current condition. However, the Agency shall complete any regularly scheduled maintenance prior to conveyance.
5. PARKING PROPERTY DESCRIPTION: The Parking Property is composed of the real property described in Exhibit A, as well as equipment, fixtures and other personal property appurtenant to the parking operations owned by the Agency on the ground and subterranean levels of the UCOP Building. The Parking Property currently

provides 145 automobile parking spaces and ramps which provide access to the parking spaces.

6. DOCUMENTATION:

Following the expiration of the Parking Property Approval Period (as defined below), but within 90 days of Agency/Council approval of the sale of the Parking Property, the Agency and East End to enter into a Purchase and Sale Agreement (“PSA”) consistent with the terms of this Term Sheet and including such other reasonable and customary terms (including 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 Parking Property to East End as part of the transaction, other than those that East End has not agreed to assume.

7. PUBLIC PARKING:

Conveyance of title to the Parking Property to East End to be subject to East End’s obligation to maintain and operate the UCOP Parking Property 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 as defined below (“Project”). East End to be allowed to close off parking spaces to public parking in the Parking Property if necessary for construction access to the adjacent development, subject to reasonable Agency approval of closure.

8. PROJECT PROPERTY:

The vacant land and existing Key System Building currently owned by East End and located at 1100 Broadway.

9. 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 Parking 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.

Notwithstanding the above, if the close of escrow does not occur by November 30, 2008, and East End requests an extension of up to one year of the deadline to close escrow, then East End must relinquish the Good Faith Deposit and make a Second Good Faith Deposit of \$100,000 upon the same terms and conditions as the initial Good Faith Deposit as a condition for extension of the escrow closing deadline.

10. PARKING PROPERTY APPROVAL PERIOD:

Commencing on May 31, 2006 and ending on the date of 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 Parking Property. East End to determine whether or not the Parking Property is acceptable within the Parking Property Approval Period.

11. APPROVALS:

Transaction subject to the discretionary approval of the City Council acting as the Agency's governing body.

12. OPEN & CLOSE OF ESCROW: Upon signing of the PSA, 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; c) East End's issuance

of a notice to proceed to its contractor for construction of the Project; and d) within 90 days of the issuance of the notice to proceed, the completion by East End's Project contractor of the following activities: i) grading of the entire Project site, ii) driving of all piles, iii) installation of all forms and steel necessary for pouring of the Project's foundation, and iv) first pouring of concrete for the foundation.

Agency Administrator may extend the November 30, 2008 closing deadline up to a maximum of one (1) year at his or her sole discretion upon the request of East End and his or her determination that East End is making good faith efforts, based upon verifiable evidence, to meet the closing conditions listed above. Agency shall retain previous \$100,000 Good Faith Deposit, and East End shall make a second \$100,000 Good Faith Deposit upon the same terms described in paragraph no. 8 above, as a condition for the Agency's extension of the November 30, 2008 closing deadline.

13. TITLE INSURANCE: East End to secure title insurance policy, if desired, at its own expense.
14. 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.
15. STUDIES AND REPORTS: Agency has provided East End copies of any studies or reports relating to the Parking Property including soils tests, surveys, regulatory reviews, engineering studies, complete copies of all reciprocal easements or other regulatory agreements with UCOP.
16. RIGHT OF ENTRY: The Agency to grant a right of entry to East End to conduct tests and other feasibility studies during the Parking Property Approval Period. East End to indemnify the Agency and City for entry.
17. BROKER'S COMMISSION: East End represents that no brokers have acted on its behalf in connection with the Parking Property.

18. TRANSFER RIGHTS:

East End shall be permitted to transfer the Project Property and the right to purchase the Parking Property to the New Entity subsequent to City Council/Agency approval of the sale of the Parking Property. Subsequent transfers of the Project Property and the Parking Property to qualified transferees, who can demonstrate the financial capacity and development experience to complete the Project, shall be approved by the Agency, whose approval shall not be unreasonably withheld.

19. AMENDMENT TO BASICOPA:

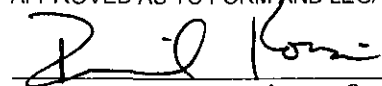
Prior to executing the PSA, East End or the New Entity to execute an amendment to the existing Owner Participation Agreement (OPA) for the Project which will require:

- a) Development on the Project Property of at least 125,000 square feet of office space, or 125 residential units, plus at least 10,000 square feet of retail space under either option
- b) Developer must provide regular maintenance of the site.
- c) Agency review and approval of plans and specifications for the Project at 50% and 100% of design completion
- d) Commencement of the Project by November 25, 2008. Agency Administrator may extend this deadline up to a maximum of one (1) year at his or her sole discretion upon the request of East End.
- e) Commencement of the Project shall mean i) procurement of all approvals and permits necessary to start construction; ii) submission to the Agency of documentation that all debt and equity financing necessary to complete Project; iii) issuance of a notice to proceed to the Project contractor; iv) grading of the entire Project site; v) driving of all piles; vi) installation of all forms and steel necessary to pour the Project foundation; and vii) first pour of concrete for the Project's foundation.
- f) Payment of \$440,000 in liquidated damages to the Agency for failure to submit

predevelopment documentation, commence construction, or diligently pursue completion of construction of the Project. Payment of these of damages to be secured by an irrevocable letter of credit or bond in favor of the Agency.

2006 NOV 16 PM 5:32

APPROVED AS TO FORM AND LEGALITY



AGENCY COUNSEL

## REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**A RESOLUTION AUTHORIZING THE SALE OF THE PUBLIC PARKING GARAGE AT 1111 FRANKLIN STREET BY THE AGENCY TO EAST END OAKLAND I, LLC, FOR AN INITIAL PRICE OF \$4,350,000, AND AUTHORIZING AN AMENDMENT TO THE OWNER PARTICIPATION AGREEMENT WITH EAST END FOR THE 1100 BROADWAY PROJECT PROVIDING FOR GREATER AGENCY REVIEW AND APPROVAL AUTHORITY OVER THE PROJECT, RESTRICTING TRANSFER OF THE PROJECT PROPERTY PRIOR TO COMPLETION, EXPANDING THE AGENCY'S REMEDIES, AND REVISING THE DEVELOPMENT SCHEDULE**

**WHEREAS**, in May 1998, the Redevelopment 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**, pursuant to Agency Resolution No. 2004-30 C.M.S., the Redevelopment Agency and East End Oakland I, LLC ("East End") entered into an Owner Participation Agreement (the "OPA") on November 8, 2004, providing for redevelopment of a vacant lot and the preservation and rehabilitation of the Key System building at 1100 Broadway (the "Project") in the Central District Redevelopment Project Area; and

**WHEREAS**, 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 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 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 the 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**, 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 been satisfied; and

**WHEREAS**, an Environmental Impact Report ("EIR") was prepared for a 150 room hotel at 1100 Broadway, as previously proposed, by the Community and Economic Development Agency, was certified by the Planning Commission on April 24, 1998, 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**, 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 December 5, 2006; now, therefore, be it

**RESOLVED:** That the Agency hereby authorizes the sale of the Property to East End Oakland I, LLC, on the terms and conditions set forth in this Resolution; 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:

- The initial purchase price to be \$4,350,000, increased by a 5 percent annual rate prorated daily from May 31, 2006, to the close of escrow occurring on or before November 30, 2008. Thereafter, the purchase price to increase at the greater of 5 percent or the increase in the McGraw-Hill Construction Cost Index for the Bay Area for the period beginning August 1, 2006 and ending August 1, 2008.

- East End to bear the costs of assessment of the environmental condition and remediation of hazardous materials contamination on the Property.
- 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.
- East End to make a good faith deposit of \$100,000 into escrow upon execution of the PSA.
- 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; c) East End's issuance of a notice to proceed to its contractor for construction of the Project, d) East End's contractor's completion of all of the following activities: i) grading of the entire Project site, ii) driving of all piles, iii) installation of all forms and steel for the Project foundation, and iv) the first pour of concrete for the Project foundation.
- Close of escrow to occur no later than November 30, 2008. Deadline for the close of escrow may be extended for a maximum of 365 days at the sole discretion of the Agency Administrator upon her determination that East End is making good faith efforts, based upon verifiable evidence, to meet the closing conditions listed above. Extension of the deadline for the close of escrow may require at the Agency Administrator's discretion, East End's payment of a second good faith deposit of \$100,000 upon the same terms and conditions as the initial good faith deposit.
- East End to have the right to assign its rights under the PSA to another developer who demonstrates to the Agency Administrator's reasonable satisfaction that it has the financial capacity and development experience to complete the Project, under the same terms and conditions contained in this Resolution and the PSA.
- East End to be authorized to transfer its rights and obligations under the PSA to an entity controlled by SKS Investments, LLC.

and be it further

**RESOLVED:** That prior to or concurrently with entering into the PSA, East End and the Agency shall execute and record an amendment to the current OPA for the Project that:

- Provides that as part of the Project, East End must renovate the Key System Building and develop a new building of at least 125,000 square feet of office space, or 125 residential units, or a combination of office space and residential units where one residential unit may be substituted for 1,000 square feet of office space, plus at least 10,000 square feet of ground floor retail under any development option.
- Provides for Agency review and approval of Project plans and specifications, financing, and construction contract.
- Extends the Project commencement date to November 25, 2008.
- *Authorizes the Agency Administrator to extend the Project commencement date by up to one year in his or her discretion provided that East End or its assignee is making reasonable progress toward Project commencement.*
- Specifies that the following activities must be completed as part of Project commencement: a) the grading of the Project site; b) driving of all piles; c) the installation of forms and steel for the Project foundation; and d) the completion of the first pour of concrete for the Project foundation.
- Requires East End to perform regular predevelopment maintenance of the Property.
- Requires Agency approval of transfers by East End prior to Project completion, and authorizes a transfer of the Property and all rights and obligations under the OPA to a new entity that is controlled by SKS Investments.
- Provides for liquidated damages to the Agency of \$440,000 if East End defaults on its development obligations.

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 any liquidated damages received by the Agency under the provisions of the OPA amendment shall be deposited into Unrestricted Land Sale Proceeds Fund

(9553), Capital Improvement Projects – Economic Development Organization (94800), Lawsuit Settlements Account (48412), Keystone Hotel Project (P127010); and be it further

**RESOLVED:** That the Agency Administrator is authorized to negotiate and execute the PSA and the amendment to the OPA, and take whatever action and execute any other documents necessary with respect to the sale of the Property or the amendment to the OPA 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