

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

OFFICE OF THE AGENCY ADMINISTRATOR

2006 NOV 30 PM 6:52

TO: Office of the Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: December 5, 2006

RE: Supplemental Report and Revised 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

SUMMARY

On November 28, 2006, Agency staff presented a proposed resolution and agenda report to the City Council's Community and Economic Development Committee authorizing the sale of an Agency-owned parking garage located within the University of California Office of the President building at 1111 Franklin Street ("UCOP Parking") to East End Oakland I, LLC ("East End"). As was indicated in the agenda report, East End is planning 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. Accordingly, staff had discussions with SKS Investments, LLC regarding the renovation of the historic Key System Building at 1100 Broadway and the construction of the new building on the adjacent vacant site (the "Project").

KEY ISSUES AND IMPACTS

During these discussions with SKS representatives, it became apparent that the November 30, 2008 closing deadline for sale of the UCOP Parking stated in the original resolution authorizing the sale of the UCOP Parking would need to be renegotiated. The original resolution requires that certain construction activities, such as preparing the foundation for the new building, must be completed on the vacant portion of the Project site before the sale of the UCOP Parking can close to ensure that the proposed Project is moving forward. However, SKS advised staff that shoring and stabilizing of the Key System building must be completed before the start of these vacant site construction activities required for closing of the UCOP Parking purchase. SKS principals anticipate that completion of the required Key System building shoring and stabilization could delay start of the vacant site activities by up to 30 weeks. SKS principals report that a more precise estimate of the time required to complete the work on the Key System building and the vacant site will not be available until existing conditions in the historic building have been more thoroughly analyzed by the project design team and a construction schedule has been developed.

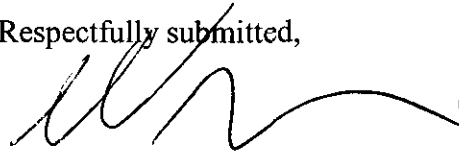
Item: _____
City Council
December 5, 2006

Accordingly, staff is recommending approval of a revised resolution by the City Council as follows. The primary revision would extend 1) the current November 25, 2008 deadline for Project commencement as defined in the resolution and the proposed amended Owner Participation Agreement (OPA), and 2) the current November 30, 2008 closing deadline for purchase of the UCOP Parking to a new date to be negotiated by Agency staff and East End or SKS Development, LLC, once a more realistic construction schedule for the Project has been developed. The second revision to the resolution would add shoring of the Key System Building to the currently required vacant site activities to be completed to satisfy the commencement of construction definition in the OPA and one of the conditions for closing of the UCOP Parking purchase. The third revision stipulates that any change in the use of the proceeds from the sale of the UCOP Parking other than development and construction of replacement parking in the Central District as currently intended must be specifically authorized by City Council.

ACTION REQUESTED OF THE AGENCY

The Agency is requested to approve the attached revised 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 to the November 28, 2006 agenda report to Council.

Respectfully submitted,



Daniel Vanderpriem

Director of Redevelopment, Economic
Development, Housing and Community
Development

Prepared by:

John Quintal

Economic Development Analyst

APPROVED AND FORWARDED
TO THE CITY COUNCIL:


OFFICE OF THE AGENCY ADMINISTRATOR

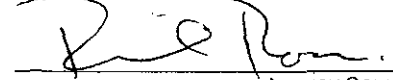
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OFFICE OF THE CITY CLERK

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REVISED 11/28/2006

APPROVED AS TO FORM AND LEGALITY


AGENCY COUNSEL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. _____ C.M.S.

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 earlier of August 27, 2008, or the close of escrow. After August 27, 2008, the purchase price to increase until the close of escrow 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) shoring of Key System Building façade, ii) grading of the entire Project site, iii) driving of all piles, iv) installation of all forms and steel for the Project foundation, and v) the first pour of concrete for the Project foundation.
- Close of escrow date to be negotiated. 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 a date to be negotiated.
- Authorizes the Agency Administrator to extend the Project commencement date and other Project milestones 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) shoring of the Key System Building façade; b) the grading of the Project site; c) driving of all piles; d) the installation of forms and steel for the Project foundation; and e) 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 use of any proceeds from the sale of the Property for other than the development and construction of replacement parking in the Central District shall require authorization from the Agency Board; 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