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ONE FRANK OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
John A. Russo  
City Attorney

September 18, 2007

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**CITY COUNCIL/REDEVELOPMENT AGENCY**  
**Oakland, California**

**Subject: *The City of Oakland, et al., v. Pacific Renaissance Associates, II, et al., Alameda County Case Number RG 03111924, and related cases***

President De La Fuente and Members of the City Council and  
Redevelopment Agency:

Attached is a settlement letter from outside legal counsel in the captioned case.

Very truly yours,

A handwritten signature in black ink that reads "John A. Russo". The signature is written in a cursive, flowing style.

JOHN A. RUSSO  
City Attorney

Attachments

**Memorandum**

TO•

**Hon. Ignacio De La Fuente, President, Oakland City Council  
Members of the Oakland City Council**

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FROM•

**SONNENSCHN NATH & ROSENTHAL LLP**

*Arnold J. Schuster*

DATE•

**September 4, 2007**

RE•

**Pacific Renaissance Plaza - Revised Litigation Settlement Report regarding: The City of Oakland, et al v. Pacific Renaissance Associates II, et al (Alameda County Case Number RG 03111924 and related cases (the "Pacific Renaissance Plaza Litigation").**

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The City Council approved a settlement of the Pacific Renaissance Plaza Litigation pursuant to Council Resolution No. 80120, adopted September 19, 2006. The terms of that settlement provided for an option on the part of the City to purchase the commercial portions of Pacific Renaissance Plaza, as well as the 50 residential units. The option was not exercised, the settlement agreement has expired, and the Pacific Renaissance Plaza Litigation was returned to the active trial calendar of the Alameda County Superior Court.

A revised settlement of the Pacific Renaissance Plaza Litigation has been reached, subject to the approval of the Oakland City Council ("City") and the Redevelopment Agency of the City of Oakland ("Redevelopment Agency"), following negotiations between the defendants and representatives of the City/Redevelopment Agency, the Plaintiffs in the Hom Litigation (defined below) and the East Bay Asian Local Development Corporation ("EBALDC"). The terms of the settlement described below are set out in three related agreements ("Settlement Agreements"): a Purchase and Sale Agreement between EBALDC's affiliate and International Hotelier Management Corp. ("IHMC"); an Affordable Housing Agreement among the City, the Redevelopment Agency, the Hom Plaintiffs and EBALDC's affiliate; and a Settlement and Release Agreement among the City, the Redevelopment Agency, the Hom Plaintiffs and the Defendants in the Pacific Renaissance Plaza Litigation.

The major terms of the revised settlement are as follows:

- IHMC, a defendant in the Pacific Renaissance Litigation, will sell 50 residential units and related parking in Pacific Renaissance Plaza to EBALDC or its affiliate for a price of \$4 million. (EBALDC intends to finance this purchase with a loan from Wells Fargo Bank secured by the property.)

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Members of the Oakland City Council  
Randolph W. Hall, Chief Assistant City Attorney  
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- EBALDC will enter into a lease of one unit of the Pacific Renaissance Plaza units for the remaining life of the one remaining tenant out of the original families who resided in Pacific Renaissance Plaza, after which such unit will also be sold by EBALDC, subject to resale restrictions for 45 years.
- EBALDC will resell as soon as possible the remaining 49 Pacific Renaissance Plaza units to households with incomes at or below 100% of area median income, with a preference for households at or below 80% of area median income. Such sales will be subject to resale restrictions recorded on the units for 45 years. Such sale will require approval of the California Department of Real Estate and EBALDC has indicated that it will not acquire the units without such approval to resell them or information satisfactory to EBALDC that such approval will be granted. Notwithstanding the above, EBALDC will grant a right of first refusal to purchase units at the reduce sales prices to the existing tenants of those units as required by state subdivision law.
- Net proceeds from the sale of the units will go, first, to repay the obligations of EBALDC under the loan from Wells Fargo Bank and to reimburse the City and the Redevelopment Agency for the City/Agency's litigation and transactional costs up to \$4.25 million. The lender will receive 75% of net proceeds from each sale while the City will receive 25% of net proceeds from each sale, until both obligations have been paid. Second, net proceeds will go to cover EBALDC's transactional and development costs. Third, net proceeds will go to reimburse the Redevelopment Agency and City for any remaining litigation and transactional costs, if any. Fourth, remaining net proceeds will be used to fund the development of rental housing, affordable to tenants at or below 60% of area median income for 55 years, in the Chinatown area of the City of Oakland.
- EBALDC will reimburse the City and the Redevelopment Agency for all of their litigation and transactional costs no later than December 31, 2009, approximately two years after the projected close of the acquisition of the 50 apartment units from IHMC whether or not the units have been sold at that time.
- EBALDC will be responsible for all costs incurred in relocating the tenants currently residing in the Pacific Renaissance Plaza housing units being acquired by EBALDC who are displaced in connection with the resale by EBALDC of the units.
- The parties to the litigation will dismiss with prejudice the complaint and cross-complaint in the Pacific Renaissance Litigation and in the related case of *Yet Hom et al., v. International Hotelier Management Corp. et al.*, Alameda County Case Number RG 03108416 ("Hom Litigation"). This dismissal will occur only after all

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Settlement Agreements have been executed and the sale of the 50 residential units and related parking pursuant thereto to EBALDC's affiliate has been consummated.

City and Agency resolutions have been prepared and are attached that authorize settlement and related transactions along these terms. Please contact Arnold Schuster or Mary Kay Lacey if you have any questions or would like to discuss any aspect of this matter.

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DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

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**A RESOLUTION AUTHORIZING SETTLEMENT OF LITIGATION IN THE MATTER OF *THE CITY OF OAKLAND ET AL., V. PACIFIC RENAISSANCE ASSOCIATES II, ET AL.*, AND RELATED CASES, AUTHORIZING THE NEGOTIATION AND EXECUTION OF DOCUMENTS TO EFFECTUATE THE SETTLEMENT, AND RESCINDING RESOLUTION NO. 80120 C.M.S AUTHORIZING PREVIOUS SETTLEMENT TERMS**

**WHEREAS**, the City is a party to a lawsuit, *The City of Oakland, et al. v. Pacific Renaissance Associates II, et al.* (Alameda County Case Number RG 03111924), and related cases; and

**WHEREAS**, the lawsuits concern Pacific Renaissance Plaza, a mixed-use commercial and residential complex on 9<sup>th</sup> Street between Franklin and Webster; and

**WHEREAS**, Council Resolution No. 80120 C.M.S. adopted September 19, 2006, authorized settlement of the lawsuits on certain terms; and

**WHEREAS**, the parties to the lawsuits have negotiated new terms of settlement; now, therefore, be it

**RESOLVED**: That Resolution No. 80120 C.M.S. is hereby rescinded; and be it further

**RESOLVED**: That the City Council hereby authorizes legal counsel for the City to settle the case of *The City of Oakland, et al. v. Pacific Renaissance Associates II, et al.* (Alameda County Case Number RG 03108416) and related cases, in accordance with the following terms:

- International Hotelier Management Corporation ("IHMC") to sell 50 residential units in Pacific Renaissance Plaza to the East Bay Asian Local Development Corporation or its affiliate ("EBALDC") for a price of \$4 million.
- EBALDC to resell the Pacific Renaissance Plaza units to households with incomes at or below 100% of area median income, with a preference for

households at or below 80% of area median income, subject to a right of first refusal to purchase units held by existing tenants.

- Sales to be subject to 45-year resale restrictions.
- EBALDC to grant a lifetime lease for the one remaining tenant out of the original families who resided in Pacific Renaissance Plaza.
- Net proceeds from the sale of the units to go, first, to repay EBALDC's loan obligations and to reimburse the City and the Redevelopment Agency for City/Agency litigation and transactional costs up to \$4.25 million. The lender will receive 75% of net proceeds from each sale while the City/Agency will receive 25% of net proceeds from each sale, until both obligations have been paid. Second, net proceeds will go to cover EBALDC's transactional and development costs. Third, net proceeds will go to reimburse the Redevelopment Agency and City for any remaining litigation and transactional costs, if any. Fourth, remaining net proceeds will be used to fund the development of rental housing, affordable to tenants at or below 60% of area median income for 55 years, in the Chinatown area of the City of Oakland.
- EBALDC to reimburse the City/Agency for the City/Agency costs no later than December 31, 2009.
- EBALDC to be responsible for relocating any existing tenants of the Pacific Renaissance Plaza housing units who are displaced.
- Dismissal with prejudice of the complaint and cross-complaint in the above-titled litigation and in the related case of *Yet Hom et al., v. International Hotelier Management Corp. et al.*, Alameda County Case Number RG 03108416 ("Hom Litigation").

and be it further

**RESOLVED:** That the City Council hereby authorizes the City Administrator and the City's legal counsel to negotiate and execute all agreements necessary to effectuate the settlement, including (1) a settlement and release agreement, (2) a side agreement with EBALDC and the Hom plaintiffs setting forth affordable housing terms and the terms of repayment to the Agency and City, and (3) any other agreements or documents that the City Administrator and the City's legal counsel deems necessary to effectuate the terms of the settlement consistent with the settlement terms authorized by the Council; and be it further

**RESOLVED:** That the City Council hereby authorizes the City Administrator and City legal counsel to take whatever other actions are necessary with the respect to the settlement and the transaction consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2007

**PASSED BY THE FOLLOWING VOTE:**

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

NOES-

ABSENT-

ABSTENTION-

Attest: \_\_\_\_\_  
LATONDA SIMMONS  
Clerk of the City of Oakland, California

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

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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 SETTLEMENT OF LITIGATION IN THE MATTER OF *THE CITY OF OAKLAND ET AL., V. PACIFIC RENAISSANCE ASSOCIATES II, ET AL.*, AND RELATED CASES, AUTHORIZING THE NEGOTIATION AND EXECUTION OF DOCUMENTS TO EFFECTUATE THE SETTLEMENT, AND RESCINDING RESOLUTION NO. 2006-0065 C.M.S AUTHORIZING PREVIOUS SETTLEMENT TERMS

**WHEREAS**, the Redevelopment Agency is a party to a lawsuit, *The City of Oakland, et al. v. Pacific Renaissance Associates II, et al.* (Alameda County Case Number RG 03111924) and related cases; and

**WHEREAS**, the lawsuits concern Pacific Renaissance Plaza, a mixed-use commercial and residential complex on 9<sup>th</sup> Street between Franklin and Webster in the Central District; and

**WHEREAS**, Agency Resolution No. 2006-0065 C.M.S. adopted September 19, 2006, authorized settlement of the lawsuits on certain terms; and

**WHEREAS**, the parties to the lawsuits have negotiated new terms of settlement; now, therefore, be it

**RESOLVED**: That Resolution No. 2006-0065 C.M.S. is hereby rescinded; and be it further

**RESOLVED**: That the Agency hereby authorizes legal counsel for the Agency to settle the case of *The City of Oakland, et al. v. Pacific Renaissance Associates II, et al.* (Alameda County Case Number RG 03108416) and related cases, in accordance with the following terms:



- International Hotelier Management Corporation ("IHMC") to sell 50 residential units in Pacific Renaissance Plaza to the East Bay Asian Local Development Corporation or its affiliate ("EBALDC") for a price of \$4 million.
- EBALDC to resell the Pacific Renaissance Plaza units to households with incomes at or below 100% of area median income, with a preference for households at or below 80% of area median income, subject to a right of first refusal to purchase units held by existing tenants.
- Sales to be subject to 45-year resale restrictions.
- EBALDC to grant a lifetime lease for the one remaining tenant out of the original families who resided in Pacific Renaissance Plaza.
- Net proceeds from the sale of the units to go, first, to repay EBALDC's loan obligations and to reimburse the City and the Redevelopment Agency for City/Agency litigation and transactional costs up to \$4.25 million. The lender will receive 75% of net proceeds from each sale while the City/Agency will receive 25% of net proceeds from each sale, until both obligations have been paid. Second, net proceeds will go to cover EBALDC's transactional and development costs. Third, net proceeds will go to reimburse the Redevelopment Agency and City for any remaining litigation and transactional costs, if any. Fourth, remaining net proceeds will be used to fund the development of rental housing, affordable to tenants at or below 60% of area median income for 55 years, in the Chinatown area of the City of Oakland.
- EBALDC to reimburse the City/Agency for the City/Agency costs no later than December 31, 2009.
- EBALDC to be responsible for relocating any existing tenants of the Pacific Renaissance Plaza housing units who are displaced.
- Dismissal with prejudice of the complaint and cross-complaint in the above-titled litigation and in the related case of *Yet Hom et al., v. International Hotelier Management Corp. et al.*, Alameda County Case Number RG 03108416 ("Hom Litigation").

and be it further

**RESOLVED:** That the Agency hereby authorizes the Agency Administrator and the Agency's legal counsel to negotiate and execute all agreements necessary to effectuate the settlement, including (1) a settlement and release agreement, (2) a side agreement with EBALDC and the Hom plaintiffs setting forth affordable housing terms and the terms of repayment to the Agency and City, and (3) any other agreements or documents that the Agency Administrator and Agency legal counsel deems necessary to effectuate the terms

of the settlement consistent with the settlement terms authorized by the Agency; and be it further

**RESOLVED:** That the Agency hereby authorizes the Agency Administrator and Agency legal counsel to take whatever other actions are necessary with the respect to the settlement and the transaction consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2007

**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