

REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND
SUPPLEMENTAL AGENDA REPORT

OFFICE OF THE CITY CLERK

2007 FEB 20 PM 5: 53

TO: Office of the Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: March 6, 2007

RE: **Supplemental Report on (1) A Redevelopment Agency Resolution, Pursuant to Sections 4.9.2 and 11.2 of the Disposition and Development Agreement between the Oakland Redevelopment Agency and Oakland Garden Hotel, LLC, Authorizing the City Administrator to Approve the Transfer of Ownership of the Oakland Garden Hotel to the CIM Group; and**

(2) A City Resolution Pursuant to Section 10 of the Hyatt Regency Oakland Hotel Ground Lease Between the City of Oakland and Oakland Renaissance Associates Authorizing the City Administrator to Approve the Assignment of the Ground Lease and the Sale of the Marriott Hotel to the CIM Group, and to Accept All Payments Due the City

SUMMARY

This is a supplemental report to request that the Agency Board and City Council adopt resolutions related to the sale of the Oakland Garden Hotel (the "Courtyard") and the Oakland Marriott City Center Hotel (the "Marriott") to the CIM Group ("CIM"). The Agency has a disposition and development agreement ("DDA") with Oakland Garden Hotel, LLC ("OGH") for the development of the Courtyard. The City has a ground lease with Oakland Renaissance Associates ("ORA"), for the Marriott ("Ground Lease"). The DDA and ground lease require Agency and City approval of management companies for the two hotels. CIM recently requested that five companies – Crestline Hotel and Resorts as previously discussed, as well as four new companies including Dow Hotels, Interstate Hotels and Resorts, Sunstone Hotel Properties, and White Lodging Services – be pre-approved by the City and Redevelopment Agency. The attached resolutions modify language related to approval of the operator.

BACKGROUND

The City and Agency must approve the Marriott Hotel sale and assignment of the Ground Lease, as long as the proposed buyer and operator are qualified. CIM is a national real estate investment corporation that specializes in urban investment. Since the original staff report was submitted in December 2006, CIM has decided not to pursue a merger or partnership with Becker Lodging and has begun negotiations with other hotel management firms. Working from a list of 10 firms that have been previously approved to operate Marriott Hotels, CIM has identified five potential management companies - Crestline, Dow, Interstate, Sunstone and White. CIM is requesting that these five firms be approved as the operator for both hotels. CIM is in the midst of discussion with all five firms, but is not scheduled to select the manager until

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shortly prior to closing of the sale. Selection of the manager will also require approval by Marriott International prior to completion of the franchise agreement. Marriott has indicated that all five management companies have significant experience and large portfolios of full service hotels and they could operate the Oakland hotels including the convention business. Marriott's approval will still require review of operation for similar Marriott facilities, including guest surveys, operating history and other issues. Marriott will seek to confirm that the hotels managed by the selected company are high performing and that there are no low performing hotels or other problems with the selected company. Marriott has informed the City that one of the companies, Sunstone, has a hotel that was out of compliance with Marriott's requirements, and that Sunstone will not receive "Marriott approved status" for new franchise agreements until Marriott's requirements are met for the noncompliant hotel. CIM is considering Sunstone based on experience at other CIM hotels, but should Marriott not approve Sunstone, CIM will select one of the other management companies. A brief description of the five management companies follows.

Crestline Hotel and Resorts is a subsidiary of Barcelo Crestline and Barcelo Hotels & Resorts, one of the world's largest hospitality companies, which operates 121 hotels in 15 countries, mostly in Europe, North and South America. Crestline manages 43 hotels in the U.S., including five Marriott Hotels and six Courtyard by Marriott Hotels, 20 hotels by other chains and 12 independent hotels.

Dow Hotels is the owner operator of eight hotels with over 2,400 rooms including two Marriott Suites Hotels. Staff will confirm that six of the hotels operated by Dow are of a quality at least comparable to the Oakland Marriott.

Interstate Hotels and Resorts is a large international management company that manages 286 hotels, resorts and conference centers with more than 65,000 rooms. Interstate's portfolio includes 16 Marriott Hotels, 9 Courtyard by Marriott Hotels and numerous other chain and independent hotels.

Sunstone Hotel Properties manages 60 hotels, with more than 17,000 rooms. Interstate's portfolio includes 14 Marriott Hotels, 7 Courtyard by Marriott Hotels and numerous other chain and independent hotels

White Lodging Services manages 100 hotels, with more than 13,000 rooms. White's portfolio includes 7 Marriott Hotels, 32 Courtyard by Marriott Hotels and numerous other chain and independent hotels

KEY ISSUES AND IMPACTS

Courtyard - Certificate of Completion

The Agency never issued a certificate of completion ("CoC") to certify OGH's full compliance with terms of the DDA on the Courtyard. There was an outstanding claim against OGH's contractor for failure to comply with the Agency's Local Employment Program and Small/Local

Small Business Program. Contract Compliance assessed penalties of \$132,204, but nonetheless, offered the contractor the option to make up deficiencies on the Courtyard project by hiring on other projects. The contractor agreed to the option, but never performed under this agreement. Thus, the penalty remains outstanding. OGH wants to have the penalties forgiven. As OGH and the owner of the Pacific Renaissance Plaza are related entities, OGH sought and the Agency has agreed to include the issuance of the CoC as a term of the proposed Pacific Renaissance settlement. The Pacific Renaissance Settlement has not been completed, and will likely not close for some months.

In order for the sale of the Marriott properties to close, the Courtyard must obtain a CoC. Under terms of current agreements for the Courtyard (the DDA) and Pacific Renaissance (the Settlement Agreement), OGH must pay the penalty due in order to close the sale of the Marriotts, or may wait until the Pacific Renaissance Settlement closes. OGH must deposit in escrow the \$132,204 due. If the Marriott sale occurs first, then the funds will be paid to the Agency. If the Pacific Renaissance Settlement is first to close, then the funds will be retained by OGH.

City Loan

The City made a \$3.2 million Loan to ORA for the Marriott in 1986. In 1997, the City authorized a restructuring of its financial contribution to the Marriott that capitalized the outstanding principle (\$3.2 million), interest (\$3.3 million), unpaid ground lease rent (\$0.3 million) and unpaid ball room fees (\$1.4 million) into a \$8.2 million share of a \$43.4 million pool of loans ("Pool"). The City has a 19% share of the "Pool" of loans on the Marriott, with International Hoteliers, Ltd. (62%), a general partner of ORA, and C&L/IHL (19%), the managing general partner of ORA, being the other holders of the Pool. The Pool shares in all excess cash flow, until the loans are paid in full, including any positive cash flow from a sale. Since the Pool is earning interest at a 10% rate and is now valued at approximately \$106.1 million, including the City's current share of \$20.1 million, it is highly unlikely that the City or other Pool holders will ever be paid in full. According to documents from ORA, the Marriott will generate \$40.8 million in cash flow and that the Pool will share in \$27.1 million net cash flow, after the senior debt is paid. There are several obligations that will be outstanding at the sale, including insurance claims, pension obligations and other delayed costs. Funds will remain in escrow to cover these obligations. Based on projections provided by the seller, the City will receive approximately \$5.1 million less 19% of the funds required to remain in escrow.

Staff has hired a forensic accountant and an appraiser to review all records to determine if ORA's calculations for excess cash flow are accurate and to make sure the City receives its fair share of sales proceeds. Review of records and documents has highlighted two potential issues: (1) should the sale of the Marriott and the separate sale of the operating agreement and all outstanding shares of Integrated Services Corp. ("ISC") be considered one sale; and (2) the sale of the two hotels is one deal and the price of the Courtyard may be inflated (\$148,148/room) and the price of the Marriott thereby deflated (\$70,455/room). If the three sales are combined and the full price is \$66 million or \$102,000 per room, then the City's proceeds from the Marriott sale would increase by \$2.9 million (19% of \$15.3 million). The appraisal of the Marriott may

provide evidence that the sales price has been obscured in the transaction and that the City should receive a greater share of the proposed sale price. The appraisal was not available at publication of this report but staff should be able to verbally present the results at the Council meeting.

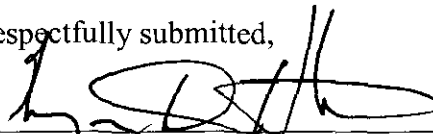
RECOMMENDATION (S) AND RATIONALE

Staff recommends that: (1) the Redevelopment Agency adopt the resolution, pursuant to Sections 4.9.2 and 11.2 of the Disposition and Development Agreement between the Oakland Redevelopment Agency and Oakland Garden Hotel, LLC, authorizing the City Administrator to approve the transfer of ownership of the Oakland Garden Hotel to the CIM Group; and (2) the City Council adopt the resolution pursuant to section 10 of the Hyatt Regency Oakland Hotel ground lease between the City of Oakland and Oakland Renaissance Associates authorizing the City Administrator to approve the assignment of the ground lease and the sale of the Marriott Hotel to the CIM Group, and to accept all payments due the City. CIM, Crestline and Becker, all have the necessary experience to own and/or operate the Courtyard and Marriott. In addition, the sale of the Marriott will result in substantial renovations to the facility.

ACTION REQUESTED OF THE CITY AND REDEVELOPMENT AGENCY

Staff recommends that the City and Redevelopment Agency approve the attached resolutions.

Respectfully submitted,



Gregory Hunter

Interim Director of Redevelopment, Economic
Development, Housing and Community
Development

Prepared by:

Patrick Lane

Redevelopment Manager West


**APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:**


OFFICE OF THE AGENCY ADMINISTRATOR

2007 FEB 22 PM 5:53

REVISED

Approved as to Form and Legality



City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

A RESOLUTION PURSUANT TO SECTION 10. OF THE HYATT REGENCY OAKLAND HOTEL GROUND LEASE BETWEEN THE CITY OF OAKLAND AND OAKLAND RENAISSANCE ASSOCIATES AUTHORIZING THE CITY ADMINISTRATOR TO APPROVE THE ASSIGNMENT OF THE GROUND LEASE AND THE SALE OF THE MARRIOTT HOTEL TO THE CIM GROUP, AND TO ACCEPT ALL PAYMENTS DUE THE CITY

WHEREAS, on August 12, 1981, the City entered into the Hyatt Regency Oakland Hotel Ground Lease ("Ground Lease") with Oakland Hotel Associates, Ltd., a California limited partnership to allow construction of first class hotel building (the "Property"); and

WHEREAS, on December 29, 1986 the Ground Lease was amended and assigned to Oakland Renaissance Associates, a California limited partnership ("ORA"), and the City agreed to provide ORA \$3.2 million in financing; and

WHEREAS, on August 28th, 1997, the City executed a Restructuring Agreement that capitalized the outstanding loan principle (\$3.2 million) and interest (\$3.3 million), unpaid ground lease rent (\$0.3 million) and unpaid ball room fees (\$1.4 million) into a \$8.2 million share (collectively the "Loan") of a \$43.4 million pool of loans ("Pool") from a variety of lenders, and the loans must be paid off if the Property is sold; and

WHEREAS, Section 10. of the Ground Lease requires the City's written consent prior to assignment of the ground lease, and further requires that if the assignee is not an experienced, reputable and responsible operator of an existing hotel of a type comparable to the Marriott, then concurrent with the assignment of the lease, the assignee must enter into an operating agreement with a reputable and experienced hotel operator; and

WHEREAS, ORA is proposing to sell the Marriott Hotel Property, which sits on the land leased from the City, to the CIM Group, Inc., ("CIM"); a major commercial property owner and developer with nationwide real estate holdings and

WHEREAS, CIM has the real estate management capacity to own the Property; and

WHEREAS, CIM is proposing to contract with either Crestline Hotels and Resorts ("Crestline"), Dow Hotels ("Dow"), Interstate Hotels and Resorts ("Interstate"), Sunstone Hotel Properties ("Sunstone"), or White Lodging Services ("White") to manage the Property, and all are experienced operators of similar hotel facilities and appear to have the capacity to operate the Property; and

WHEREAS, approval of the operator will be required by Marriott International in order for CIM to obtain approval of a new franchise agreement; and

WHEREAS, the requirements of the California Environmental Quality Act ("CEQA"), the CEQA guidelines as prescribed by the Secretary of Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now therefore be it

RESOLVED: That the City approves the assignment or other transfer of the Ground Lease to CIM and the selection of Crestline, Dow, Interstate, Sunstone or White as the hotel operator, subject to Marriott and City Administrator approval following due diligence reviews of submittals, and the maintenance of the superior position of the Ground Lease; and be it

FURTHER RESOLVED: That the City Administrator or her designee is authorized to conduct all negotiations, review and approve all submissions, execute all agreements, accept all payments and take whatever action is necessary with respect to the Ground Lease and the loan repayment consistent with this Resolution and its basic purposes; and be it

FURTHER RESOLVED: That all monies received in repayment of the Loan are hereby appropriated to the General (1010); and be it

FURTHER RESOLVED: That the Agency has independently reviewed and considered this environmental determination and the Agency finds and determines, based on the information in the staff report accompanying this resolution, that this action complies with CEQA because this action on the part of the Agency is exempt from CEQA pursuant to Section 15301 (existing facilities) of the CEQA guidelines; and be it

FURTHER RESOLVED: That the City Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this Project;

and be it

FURTHER RESOLVED: That all documents related to this transaction shall be reviewed and approved by the City Attorney's Office prior to execution, and copies will be placed on file with the City Clerk; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) the Community & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

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

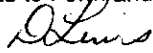
NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

2007 FEB 22 PM 5:53

REVISED
Approved as to Form and Legality

ORA Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. _____ C.M.S.

A RESOLUTION, PURSUANT TO SECTION 4.9.2 AND 11.2 OF THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE OAKLAND REDEVELOPMENT AGENCY AND OAKLAND GARDEN HOTEL LLC, AUTHORIZING THE AGENCY ADMINISTRATOR TO APPROVE THE TRANSFER OF OWNERSHIP OF THE OAKLAND GARDEN HOTEL TO THE CIM GROUP

WHEREAS, Oakland Redevelopment Agency (the "Agency") Resolution No. 99-32 C.M.S., authorized a disposition and development agreement ("DDA") with Oakland Garden Hotel, LLC ("OGH"), which provided for OGH to acquire a 37,342 site located on the northeast corner of 9th Street and Broadway, Oakland ("Property"), to build a 160 room hotel with ground floor retail ("Project"), and the DDA was executed in July 1999; and

WHEREAS, Section 4.9.2 of the DDA requires prior written consent from the Agency before any transfer of the Property, for the first seven years of operations; and

WHEREAS, Section 11.2 requires prior written consent from the Agency for the operator, if the buyer is not a qualified hotel operator, for the first seven years of operations; and

WHEREAS, the Project, currently known as the Marriott Courtyard, was completed in March 2002, fewer than seven years ago; and

WHEREAS, OGH is proposing to sell the Property to the CIM Group, Inc., ("CIM"); and

WHEREAS, CIM is a major commercial property owner and developer with nationwide real estate holdings; and

WHEREAS, CIM appears to have the real estate management capacity to own the Property; and

WHEREAS, CIM is proposing to contract with either Crestline Hotels and Resorts ("Crestline"), Dow Hotels ("Dow"), Interstate Hotels and Resorts ("Interstate"), Sunstone Hotel Properties ("Sunstone"), or White Lodging Services ("White") to manage the Property; and

WHEREAS, Crestline, Dow, Interstate, Sunstone and White all appear to be experienced operators of similar hotel facilities and appear to have the capacity to operate the Property; and

WHEREAS, Marriott International's approval of the operator will be required in order for CIM to obtain approval of a new franchise agreement; and

WHEREAS, the requirements of the California Environmental Quality Act ("CEQA"), the CEQA guidelines as prescribed by the Secretary of Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now therefore be it

RESOLVED: That the Agency approves the transfer of the Property to CIM and the selection of Crestline, Dow, Interstate, Sunstone or White as the hotel operator, subject to Marriott and Agency Administrator approval following due diligence reviews of submittals, and the maintenance of the superior lien position of the DDA; and be it

FURTHER RESOLVED: That the Agency Administrator or her designee is authorized to conduct all negotiations, review and approve all submissions, execute all agreements and take whatever action is necessary with respect to the Property, the Project and the DDA consistent with this Resolution and its basic purposes; and be it

FURTHER RESOLVED: That the Agency has independently reviewed and considered this environmental determination and the Agency finds and determines, based on the information in the staff report accompanying this resolution, that this action complies with CEQA because this action on the part of the Agency is exempt from CEQA pursuant to Sections 15301 (existing facilities) of the CEQA guidelines; and be it

FURTHER RESOLVED: That the City Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this Project; and be it

FURTHER RESOLVED: That all documents shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution, and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) the Community & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

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