

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

OFFICE OF THE AGENCY ADMINISTRATOR
CITY OF OAKLAND

2006 JAN 12 PM 1:22

TO: Office of the Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: January 24, 2006

RE: **A RESOLUTION, PURSUANT TO SECTION 11.2(E) OF THE DISPOSITION AND DEVELOPMENT AGREEMENT (“DDA”) BETWEEN THE OAKLAND REDEVELOPMENT AGENCY AND PRENTISS PROPERTIES WEBSTER, LP (THE CURRENT OWNER OF 2100 FRANKLIN STREET, THE SITE OF THE FORMER BERMUDA BUILDNG), APPROVING THE TRANSFER OF THE PROPERTY AND DDA TO AN ENTITY CREATED OUT OF THE MERGER OF PRENTISS PROPERTIES TRUST AND BRANDYWINE REALTY TRUST TO FORM A NEW PARENT FOR PRENTISS PROPERTIES WEBSTER, LP, AND TO AMEND THE DDA TO SUSPEND AND EXTEND THE AGENCY’S REPURCHASE RIGHTS UNDER CERTAIN CONDITIONS DURING CONSTRUCTION ON THE SITE**

SUMMARY

It is recommended that the Agency Board approve a resolution related to the redevelopment of a site located at 2100 Franklin Street, Oakland (the “Property”), which was formerly occupied by the Bermuda Building. The Agency has entered into a disposition and development agreement with Prentiss Properties Webster, LP (“Prentiss”) for the development of the Property. The proposed resolution authorizes the Agency Administrator to consent to a proposed corporate merger between Prentiss Properties Trust and Brandywine Realty Trust to form a new parent company for Prentiss. The proposed resolution further amends the DDA to suspend and extend the Agency’s repurchase right under certain conditions during the construction of Center Twenty-One (the “Project”), a new 252,077 square-foot office building to be developed at the Property that will connect to Prentiss’ existing 2101 Webster Street office building.

FISCAL IMPACT

There is no fiscal impact to the City, General Fund or Redevelopment Agency associated with approval of the proposed legislation. However, the proposed Project will result in the development of an unutilized vacant property and is expected to generate property, business license and sales tax revenues for the Redevelopment Agency and the City of Oakland.

The DDA currently gives the Agency the limited right to repurchase the Property for four consecutive years commencing on January 1, 2007 and ending on December 31, 2010. However, the Agency can only exercise this right during the first four years if Prentiss does not complete

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development by December 31, 2006, 2007, 2008, or 2009, and does not pay any of the \$300,000 in liquidated damages due each year if development is not complete. The repurchase price for the first four years is \$3,600,000, less any of the unpaid liquidated damages. If development is not complete by December 31, 2010, but all liquidated damages have been paid, the purchase price is \$3.6 million plus \$2.5 million of the \$2,544,016 of building demolition costs paid by Oakland Bermuda, LLC (“OBL”). The Agency did not allocate any funds in the Fiscal Year 2005-07 Budget for such a contingent acquisition.

BACKGROUND

The Agency acquired the Property at 2100 Franklin Street by eminent domain. The Property was occupied by the earthquake-damaged Bermuda Building which represented a significant health and safety hazard to the surrounding neighborhood. In August of 2001, the Agency entered into a DDA with OBL that provided OBL with a leasehold interest in the Property (because the Agency had not completed the eminent domain process and did not yet have full title to the Property) for the development of an office building. OBL paid \$3.6 million for the Property and demolished the Bermuda Building at their cost. The Agency acquired full title to the Property in March 2004 and, as specified in the DDA, transferred title to OBL on July 29, 2004. On September 21, 2004, pursuant to Resolution No. 2004-49 C.M.S., the Agency approved transfer of the DDA and the Property from OBL to Prentiss.

Prentiss is planning to construct a new 252,077 square-foot “Class A” office building at the Property, which will connect to Prentiss’ existing 2101 Webster Street office building. Specifically, Center Twenty-One is a nine-story office tower with main access from 21st Street supporting the following uses: 15,000 square feet of street-facing ground floor retail space fronting Franklin and 22nd Streets, 218,000 square feet of office space on 8 floors, and 73 spaces of below-grade parking. Prentiss received planning approvals for the Project on November 2, 2005. Project construction is scheduled to start in the spring of 2006 and should be completed by the fall of 2007.

On October 3, 2005, Prentiss Properties Trust, the parent company of Prentiss, and Brandywine Realty Trust entered into an Agreement and Plan of Merger. Subject to satisfying various terms and conditions of closing, the two real estate investment trusts (REITs) aim to complete the merger during the first quarter of 2006.

KEY ISSUES AND IMPACTS

Section 11.2(e) of the DDA requires Agency approval of any merger of all or substantially all of the assets of Prentiss, or its parent company, Prentiss Properties Trust. Prentiss Property Trust is in the process of merging its business with Brandywine Realty Trust, a Maryland real estate investment trust. Once the merger is completed, Prentiss will be renamed to Brandywine Webster, L.P., but Prentiss’ staff will remain in charge of the development of the Property.

If Prentiss does not complete project construction within a certain period, the DDA gives the Agency the right to repurchase the Property beginning in 2007 and ending in 2010. Prentiss has requested that the DDA be amended to allow for the suspension and extension of the Agency’s repurchase rights during construction provided that 1) construction of the Project is underway

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and proceeding to completion within two years of the date any building permit is issued, and 2) construction work on the Project is not abandoned, or substantially ceased, for a period of 60 days.

The first issue is whether to approve the merger between Prentiss Properties Trust and Brandywine Realty Trust. The second issue is whether to suspend the Agency's repurchase rights to the Property once construction of the Project has begun and for so long as such construction continues.

The Merger

The proposed merger will combine two REITs with substantial holdings, and extensive development and property management expertise. Prentiss Properties Trust owns interests in a diversified portfolio of 137 primarily suburban Class A office and suburban industrial properties containing an aggregate of approximately 20.0 million net rentable square feet. In addition to managing the properties that it owns, Prentiss manages approximately 6.9 million net rentable square feet in office, industrial and other properties for third parties. Brandywine Realty Trust owns 227 office properties, 23 industrial facilities and one mixed-use property containing an aggregate of approximately 19.6 million square feet in rentable space. In addition to managing the properties that it owns, Brandywine manages approximately 3.6 million of net rentable square feet in office, industrial and other properties for third parties.

Because of the financial strength and development expertise of the two REITs, as well as the retention of Prentiss as project developer, staff does not believe that the proposed merger will reduce the standards of developer expertise and financial capability necessary to meet the Agency's expectations for the Project. Staff believes that it is in the best interest of the Agency to consent to the proposed merger since it does not appear to jeopardize the timely redevelopment of the Property. Prentiss' stated commitment to start construction on Center Twenty-One in the spring of 2006 demonstrates their intention to redevelop the Property as quickly as possible. Building permits are ready to be issued.

Suspension of the Agency's Repurchase Rights

The DDA currently gives the Agency the limited right to repurchase the Property for four consecutive years commencing on January 1, 2007 and ending on December 31, 2010. However, the Agency can only exercise this right during the first four years if Prentiss does not complete development by December 31, 2006, 2007, 2008, or 2009, **and** does not pay any of the \$300,000 in liquidated damages due each year if development is not complete. These completion deadlines were extended one year from the original deadline of December 31, 2005 as required by the forced delay provisions of the DDA. In summary these provisions state that performance by either party under the DDA shall not be deemed to be in default where delays or default are due to Force Majeure. The DDA broadly defines Force Majeure to include "the general unavailability of construction or permanent financing for projects similar to the Project".

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In January 2004, OBL, Prentiss' predecessor and the previous owner of the Property, submitted to the Agency formal notification and documentation to support its claim for a Force Majeure extension of the Project completion deadlines under this provision of the DDA. OBL's claim and supporting evidence related to the unavailability of construction or permanent financing necessary to construct the minimum-sized office tower on the Property. Staff reviewed and evaluated OBL's request, and agreed that prevailing rental rates, market absorption rates, vacancy rates and other market factors and real estate lender requirements supported its claim that construction or permanent financing for an office building, which was not substantially preleased, was not generally available in the market. Consequently, staff extended by one year all Project completion deadlines as provided in the DDA. However, Prentiss recently submitted plans for a building permit and intends to proceed with construction soon.

At any rate, the DDA provides that if a construction completion deadline, however extended, is missed, then the repurchase price under the Agency's repurchase rights discussed above for the first four years is \$3,600,000, less any of the unpaid liquidated damages. For example, if development is not completed by December 31, 2009, then the repurchase price would be \$3,600,000, assuming that the developer has paid to the Agency annual liquidated damages payments of \$300,000 over a term of four years. If the developer has not paid the liquidated damages in the amount of \$300,000 per year during this time, the repurchase price of \$3.6 million would be adjusted downward to reflect a subtraction of \$1.2 million in total unpaid liquidated damages. This would yield a repurchase price of \$2.4 million payable by the Agency to Prentiss. If development is not complete by December 31, 2010, but all liquidated damages have been paid, the purchase price is \$3.6 million plus \$2.5 million of the \$2,544,016 of building demolition costs paid by OBL.

Suspension of the Agency's repurchase right after construction has begun and is continuing would not harm the Agency's interests or right to collect any payments for liquidated damages, so long as Project construction is progressing in a timely fashion. However, the Agency's repurchase option is an incentive for Prentiss to pay any liquidated damages that may become due to the Agency. If the repurchase right is eliminated, then another incentive is needed to ensure that liquidated damages due are paid. It is recommended that payment of liquidated damages potentially due in any year as a result of not completing construction per the schedule established in the DDA, be secured to guarantee payment. Accordingly, the Agency should require the developer to pledge payment of the liquidated damages by placing the first payment potentially due in January of 2007 into an escrow account at the time of executing the proposed DDA amendment. The developer should also be required place any possible subsequent payments to the Agency into escrow 6 months prior to the scheduled payment date per the DDA. Should the developer fail to comply with the terms of this arrangement in any given year, then the Agency would automatically be entitled to reinstate its repurchase right.

Generally, the right to repurchase the Property if construction has not started is more important than the right to repurchase if construction has started and is continuing, but will miss one of the DDA's completion deadlines. The Agency would face significant difficulties and unforeseen financial obligations if it repurchased the Property during construction.

First, the Agency would have to deal with Project lender(s) and/or investors either to terminate any existing loan agreement(s) or, if possible, to cure any developer defaults and assume existing Project financing. Moreover, the Agency would have to find a new development team that would be willing to complete the project. This could prove to be quite difficult in light of the fact that Prentiss intends to integrate the new building with their existing office tower at 2101 Webster, a property that is not subject to the Agency's repurchase rights. If the Agency were unable to identify an alternative developer to finish the project, it could be faced with the prospect of having to demolish any improvements on the site and issue another RFP. It is not certain if the Agency would be able to recapture all of its expenses related to a repurchase of the Property in this type of scenario. Lastly, real estate lenders will often request that the Agency suspend its repurchase rights with a fixed price during construction because such rights potentially allow the Agency to reacquire a property for an amount that is less than the lender's construction loan disbursements at the time of foreclosure.

As a result, staff believes that Prentiss' request to amend the DDA to allow for the suspension and extension of the Agency's repurchase rights is reasonable provided that 1) construction of the Project is underway and proceeding to completion within two (2) years of the date any building permit is issued, and 2) construction work on the Project is not abandoned, or substantially ceased, for a period of 60 days.

SUSTAINABLE OPPORTUNITIES

Economic

There are no sustainable economic opportunities that apply to this particular action.

Environmental

There are no sustainable environmental opportunities that apply to this particular action. However, the DDA requires that the developer incorporate as many "environmental sustainability" features into the design and construction of the project as are practical and financially feasible.

Social Equity

There are no social equity opportunities related to the proposed Council action.

DISABILITY AND SENIOR CITIZEN ACCESS

The DDA requires that any development on the Project site comply with all applicable local, state and federal regulations including those pertaining to disabled and senior citizen access.

RECOMMENDATION (S) AND RATIONALE

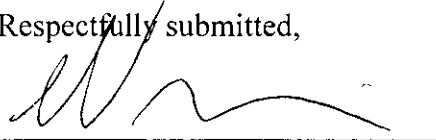
Staff recommends that the Agency adopt the attached resolution authorizing the Agency Administrator 1) to consent to a corporate merger of Prentiss Properties Trust and Brandywine Realty Trust to form a new parent company for Prentiss, and 2) to suspend and extend the Agency's repurchase right under certain conditions during the construction of Center Twenty-One, and add a requirement that any liquidated damages that might be due to the Agency in any given year be placed in escrow at the beginning of the subject year.

The merger will create a stronger parent company for Prentiss, while retaining the development entity and team that is currently in charge of implementing the Project. The Project will be underway starting in the spring of 2006 and is projected to complete construction in the fall of 2007. Prentiss' request for suspension of the Agency's repurchase rights will not damage the Agency's interests, so long as Project construction is progressing within a stipulated period of time and without any substantial delays.

ACTION REQUESTED OF THE REDEVELOPMENT AGENCY

Staff recommends that the Redevelopment Agency approve the attached resolution.

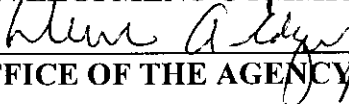
Respectfully submitted,



Dan Vanderprien
Director Redevelopment, Economic
Development and Housing and Community
Development

Prepared by:
Jens Hillmer
Urban Economic Coordinator
CEDA, Redevelopment

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



OFFICE OF THE AGENCY ADMINISTRATOR

OFFICE OF THE CITY CLERK
OAKLAND

Richard Ely

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**REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND**

RESOLUTION No. _____ C.M.S.

A RESOLUTION, PURSUANT TO SECTION 11.2(E) OF THE DISPOSITION AND DEVELOPMENT AGREEMENT (“DDA”) BETWEEN THE OAKLAND REDEVELOPMENT AGENCY AND PRENTISS PROPERTIES WEBSTER, LP (THE CURRENT OWNER OF 2100 FRANKLIN STREET, THE SITE OF THE FORMER BERMUDA BUILDING), APPROVING THE TRANSFER OF THE PROPERTY AND DDA TO AN ENTITY CREATED OUT OF THE MERGER OF PRENTISS PROPERTIES TRUST AND BRANDYWINE REALTY TRUST TO FORM A NEW PARENT FOR PRENTISS PROPERTIES WEBSTER, LP, AND TO AMEND THE DDA TO SUSPEND AND EXTEND THE AGENCY’S REPURCHASE RIGHTS UNDER CERTAIN CONDITIONS DURING CONSTRUCTION ON THE SITE

WHEREAS, the Redevelopment Agency of the City of Oakland (“Agency”) acquired the real property at 2100 Franklin Street, Oakland (“Property”) by eminent domain, the site of the former Bermuda Building which was severely damaged during the 1989 Loma Prieta earthquake; and

WHEREAS, on August 7, 2001, the Agency entered into a disposition and development agreement (“DDA”) with Oakland Bermuda, LLC (“OBL”), which provided for OBL to acquire the Property for \$3.6 million, demolish the structures and eventually construct a new office building; and

WHEREAS, on September 21, 2004, pursuant to Resolution No. 2004-49 C.M.S., the Agency approved transfer of the DDA and the Property from OBL to Prentiss Properties Webster LP (“Prentiss”); and

WHEREAS, Prentiss is planning to construct a new 252,077 square-foot “Class A” office building (“Project”) at the Property, which will connect to Prentiss’ existing 2101 Webster Street office building

WHEREAS, Section 11.2(E) of the DDA permits Prentiss, or its parent company, Prentiss Properties Trust, to combine its business with other corporate entities, subject to the Agency’s consent; and

WHEREAS, Prentiss Properties Trust is in the process of merging its business with Brandywine Realty Trust to form a new parent company for Prentiss; and

WHEREAS, Prentiss Properties Trust and Brandywine Realty Trust are major commercial property owners, developers and operators with nationwide real estate holdings; and

WHEREAS, the combined financial and development capacity of Prentiss Properties Trust and Brandywine Realty Trust meet the standards of developer expertise and financial capability necessary to satisfy the Agency's expectations for the development of the Project; and

WHEREAS, the DDA gives the Agency the limited right to repurchase the Property during four consecutive years commencing on January 1, 2007 and ending on December 31, 2010, if Prentiss does not complete development of the Project by December 31, 2006, 2007, 2008, or 2009, and does not pay an amount of \$300,000 in liquidated damages due each year if development is not complete in those years; and

WHEREAS, Prentiss has requested that the Agency suspend its repurchase right once the development has started construction of the Project, subject to certain conditions; now therefore be it

RESOLVED: That the Agency approves the transfer of the Property and assignment of the DDA to the entity created by the merger of Prentiss Properties Trust and Brandywine Realty Trust to form a new parent company for Prentiss on such terms as the Agency Administrator deems appropriate; and be it further

RESOLVED: That the Agency Administrator is authorized to negotiate an amendment to the DDA that will suspend and extend its repurchase right for the Property provided that 1) construction of the Project is underway and proceeding to completion within two (2) years of the date any building permit is issued, and 2) construction work on the Project is not abandoned, or substantially ceased, for a period of 60 days; but will not suspend any payments due under liquidated damages provisions of the DDA and be it further

RESOLVED: That the Agency Administrator or her designee is authorized to take whatever action is necessary with respect to the Property, the Project and the DDA amendment consistent with this Resolution and its basic purposes; 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, _____, 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