

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2009 JUL -2 AM 10:11

REDEVELOPMENT AGENCY AND THE CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City/Agency Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: July 14, 2009

RE: **Redevelopment Agency And City Resolutions Amending Resolution Nos. 2009-0005 C.M.S. And 81781 C.M.S. Authorizing An Amendment To The Disposition And Development Agreement With Olson 737 – Oakland 1, LLC, For The City Center T-10 Residential Project At 14th Street, 13th Street Pedestrian Walk, Jefferson Street And Martin Luther King, Jr. Way: (A) To Authorize Transfer Of The Project and Property To WP West Development Enterprises, LLC Or An Affiliated Entity, and (B) To Modify The Schedule And Extend The Completion Date**

SUMMARY

Resolutions have been prepared authorizing the Redevelopment Agency to amend the Disposition and Development Agreement (“DDA”) with Olson 737 – Oakland 1, LLC (“Olson”) for the T-10 Residential Project located on the block bounded by 14th Street, 13th Street Pedestrian Walk, Jefferson Street and Martin Luther King, Jr. Way and known as the City Center T-10 Block . The amendment is required because the project has been delayed due to contractor problems and changes in the housing market. Previously, Council authorized a DDA amendment that would have, among other things, authorized transfer of the project and property to another developer, DCA City Walk, L.P., or to another qualified entity approved by staff without returning to the Agency, and would have extended the completion date to December 31, 2010. That prospective developer has withdrawn from the project. Now, Olson seeks authority to transfer the property to WP West Development Enterprises, LLC, or an affiliated entity (“Wood Partners”), a new rental developer. Wood Partners has proposed that the completion date be extended to December 31, 2011. The proposed amendment would authorize the transfer to Wood Partners and extend the completion date. Other development dates will be extended as well.

FISCAL IMPACTS

The project delays have reduced the projected tax increment revenues of the Redevelopment Agency and the amendment will further reduce potential revenues. The amendment will generate real estate transfer tax for the City of up to \$75,000 as soon as the transfer to another developer takes place. However, this amount will be substantially less than the anticipated transfer tax from the sale of the condominium units, previously estimated at \$1,591,000, which the City will no longer receive. When completed, the project will generate approximately

Item: _____
Community and Economic Development Committee
July 14, 2009

\$335,000 per year in general tax increment and \$152,000 per year in Low and Moderate Income Housing Funds for the Agency; and the City will receive its portion of the pass-through payments of tax increment of approximately \$37,000 per year. This is about half of the revenue that was expected from the condominium project. The project will provide housing for approximately 428 new residents who will support businesses in the area and thereby increase sales tax and parking tax revenue for the City.

BACKGROUND

On July 6, 2004, the Agency Board approved a resolution authorizing a DDA for the sale of the project site to Olson for a cash purchase price of \$8.7 million for its development as a condominium project. The Agency and Olson entered into the DDA on August 6, 2004. Olson then purchased the property on September 22, 2004. Olson diligently pursued the project, receiving a grading permit on January 26, 2005, and a shoring permit on March 4, 2005, and began construction of the project immediately.

Project construction was delayed several times due to problems with framing sub-contractors. The initial framers performed substandard work and had labor problems which required them to be replaced. Work had to be removed and reconstructed. A third framing sub-contractor was later hired. Olson eventually put the general contractor in default for various construction defects and other problems on the site. Rather than correct the defects, the contractor vacated the site in July 2007 and eventually went bankrupt. Due to the suspension of construction, among other things, the construction lender, Wells Fargo Bank, N.A. ("Wells Fargo"), placed Olson in default and suspended disbursements under its construction loan on October 17, 2007. Wells Fargo placed several conditions on reinstating its loan, including resumption of construction and extension of the DDA completion deadline.

On December 18, 2007, the Agency Board approved Resolution No. 2007-0087 C.M.S. authorizing an amendment to the DDA that extended the date for project completion, and required as conditions of the extension that Olson (1) enter into a binding labor harmony agreement with the Building and Construction Trades Council of Alameda County, and (2) commit to local hiring in the project. Olson never agreed to this amendment and it was never executed.

Once Agency staff determined that the amendment was not going to be executed, it placed Olson in default under the DDA. The January 18, 2008 default letter listed two issues: (1) failure to diligently prosecute construction; and (2) failure to complete construction by December 31, 2007. Olson cannot cure these defaults without an amendment to the DDA.

On February 3, 2009, the Agency Board approved Resolution No. 2009-0005 C.M.S. authorizing an amendment to the DDA that (1) permitted the project to be a rental project, (2) extended the dates for project development and completion, (3) authorized transfer of the project and property to DCA City Walk, L.P. ("Simpson") or to another qualified entity approved by the Agency Administrator without returning to the Agency, (4) added local construction employment requirements, (5) modified the profit-sharing provision, and (6) rescinded Resolution No. 2007-0087 C.M.S. That amendment has not been executed.

Olson has been marketing the project and property for sale to a rental housing developer. The original purchaser identified by Olson, Simpson, withdrew from negotiations to acquire the project. When Simpson's participation fell through, Olson issued a request for offers and started negotiating with New Urban Communities Partners, LLC. This offer also fell through and Olson started discussions with other developers who had shown interest in the request for offers, and eventually selected Wood Partners. Wood Partners has requested that the DDA be amended to facilitate the sale and transfer of the project.

PROJECT DESCRIPTION

Project Scope

The project, now known as "City Walk", was originally scheduled to provide 252 units of market rate for-sale housing and approximately 3,000 square feet of retail space. The current proposal is to rent the units, with no plans for selling individual units as condominiums. The ground floor residential units will have individual entries to activate the street level. The retail will further activate the street at the corner of 13th and Jefferson Streets. In addition, there will be 252 structured parking spaces accessible from Martin Luther King Jr. Way, and the project will have up to 200 spaces available in the City Center West Garage. The total project cost is approximately \$52 million.

Project Schedule

Under the project schedule set forth in the original DDA, Olson was required to complete project construction by December 31, 2007. Failure to meet project schedule dates constitutes an event of default under the DDA. Olson has requested a new schedule that will bring the project out of default. The revised schedule of completion for the project will include several intermediate dates. The tentative schedule of dates includes: (1) obtain building permits by January 31, 2010; (2) execute a construction contract by March 30, 2010; (3) recommence construction by May 31, 2010; (2) complete the first phase of the project by August 31, 2011; and (4) complete the entire project by December 31, 2011. These dates are all approximately one year longer than the dates proposed last fall when Olson first started discussing the DDA amendment with a revised schedule and transfer to Simpson.

Project Status

Olson spent 2007/2008 negotiating with Liberty Mutual, the surety for the construction performance bond for the project, to work out a settlement for the failure of UPA California, the previous contractor for the project, to perform under the construction contract. Olson worked out a settlement with Liberty Mutual and used the proceeds from the settlement to substantially pay down the construction loan with Wells Fargo. Olson now owes approximately \$70,000 to Wells Fargo.

Olson's defaults under the DDA entitle the Agency to exercise its remedies and take back the site. Under the DDA and the Agency's agreement with Wells Fargo, the Agency must first pay off the loan, and then pay the developer the property's current appraised fair market value (less the amount of loan repayment) in order to take back the property. Olson's deal with the

prospective new developer is for a sales price of approximately \$5 million, which is a good approximation of the current market value of the site and the cost to the Agency, should the Agency choose to exercise its reversionary rights.

Olson's building permit for the project has expired and the developer is working with the Building Department to comply with the new International Building Code ("IBC"). Olson has completed several new Alternate Materials and Methods Requests ("AMMRs") to address certain permit issues, but the developer is also revising drawings and plans to resubmit the project for new permits under the IBC. Olson has also been cleaning the exterior of the building and weatherproofing the structure, including repairing the roof and installing Hippwrap® on the substantially completed portion of the project. This has improved the condition of the site but the vacant, half completed structure, remains a blight on the neighborhood.

Because of the decline in the condominium market and the fact that Olson is a condominium developer, Olson began looking for a rental developer that could complete the project. Olson has tentatively negotiated a sale of the project to Wood Partners, for approximately \$5 million. Olson is now requesting the Agency's consent to transfer the DDA and sell the property to Wood Partners, and has asked for schedule extensions required to facilitate the sale. These extensions are required to insure Wood Partners is given enough time to complete the project without being in default. Wood Partners has agreed to escrow funds for the purchase of the property on or before June 30, 2009, but will not close on the sale until the extension is authorized.

KEY ISSUES AND IMPACTS

Project Transfer

Olson is negotiating a sale of the property and a transfer of the project to WP West Development Enterprises, LLC, or an affiliated entity; WP West Development Enterprises, LLC is the division of Wood Partners LLC that operates west of the Mississippi. Wood Partners LLC is one of the largest multi-family housing developers in the country. Founded in 1998, Wood Partners LLC has grown into a national developer with 15 offices across the country and over 24,000 units developed in over 89 communities. In fact, Wood Partners was ranked as the #1 multi-family rental builder in the US in 2004 with over 6,000 units started; in 2005 it was #3 and in 2008 it was #5. Wood Partners LLC has started construction on between 3,000 and 6,000 residential units each year over the past seven years and has increased from seven to 15 offices in the same period. In the west alone, Wood Partners LLC has developed over 27 projects of a similar scale and type; each project has between 132 and 373 rental units. These projects are mainly three- to five-story garden apartments, although Wood Partners LLC has developed many mid-rise and high-rise condominium projects as well.

Started in Atlanta, Wood Partners LLC is heavily concentrated in the Southeast between Washington D.C. and South Florida but also has offices in Massachusetts, Texas, Utah, Colorado, Arizona, Northern and Southern California. In 2006 Wood Partners LLC pulled back from the condominium market, but in 2007 expanded into the rental market. The San Francisco office is one of three opened in 2008, showing a commitment to operate in Northern California during the current down trend in the housing market. Wood Partners has also quadrupled its liquidity between 2005 (\$10.2 million) and 2008 (\$42.5 million), and had \$108.9 million in

Item: _____

equity as of December 31, 2008. Wood Partners clearly has the experience and net worth required by Council for approval as the developer.

Building Permit Fees

There is approximately \$500,000 in outstanding building permit fees for the project. The majority of these fees are Obstruction Permits for occupying the sidewalk and metered parking spaces on Jefferson Street, 14th Street and Martin Luther King, Jr. Way. Council has been concerned that these fees be paid prior to executing this DDA Amendment. However, Olson is not in a position to pay these fees until the sale of the property. Staff has worked out a *compromise that would allow the fees to be paid and the DDA Amendment to be executed concurrently through escrow when the property is sold to a new developer.* The City will also receive fees for the new Building Permits and any additional Obstruction Permits required by the project.

SUSTAINABLE OPPORTUNITIES

Economic

The proposed project will take an underutilized site and convert it to better economic use. The project will generate approximately \$37,000 per year in additional property tax revenue for the City's General Fund beginning in FY 2009-10 and increase the Redevelopment Agency's general tax increment by \$335,000 per year.

Environmental

Developing this type of "infill" high-density residential project in the urban core reduces suburban sprawl by reducing development pressures on communities at the Bay Area's periphery and preserves open space. Moreover, the project's location next to mass transit will reduce the reliance on automobiles and decrease pollution from cars.

Social Equity

The project will generate approximately \$152,000 per year for the Housing Set-aside, which will fund approximately 1.5 new affordable housing units per year or over 20 units by the end of Central District Redevelopment Area's period to collect tax increment in 2022.

DISABILITY AND SENIOR CITIZEN ACCESS

All housing development projects are required to construct and set aside units to be occupied by persons with disabilities as required by Federal ADA Accessibility Guidelines, the Fair Housing Act and the State of California's Title 24 accessibility regulations. This means that at least 5 percent of the newly constructed units will be available to people with disabilities. Also the use of "green building" materials may reduce any incidence of environmental illness disabilities.

RECOMMENDATION(S) AND RATIONALE

It is recommended that the Agency authorize the amendment to the DDA with Olson extending the project completion date to December 31, 2011, extending other development dates, and

Item: _____

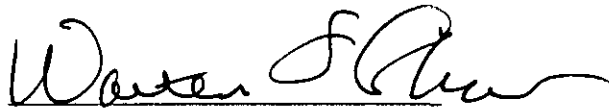
Community and Economic Development Committee
July 14, 2009

allowing the transfer of the property and project to WP West Development Enterprises, LLC or an affiliated entity, or another developer approved by the Agency Administrator. Unless Olson is able to amend the DDA and cure its defaults, it will be difficult to get the project back under construction quickly. Working with Olson and approving the amendment will help get the project completed swiftly and provide good construction jobs at a time when the industry is experiencing a slow down. Once completed the project will improve conditions in the Central District and provide transfer tax and property tax revenue to the City and Redevelopment Agency.

ACTIONS REQUESTED OF THE AGENCY/CITY COUNCIL

It is recommended that the Agency and City Council pass the attached resolutions authorizing the amendment to the DDA for the T-10 Residential Project.

Respectfully submitted

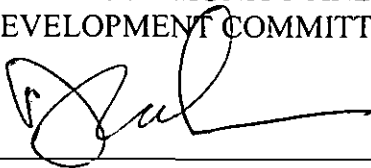


Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed By: Gregory Hunter, Deputy Director
Economic Development and Redevelopment

Prepared by: Patrick Lane
Redevelopment Manager

APPROVED AND FORWARDED
TO THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:

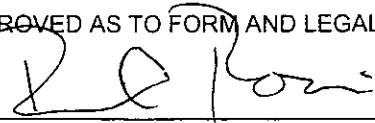


Office of the City/Agency Administrator

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 JUL -2 AM 10:17

APPROVED AS TO FORM AND LEGALITY:



Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

A RESOLUTION AMENDING AGENCY RESOLUTION NO. 2009-0005 AUTHORIZING AN AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH OLSON 737 – OAKLAND 1, LLC, FOR THE CITY CENTER T-10 RESIDENTIAL PROJECT AT 14TH STREET, 13TH STREET PEDESTRIAN WALK, JEFFERSON STREET AND MARTIN LUTHER KING, JR. WAY: (A) TO AUTHORIZE TRANSFER OF THE PROJECT AND PROPERTY TO WP WEST DEVELOPMENT ENTERPRISES, L.L.C., OR AN AFFILIATED ENTITY, AND (B) TO MODIFY THE SCHEDULE AND EXTEND THE COMPLETION DATE

WHEREAS, a Disposition and Development Agreement ("DDA") with Olson 737 – Oakland I, LLC ("Olson") was entered into on August 6, 2004, per Agency Resolution No. 2004-37 C.M.S. adopted on July 6, 2004, which sets forth the terms and conditions of the sale of certain property located on the block bounded by 14th Street, the 13th Street pedestrian walk, Jefferson Street, and Martin Luther King, Jr., Way (the "Property") to Olson, and governs the development of the City Center T-10 Residential Project, 252 residential condominium units, and approximately 3,000 square feet of retail space (the "Project") on the Property; and

WHEREAS, on September 26, 2004, Olson purchased the Property from the Agency in order to develop the Project; and

WHEREAS, the DDA requires that Olson complete the Project by December 31, 2007; and

WHEREAS; construction of the Project has been suspended; and

WHEREAS, Resolution No. 2007-0087 passed on December 18, 2007, authorized an amendment to the DDA that would have extended the Project completion date under certain conditions; and

WHEREAS, Olson declined to enter into that DDA amendment authorized by the 2007 Resolution; and

WHEREAS, Resolution No. 2009-0005 passed on February 3, 2009, authorized an amendment to the DDA that would allow the project to be rental, extend the Project completion date to December 31, 2010, authorize transfer of the Project to DCA City Walk, L.P., or to another qualified entity approved by the Agency Administrator without returning to the Agency, add local construction employment requirements, and modify the profit-sharing provisions; and

WHEREAS, Olson has again requested an extension of the DDA Project development and completion dates; and

WHEREAS, Olson is seeking to transfer the Project to WP West Development Enterprises, LLC, or an affiliated entity ("Wood Partners"), and seeks Agency consent to such transfer pursuant to the DDA; now, therefore, be it

RESOLVED: That the Redevelopment Agency hereby amends Resolution No. 2009-0005 authorizing the Agency Administrator or his or her designee to negotiate and execute an amendment to the DDA with Olson for the City Center T-10 Residential Project (A) to extend the completion of Project deadline from December 31, 2010, to December 31, 2011, and extend other Project development deadlines, and (B) to consent to the transfer of the Project and the Property to WP West Development Enterprises, LLC, or an affiliated entity, or to another qualified developer approved by the Agency Administrator in his or her discretion without returning to the Agency if the Agency Administrator determines that the transferee meets the developer criteria set forth in the staff report accompanying Resolution No. 2009-0005; and be it further

RESOLVED: That the Agency Administrator or his or her designee is hereby authorized to take any necessary and appropriate actions with respect to the amendment of the DDA consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
 CHAIRPERSON BRUNNER

NOES-


ABSENT-

ABSTENTION-

ATTEST: _____
 LATONDA SIMMONS
 Secretary of the Redevelopment Agency
 of the City of Oakland

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2009 JUL -2 AM 10:11

APPROVED AS TO FORM AND LEGALITY:


Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION AMENDING RESOLUTION NO. 81781 APPROVING AN AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND OLSON 737 – OAKLAND 1, LLC, FOR THE CITY CENTER T-10 RESIDENTIAL PROJECT AT 14TH STREET, 13TH STREET PEDESTRIAN WALK, JEFFERSON STREET AND MARTIN LUTHER KING, JR. WAY: (A) TO AUTHORIZE TRANSFER OF THE PROJECT AND PROPERTY TO WP WEST DEVELOPMENT ENTERPRISES, L.L.C. OR AN AFFILIATED ENTITY, AND (B) TO MODIFY THE SCHEDULE AND EXTEND THE COMPLETION DATE

WHEREAS, per Health and Safety Code Section 33433, the City Council approved a Disposition and Development Agreement ("DDA") between the Redevelopment Agency of the City of Oakland (the "Agency") and Olson 737 – Oakland I, LLC ("Olson") for the sale of certain property located on the block bounded by 14th Street, the 13th Street pedestrian walk, Jefferson Street, and Martin Luther King, Jr., Way (the "Property") to Olson, and the development of the City Center T-10 Residential Project, 252 residential condominium units, and approximately 3,000 square feet of retail space (the "Project") on the Property; and

WHEREAS, on September 26, 2004, Olson purchased the Property from the Agency in order to develop the Project; and

WHEREAS, the DDA requires that Olson complete the Project by December 31, 2007; and

WHEREAS, construction of the Project has been suspended; and

WHEREAS, Resolution No. 81781 passed on February 3, 2009, approved an amendment to the DDA that would allow the Project to be rental, extend the Project

completion date to December 31, 2010, authorize transfer of the Project to DCA City Walk, L.P., or to another qualified entity approved by the Agency Administrator without returning to the Agency, add local construction employment requirements, and modify the profit-sharing provisions; and

WHEREAS, Olson has requested an additional extension of the DDA Project development and completion dates; and

WHEREAS, Olson is seeking to transfer the Project to WP West Development Enterprises, LLC or an affiliated entity ("Wood Partners"),; and

WHEREAS, the Agency is considering entering into an amendment to the DDA to provide for these changes; now, therefore, be it

RESOLVED: That the City Council hereby amends Resolution No. 81781 approving an amendment to the DDA with Olson for the City Center T-10 Residential Project (A) to extend the completion of Project deadline from December 31, 2010, to December 31, 2011, and extend other Project development deadlines, and (B) to consent to the transfer of the Project and the Property to Wood Partners or its affiliate, or to another qualified developer approved by the Agency Administrator in his or her discretion.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council,
City of Oakland