

# CITY OF OAKLAND



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September 19, 2006

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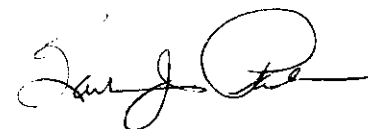
## **CITY COUNCIL/REDEVELOPMENT AGENCY Oakland, California**

**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,

  
for JOHN A. RUSSO  
City Attorney

Attachments

**Arnold P. Schuster**  
415.882.5060  
aschuster@sonnenschein.com

September 6, 2006

**HONORABLE 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:**

A settlement in the above matter has been negotiated, subject to Council and Agency approval. Council and Agency resolutions authorizing settlement are attached. The undersigned recommends settlement and adoption of the attached resolutions.

**A. Background of the Above-Titled Litigation:**

On June 18, 1987, the Redevelopment Agency of the City of Oakland ("Agency") executed an Amended and Fully Restated Disposition and Development Agreement with Pacific Renaissance Associates. II ("PRA II"). Thereafter, on June 22, 1990, the Agency executed a Second Amended and Fully Restated Disposition and Development Agreement ("DDA") with PRA II. Among other things, the DDA set forth the terms under which PRA II would develop the Pacific Renaissance Plaza ("Plaza"), a mixed residential and commercial complex in the 300 block of Ninth Street in downtown Oakland.

To assist PRA II with the construction of the Plaza, the Agency provided PRA II with a \$7 million loan ("Development Loan"). Under the DDA, the Development Loan accrued interest at ten percent per annum. Repayment of the Development Loan was to be made in accordance with applicable provisions of the DDA and the terms of the Development Loan documents. A

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Deed of Trust on the Plaza secured the Development Loan and PRA II's performance of obligations under the DDA and related transactional documents.

In September 1999, Defendants notified the Agency that PRA II intended to sell the Plaza to an affiliate, International Hotelier Management Corp. ("IHMC") ("IHMC Transaction"). Defendants further stated that there would be no "Net Sale Proceeds" from the IHMC Transaction that would permit PRA II to repay any portion of the Development Loan, and that the Agency was required under the DDA to reconvey its Deed of Trust on the Plaza. Based in part upon Defendants' additional representation that PRA II and IHMC did not have "common ownership," the Agency accepted Defendants' representation that the proposed transaction was a *bona fide* sale, and reconveyed its Deed of Trust. The City subsequently learned through this litigation that, as of September 1999, Defendants understood that over 90 percent of the ultimate ownership of Defendants was commonly owned.

Under the DDA, PRA II was required to maintain 50 residential condominiums at the Plaza as affordable housing units for a minimum period of 10 years after their construction. The DDA defined affordable housing units as: "housing units which are priced so as to be affordable for families or individuals with annual incomes not more than 80% of the Oakland [Standard Metropolitan Statistical Area] median income[.]" The Grant Deed, which the Agency and PRA II executed in 1990, specified a rental rate of 30 percent of 50 percent of the median annual income. The DDA also specified that the 50 affordable housing units would remain affordable housing beyond the minimum 10 year period if it was economically feasible to do so ("Term of Affordability"). During the minimum 10 year affordability period, Defendants charged tenants of the affordable housing units rents in excess of 30 percent of 50 percent of the Oakland Standard Metropolitan Statistical Area median income ("Rental Charges").

In February 2002, Defendants informed the Agency that it was not economically feasible to maintain the 50 affordable housing units as affordable housing beyond the minimum 10 year period specified under the DDA. Defendants also stated that they would terminate the tenancies of the units' occupants unless the Agency purchased the units at a price Defendants calculated under applicable DDA provisions. In April 2003, after the Agency declined to purchase the 50 units, IHMC notified tenants living in the 50 units that their tenancies would be terminated effective July 31, 2003. Defendants subsequently terminated almost all of those tenancies and initiated eviction proceedings against some of the tenants ("Evictions").

Following the Evictions, the Hom Plaintiffs brought suit against Defendants in an action styled *Yen Hom et al. v. International Hotelier Management Corp. et al.*, Alameda County Case Number RG 03108416. The Hom Plaintiffs' operative complaint includes claims for: (1) Breach of Contract; (2) Fraud; (3) Breach of Fiduciary Duty; (4) Unlawful, Unfair, and Fraudulent Business Practice; (5) Restitution; (6) Wrongful Eviction; (7) Negligent Infliction of Emotional



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Distress; (8) Intentional Infliction of Emotional Distress; (9) Violation of Fair Housing Laws & Covenants; and (10) Enjoin Violation of Restrictive Covenant.

The City and Agency brought a separate action against Defendants, styled *The City of Oakland et al., v. Pacific Renaissance Associates II, et al.*, Alameda County Case Number RG 03111924. The City/Agency's operative complaint includes claims for: (1) Specific Enforcement Of Contract; (2) Restitution; (3) Breach Of Contract; (4) Quiet Title; (5) Fraud; (6) Breach Of Contract; (7) Breach Of Implied Covenant Of Good Faith And Fair Dealing; (8) Unfair And Fraudulent Business Practices; (9) Cancellation Of Instrument; (10) False Claims Act; (11) Fraudulent Transfer; And (12) Conspiracy To Commit Fraudulent Transfer. Among other things, these claims allege that: (1) the IHMC Transaction was in substance a refinance, rather than a *bona fide* sale, and that the Agency is entitled to reinstatement of its Deed of Trust; (2) the Rent Charges improperly exceeded the rental formula included in the Grant Deed; and (3) that the Term of Affordability extended beyond the minimum 10 year period. The City alleged that the Term of Affordability extended beyond 10 years after obtaining, through this litigation, information indicating that the affordable housing units were operating with a positive cash flow. Defendants' representations prior to April 2003 led the City/Agency to believe that the units were operating at a loss.

**B. Recommended Settlement Terms for the Above-Titled Litigation:**

Pursuant to Section 401 of the Charter, the undersigned, a law firm retained to represent the City and the Agency in the above-titled litigation, recommends settlement of the above-titled litigation on the following terms:

- The Agency and IHMC will negotiate documents so that the Agency, or its assignee, will have a six-month option to purchase all of IHMC's and certain related parties' interests in the Pacific Renaissance Plaza for \$40,000,000. Those interests include the retail commercial parcel with approximately 90 parking spaces in the Plaza; 50 residential condominium units, and approximately 50 parking spaced in the Plaza; and related interests. The purchase price is believed to be significantly below the fair market value of such interests to be purchased by the Agency; the difference between such fair market value and the purchase price represents the amount of recovery of the Agency resulting from this settlement. The Agency can assign all or part of its right to purchase to a third party. The Agency, at its sole discretion, may elect not to exercise its option.
- The Agency will issue a Certificate of Compliance for the Marriott Courtyard Hotel.

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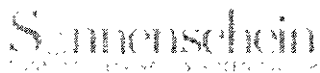
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- Upon closing, there will be an executed settlement agreement and dismissal with prejudice of the complaint and cross-complaint in the above-titled litigation and in the related case of *Yet Hom et al., v. International Hotelier Management Corp. et al.*, Alameda County Case Number RG 03108416 ("Hom Litigation"). The plaintiffs in the Hom Litigation have separately settled with Defendants.
- The Agency, City, and Defendants will each bear their own attorneys' fees and costs.
- In addition, the plaintiffs in the Hom Litigation and the Agency or the City are to enter into a separate agreement regarding various issues related to the process and other aspects of determining the number of affordable housing units that will be preserved as affordable following purchase of these units by the Agency. In return for this "side" agreement, the plaintiffs in the Hom Litigation will release their liens on the property.
- In the event that the Agency does not exercise its option or, if the Agency exercises the option and the Defendants default, then the City/Agency has the right to enforce performance of the settlement agreement and/or to restore the matter to the active trial calendar.

The attached Agency resolution authorizes the Agency Administrator to negotiate and execute all agreements necessary to effectuate the above settlement, including (1) a settlement and release agreement, (2) a purchase option and sales agreement providing for the Agency option to purchase certain portions of the Plaza, (3) a listing agreement with a broker to perform services related to marketing the property for resale, (4) the side agreement with the plaintiffs in the Hom Litigation, and (5) 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.

**C. Listing Agreement Negotiated with Real Estate Brokers:**

A listing agreement has been negotiated with Commonwealth Companies and Claremont Realty (together, "Broker") with respect to the sale of the non-residential portion of the Plaza ("Listing Agreement"), subject to approval of the City Council acting as the Agency board. The



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attached Agency resolution authorizes the Agency Administrator to enter into the Listing Agreement with the Broker.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL LLP

A handwritten signature in dark ink, appearing to read "Arnold P. Schuster".

Arnold P. Schuster

APS:sl

Enclosures



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**DRAFT**

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
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

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

**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:

- The Redevelopment Agency, or its assignee, to have a six-month option to purchase all of International Hotelier Management Corp.'s ("IHMC's") and certain related parties' interests in Pacific Renaissance Plaza for \$40,000,000. The Agency to have the right to assign all or part of its right to purchase to a third party. The Agency, at its sole discretion, may elect not to exercise its option.
- The Agency to issue a Certificate of Compliance for the Marriott Courtyard Hotel.
- Upon closing, there will be an executed settlement agreement and 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").

- The Agency, the City, and defendants to each bear their own attorneys' fees and costs.
- The plaintiffs in the Hom Litigation and the Agency or the City to enter into a separate agreement regarding various issues related to the process and other aspects of determining the number of affordable housing units that will be preserved as affordable following purchase of these units by the Agency. In return for this "side" agreement, the plaintiffs in the Hom Litigation to release their lis pendens on the property.
- In the event that the Agency does not exercise its option or, if the Agency exercises the option and the defendants default, the City/Agency to have the right to enforce performance of the settlement agreement and/or to restore the matter to the active trial calendar.

and be it further

**RESOLVED:** That the 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, \_\_\_\_\_, 2006

**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



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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, AND AUTHORIZING THE NEGOTIATION AND EXECUTION OF DOCUMENTS TO EFFECTUATE THE SETTLEMENT, INCLUDING AN OPTION TO PURCHASE PORTIONS OF PACIFIC RENAISSANCE PLAZA ON 9<sup>TH</sup> STREET BETWEEN FRANKLIN AND WEBSTER FOR \$40 MILLION**

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

**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:

- The Agency, or its assignee, to have a six-month option to purchase all of International Hotelier Management Corp.'s ("IHMC's") and certain related parties' interests in Pacific Renaissance Plaza for \$40,000,000. The Agency to have the right to assign all or part of its right to purchase to a third party. The Agency, at its sole discretion, may elect not to exercise its option.

- The Agency to issue a Certificate of Compliance for the Marriott Courtyard Hotel.
- Upon closing, there will be an executed settlement agreement and 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").
- The Agency, City, and defendants to each bear their own attorneys' fees and costs.
- The plaintiffs in the Hom Litigation and the Agency or the City to enter into a separate agreement regarding various issues related to the process and other aspects of determining the number of affordable housing units that will be preserved as affordable following purchase of these units by the Agency. In return for this "side" agreement, the plaintiffs in the Hom Litigation to release their lis pendens on the property.
- In the event that the Agency does not exercise its option or, if the Agency exercises the option and the defendants default, the City/Agency to have the right to enforce performance of the settlement agreement and/or to restore the matter to the active trial calendar.

and be it further

**RESOLVED:** That the Agency hereby authorizes the Agency Administrator to negotiate and execute all agreements necessary to effectuate the settlement, including (1) a settlement and release agreement, (2) a purchase option and sales agreement providing for an option on the part of the Agency to purchase certain portions of Pacific Renaissance Plaza, (3) a listing agreement with a broker to perform services related to marketing the property for resale, (4) a side agreement with the tenant plaintiffs in the litigation concerning the use of the property, and (5) 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

