

CITY OF OAKLAND/REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND

2007 NOV 29 PM 7:52

CITY/AGENCY AGENDA REPORT

TO: Office of the City Administrator/Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: December 11, 2007

RE: **A Redevelopment Agency Resolution 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, To Extend The Date For Project Completion**

SUMMARY

A Resolution has 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 the completion date needs to be extended from December 31, 2007 to June 30, 2009. The amendment will also place conditions on Olson that need to be met before the extension is effective, and will add several intermediate deadlines on project completion. Staff has prepared a draft DDA Amendment, which is still under negotiation with Olson, and is attached to this report. See Attachment A - Draft T-10 Residential Project First Amendment to the Disposition and Development Agreement.

FISCAL IMPACTS

The project delays have reduced the tax increment revenue of the Redevelopment Agency and delayed transfer tax to the City. The DDA Amendment will allow the project to move forward, the Redevelopment Agency’s tax increment to rise and the City will receive transfer tax revenue from the sale of the condominiums.

BACKGROUND

On July 6, 2004 the Agency Board approved a resolution authorizing the sale of real property located at 14th Street, 13th Street pedestrian walk, Jefferson Street and Martin Luther King, Jr. Way to Olson for \$8.7 million, plus possible Agency profit-sharing, for the City Center T-10 Residential Project, authorizing a DDA for the project, and authorizing a short-term Redevelopment Agency seller-financing loan of \$1.7 million. The Agency and Olson entered

into the DDA on August 6, 2004. Olson then purchased the property on September 22, 2004, and repaid the Agency loan in full with market-rate interest by December 31, 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 DESCRIPTION

Project Scope

The project, now known as "City Walk", will provide 252 units of market rate for-sale housing and approximately 3,000 square feet of retail space. The ground floor 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 in excess of \$80 million.

Project Schedule

Under the project schedule set forth in the DDA, Olson is required to complete project construction by December 31, 2007. Failure to meet project schedule dates constitutes an event of default under the DDA and entitles the Agency to exercise its remedies.

The revised schedule of completion for the Project will include several intermediate dates. The tentative schedule of dates includes: (1) recommencing construction by January 31, 2008; (2) issuance of a Temporary Certificate of Occupancy for the first phase by November 30, 2008; (3) issuance of a Temporary Certificate of Occupancy on all units by March 31, 2009; and (4) completion of the entire project by June 30, 2009.

KEY ISSUES AND IMPACTS

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 rebuilt again. A third framing sub-contractor was later hired. Olson eventually wrote the general contractor a default letter regarding various construction defects and other problems on the site. Rather than correct the defects, the contractor vacated the site. Olson has since been in negotiations with the bond surety for the contractor, the construction lender, Wells Fargo Bank, N.A. ("Wells"), Turner Construction and sub-contractors to get the project back under construction. At the time of writing this report, Olson was preparing to resume construction. Staff will give a verbal update of the status of the project at the CED Committee. Turner Construction will be retained as a consultant, but Olson will act as the general contractor and hire sub-contractors directly.

Due to the suspension of construction, among other things, Wells placed Olson in default and suspended disbursements under its construction loan on October 17, 2007. Wells has placed

several conditions on reinstating its loan, including resumption of construction and extension of the DDA completion deadline.

CEDA staff have drafted a proposed amendment to the DDA that would extend the DDA project completion date by 18 months to June 30, 2009; however, the extension would be effective only if certain preconditions are met. The Agency's conditions include: (1) submitting evidence that Olson has met Wells' conditions and is no longer in default under the Wells loan; (2) submitting evidence that Wells will extend its loan maturity date and the Project completion date to a date no earlier than the new DDA completion date, and that Wells is consenting to the DDA amendment; (3) submitting a new construction contract and the proposed construction management agreement with Turner Construction to the Agency for the Agency's prior review and approval, and entering into these new agreements; and (4) resuming construction of 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 \$75,000 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 \$530,000 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 \$275,000 per year for the Housing Set-aside, which will fund approximately 3 new affordable housing units per year or over 40 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.

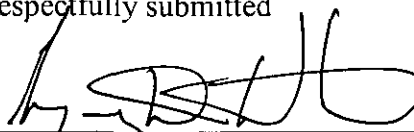
RECOMMENDATION(S) AND RATIONALE

It is recommended that the Agency amend the DDA with Olson extending the project completion date by 18 months if certain conditions are met. Unless Olson is able to amend the DDA and cure its defaults under the construction loan, 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

It is recommended that the Agency authorized the amendment to the Disposition and Development Agreement ("DDA") with Olson 737 – Oakland 1, LLC ("Olson") for the T-10 Residential Project.

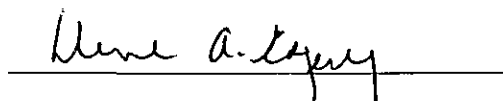
Respectfully submitted



Gregory Hunter, Deputy Director
Community and Economic Development Agency
Economic Development and Redevelopment

Prepared by:
Patrick Lane
Redevelopment Manager

APPROVED AND FORWARDED
TO THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE


OFFICE OF THE CITY ADMINISTRATOR/
AGENCY ADMINISTRATOR

ATTACHMENT A
Draft
T-10 Residential Project
First Amendment to the Disposition and Development Agreement

[DRAFT 11/29/2007]

NO FEE DOCUMENT

Gov't. Code 27383

RECORDING REQUESTED BY:

The Redevelopment Agency of the City of Oakland

WHEN RECORDED, MAIL TO:

The City of Oakland
Community and Economic Development Agency
250 Frank Ogawa Plaza, 5th Floor
Oakland, California 94612
Att'n.: Patrick Lane, Project Manager

T-10 RESIDENTIAL PROJECT

**FIRST AMENDMENT TO DISPOSITION
AND DEVELOPMENT AGREEMENT**

This First Amendment to Disposition and Development Agreement (the "Amendment") is entered into as of this _____ day of November, 2007, by and between the Redevelopment Agency of the City of Oakland (the "Agency"), a community redevelopment agency organized and existing under the California Community Redevelopment Law, and Olson 737-Oakland 1, LLC (the "Developer"), a California limited liability company.

RECITALS

A. In connection with the development of real property located within the Central District Redevelopment Project Area in the City of Oakland, the Agency and Olson Urban Housing, LLC, a Delaware limited liability company ("Olson"), entered into that certain Disposition and Development Agreement ("DDA") dated August 6, 2004, which was recorded in the Official Records of County of Alameda, State of California ("Official Records") on September 22, 2004 as document no. 2004429412. By that certain Assignment and Assumption Agreement dated September 17, 2004, Olson assigned to the Developer, and the Developer assumed from Olson, all of Olson's rights and obligations under the DDA. The DDA among other things provides for the completion of the Project described in the DDA by a certain date.

B. The Agency, the Developer, and Wells Fargo Bank N.A. (the "Lender"), a national banking association, entered into that certain Collateral Assignment and Subordination Agreement as of September 17, 2004, which was recorded in the Official

Records of County of Alameda, State of California ("Official Records") on September 22, 2004 as document no. 2004429420. That agreement, among other things, required the consent of the Lender prior to the any amendment to the DDA.

C. The Lender issued a default letter to the Developer dated October 17, 2007, for the Project.

D. The Agency and the Developer wish to amend the DDA to extend the completion date for the Project, conditioned on the Developer curing the defaults with the Lender and satisfying other conditions. Lender is consenting to this amendment.

NOW, THEREFORE, the Agency, and the Developer agree as follows:

1. Upon satisfaction of the conditions set forth in Section 3 of this Amendment below, Section 5.6 of the DDA shall be amended to read as follows:

5.6 Completion of Project. The Developer shall diligently prosecute construction of the Project; shall complete at least 85 units, as evidenced by issuance of a Temporary Certificate of Occupancy for those units by the appropriate officer of the City of Oakland no later than _____, 200___; shall complete the remaining Project units, as evidenced by issuance of a Temporary Certificate of Occupancy by the appropriate officer of the City of Oakland for those units, no later than _____, 200___; and shall complete the entire Project no later than June 30, 2009.

2. Upon satisfaction of the conditions set forth in Section 3 of this Amendment below, the date for the Completion of Project in the Schedule of Performance attached to the DDA as Exhibit G shall be modified to read "Not later than **June 30, 2009**".

3. The effectiveness of this Amendment is subject to the following conditions precedent, all of which must be satisfied by the Developer to the Agency's reasonable satisfaction:

- 3.1. The Developer must submit evidence to the Agency demonstrating (1) that the Developer has completed the tasks and satisfied the conditions set forth in that October 17, 2007, default letter from the Lender, and (2) that the Developer is no longer in default under Lender's loan;
- 3.2. The Developer must submit a new construction contract to the Agency for the Agency's prior review and approval;
- 3.3. The Developer must submit the proposed construction management agreement with Turner Construction to the Agency for the Agency's prior review and approval;
- 3.4. The Developer must enter into the new construction contract and construction management agreement;
- 3.5. The Developer must resume construction of the Project;

- 3.6. The Developer must submit evidence to the Agency that the Lender has or is prepared to extend the loan maturity date and the Project completion date in Lender's loan documents to a date no earlier than the new completion date set forth in this Amendment; and
- 3.7. Lender must consent to this Amendment in writing.

If all of these conditions precedent are not satisfied by January 31, 2008, this Amendment automatically shall be void and of no force or effect.

4. All other provisions of the DDA not modified or amended by this Amendment shall remain in full force and effect.

[SIGNATURE BLOCKS ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned parties have executed this First Amendment to Disposition and Development Agreement as of the date first above written.

“AGENCY”

THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND,
a community redevelopment agency organized and existing under the California
Community Redevelopment Law

By: _____
Agency Administrator

Approved as to form and legality:

By: _____
Agency Counsel

“DEVELOPER”

OLSON 737 – OAKLAND 1, LLC,
a California limited liability company

By: Olson Urban Housing, LLC,
a California limited liability company
Its: Sole Member

By: The Olson Company,
a California corporation,
Its: Managing Member

By: _____

Its: _____

By: _____

Its: _____

Consent

Wells Fargo Bank, N.A. (the "Lender"), a national banking association, is beneficiary and holder of a deed of trust in the principal amount of \$58,335,000 recorded as Instrument No. 2004429417 on September 22, 2004, in the Official Records of the County of Alameda, State of California. The Agency, the Developer, and the Lender entered into that certain Collateral Assignment and Subordination Agreement as of September 17, 2004, which was recorded in the Official Records of County of Alameda, State of California ("Official Records") on September 22, 2004 as document no. 2004429420. The Agency and the Developer are entering into the foregoing First Amendment to Disposition and Development Agreement, which extends the completion date for the Project. Lender hereby consents to the terms and provisions of the foregoing First Amendment to Disposition and Development Agreement.

"LENDER"

WELLS FARGO BANK, N.A.,
a national banking association

By: _____
Its: _____

By: _____
Its: _____

Dated: _____, 2007

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2007 NOV 29 PM 7:52

APPROVED AS TO FORM AND LEGALITY:



Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

A RESOLUTION 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, TO EXTEND THE DATE FOR PROJECT COMPLETION

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 delayed due to problems with the contractor and sub-contractors and has been suspended since the contractor vacated the site and will not be completed on time; and

WHEREAS, Olson has requested an 18-month extension of the DDA Project completion date; and

WHEREAS, the Agency is willing to grant such an extension if certain conditions are met; now, therefore, be it

RESOLVED: That the Redevelopment Agency hereby authorizes an amendment of the DDA with Olson for the City Center T-10 Residential Project to extend the completion of Project deadline from December 31, 2007, to June 30, 2009, if certain conditions imposed on Olson are met; and be it further

RESOLVED: That the Agency Administrator or his or her designee is hereby authorized to negotiate and execute an amendment to the DDA extending the completion date and imposing conditions on Olson in connection with such extension; and be it further

RESOLVED: That all documents related to this transaction shall be reviewed and approved by Agency Counsel prior to execution, and copies will be placed on file with the Agency Secretary; 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, _____, 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