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OAKLAND

2013 APR 11 AM 9:05

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: Sears LDDA Amendments

DATE: April 23, 2013

City Administrator
Approval

Deanna J. Santana

Date

4/23/13

COUNCIL DISTRICT: 3

RECOMMENDATION

Staff recommends that the City Council adopt:

An Ordinance Authorizing: 1) An Amendment to a Lease Disposition and Development Agreement with Sears Development Company to Extend Development Deadlines for an Automotive Service Project located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way; and 2) an Assignment of the Lease Disposition and Development Agreement to the Strategic Urban Development Alliance, LLC, or an affiliated entity

EXECUTIVE SUMMARY

Staff is recommending that the City Council adopt legislation authorizing (1) an amendment to a Lease Disposition and Development Agreement (LDDA) with Sears Development Company (Sears) to extend development deadlines for the completion of an automotive service project (the "Project") located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way (the "Property") by up to 72 months, changing it from the currently stipulated date of October 2010 to October 2016, for a payment by Sears of \$100,000, and 2) an assignment of the development rights in the LDDA to a new qualified developer, the Strategic Urban Development Alliance, LLC (SUDA), or an affiliated entity to be created for the development of the Project.

Sears has not met the Project completion deadline stipulated in the LDDA, which was executed in October of 2005, and has requested that the deadline be extended. Furthermore, Sears desires to transfer the LDDA to SUDA, an Oakland-based developer, to assume responsibility for the development of the automotive repair facility. If the development deadlines are not extended and Sears does not complete the automotive repair facility by the originally required date of October 2010, the LDDA specifies that the Oakland Redevelopment Successor Agency (ORSA)

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CED Committee
April 23, 2013

must pay Sears \$1.6 million if Sears, or a successor in interest, whether or not Sears is in default.¹

OUTCOME

Extending development deadlines for completion of the Project and assigning the LDDA to SUDA will avoid a default by Sears for not completing the automotive repair facility by the originally required date of October 2010. The LDDA specifies that the Oakland Redevelopment Successor Agency (ORSA) must pay Sears \$1.6 million if Sears, or a successor in interest, does not develop the Property, whether or not Sears is in default.

The proposed amendment will substantially reduce the possibility that ORSA will have to make this payment to Sears, or, if approved as successor in interest, to SUDA. Furthermore, the proposed amendment and transfer of development rights to SUDA will bring in a qualified company for the development of the Project and provide additional time for SUDA to complete all predevelopment activities and start construction.

BACKGROUND/LEGISLATIVE HISTORY

On October 18, 2005, the Redevelopment Agency (Agency), pursuant to Resolution No. 2005-38 C.M.S., dated June 21, 2005, acquired a property located at 1911 Telegraph Avenue from Sears as part of the site assembly for the development of the Uptown Project. The property was partially occupied by a Sears Auto Center and ancillary parking. At the time, Sears considered the Auto Center to be an integral component of its retail operations in downtown Oakland and requested that the Agency, as part of the transaction, deliver a site next to the department store for the relocation of the automotive services facility at 1911 Telegraph Avenue. Accordingly, the Agency acquired the Property, which is located across from the Sears department store, for the development of a new Auto Center.

On October 18, 2005, the Agency, pursuant to Resolution No. 2005-38 C.M.S., entered into a LDDA with Sears for the development of a new automotive service facility on the Property. Sears was to complete the Project within 60 months of execution of the LDDA, or on October of 2010. Sears did not meet this deadline and the Property was not transferred to them. The LDDA provides that if Sears does not develop the Project, the agreement can be terminated and Sears would be entitled to a payment of \$1.6 million. This payment, which is listed on the Recognized Obligation Payment Schedule (ROPS), is an obligation of the ORSA.

¹ The former Redevelopment Agency acquired other property at 1911 Telegraph from Sears for the Uptown Project. Rather than pay Sears for the 1911 Telegraph property at that time, the parties agreed that Sears, at its option, would receive either: (1) the Property; or (2) a payment by the Successor Agency of \$1.6 Million (representing the proportional value of the 1911 Telegraph property).

The Property was transferred to the City in January of 2012. The Property is currently used as a surface public parking lot. The Agency had entered into a month-to-month parking management agreement with Star Park Corporation, a private parking operator who is now paying to the City a monthly fee of \$3,500 for use of the Property. Sears has a parking license for up to 50 cars on the Property, which would be transferred to the Telegraph Parking Plaza garage at 2101 Telegraph Avenue once construction on the Project has started.

ANALYSIS

The LDDA Amendment

Staff has evaluated Sears' reasons for delaying the Project and considers its request to extend the date of Project completion by up to 72 months, changing it from October 2010 to October 2016, reasonable at this time.

Since execution of the LDDA, Sears diligently analyzed the feasibility of developing a stand-alone auto center or a larger mixed-use project combining a ground-floor automotive service use with residential, retail and/or parking uses at the Property. Sears has cited the national recession and its adverse effect on commercial real estate development in the Bay Area, as well as the financial infeasibility of various project scenarios that they have analyzed thus far, as reasons for delaying the Project. However, economic conditions in the East Bay are gradually improving, and certain sectors of the commercial real estate market, especially housing and retail, are gaining momentum. It is therefore timely for Sears to request an extension of the LDDA development deadlines for the completion of the Project.

Assignment of the LDDA to SUDA

Aside from requesting an extension to the development deadlines, Sears has also asked that the LDDA be transferred to SUDA, a local developer. Sears would like to sell his development rights to SUDA because it believes that SUDA will be able to develop the Property more expeditiously since they are a local company with more experience in the East Bay market. A transfer of the LDDA to SUDA would give them the right to take title to the Property upon meeting certain predevelopment requirements and to develop the Project. If SUDA is unable to comply with the terms of the extended LDDA, then ORSA would have to pay \$1.6 million to SUDA.

SUDA was formed in 2001 as a fully integrated general engineering, construction, real estate, and finance firm. SUDA principals bring a diversity of experience and expertise to the firm. As a developer, SUDA is involved in land acquisition, construction and sale of residential, industrial, and commercial projects throughout the United States. Based on a review of unaudited financial statements, SUDA has the capacity to develop an automotive service facility on the Property. In addition, SUDA has access to financing through the EB5 Immigrant Investor Visa Program. SUDA's most recent projects in Oakland include:

Thomas L. Berkeley Square (TLBS) located at 2000 San Pablo Avenue

The TLBS project is a 242,000 square foot mixed-use development spreading over 1.56 acres of land in downtown Oakland. Phase I of TLBS, the new home of the Alameda County Social Services Agency and the North County Center for Self-Sufficiency Corporation was completed in 2006. The 4-story, 110,000 square-foot multi-use office building, including a parking garage, was financed by a \$52.2 million bond measure. SUDA broke ground on TLBS-Phase II in January, 2006. The project involved the design and construction of 89 market-rate residential condominium units and parking facilities for an additional 123 vehicles. The project also included 4,000 square feet of retail space. TLBS was developed at a cost of \$100 Million.

La Escuelita Education Center

La Escuelita Education Center is located at Second Avenue and Tenth Street. The facility will host La Escuelita Elementary, MetWest High School, and Yuk Yau and Centre Infantil CDCs, while providing the Eastlake community with a state-of-the-art, multi-use structure. Project completion is expected by mid-2013. SUDA, in joint venture with Turner Construction, serves as the construction manager for the La Escuelita Education Complex Project.

Agency's Rights and Remedies

The LDDA requires ORSA to pay Sears \$1.6 million if Sears, or a successor in interest, does not develop the Property, whether or not Sears is in default. As noted above, the Agency acquired other property at 1911 Telegraph from Sears for the Uptown Project. Rather than pay Sears for the 1911 Telegraph property at that time, the parties agreed that Sears, at its option, would receive either: (1) the Property; or (2) a payment by ORSA of \$1.6 million (representing the proportional value of the 1911 Telegraph property).

Since Sears has not completed construction of a Project by the current LDDA deadline, the City could declare Sears in default, and ORSA would have to pay Sears \$1.6 million pursuant to the terms of the LDDA. Extending development deadlines for completion of the Project and assigning the LDDA to SUDA will avoid a default by Sears, and thus substantially reduce the possibility that ORSA will have to pay \$1.6 million to Sears, or, if approved as successor in interest, to SUDA.

PUBLIC OUTREACH/INTEREST

There is no public outreach required for adoption of the proposed legislation.

COORDINATION

The following City departments were consulted during the preparation of this report:

- Office of the City Attorney
- City Budget Office

COST SUMMARY/IMPLICATIONS

The LDDA Extension Fee

Sears will have to pay to the City a fee in the amount of \$100,000 for the proposed amendment to extend development deadlines. These funds will be deposited into the General Purpose Fund (1010) to support the existing revenue budget.

Loss of Tax Receipts

Sears' request for the extension will delay the City's receipt of property, sales, utility and business taxes generated by the Project. The net loss of property taxes to the City is approximately \$11,400 per year as a result of not having a stand-alone Sears Auto Center on the site as of October of 2010.

Parking Lease Revenue

The City is receiving \$42,000 per year from leasing the Property to Star Park. These revenues are used to support property maintenance and other activities related to properties formerly owned by the Redevelopment Agency. Once the Property is transferred to SUDA, these revenues will no longer be available to the City.

Payment to Sears

As stated above, the LDDA requires ORSA to pay Sears \$1.6 million if Sears, or a successor in interest, does not develop the Property, whether or not Sears is in default. Since Sears has not completed construction of a Project by the current LDDA deadline, the City could declare Sears in default, and ORSA would have to pay Sears \$1.6 million pursuant to the terms of the LDDA. Extending development deadlines for completion of the Project and assigning the LDDA to SUDA will avoid a default by Sears, and thus substantially reduce the possibility that ORSA will have to pay \$1.6 million to Sears, or, if approved as successor in interest, to SUDA. The potential obligation of \$1.6 million is currently listed on the Recognized Obligation Payment Schedule (ROPS).

FISCAL/POLICY ALIGNMENT

The proposed Project supports the following goal as identified in the current Central District Project Area Redevelopment Plan:

- Revitalization and strengthening of the Oakland Central District's historical role as the major regional retail center for the Metropolitan Oakland Area.

The completed project will generate property, sales, utility and business taxes for the City and other taxing entities.

SUSTAINABLE OPPORTUNITIES

Economic:

Eventual development of the Project will bring an underutilized site in the heart of the Uptown district back to economically viable use.

Environmental:

SUDA would endeavor to include as many "green building" features into the new auto center as possible.

Social Equity:

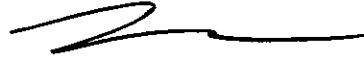
A number of the potential construction and permanent jobs to be created by the development of the Project may be available to low and moderate income individuals, including area residents.

CEQA


The City of Oakland, for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"), prepared a focused Environmental Impact Report for the Uptown project, which included environmental review of the Project, analyzing the significant environmental effects and mitigation measures in accordance with the California Environmental Quality Act, Public Resources Code § 21000, et seq. On February 18, 2004, the City Council, in accordance with CEQA Guidelines § 15090, certified that a Final Environmental Impact Report ("EIR") on the Project has been completed in compliance with CEQA, and the Guidelines for Implementation of the California Environmental Quality Act. At this time, there are no changes to the Project, new information, or changes in circumstances that would result in new significant environmental impacts or substantially more severe impacts from those previously identified in the EIR and later addenda. Therefore, no further environmental evaluation is required, and no Supplemental/ Subsequent EIR is needed pursuant to State CEQA Guidelines Section 15162. Moreover, the Mitigation Monitoring and Reporting Program approved in 2005 is still applicable to the development of the Project.

For questions regarding this report, please contact Jens Hillmer, Urban Economic Coordinator at 238-3317.

Respectfully submitted,



Fred BLACKWELL
Assistant City Administrator

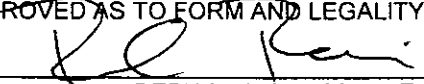
Reviewed by: 
Gregory Hunter
Office of Neighborhood Investment

Prepared by:
Jens Hillmer
Urban Economic Coordinator
Office of Neighborhood Investment

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OAKLAND

2013 APR 11 AM 9:05

APPROVED AS TO FORM AND LEGALITY:

BY: 
DEPUTY CITY ATTORNEY

DEPUTY CITY ATTORNEY

FOR DIANNE

WELLS

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE AUTHORIZING: 1) AN AMENDMENT TO A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT WITH SEARS DEVELOPMENT COMPANY TO EXTEND DEVELOPMENT DEADLINES FOR AN AUTOMOTIVE SERVICE PROJECT LOCATED AT 2000-2016 TELEGRAPH AVENUE AND 490 THOMAS L. BERKELEY WAY; AND 2) AN ASSIGNMENT OF THE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT TO THE STRATEGIC URBAN DEVELOPMENT ALLIANCE, LLC, OR AN AFFILIATED ENTITY

WHEREAS, on October 18, 2005, the dissolved Redevelopment Agency (Agency), pursuant to Resolution No. 2005-38 C.M.S., entered into a Lease Disposition and Development Agreement (LDDA) with Sears Development Company (Sears) for the development of a new automotive service facility (the "Project") on property located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way (the "Property"); and

WHEREAS, the Agency acquired other property at 1911 Telegraph from Sears for the Uptown Project, and instead of paying Sears, the parties agreed that Sears, at its option, would receive either: (1) the Property; or (2) a payment by the Agency of \$1.6 Million (representing the proportional value of the 1911 Telegraph property); and

WHEREAS, the Agency dissolved on February 1, 2012; and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Agency pursuant to Health and Safety Code Sections 34171(j) and 34173; and

WHEREAS, ORSA has listed the LDDA as an enforceable obligation on its Recognized Obligation Payment Schedule and must pay Sears \$1.6 million if Sears, or a successor in interest, does not develop the Property, whether or not Sears is in default; and

WHEREAS, the City of Oakland (City) acquired the Property from the Agency in January of 2012; and

WHEREAS, Sears made good faith efforts to complete the Project by October 2010, as specified in the LDDA, but has been unable to do so because the continuation of adverse economic conditions in downtown Oakland's real estate markets has made development of the Project financially infeasible; and

WHEREAS, Sears has requested 1) to extend the LDDA deadlines for Project pre-development activities and completion by seventy-two (72) months, or from October 2010 to October 2016, for a payment of \$100,000 to the City, and 2) to transfer the LDDA to the Strategic Urban Development Alliance (SUDA), or an affiliated entity of SUDA; and

WHEREAS, SUDA is a qualified local development company that has the financial capacity to develop the Project; and

WHEREAS, the City, in light of the adverse economic conditions in the Central District Redevelopment Project Area that have hindered Sears' efforts to complete the Project, has agreed to extend Sears' development deadlines as set forth in the LDDA, and to transfer the LDDA to SUDA, or an affiliated entity; and

WHEREAS, the City of Oakland, as the Lead Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"), prepared a focused Environmental Impact Report for the Uptown project, which included environmental review of the Project, analyzing the significant environmental effects and mitigation measures in accordance with the California Environmental Quality Act, Public Resources Code § 21000, et seq.; and

WHEREAS, on February 18, 2004, the City Council in accordance with CEQA Guidelines §15090 certified that the Final Environmental Impact Report ("EIR") on the Uptown Mixed Use Project, which included the Project, has been completed in compliance with CEQA, the Guidelines for Implementation of the California Environmental Quality Act (14 CCR sections 15000, et seq.); and

WHEREAS, the City has reviewed and considered the environmental effects of the Project as shown in the EIR and other information in the record;

Now, therefore, the Council of the City of Oakland does ordain as follows:

SECTION 1. The City hereby finds and determines on the basis of substantial evidence in the record that the Uptown Mixed Use Project EIR fully analyzes the potential environmental effects of the Project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA, and that none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the Project or the

circumstances under which the Project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3).

SECTION 2. The City Administrator or her designee is hereby authorized to amend the LDDA to (1) extend the date for completion of Project construction by 72 months, from October 2010 to October 2016, for a payment of \$100,000, and 2) transfer the LDDA to SUDA.

SECTION 3. Any payments made to the City as a result of extending the development deadlines for the Project in the LDDA shall be deposited into General Purpose Fund (1010).

SECTION 4. The City Administrator or her designee is authorized to negotiate and execute an amendment to the LDDA and any other document necessary to extend development deadlines and transfer the LDDA to SUDA, or an affiliated entity, and take whatever action is necessary with respect to the amendment of the LDDA consistent with this Ordinance and its basic purposes.

SECTION 5. The amendment to the LDDA and all documents necessary to carry out this Ordinance as authorized hereunder shall be approved as to form and legality by the City Attorney and filed with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2013

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF,
and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

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

An Ordinance Authorizing: 1) An Amendment to a Lease Disposition and Development Agreement with Sears Development Company to Extend Development Deadlines for an Automotive Service Project located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way; and 2) an Assignment of the Lease Disposition and Development Agreement to the Strategic Urban Development Alliance, LLC, or an affiliated entity

Notice and Digest

The ordinance authorizes the City of Oakland to negotiate and execute an amendment to a Lease Disposition and Development Agreement (LDDA) with Sears Development Company (Sears) to 1) extend development deadlines for the completion of an automotive service project (the "Project") located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way (the "Property") by up to 72 months, changing it from the currently stipulated date of October 2010 to October 2016, for a payment by Sears of \$100,000, and 2) an assignment of the development rights in the LDDA to a new qualified developer, the Strategic Urban Development Alliance, LLC (SUDA), or an affiliated entity to be created for the development of the Project.