

OAKLAND OVERSIGHT BOARD

RESOLUTION No. 2013- 5

A RESOLUTION APPROVING AN AMENDMENT TO AN OWNER PARTICIPATION AGREEMENT BETWEEN THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY AND SKS BROADWAY LLC TO EXTEND DEVELOPMENT DEADLINES FOR A MIXED-USE PROJECT AT 1100 BROADWAY

WHEREAS, on September 6, 2007, the former Redevelopment Agency of the City of Oakland (the "Redevelopment Agency") entered into an amended and restated owner participation agreement ("OPA") with SKS Broadway, LLC ("SKS"), pursuant to Redevelopment Agency Resolution No. 2006-0088 C.M.S., with regard to the development of a mixed-use office project ("Project") located at 1100 Broadway ("Property") in the Central District Redevelopment Project Area; and

WHEREAS, the OPA, as amended, establishes various parameters for the Project, provides the Redevelopment Agency certain approval rights regarding the 1100 Broadway Project, and requires SKS to accomplish a number of specific development milestones by specific deadline dates; and

WHEREAS, on June 1, 2010, pursuant to Resolution No. 2010-54 C.M.S., the OPA was amended to extend performance deadlines to their current dates; and

WHEREAS, SKS has made good faith efforts to reach those specific development milestones by the specified dates, but has been unable to do so because of lingering adverse economic conditions in Oakland's downtown office market that hinder SKS's efforts to obtain the required anchor tenants and debt financing for the Project; and

WHEREAS, SKS has to pay liquidated damages in the amount of \$440,000 to ORSA if it fails to meet the current development milestones and defaults on the OPA; and

WHEREAS, SKS has requested to extend the deadlines for Project construction commencement and completion as defined in the OPA; and

WHEREAS, the Redevelopment Agency dissolved on February 1, 2012, and the Oakland Redevelopment Successor Agency ("ORSA") has taken over the interests and obligations of the Redevelopment Agency with respect to the OPA and the Project; and

WHEREAS, on December 18, 2012, the ORSA board approved Resolution No. 2012-13 C.M.S., authorizing the ORSA Administrator, or her designee, to negotiate and execute an amendment to the OPA to (1) extend the date on which SKS must start Project construction by two years, from June 25, 2013, to June 25, 2015, and the date by which it must complete Project construction by two years, from April 27, 2015, to April 27, 2017 (the "First Extension"); (2) give SKS an option to extend the new construction commencement and completion dates by an additional 24 months (the "Second Extension") at no cost to SKS; and (3) extend the deadlines for submission of final construction plans, the construction contract, and the financing plan to ORSA until such dates as deemed appropriate and reasonable by the Administrator or her designee such that SKS is able to meet the commencement and completion deadlines above; and

WHEREAS, California Health and Safety Code Section 34181(e) provides that the oversight board shall direct the successor agency to determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval, and that the board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities; and

WHEREAS, the Property and development of the Project, in conjunction with the sale of a City-owned parking garage on an adjacent property will generate financial benefits in the form of property taxes and sales taxes, and such property and sales taxes will be distributed to specified taxing entities in Alameda County pursuant to state law; and

WHEREAS, it is estimated that the developed Project on the Property will produce \$1.6 million in property taxes per year for the taxing entities upon completion of construction; and

WHEREAS, it is estimated that the net present value over a 10-year period accruing to the taxing entities from property taxes generated by the completed Project is \$13.7 million;

WHEREAS, the proposal has been modified to require that SKS pay a fee of \$25,000 for the First Extension and that SKS pay an additional fee of \$25,000 for the optional Second Extension; and

WHEREAS, the extension amendment as modified will increase net revenues to the taxing entities in the form of the extension fees, as well as encourage the developer to stay with the Project resulting in the long-term fiscal benefits to the taxing entities from completion of Project development noted above; and

WHEREAS, termination of the OPA would leave the future of the Property and the Project uncertain; now, therefore:

Based on the foregoing recitals and the documentation presented to the Oakland Oversight Board at a public meeting, the Oakland Oversight Board does resolve as follows:

SECTION 1. The Oakland Oversight Board finds and determines that the proposed amendments to the OPA as approved by ORSA will be of benefit to the taxing entities that will reap substantial additional property taxes from the Property, that the amendments will increase net revenue to the taxing entities, and that the proposed amendments under such conditions and yielding such benefits will best maximize the value of the Property for the taxing entities.

SECTION 2. The Oakland Oversight Board hereby approves the action of the ORSA board authorizing the ORSA Administrator to negotiate and enter into an amendment to the OPA with SKS consistent with the terms of this Resolution, and consistent with all applicable laws, to

- (1) extend the date on which SKS must start Project construction by two years, from June 25, 2013, to June 25, 2015, and the date by which it must complete Project construction by two years, from April 27, 2015, to April 27, 2017, for a fee of \$25,000 payable to ORSA;
- (2) give SKS an option to extend the new construction commencement and completion dates by an additional 24 months for a fee of \$25,000 payable to ORSA; and
- (3) extend the deadlines for submission of final construction plans, the construction contract, and the financing plan to ORSA until such dates as deemed appropriate and reasonable by the ORSA Administrator or her designee such that SKS is able to meet the commencement and completion deadlines above.

This approval is contingent on the ORSA board approving the modified terms for the extension set forth in this Resolution.

SECTION 3. The Oakland Oversight Board requires that the amendment to the OPA, shall be reviewed and approved as to form and legality by ORSA and Oversight Board General Counsel prior to execution by ORSA, and shall be placed on file with the ORSA Secretary.

ADOPTED, OAKLAND, CALIFORNIA, March 18, 2013

PASSED BY THE FOLLOWING VOTE:

AYES- ~~CARSON~~, GERHARD, LEVIN, ~~ORTIZ~~, QUAN, SMITH, TUCKER

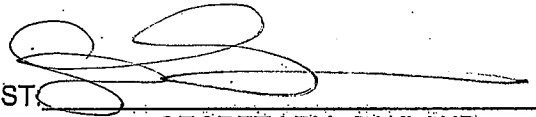
NOES-

ABSENT- **CARSON**

ABSTENTION-

EXCUSED - ORTIZ

ATTEST



SECRETARY, OAKLAND
OVERSIGHT BOARD