



DATE: January 5, 2011

TO: Honorable Mayor and City Councilmembers
Chairman and Members, Community Development Commission

FROM: Economic and Community Development Department

SUBJECT: **ADOPTION OF CITY COUNCIL AND COMMUNITY DEVELOPMENT COMMISSION RESOLUTIONS APPROVING AN AMENDMENT TO THE DISPOSITION AGREEMENT BETWEEN S.D. MALKIN PROPERTIES AND THE COMMUNITY DEVELOPMENT COMMISSION EXTENDING THE TIME REQUIREMENTS TO EXECUTE THE LEASE**

SYNOPSIS

Staff recommends that the City Council and the Community Development Commission adopt resolutions approving an amendment to the Disposition Agreement between S.D. Malkin Properties and the Community Development Commission, extending by twelve months the time requirements to execute the lease.

BACKGROUND

The effective date of the Disposition Agreement (DA) between S.D. Malkin Properties and the Community Development Commission (CDC) was July 29, 2009. Pursuant to the DA, the developer is required to do what is commercially reasonable to obtain financing for the \$200 million project in an 18-month period (Section 1.1.56). The developer is eligible for an administrative six-month extension (Section 4.10). After six months, the developer may request and be granted an additional six-month extension if the construction working drawings can be sufficiently completed to obtain a construction loan by the end of the six months (Section 4.10).

ANALYSIS

At this time, there is an unprecedented limitation on access to capital for construction, particularly for a project of this size. While smaller projects in the \$20 to \$30 million range may with difficulty be able to get financing, all experts have indicated that there is no funding for new construction of this magnitude. Almost eighteen months have passed since the effective date of the DA. While the developer has been in the capital markets, no construction lending for a project of this magnitude is available at this time. It is therefore proposed that an additional twelve months be granted. That extends the initial period from 18 months to 30 months with the time remaining as of January 29, 2011, to be 24 months.

Original Time Frame
Effective Date-July 29, 2009

		<u>Remaining Time</u>	
Secure Financing	18 months	2 months	1/ 29/ 2011
Admin. Extension	6 months	6 months	7/ 29/ 2011
2 nd Extension if constr. drawings	<u>6 months</u>	<u>6 months</u>	1/ 29/ 2012
almost complete	30 months	14 months	

Basic Amendment- 12 month extension

		<u>Remaining time</u>	
Obtain financing		12 months	1/29/2012
Admin Extension		6 months	7/29/2012
2 nd Extension if construction drawings almost done		<u>6 months</u>	1/29/2013
		30 months	

FISCAL IMPACT

The fiscal impact is both positive and negative. The Transient Occupancy Tax, TOT, from the hotel would be delayed, however, the City cannot compel lending institutions to fund this project and it is also at the mercy of the world economy and lending markets.

The major funding of the City's investment into the project comes from revenue derived from bonding. Currently the municipal bond market is still experiencing difficulties due to the collapse in the credit markets in 2007 and 2008, and the subsequent downturn of the economy. Many projects anticipated to be built in the Redevelopment Project Area have not come to fruition due to the lack of residential market and access to capital. Therefore, this extension gives the Agency more time to build bond capacity. Aligning the DA with the capital markets also aligns the CDC's bonding capacity to what is happening in the capital markets.

On the negative side, as the Agency's ability to have debt is currently anticipated to end in 2018, and can service debt until 2028, the amortization period of anticipated bonds continues to decline.

INSURANCE REQUIREMENTS

Does not apply.

COMMISSION OR COMMITTEE REPORT

The revision to the Disposition Agreement was heard by the Redevelopment Advisory Committee on January 5, 2011 and the Economic Development Commission on December 7, 2010 and both groups concurred.

CITY ATTORNEY’S ANALYSIS

The City Attorney will have reviewed and approved the form of the amendment before it is before the City Council and the Community Development Commission.

RECOMMENDATION

Staff recommends that the City Council and the Community Development Commission adopt resolutions approving an amendment to the Disposition Agreement between S.D. Malkin Properties and the Community Development Commission, extending by twelve months the time requirements to execute the lease.

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