

PLACER COUNTY
REDEVELOPMENT AGENCY

MEMORANDUM

TO: Honorable Members of the Redevelopment Agency Board
FROM: Richard E. Colwell, Redevelopment Director
James LoBue, Deputy Director *RECORDED*
DATE: October 20, 2009
SUBJECT: Adopt a Resolution Authorizing the Redevelopment Director or Designee to Execute an Amendment to the Owner Participation Agreement with Auburn Plaza, LLC and to the Payment Guaranty with Bernard L. Magnussen for the Auburn Plaza Shopping Center to Extend the Job Creation Requirements for One Year, and Authorize the Redevelopment Director or Designee to Execute a Maximum of Two Additional One-year Extensions for the Same.

ACTION REQUESTED

Adopt a resolution authorizing the Redevelopment Director or designee to execute an amendment to the Owner Participation Agreement (OPA) with Auburn Plaza, LLC and to the Payment Guaranty (Guaranty) with Bernard L. Magnussen for the Auburn Plaza Shopping Center to Extend the Job Creation Requirements for One Year, and authorize the Redevelopment Director or designee to execute a maximum of two additional one-year extensions for the same.

BACKGROUND

On May 8, 2007, the Placer County Redevelopment Agency (Agency) Board approved an OPA with Auburn Plaza, LLC (Developer). The OPA is an agreement entered into by the Agency and Developer which outlines the roles and responsibilities of the Agency and Developer for the construction of roadway improvements along State Highway 49 between Luther Road and New Airport Road (Project).

The Project is complete. Concurrent with the completion of the Project, the Developer completed the majority of construction for its development project fronting along State Highway 49, which provides for approximately 70,000 square feet of new retail space.

The Agency received funding for the Project from various sources including a grant from the California Housing and Community Development Department, Community Development Block Grant (CDBG) program and a California Infrastructure and Economic Development Bank loan. A requirement of the CDBG grant is for the Developer to create a minimum of fifty-four (54) full-time equivalent jobs on its adjacent development by October 31, 2008. Due to the changing economic times, leasing of the development site has not proceeded as fast as initially anticipated. To date, the developer has signed six (6) leases, including a Quiznos sandwich shop, Sleep Train, Lyons Real Estate, Little Caesars, Parrot Cellular and a yogurt shop. The Developer has several other prospective tenants in lease negotiations. Previously, the Agency requested and received from the State an extension on the CDBG job creation requirements to October 31, 2009 and received

approval from your Board to amend the OPA and Guaranty to reflect the job creation deadline extension. Since then the Agency has received an additional extension from the State of the job creation deadline to October 31, 2010 due to the harsh economic times and the effect it is having on lease negotiations.

This item seeks approval to amend the OPA to extend the Developer's job creation requirements to October 31, 2010. In addition, the Developer's principal, Bernard L. Magnussen, was required to sign a Payment Guaranty securing the job creation requirements. This item also seeks approval to amend the Payment Guaranty to reflect the extended job creation deadline. In addition, this item seeks approval for the Redevelopment Director or designee to sign two additional one-year amendments to the agreements to extend the job creation requirements for a not to exceed cumulative extension of three years.

ENVIRONMENTAL STATUS

This administrative action does not constitute a project under California Environmental Quality Act guidelines, pursuant to section 15378(b)(2) and is exempt from the National Environmental Policy Act per 24 CFR Part 58.34 (a) (1) and (a) (3).

FISCAL IMPACT

The Agency utilized Placer County Developer Fees, a CDBG grant, a California Infrastructure and Economic Development Bank loan, and North Auburn Redevelopment Project Area tax increment funds to support the Project. The Project is complete and no additional funding is needed. A Payment Guaranty from Bernard L. Magnussen secures the Developer's job creation requirements. There is no impact to the Agency's Capital Projects Fund or the County's General Fund.

RECOMMENDATION

Adopt a resolution authorizing the Redevelopment Director or designee to execute an amendment to the OPA with Auburn Plaza, LLC and to the Guaranty with Bernard L. Magnussen for the Auburn Plaza Shopping Center to extend the job creation requirements for one year, and authorize the Redevelopment Director or designee to execute a maximum of two additional one-year extensions for the same.

Attachments: Resolution
Amended Owner Participation Agreement
Amended Personal Guaranty

cc: Karin Schwab, Agency Counsel

**Before the Placer County
Redevelopment Agency Board of Directors
County of Placer, State of California**

In the matter of:

Authorizing the Redevelopment Director or designee to execute an amendment to the Owner Participation Agreement with Auburn Plaza, LLC and to the Payment Guaranty with Bernard L. Magnussen for the Auburn Plaza Shopping Center to extend the job creation requirements for one year, and authorize the Redevelopment Director or designee to execute a maximum of two additional one-year extensions for the same

Resol. No:.....

Ord. No:.....

First Reading:

The following Resolution was duly passed by the Redevelopment Agency Board of the County of Placer at a regular meeting held _____,

by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:
Clerk of said Board

Chair, Agency Board

WHEREAS, the Placer County Board of Supervisors adopted the Redevelopment Plan for the North Auburn Redevelopment Project Area (Project Area) by Ordinance No. 4832-B on June 24, 1997 (as subsequently amended, Redevelopment Plan);

WHEREAS, the Redevelopment Agency (Agency) is responsible for administering the plan to effectuate redevelopment efforts within the Project Area;

WHEREAS, Auburn Plaza, LLC, a California limited liability corporation (Owner), owns certain real property located in the Project Area along State Highway 49 between Luther Road and New Airport Road and known as Placer County Assessor's Parcel No. 052-102-016 (Property);

WHEREAS, pursuant to the Project Area Redevelopment Plan, the Agency has authority to enter into agreements with the owners of real property located in the Project Area in order to provide for the development of such property in conformity with the Redevelopment Plan;

WHEREAS, the Agency and Owner on May 8, 2007 entered into an Owner Participation Agreement (OPA) regarding the development of the Property to set forth their mutual understanding and agreement regarding redevelopment of the Property;

WHEREAS, the OPA required the Owner to create a minimum of fifty-four (54) full-time equivalent jobs no later than October 31, 2008;

WHEREAS, the Agency also received a Payment Guaranty from the managing member of the Owner, Bernard L. Magnussen, to guarantee the job creation requirements;

WHEREAS, on October 21, 2008, the Board authorized the Agency to amend the OPA and Payment Guaranty to extend the Owner's job creation deadline to October 31, 2009;

WHEREAS, due to a slower than anticipated lease up period of the Owner's Property development and current economic climate, the Agency and Owner desire to extend the job creation deadline requirement to October 31, 2010 in the OPA and Payment Guaranty;

WHEREAS, the Agency desires to authorize the Redevelopment Director to approve a maximum of two additional one-year extensions for the job creation deadline;

WHEREAS, redevelopment of the Property pursuant to the OPA will serve Redevelopment Plan and Implementation Plan goals and objectives by eliminating blight and redeveloping an underutilized site in the Project Area; and

WHEREAS, this administrative action does not constitute a project under California Environmental Quality Act Guidelines, Section 15378(b)(3), and is exempt from National Environmental Policy Act guidelines per 24 CFR Part 58.34 (a)(1) and (a)(3).

NOW, THEREFORE, BE IT RESOLVED that the Placer County Redevelopment Agency Board approves this resolution, including but not limited to the environmental findings regarding this action, after due consideration of the facts stated herein and in the staff report accompanying this resolution;

BE IT FURTHER RESOLVED that the amendment to the OPA and Payment Guaranty to extend job creation requirements is hereby approved, and the Redevelopment Director or designee is authorized to execute the amendments;

BE IT FURTHER RESOLVED that the Chief Assistant CEO-Redevelopment Director is authorized to amend the OPA and Payment Guaranty for a maximum of two additional one-year extensions for the job creation deadline; and

BE IT FURTHER RESOLVED by the Agency Board that this Resolution shall become effective immediately upon adoption.

AMENDMENT TO OWNER PARTICIPATION AGREEMENT

This Amendment to Owner Participation Agreement ("**Amendment**") is entered into effective as of _____, 2009 ("**Effective Date**") by and between the Redevelopment Agency of the County of Placer, a public body, corporate and politic (the "**Agency**") and Auburn Plaza, LLC, a California limited liability company ("**Owner**"). Owner and Agency are hereinafter collectively referred to as the "**Parties**."

WHEREAS, the Parties entered into that certain Owner Participation Agreement dated as of May 8, 2007 (the "**OPA**") addressing Owner's development of a mixed use office, commercial and retail center (the "**Project**") as more particularly described in the OPA;

WHEREAS, pursuant to the OPA, the Agency agreed to use certain CDBG Funds to finance the construction of certain Public Improvements;

WHEREAS, the OPA provides that Owner will reimburse the Agency for the CDBG Funds expended for the Public Improvements if the Project fails to generate a specified number of jobs within a specified time period (the "**Job Creation Obligation**");

WHEREAS, the Parties desire to amend the OPA to modify the deadline for satisfaction of the Job Creation Obligation.

NOW THEREFORE, in consideration of the mutual covenants of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. Section 1.1(k) of the OPA is amended in its entirety to read as follows:

(k) "**Guaranty**" means that certain Payment Guaranty executed by Bernard L. Magnussen, an individual ("**Guarantor**") in favor of Agency, substantially in the form attached hereto as Exhibit B and dated as of the date hereof, guaranteeing Owner's obligation to repay the CDBG Funds to the Agency if the Project does not create 54 full-time equivalent jobs on or before October 31, 2010.

2. The first sentence of Section 4.1 of the OPA is amended to read as follows:

Owner agrees that Owner or the owners of businesses that are located in the Project shall create at least 54 full-time equivalent jobs on or before October 31, 2010.

3. Section 5.4 of the OPA is amended in its entirety to read as follows:

5.4 Enforcement of the Guaranty. If Owner or the lessees of the Property have not created a minimum of 54 full-time equivalent

jobs on or before October 31, 2010, the Agency shall be entitled to take any and all actions to enforce the Guaranty.

4. All other provisions of the OPA shall remain unchanged and in full force and effect.
5. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the OPA.
6. This Amendment may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first written above.

AGENCY:

REDEVELOPMENT AGENCY OF THE
COUNTY OF PLACER, a public body
corporate and politic

By: Richard E. Colwell
Redevelopment Director

ATTEST

By:
Secretary

OWNER:

AUBURN PLAZA, LLC, a California limited
liability company

By: Bernard L. Magnussen
Managing Member

AMENDMENT TO PAYMENT GUARANTY

This Amendment to Payment Guaranty (this "**Amendment**") is entered into effective as of Sept, 2009 ("**Effective Date**") by and between the Redevelopment Agency of the County of Placer, a public body, corporate and politic (the "**Agency**") and Bernard L. Magnussen, an individual ("**Guarantor**").

WHEREAS, the Agency and Auburn Plaza, LLC, a California limited liability company ("**Owner**") entered into that certain Owner Participation Agreement dated as of May 8, 2007 (the "**OPA**") addressing Owner's development of a mixed use office, commercial and retail center (the "**Project**") as more particularly described in the OPA;

WHEREAS, pursuant to the OPA, the Agency agreed to use certain CDBG Funds to finance the construction of certain public improvements;

WHEREAS, the OPA provides that Owner will reimburse the Agency for the CDBG Funds expended for the public improvements if the Project fails to generate a specified number of jobs within a specified time period (the "**Job Creation Obligation**");

WHEREAS, pursuant to the OPA, Guarantor executed that certain Payment Guaranty dated as of the same date as the OPA (the "**Payment Guaranty**") in order to guarantee repayment of the CDBG Funds if the Job Creation Obligation is not satisfied by the specified deadline;

WHEREAS, the Parties desire to amend the Payment Guaranty to modify the deadline for satisfaction of the Job Creation Obligation.

NOW THEREFORE, in consideration of the mutual covenants of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. Recital C of the Payment Guaranty is amended in its entirety to read as follows:

As a condition of obtaining the CDBG Funds, projects that will benefit from the Public Improvements are required to generate a specified number of full-time jobs. To meet this obligation, as more fully described in the OPA, the Owner has agreed to create or cause to be created a minimum of fifty – four (54) full-time equivalent jobs in the Project ("**Job Creation Requirement**") on or before October 31, 2010, or to repay the CDBG Funds to the Agency if the Job Creation Requirement is not satisfied by such date.

2. The first paragraph of the Payment Guaranty following the heading entitled "Agreement" is amended to read as follows:

Guaranty of Obligations. Guarantor unconditionally, absolutely, and irrevocably guarantees and promises to pay to the Agency in full the amount of \$1,888,397 plus reasonable costs, expenses and legal fees, (collectively, the "Guarantied Obligations") if Owner fails to create or cause to be created fifty-four (54) full-time equivalent jobs in the Project on or before October 31, 2010. This is a continuing guaranty of the Guarantied Obligations, and is a guaranty of payment and not of collection only.

3. All other provisions of the Payment Guaranty shall remain unchanged and in full force and effect.

4. This Amendment may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first written above.

AGENCY:

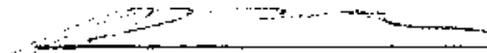
REDEVELOPMENT AGENCY OF THE
COUNTY OF PLACER, a public body
corporate and politic

By: Richard E. Colwell
Redevelopment Director

ATTEST

By:
Secretary

GUARANTOR:



Bernard L. Magnussen

