



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: November 27, 2008 REPORT NO.: RA-08-32
RTC-08-168

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Council President and Members of the City Council
Docket of December 2, 2008

SUBJECT: Second Implementation Agreement to the Disposition and
Development Agreement, City Heights Square Project –
Residential and Commercial

REFERENCE: Staff Report Nos. RA-04-26, RA-05-10, CMR-05-094, RA-07-31

REQUESTED REDEVELOPMENT AGENCY ACTIONS:

1. Should the Redevelopment Agency approve and authorize the Executive Director or designee to enter into a Second Implementation Agreement to the Disposition and Development Agreement (DDA) with City Heights Realty LLC (formerly Price Charities) for the City Heights Square Project?
2. Should the Redevelopment Agency approve the sale of land and make the appropriate findings?
3. Should the Redevelopment Agency certify the Subsequent Addendum to the Mitigated Negative Declaration (Project No. 146605)?
4. Should the Redevelopment Agency approve the revised concept plans and schematic drawings for the City Heights Square Project?
5. Should the Redevelopment Agency accept a Developer's Payment of \$47,500 for costs related to the Second Implementation Agreement and amend the FY 2009 Agency Budget for the City Heights Redevelopment Project Area?

REQUESTED CITY COUNCIL ACTIONS:

1. Should the City Council consent to the Redevelopment Agency entering into a Second Implementation Agreement to the DDA with City Heights Realty LLC (formerly Price Charities) for the City Heights Square Project?
2. Should the City Council approve the sale of land and make the appropriate findings?

3. Should the City Council certify the Subsequent Addendum to the Mitigated Negative Declaration (Project No. 146605)?

STAFF RECOMMENDATION TO THE REDEVELOPMENT AGENCY:

1. Approve and authorize the Executive Director or designee to enter into a Second Implementation Agreement to the Disposition and Development Agreement (DDA) with City Heights Realty LLC (formerly Price Charities) for the City Heights Square Project.
2. Approve the sale of land and make the appropriate findings.
3. Certify the Subsequent Addendum to the Mitigated Negative Declaration (Project No. 146605).
4. Approve the revised concept plans and schematic drawings for the City Heights Square Project.
5. Accept a Developer's Payment of \$47,500 for costs related to the Second Implementation Agreement and amend the FY 2009 Agency Budget for the City Heights Redevelopment Project Area.

STAFF RECOMMENDATION TO THE CITY COUNCIL:

1. Consent to the Redevelopment Agency entering into a Second Implementation Agreement to the DDA with City Heights Realty LLC (formerly Price Charities) for the City Heights Square Project.
2. Approve the sale of land and make the appropriate findings.
3. Certify the Subsequent Addendum to the Mitigated Negative Declaration (Project No. 146605).

SUMMARY:

Background

The Disposition and Development Agreement (DDA) with San Diego Revitalization Corporation (SDRC) for the City Heights Square office and retail project was approved by the Redevelopment Agency on May 3, 2005 (Attached to Attachment 1 First Implementation Agreement to the Disposition and Development Agreement, City Heights Square Office and Retail Project). The proposed project (consisting of a four story 90,000 square foot building with office space on the top three floors and retail space on the ground floor) is located on an approximate 1.4 acre site along University Avenue and bordered by 43rd Street to the west and Fairmount Avenue to the east. The project is part of a larger 2.7 acre mixed-use master planned project consisting of a recently completed affordable housing project, the proposed La Maestra Family medical clinic and an approximate 5,300 square foot park. On November 13, 2007 a First Implementation Agreement to the DDA (see Attachment 1) was approved by the Agency and executed on November 30, 2007. That approved agreement reflected the corporate name change of the developer (from SDRC to Price Charities), extended key deadlines within the Schedule of Performance, updated the status of the project and incorporate new language related to the Loan Agreement.

Project Implementation

The Second Implementation Agreement to the Disposition and Development Agreement (DDA) (see Attachment 2) is being proposed to amend the DDA and other associated documents to, among other things, change the development to a mixed-use residential/commercial project that will provide 92 residential apartment units (including a minimum of 14 affordable units), retail and office space, covered surface parking, two levels of subterranean parking, reallocate certain remediation responsibilities related to the Agency's Acquisition Parcel and to provide for a modification of the purchase price of the Acquisition Parcel.

The Developer has been attempting unsuccessfully for three years to lease the office space and has determined that office space demand within City Heights is not yet sufficient to warrant the construction of the approved office building. Much of the site has been vacant for several years, and is detrimental to the continuing efforts to revitalize the core of the City Heights community and Redevelopment Project Area.

The proposed project includes a five-story structure above two subterranean parking levels (see Attachment 3). The ground floor includes approximately 20,500 square feet of leasable retail space and the apartment lobby. The second floor would include approximately 3,000 square feet of leasable office space, 20 residential units and recreational areas. The third through fifth floors would contain the remaining 72 apartment units. The project proposes to provide up to approximately 287 parking spaces both on grade and within the two levels of below grade parking. The project is scheduled to begin construction in 2009 with completion in 2011.

Of the total 92 units, a minimum of the 14 units will be affordable. Specifically, 4 will be restricted to 50% of Area Median Income (AMI) and 10 units will be restricted at 65% AMI. All of the affordable units would be three bedroom units. With the Redevelopment Agency's involvement in the project through the proposed Second Implementation Agreement to the DDA, affordability restrictions will be placed on the property for not less than 55 years. These affordability restrictions satisfy California Community Redevelopment Law and the City Heights Redevelopment Project Area's current 5-Year Implementation Plan.

The proposed Second Implementation Agreement to the DDA also modifies certain remediation responsibilities related to the Agency Acquisition Parcel. Under the current agreement, the Agency is responsible for acquiring the Acquisition Parcel, relocating all tenants, demolishing the improvements and remediation any hazardous substances from the Acquisition Parcel. A portion of the site (approximately 12,500 square feet) is currently owned by the Redevelopment Agency and is being leased to Jack-in-the-Box for a restaurant. Jack-in-the-Box has received a building permit to build a new restaurant on University Avenue near Interstate 15, to replace this restaurant, and estimates the completion of the new restaurant and moving date to be February 2009. The Agency will be prepared to demolish the existing Jack-in-the-Box restaurant in early 2009. The proposed Second Implementation Agreement to the DDA, modifies the current

agreement through the Agency selling the Acquisition Parcel to the Developer with potential hazardous substances on-site, and the Developer will be responsible for the remediation of any hazardous substances. Upon removal and delivery of any hazardous substances to the appropriate landfill by the Developer, the Agency will maintain liability of those hazardous substances.

Related to the remediation activities and to facilitate the project schedule, the Second Implementation Agreement to the DDA, allows the Developer through a Right Of Entry Agreement to begin excavation and remediation efforts on the Acquisition Parcel, after the Agency has completed the demolition and removal of the existing Jack-in-the-Box building, but prior to the Closing (conveyance of the Acquisition Parcel to the Developer).

Based upon the revised transaction, a new purchase price for the Acquisition Parcel has been determined based upon the proposed sale of the Acquisition Parcel at fair market value at highest and best use. Keyser Marston Associates, Inc. (KMA), the Agency's economic consultant, has analyzed the estimated costs and revenues of the proposed development and have prepared an Estimate of Re-Use Value (see Attachment 4) and the Summary Pertaining to the Proposed Sale of Certain Property within the City Heights Project Area report, pursuant to California Community Redevelopment Law Section 33433 (see Attachment 5). These reports conclude that with the Agency conveying the Acquisition Parcel to the Developer with the potential hazardous substances on-site, the fair market value (price) at highest and best use is \$586,000.

Additional attachments have been added to the Second Implementation Agreement to the DDA to reflect the introduction of residential units and affordability covenants. Also, prior to the Closing of the Acquisition Parcel, the Developer will enter into a Park Maintenance Agreement with the City and Agency, as appropriate, in order to maintain the proposed City Heights Square 5,300 square foot park that will be designed and constructed by the Agency or City, pursuant to the original DDA.

The land use entitlements for proposed residential/commercial project are concurrently being processed through the discretionary approval process, receiving Planning Commission approval on November 6, 2008 and scheduled for City Council consideration on December 2, 2008. Based upon a review of the current project, it was determined that there was no new significant environmental impacts not considered for the previous Mitigated Negative Declaration; no substantial changes have occurred with respect to the circumstances under which the project is undertaken; and there is no new information of substantial importance to the project. Therefore, a Subsequent Addendum to the Mitigated Negative Declaration (Project No. 146605) was prepared for this project in accordance with State of California Environmental Quality Act (CEQA) Guidelines (see Attachment 6). Therefore, in accordance with Section 15164 of the State CEQA guidelines, an Addendum is prepared. All mitigation measures included in the previous Mitigated Negative Declaration No. 40960 and in the No. 95232 Addendum have been incorporated into this Subsequent Addendum.

FISCAL CONSIDERATIONS:

The Developer has agreed to loan the Agency funds in an amount estimated to equal the costs and expenses associated with the acquisition, relocation and preparation of the Acquisition Parcel by the Agency, specifically \$3.5 million. The \$586,000 purchase price for the Acquisition Parcel will be credited against the outstanding principal balance of the \$3.5 million Developer loan at the time of Closing. Also, factored into the fair market price, is an amount equal to \$264,000 which represents the estimated cost to be incurred by the Developer, (as determined by the Agency's environmental consultant SCS Engineers) to remediate, remove and transport any hazardous substances on the Acquisition Parcel. If the actual contamination value of the Acquisition Parcel is less than \$264,000, the difference will be credited against the outstanding principal balance of the Developer loan. Similarly, if the actual contamination value of the Acquisition Parcel is more than \$264,000, the difference will be added to the outstanding principal balance of the Developer loan.

To date, the Agency has borrowed approximately \$2.28 million, of the total \$3.5 million Developer loan, for the purchase of the Acquisition Parcel, currently occupied by Jack-in-the-Box and the Agency's share of the cost for acquiring the 5,300 square foot park site. As noted earlier, the Agency is responsible for relocating Jack-in-the-Box and has been working proactively and cooperatively with them on their new proposed replacement restaurant site near Interstate 15 and University Avenue. Although the Agency continues to work with existing tenant to relocate them, there may be a threat of a claim by the existing tenant for loss of goodwill. A potential claim is not yet known, and if filed, the amount of the claim may not be known until 90 days prior to a trial date, which has not been scheduled. The Agency will fight any loss of goodwill claim that may be asserted by the existing tenant. Agency staff and special legal counsel believe that any such claim, if found valid and meritorious, will be rendered if at all in an amount that is significantly less than alleged by the tenant based on several factors, including the location of the proposed new site and other Agency relocation assistance efforts. Per the existing terms of the Loan Agreement, the Agency will not begin making interest payments, until construction begins on the residential/commercial project.

The total development cost of the project is approximately \$48 million. The Developer proposes to finance the project with an approximate \$15 million construction loan and the remaining \$33 million through Developer equity.

Based upon a total project cost of \$48 million, the project is estimated to generate over \$400,000 per year in new gross property tax increment, upon its completion in 2011. In addition to property tax increment, additional economic development benefits include the creation of approximately 400-500 temporary construction jobs, 60 permanent retail/office jobs, 10 permanent jobs associated with the apartment operations and sales tax revenue generated through the new retail space.

PREVIOUS AGENCY and/or COUNCIL ACTIONS:

On May 3, 2005 the Redevelopment Agency approved the Disposition and Development Agreement (DDA) with San Diego Revitalization for the proposed City Heights Square Project. On November 13, 2007, the Redevelopment Agency approved the First Implementation Agreement to the DDA with Price Charities (formerly San Diego Revitalization Corporation).

COMMUNITY PARTICIPATION & PUBLIC OUTREACH EFFORTS:

A notice of the time and place of the Redevelopment Agency and City Council joint public hearing has been published in a newspaper of general circulation for at least two successive weeks prior to the joint public hearing. Also, the documents related to this joint public hearing have been available for public review and copying at the Offices of the Redevelopment Agency and City Clerk at the time of the first publication of the notice of the joint public hearing.

On September 8, 2008, the City Heights Project Area Committee recommended approval of the proposed Second Implementation Agreement to the DDA by a vote of 10-0-2.

ALTERNATIVE:

Do not approve the proposed Second Implementation Agreement to the Disposition and Development Agreement.

Respectfully submitted,

Janice L. Weinrick
Deputy Executive Director
Redevelopment Agency/
Assistant Director City Planning
& Community Investment,
Redevelopment Division

Approved: William Anderson
Assistant Executive Director
Redevelopment Agency/
Deputy Chief Operating Officer
Executive Director of City Planning
and Development

Attachments:

1. First Implementation Agreement to the Disposition and Development Agreement, (City Heights Square Office and Retail Project) PLEASE NOTE: Due to the size of the document, it is being distributed on a limited basis, but is available upon request and available at the City Clerk's Office.
2. Second Implementation Agreement to the Disposition and Development Agreement
3. Revised Concept Plans and Schematic Drawings
4. Keyser Marston Associates, Inc Memo City Heights Square Estimate of ReUse Value

5. Health and Safety Code Section 33433 Summary Report, Summary Pertaining to the Proposed Sale of Certain Property within the City Heights Project Area
6. Subsequent Addendum to Mitigated Negative Declaration