

RESOLUTION AMENDING AND RESTATING RESOLUTION NO. 75359 C.M.S., WHICH WAS APPROVED ON NOVEMBER 30, 1999, AND RE-AUTHORIZING A \$1.0 MILLION LOAN OF ENHANCED ENTERPRISE COMMUNITY HUD-108 REVOLVING LOAN FUNDS AND ECONOMIC DEVELOPMENT INITIATIVE FUNDS TO OAKLAND HOSPITALITY, LLC. TO HELP FINANCE THE CONSTRUCTION OF A HOMEWOOD SUITES (FORMERLY HAWTHORN SUITES) HOTEL AT THE EMBARCADERO AND 10<sup>TH</sup> AVENUE

WHEREAS, on November 30, 1999, the City Council approved Resolution No. 75359 (“Original Resolution”) that authorized a \$500,000 HUD Section 108 loan and a \$500,000 EEC EDI loan (the “City Loans”) to Oakland Hospitality, LLC (“Borrower”) to help finance development of a 118-room (136-key) extended-stay suites hotel on a 4.5-acre site at 10<sup>th</sup> Avenue and Embarcadero (the “Project”); and

WHEREAS, a \$5 million private first loan from Fremont Bank and a \$2 million “near-equity” loan from InterBank Brenner that were originally proposed to provide additional financing proved to be unworkable; and

WHEREAS, the Borrower has obtained a commitment from a new private lender for a \$8.7 million loan (“New Private Loan”) and brought in new true equity partners to replace the Fremont Bank and InterBank Brenner financing; and

WHEREAS, the Borrower has further strengthened the project by bringing on Hilton Hotels as sponsor and manager under its Homewood Suites flag; and

WHEREAS, Hilton Hotel will also guarantee \$1.8 million of the New Private Loan; and

WHEREAS, the Original Resolution specified that the City Loans would be secured by a deed of trust subordinate only to a private loan in the maximum amount of \$5 million, but the new Project financing structure would require revision of this condition to allow the City Loans to be subordinate to the New Private Loan in the amount of \$8.7 million; and

WHEREAS, the Borrower has obtained an appraisal (the “Appraisal”) of its leasehold interest in the Project site including the proposed hotel building and other site improvements and contributory value of furniture, fixtures and equipment (the “Project Improvements”) that estimates as-completed and stabilized-occupancy values that are still more than sufficient to meet the loan-to-value (LTV) ratios specified in the Original Resolution, even with the larger New Private Loan; and

WHEREAS, the Appraisal contains an updated income and expense pro forma (“Pro Forma”) that indicates the proposed new hotel’s cash flow will be able to cover debt service on the New Private Loan and the City Loans according to generally accepted standards; and

WHEREAS, the City engaged the same hospitality industry expert who reviewed the original development proposal to review and evaluate the Appraisal, Pro Forma and new development budget for the Project; and

WHEREAS, this industry expert concluded that the Appraisal, Pro Forma and new development budget for the Project were reasonable and achievable even under conservative assumptions; and

WHEREAS, staff and the Borrower have re-analyzed the Original Resolution’s provision for a 5% near-equity participation by the City in the Borrower and the Project and concluded that it is in the City’s and Borrower’s mutual best interests to substitute increases in the interest rates for the City’s Loans for such near-equity participation; and

WHEREAS, the City’s Loan Review Committee has reviewed and approved the above revisions to the terms and conditions contained in the Original Resolution; and

WHEREAS, the re-authorization of the City’s Loans to Borrower with the above described revisions will allow construction of the Project and the creation of approximately 41 full-time permanent jobs paying a minimum wage of \$9 per hour; and

WHEREAS, over the two years, Borrower has been working with City staff and administrators at Laney College and the Hospitality Employment and Restaurant Training (HEART) Program regarding the hiring of Oakland, and specifically EEC Area residents, for these new jobs; and

WHEREAS, Borrower has committed to making extra efforts, including the capitalization of a special scholarship fund to assist deserving students, to assure that EEC Area residents receive priority consideration for all new jobs; and

WHEREAS, the Port of Oakland (“Port”) is the Lead Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 (“CEQA”); and

WHEREAS, in October 1999, the Port determined that the Project complied with CEQA requirements based on the Port’s earlier findings and adoption of a Mitigated Negative Declaration for the Project in March 1996; and

WHEREAS, the City is a Responsible Agency under CEQA Guidelines Section 15096, and has the responsibility for mitigating only the direct or indirect environmental effects of those parts of the project which it decides to finance or approve; and

WHEREAS, the City considered the Mitigated Negative Declaration prepared by the Port and finds that there are no environmental impacts associated with its approval of loans for the Project; and

WHEREAS, sufficient HUD Section 108 and EDI funds are included in the FY99-01 adopted policy budget to fund the proposed loans;

NOW, THEREFORE BE IT RESOLVED: That the City Council does hereby re-authorize a \$500,000 EEC HUD Section 108 loan (“Section 108 Loan”) and a \$500,000 EEC EDI loan (“EDI Loan”) to Borrower for construction of the Homewood Suites Hotel at the Embarcadero and 10<sup>th</sup> Avenue; and be it

FURTHER RESOLVED: That the making of the Loan shall be contingent upon and subject to such appropriate terms and conditions as the City Manager or his designee may determine, including, but not limited to the following:

1. The Section 108 Loan shall be fully amortized over a maximum 13-year period at an 8.5% interest rate with monthly payments of approximately \$5,306 following a 24-month interest-only construction and occupancy-stabilization period. Construction loan interest to be reserved from EDI loan proceeds. Under any circumstance, Section 108 Loan shall become completely due and payable no later than June 2016.
2. The EDI Loan shall be amortized over a maximum 25-year period at an 8.5% interest rate with monthly payments of \$4,026 beginning the 3<sup>rd</sup> year of the loan, but becoming completely due and payable no later than June 2016. No interest will accrue or be payable on the EDI Loan during its 1<sup>st</sup> year. Interest-only payments would be required during the 2<sup>nd</sup> year of the EDI Loan. Upon City review and approval, monthly payments on the EDI Loan may be adjusted to as low as \$2,709 to maintain the total debt service coverage ratio for both City Loans and the private first loan at a minimum of 1.3:1. Any unpaid interest under this provision would accrue to principal.
3. Secured by: A) a deed of trust on the Project Improvements that is subordinate only to a lien that secures the New Private Loan in the maximum amount of \$8,700,000 and under terms and conditions acceptable to the City, B) a UCC filing on all furniture, fixtures, and equipment (FF&E), receivables and inventory owned by the Borrower that is subordinate only one other lien, C) a senior lien on all FF&E purchased with proceeds of the City Loans, and D) the personal guarantees of Adam Dubroff, Mark Bishop and John Pryor.
4. City review and approval of an appraisal that establishes: A) an as-built collateral value of at least \$12.13 million for the Project Improvements, which is sufficient to provide a maximum 80% LTV ratio on all private Project debt

financing and both the Section 108 and EDI Loans, and B) a stabilized-occupancy value of at least \$13.86 million, which is sufficient to provide a maximum 70% LTV ratio on all private Project debt financing and both the Section 108 and EDI Loans.

5. Commitment of all of the private debt and equity that is necessary to complete the Project.
6. Disbursement of City Loan proceeds after all cash investor equity is disbursed into the Project and on a pro rata basis with the first \$1 million of other Project debt financing.
7. City's review and approval of detailed plans and specifications for the Project.
8. Borrower's execution of a guaranteed maximum contract for construction of the Project.
9. Borrower's and Borrower's contractor's compliance with federal prevailing wage and the City's local hiring programs during the Project's construction.
10. Borrower's submission of quarterly and annual financial statements and tax returns.
11. Submission of annual tax returns and personal financial statements for Adam Dubroff, Mark Bishop, John Pryor and any future 20% or greater principals of Oakland Hospitality, LLC.
12. Designation of the City as co-insured or co-loss payee of Borrower's property and business liability insurance policies, with submission of actual endorsement covering the City.
13. Execution of an agreement between City, Borrower and the Port of Oakland that explicitly permits City's pursuit of all its legal remedies under its deed of trust and UCC filing in the event of default on the City loan.
14. Borrower's maintenance of a hotel business on the Project property during the term of the City loan.
15. Borrower's procurement of a letter of credit ("Letter of Credit") in an amount equal to one year's interest payments on the City Loans. This requirement shall be waived after A) the Project maintains a minimum 1.3:1 net leasehold cash flow to total Project debt service coverage ratio for 12 consecutive months, B) all interest payments have been made on the City Loans, and C) Borrower has been in compliance with all the terms and conditions of the City Loans over its entire term to date.
16. Borrower's contractor procurement of a payment and performance bond for construction of the Project.
17. Confirmation that the Project site has received official environmental review clearance or if City in its sole discretion approved that Borrower has obtained adequate insurance coverage against possible environmental contamination of the site from a qualified insurer.
18. Favorable HUD eligibility determination.

19. Disbursement of Project income to equity investors only after all interest payments have been made and the Letter of Credit has been released upon City approval
20. Certification by the City Council that the Project complies with California Environmental Quality Act and other relevant environmental regulations; and be it

FURTHER RESOLVED: That the City Manager or his designee is authorized to conduct negotiations, execute documents, administer the Loans, extend or modify repayment terms, resubordinate the Loans, so long as the LTV ratio for any senior loan and the City Loans does not exceed 80% of the as-completed value or 70% of the stabilized occupancy value of the Project Improvements as determined by the City, and take any other action with respect to the loans and the Project that are consistent with this Resolution and its basic purpose; and be it

FURTHER RESOLVED: That prior to execution, all loan documents shall be reviewed and approved as to form and legality by the Office of the City Attorney.