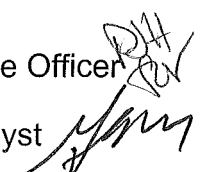



CITY OF LOS ANGELES  
INTER-DEPARTMENTAL CORRESPONDENCE

0150-09369-0000

Date: July 9, 2010

To: The City Council  
The MayorFrom: Miguel A. Santana, City Administrative Officer   
Gerry F. Miller, Chief Legislative Analyst Subject: **VARIOUS ACTIONS RELATED TO THE DISTRICT SQUARE RETAIL PROJECT**

The Community Redevelopment Agency (Agency) and the Community Development Department (CDD), in two separate transmittals, request various actions relative to the District Square Retail Project (Project) located at 3570-3670 Crenshaw Boulevard in the Mid-City Recovery Redevelopment Project Area (Mid-City RPA).

The Agency requests authorization to: 1) execute an Owner Participation Agreement (OPA) with District Square, LLC (Developer) for the Project; 2) execute and deliver a Promissory Note (Note) with the Developer, subject to the terms of the OPA; 3) adopt a joint resolution (Attachment 1) making findings regarding the expenditure of funds up to \$6,500,000 (plus interest accruing under the Note) from the Mid-City RPA for certain publicly-owned improvements associated with the Project; and, 4) submit an application for a U.S. Department of Commerce Economic Development Administrative Grant in the amount up to \$2,000,000 to reimburse the Agency for a portion of the financial assistance to the Project.

The Agency is not providing the Developer with any upfront financial assistance. Rather, the Agency is pledging 100 percent of the net Agency's future Site Specific Tax Increment (SSTI) Revenues to reimburse the Developer for a portion of the Project's public improvement and foundation costs. The financial assistance is evidenced by a Note in the principal amount of up to \$6.5 million. To date, the Agency has not disbursed any funds to the Developer. In addition to the contribution of future SSTI, the Agency is also pledging 100 percent of site specific Assembly Bill (AB) 1290 funds (totaling approximately \$974,000) to the Project.

The CDD requests authorization to: 1) negotiate and execute a Loan Agreement (Section 108/City Loan) with the Borrower for up to \$22,674,000 from the proceeds of funds borrowed by the City from the U.S. Department of Housing and Urban Development (HUD) Section 108 Loan Guarantee Program for the reasonable and eligible development costs of the Project; 2) to use a maximum of 49 percent of Project-generated site-specific tax revenues (SSTR, the City's share of sales taxes, utility taxes and business license fees from Phases I and II – described below) to apply towards debt service and repayment of the Section 108 Loan; and, 3) to negotiate and execute a Pledge and Assignment Agreement with the Agency

and apply the annual payments of net SSTI revenues towards the debt service payments for the \$22,674,000 Section 108 Loan. The CDD also requests authorization to subordinate the proposed Section 108 Loan to a \$34 million private loan for the Project, subject to the review and approval of the City Attorney as to form and legality. Net SSTI revenues will be available to the Borrower for debt service payments for any remaining balance that the Borrower may want to refinance at the maturity of the Section 108 Loan. If approved, the City will provide a total of approximately \$26.2 million in federal grants and loans for this Project, which is detailed below:

1. \$22.7 million HUD Section 108 Loan;
2. \$1.4 million in Community Development Block Grant (CDBG) - American Recovery and Reinvestment Act (CDBG-R) funds (C.F. 09-2665); and,
3. \$2.1 million from future CDBG funds, subject to the approval of the Council and the Mayor.

In addition, approximately \$20 million in Project generated SSTR is pledged to debt service the \$22.7 million Section 108 Loan for a 20 year period beginning in 2013 and expiring in 2032.

The CDD states that Section 108 funding for the Project is appropriate under federal assistance guidelines and that the Project costs are reasonable. The Developer will be required to retain a Financial Consultant to provide a final opinion on the funding structure for the Project prior to the release of Section 108 funding. The Section 108 Loan Agreement will be executed only when all the other sources of funding for the Project are firmly committed and available to the Project.

Prior to the release of any funds, the Borrower is required to procure the guaranty of an independent Guarantor (Guarantor) that would guarantee the Section 108 Loan with respect to any shortfalls in the SSTR, AB1290 and SSTI, in amounts sufficient to meet debt service obligations of the Section 108 Loan. The Guarantor will also fund any and all shortfall(s) up to 100 percent of the required funds to complete the Project if additional private financing is not secured in time and/or in the projected amounts. Additional detail is provided in the Findings Section.

In addition to approximately \$26.2 million in federal grants and loans, the City is contributing approximately \$20 million in Project generated SSTR that is pledged to debt service the \$22.7 million Section 108 Loan for a 20-year period beginning in 2013 and expiring in 2032. In addition to the Agency's approximately \$974,000 contribution of Site Specific AB1290 funds, the Agency is contributing approximately \$10.4 million in SSTI that is pledged to debt service the Section 108 Loan and for any unpaid balance of the loan at maturity. The total combined City/Agency contribution to the District Square Project is approximately \$31.4 million. A summary of Agency and City financial assistance is provided in the Findings Section, Table One of the Agency transmittal dated July 1, 2010, and Attachment C of the CDD transmittal dated May 12, 2010. According to the CDD, the total cost of the Project is estimated at \$93.5 million.

Fee Title to the Project is held by District Square, LLC, a California Limited Liability Company, wholly owned by the Charles Company. Metropolitan Square, a California

Corporation, wholly owned by M and A Gabae L.P. (Limited Partner), is a special purpose corporation created solely to serve as the Borrower of the Section 108 Loan (see City Financing below). The Borrower will then lend the Section 108 Loan proceeds to a Special Purpose Investment Fund (Investment Fund) to be formed in conjunction with the New Market Tax Credit (NMTC) funding structure of this Project. M and A Gabae L.P. is the holding company of the Charles Company (Developer and Sponsor), owned by Mark and Arman Gabae. Charles Company is a major real estate investment and development firm. The Agency is currently in litigation with an entity (M&A Gabae) affiliated with the Developer. Therefore, the Agency's authorization to execute the OPA with the Developer is subject to final approval and execution of all settlement agreements.

Section 108 Loans are typically used by the City as a source of gap financing to make a project feasible. If a determination is made that a certain amount of debt cannot be carried by a project's private sector cash flows, the Mayor and Council may approve the use of SSTR revenues/new General Fund monies generated from the Project to pay all or a portion of that project's debt service obligations in accordance with the Block Grant Investment Fund Policy (BGIF). In addition to SSTR revenues, other sources of funds that have been used for debt service payments for other projects have included the City's share of AB1290 funds, Agency tax increment, Community Development Block Grant (CDBG) and other grant funds. Discussions with CDD and the Agency indicate that no other sources of funds are available for the Project at this time beyond those discussed in this report.

This report provides recommendations for the Section 108 Loan Agreement, the use of General Fund revenues and the use of net SSTR proceeds and Pledged AB1290 funds for debt service payments for the \$22,674,000 Section 108 Loan, subject to review and approval of the City Attorney, as to form and legality. A summary of the sources and uses of funding for the Project is provided in Attachment 2.

#### Capital Finance Administration Fund

The BGIF Policy allows the use of up to 50 percent of the gross amount of Project-generated revenues collected as a repayment source for Section 108 loans for up to a 20-year period. The City Attorney has indicated that funds for any annual debt service payment are subject to discretionary appropriation by the Mayor and the Council and must be included in the General Fund Capital Finance Administration Budget. Additional information on the Capital Finance Administration Budget is provided in the Findings Section of this report.

#### City Review

The BGIF Policy requires that a team consisting of CDD, CLA, CAO, the Mayor's Office and the Agency should review and provide input for projects that propose to use SSTR as a source for debt service payments. This report includes a recommendation for the Agency and CDD to convene a team as required by the BGIF Policy regarding projects for which SSTR is proposed to be used as a source for debt service payment. Efforts should be made to hold a meeting as soon as SSTR funds are contemplated as a source of gap financing, and no later than 60 days prior to transmitting the project for Council and Mayor approval.

## The District Square Project

The 6.5-acre District Square Retail Project is located at the south eastern intersection of Crenshaw Boulevard and Rodeo Street along the Crenshaw Commercial Corridor in Council District 10. The Project is adjacent to two rail lines/stations: 1) the Exposition-Crenshaw Light Rail Line Station; and 2) the Crenshaw Line (approved by the Metropolitan Transportation Authority in December 2009, which will connect to the Exposition-Crenshaw Light Rail Line).

The following existing tenants are currently on the Project site: Ralphs, Rite-Aid, Rent-To-Own (lessee of Rite Aid), Unity in the Community (lessee of Rite Aid), Cameo Cleaners, Royal (lessee of Cameo Cleaners), King Donuts, and Hong Kong Express. According to the Agency, relocation costs for the tenants have not been determined; however, all costs related to the relocation of all tenants on the site will be borne by the Developer.

The Developer will demolish the existing 78,000 square feet of commercial and retail improvements and replace them with a new 296,567 square foot, two-story, retail center with a total of 998 on-grade and third floor rooftop parking spaces. The Agency notes that the Project will be built to the intent of Leadership in Energy and Environmental Design Silver, but will not be required to be certified as such.

### *Phase I*

The completed Phase I consists of Walgreens with 14,415 net rentable square feet (nrsf), Denny's (5,041 nrsf), and approximately 45,000 nrsf of general retailers. The development of Phase I was completed with the investment of direct equity and private loans. It did not include the assistance of public funds.

### *Phase II*

The District Square Retail Project is the second phase of a two-phased project. Phase II consists of new construction and development on 14 contiguous parcels. Project construction activity is expected to begin within three to six months after the close of the Section 108 Loan Agreement and approval of the Section 108 Loan by HUD. According to the Agency, the potential Project tenants are:

<b>Tenant</b>	<b>Square Feet</b>
<b>1<sup>st</sup> Floor:</b>	
Ralphs (executed Letter of Interest)	60,767
Restaurant – to be determined	16,000
Panda Express	3,400
To be determined	1,500
<b>2<sup>nd</sup> Floor:</b>	
Target (executed lease)	150,000
Ross Dress for Less	30,000
Marshall's	30,000
To be determined	2,500
To be determined	2,400
<b>Total:</b>	<b>296,567</b>

## Project Financing

The CDD indicates that the total cost of the Project is approximately \$93.5 million. Financing for the Project is comprised of the Section 108 Loan (\$22.7 million), a private loan (\$34 million), CDBG-American Recovery and Reinvestment Act (CDBG-R) funds (C.F. 09-2665) (\$1.4 million), future CDBG funds (\$2.1 million), Developer Direct Equity and Deferred Developer Fee (\$12.2 million), NMTC Equity Investment (\$13.7 million) and Tenants Investments (\$7.4 million). Additional information regarding the financing for the Project is provided in the Findings Section of this report. It should be noted that the issuance of the Section 108 Loan reduces the City's capacity to provide additional loans to other projects in the current Consolidated Plan year. If the Council approves this Project, the remaining Section 108 debt capacity is approximately \$89.1 million.

Future commitment of CDBG funds is subject to Mayor and Council approval and allocation on an annual basis. In the event that the approval is not provided for future CDBG funds, the Borrower guarantees to provide these funds to close the funding gap. The Section 108 Loan represents funds from the federal government that are collateralized against future City CDBG entitlements.

In addition to the aforementioned financing, the Project also includes a total of approximately \$20 million in pledged SSTR over a 20-year period, and \$10.4 million in SSTI over a 30-year period to debt service the \$22.7 million Section 108 Loan.

## Section 108 City Loan

The CDD requests authority to negotiate and execute a promissory note in favor of HUD and a Loan Agreement with the Borrower to borrow up to \$22,674,000 by the City pursuant to the Section 108 Loan Guarantee program from HUD for the reasonable and eligible development costs of the Project.

The City will make principal and interest debt service payments to HUD based on the HUD amortization schedule that is provided to the City after the issuance of the Section 108 Loan. The interest-only debt service payments for the proposed Section 108 Loan during the Variable Interest period (estimated to be two years) will be paid from an Interest Reserve Fund, funded with proceeds (\$566,850) from the Section 108 Loan. The Sponsor will provide an independent and direct guarantee to the City to replenish the Interest Reserve Fund for debt service payments in the event of a shortfall. The debt service payments for the remaining 18 years of the Section 108 Loan term are proposed to be paid from the following and are shown in Attachment Three:

1. Pledge of 100 percent of the Agency's net SSTI revenues of the Borrower and Agency from the Project;
2. Pledge of 100 percent of site specific AB1290 funds from the Project; and,
3. An aggregate amount of 49 percent of Project-generated SSTR.

The CDD recommends that the release of the \$22,674,000 in Section 108 City Loan funds should be subject to HUD approval and the following:

1. Revisions to the OPA between the Agency and District Square, LLC for the Project as detailed in the Agency Financing Section below;
2. The Borrower providing necessary and sufficient documentation evidencing that at least 70 percent of the Project is pre-leased;
3. The Borrower's creation of an entity to serve as an independent Guarantor for the Section 108 Loan. In the course of the Guaranty, the Guarantor shall meet the following covenants: 1) Guarantor's capitalization, as determined by current market value (based on an annual appraisal) shall not fall below \$10,000,000; and 2) Guarantor's annual unencumbered and unrestricted Cash Flows from operation shall not fall below \$1,200,000; and,
4. The Developer's agreement that the City will not exceed the pledge of an aggregate 49 percent of SSTR over the life of the Section 108 Loan.

The Section 108 Loan will generate a front end fee of \$113,370 when the loan is disbursed. In addition, the Developer will pay all of the City's closing costs for Project transactions. A summary of the Section 108 Loan Terms is provided as Attachment 4 to this report. The Risks and Mitigation Factors for the Section 108 Loan are discussed in the Findings Section of this report.

Project construction activity is expected to begin within three to six months after the close of the Section 108 Loan Agreement and approval of the Section 108 Loan by HUD.

#### Agency Financial Assistance

The Agency will pledge future Agency funds up to \$6,500,000, plus interest, towards repayment of the \$22.7 million Section 108 Loan. Projections for these future net SSTI and site specific AB1290 funds were estimated by CDD and are provided in Attachment 3 to this report. The Agency will also submit an application for a U.S. Department of Commerce Economic Development Administrative Grant (EDA Grant) in an amount up to \$2,000,000. The EDA Grant would reimburse the Agency for a portion of the financial assistance to the Project. Future net SSTI and AB1290 funds attributable to the Project will have to be approved and appropriated annually by the Council for the Project.

The Agency also requests authorization to negotiate and make changes to the OPA, to comply with federal requirements in connection with the Section 108 Loan that will be provided for the Project, including execution of the Note prior to the completion of the Project, subject to the review of the City Attorney.

Discussions with CDD indicate that changes to the terms and conditions of the OPA and Note are required pursuant to HUD regulations for the City to accept the pledge of SSTIs from the Project as one of the key sources of funds for repayment of the Section 108 Loan. The CDD recommends that the documentation by and between District Square LLC and

the Agency, consisting of the OPA, the Note and attachments, include the following representations by the assignor (effectively the Agency) for the benefit of the assignee (City/CDD):

- 1) The Agency's proposed administrative fee which is proposed at two percent annual SSTI should be deleted or waived by the Agency as this was not included in the cost projections for the Project. The CDD indicates that this fee will reduce the amount of net SSTI available for debt service of the Section 108 Loan;
- 2) The OPA structure must be changed so that the Note shall state that the CDD, on behalf of the City, is the primary assignee and the Agency is the effective assignor. Further, the Note and should be fully executed and delivered to CDD as the Agency's funding commitment before or concurrent with the close of the Section 108 Loan Agreement for the Section 108 loan and the execution of the related documents. Also, the Note shall contain terms that are customary and reasonable both professionally and legally to provide CDD with the necessary and sufficient collateral for the purpose of assignment of the loan/collateral to HUD and meeting the Loan to Value ratio required for the Section 108 Loan as pursuant to HUD regulations; and,
- 3) The Agency shall give consent for District Square LLC to assign the Pledge Agreement for the SSTI, as provided in the OPA, Note and SSTI Projections, solely for the benefit of the City, HUD, and such other financial institutions as determined by CDD.

With regard to the CDD's aforementioned Recommendation No. 1, our Offices concur that the Agency's addition of a two percent administrative fee should not be included as part of the OPA. This is the first project to include such a fee. The imposition of such a fee for this project or any future project could set a precedent and impact future economic development projects. Therefore, we recommend that the Agency report to the Housing, Community, and Economic Development Committee in 30 days with details of this new fee, the criteria in determining when this fee will be applied and to what projects; the policies and procedures regarding application of the fee; and, expenditures the Agency anticipates funding with revenue received from implementing this new fee.

#### New Market Tax Credits

To complete gap financing for District Square, the Developer intends to seek New Market Tax Credits (NMTC). NMTCs are funds which allow investors to receive a federal tax credit for making qualified investments in low-income communities. The Developer will identify one or more Community Development Entities (CDE) to allocate \$56.3 million in Qualified Equity Investments resulting in a gross NMTC equity investment of \$13.7 million. NMTC are provided to projects after all sources of funds have been secured.

Pursuant to Federal tax law, investors may not redeem their investments in CDEs prior to the conclusion of a seven-year period. To accommodate the seven year

requirement for the NMTC funding, the City is required to waive the right to foreclose on the Project for the first seven years. The CDE will record a Deed of Trust in the second position on the real property to secure the Project as collateral for the first seven years of the Section 108 Loan Agreement. The CDE will in turn provide a security interest for the Section 108 Loan during the first seven years. At the conclusion of the seven-year period and after the NMTC investor exits the Fund, the City will have a second trust deed security interest in the Project. For District Square, the Developer or Sponsor of the Project will assume responsibility for payment of the Section 108 Loan after the first seven years.

NMTC regulations require that at least 40 percent of all permanent jobs created by a Project be filled with low- and moderate-income individuals. According to the Agency and CDD, District Square will create approximately 430 temporary construction jobs and 600 new permanent jobs. Of these, 240 must be filled by low- and moderate-income individuals.

### Financial Reviews

The CDD requests that the Mayor and Council instruct the Office of Finance (OOF) and the Department of Water and Power (DWP) to provide on a quarterly basis to CDD and the City Administrative Officer (CAO) the most recent information on the amount of the City's share of the SSTR for the Project as well as all CDD-administered SSTR projects.

In addition to CDD's analysis of projected SSTR for the Project, Kosmont Companies (Kosmont), an independent, third-party consultant, has also conducted a preliminary analysis of the revenue assumptions for the Project. Additional information on the financial analysis by CDD and Kosmont is provided in the Findings Section of this report.

## **RECOMMENDATIONS**

1. That the City Council:
  - a. Authorize the Community Redevelopment Agency (Agency) Chief Executive Officer (CEO), or designee, to:
    - i. Execute, after final approval and execution of all settlement agreements for all litigation between the Agency and District Square, LLC (Developer) or its affiliates and after dismissal of all such litigation by Developer/its affiliates, an Owner Participation Agreement (OPA) with the Developer for the District Square commercial redevelopment project, which OPA pledges future Agency funds to the Developer in the form of a promissory note (Note) in a principal amount of up to \$6,500,000, plus interest, to reimburse the Developer for publicly-owned improvement costs and foundation costs;
    - ii. Take all necessary actions to implement the OPA, including without limitation execution and delivery of the Note, subject to the terms and conditions of the OPA;



- iii. Negotiate and make changes to the OPA with District Square, LLC, in consultation with the Community Development Department (CDD), and subject to review by the City Attorney, in order to comply with Department of Housing and Urban Development (HUD) requirements in connection with the Section 108 Loan for the project, including execution of the Note prior to completion of the project as follows:
  - (1) The structure must be changed so that the Note shall state that the Community Development Department (CDD), on behalf of the City, is the primary assignee and the Agency is the effective assignor and should be fully executed and delivered to CDD as the Agency's funding commitment before or concurrent with the close of the Section 108 Loan Agreement for the Section 108 Loan and the execution of the related documents. Also, the Note shall contain terms that are customary and reasonable both professionally and legally to provide CDD with the necessary and sufficient collateral for the purpose of assignment of the loan/collateral to HUD and meeting the Loan to Value ratio required for the Section 108 Loan as pursuant to HUD regulations;
  - (2) The Agency shall give consent for District Square, LLC to assign the Pledge Agreement for the SSTI, as provided in the OPA, Note and SSTI Projections, solely for the benefit of the City, HUD, and such other financial institutions as determined by CDD;
- iv. To apply for a U.S. Department of Commerce Economic Development Administrative Grant (EDA Grant) in the amount up to \$2,000,000 for the purpose of covering public improvement costs associated with the District Square Project and instruct the Agency to report to the Council if an EDA Grant is awarded;
- b. Delete the two percent per annum administrative fee in the OPA relative to the Agency's commitment of future SSTI, and instruct the Agency to report to the Housing, Community, and Economic Development Committee in 30 days with details of this new fee; the criteria in determining when this fee will be applied and to what projects; the policies and procedures regarding application of the fee; and, expenditures the Agency anticipates funding with revenue received from implementing this new fee;
- c. Adopt a joint resolution (Attachment 1) making findings regarding the expenditure of funds up to \$6,500,000 (plus interest accruing under the Note) from the Mid-City Recovery Redevelopment Project Area for certain publicly-owned improvements associated with the District Square commercial redevelopment project;

- d. Instruct the Agency's CEO, or designee, to report on a quarterly basis, by no later than two weeks after the end of each calendar quarter, to the Community Development Department (CDD), the Chief Legislative Analyst (CLA), and the City Administrative Officer (CAO), the actual amount of Assembly Bill 1290 funds available to the Project, and transfer said funds accordingly;
- e. Instruct the Office of Finance's General Manager, or designee, to report on a quarterly basis, by no later than two weeks after the end of each calendar quarter, to CDD and the CAO, the City's share of the Sales Tax and the Business Tax from the Project, including Phase I; and
- f. Request the Department of Water and Power's (DWP) General Manager, or designee, to report on a quarterly basis, by no later than two weeks after the end of each calendar quarter, to CDD and the CAO, the amount of the City's share of the Utility Taxes from the Project;
- g. Instruct the Agency's CEO, or designee, to convene a team consisting of CDD, CLA, CAO, the Mayor's Office and the Agency to review and provide input for projects that propose to use SSTR as a source for debt service payments. Efforts should be made to hold a meeting as soon as SSTR funds are contemplated as a source of gap financing, and no later than 60 days prior to the transmitting the project for Council and Mayor approval; and,

2. That the City Council and the Mayor:

- a. Authorize the CDD's General Manager, or designee, to:
  - i. Negotiate and execute a promissory Note in favor of the U.S. Department of Housing and Urban Development (HUD) and the related documents (HUD documents) for the borrowing of up to \$22,674,000 by the City pursuant to the Section 108 Loan Guarantee program from HUD, in order to provide financial assistance for the development of District Square Retail Project, subject to approval of the City Attorney as to form and legality;
  - ii. Negotiate and execute amendments of the HUD Documents that may be necessary, subject to approval of the City Attorney as to form and legality;
  - iii. Negotiate and execute a Section 108 Loan Contract and related documents for advancing the Section 108 Loan of up to \$22,674,000 to Metropolitan Square (Borrower) for the reasonable and eligible development costs of the Project, subject to approval of the City Attorney as to form and to the following:
    - (1) The Borrower's creation of an entity to serve as Guarantor for the subject \$22,674,000 Section 108 Loan, acceptable to CDD and to the City Attorney as to form and legality;

- (2) The Borrower providing necessary and sufficient documentation evidencing that least 70 percent of the Project is pre-leased;
  - (3) The Developer's agreement that the City will not exceed the pledge of an aggregate 49 percent of SSTR over the life of the Section 108 Loan. Attachment 3 defines each year's percentage of SSTR pledged from Year Nine through Year 20, and these percentages should be maintained. Any shortfall of SSTR debt payments will be the sole responsibility of the Developer. In the course of the Guaranty, the Guarantor shall meet the following covenants: 1) Guarantor's capitalization, as determined by current market value (based on an annual appraisal) shall not fall below \$10,000,000; and 2) Guarantor's annual unencumbered and unrestricted Cash Flows from operation shall not fall below \$1,200,000.
- iv. Provide debt service for the Section 108 Loan by applying up to 49 percent of site specific tax revenues (SSTR) generated from the Project (consisting of Target and other retailers to be determined);
  - v. Negotiate and execute a Pledge and Assignment Agreement with the Agency for the pledge of 100 percent site specific tax increment revenues (SSTI) from the Project to be applied towards debt service and repayment of the Section 108 Loan;
  - vi. Negotiate and execute agreements that will subordinate the Section 108 Loan to a construction or a permanent senior lender, and also other amendment(s) related to the Section 108 Loan Documents, subject to approval of the City Attorney as to form; and
  - vii. Prepare Controller instructions, with concurrence of the CAO, including any future technical adjustments relative to the intent of this report, and instruct the Controller to implement these instructions;
- b. Authorize the Controller to:
    - i. Establish new account F218 District Square and appropriate \$22,674,000 within Fund 43F Section 108 Loan Guarantee Program; and
    - ii. Expend funds upon proper demand of the General Manager of CDD, or designee;
  - c. Find that the Project is in compliance with CEQA and the National Environmental Policy Act (NEPA), and as per the environmental documents the Project has no adverse impact on the environment;

- d. Find that the Project meets the national Objective, Eligible Activity and Public Benefit provision of the Housing and Community Development Act and that the Project is necessary and appropriate to accomplish the City's economic development objectives; and,
- e. Instruct the General Manager, CDD, or designee, to convene a team consisting of CDD, CLA, CAO, the Mayor's Office and the Agency to review and provide input for projects that propose to use SSTR as a source for debt service payments. Efforts should be made to hold a meeting as soon as SSTR funds are contemplated as a source of gap financing, and no later than 60 days prior to the transmitting the project for Council and Mayor approval.

### **FISCAL IMPACT STATEMENT**

The District Square Retail Project (Project) will have a General Fund impact. The Project is anticipated to generate new revenue to the City in the form of Site Specific Tax Revenues (SSTR) from sales tax, business tax and utility fees. Approval of the recommendations will result in the use of up to 49 percent of new revenue for Section 108 debt service for the life of the loan. The use of General Fund revenues to pay Section 108 debt service payments makes this financing a General Fund obligation. Funds for any annual debt service payment are subject to discretionary appropriation by the Mayor and the Council and are included in the General Fund Capital Finance Administration Budget. The Borrower will provide an independent Guarantor directly to the City that would guarantee any shortfalls in the Project-generated SSTR, Pledged AB1290 Funds (AB1290) and Community Redevelopment Agency's (Agency) net Site Specific Tax Increment (SSTI) Revenues for the Section 108 Loan.

The proposed City funding for the Project is comprised of the following federal grant and loans: 1) \$22.7 million Section 108 Loan; 2) \$1.4 million in Community Development Block Grant (CDBG)-American Recovery and Reinvestment Act funds and 3) \$2,052,500 from future CDBG funds, subject to the approval of the Council and the Mayor. In addition to approximately \$26.2 million in federal grants and loans, the City is contributing approximately \$20 million in Project generated SSTR that is pledged to debt service the \$22.7 million Section 108 Loan for a 20-year period beginning in 2013 and expiring in 2032.

The Section 108 Loan will generate a front end fee of \$113,370 when the loan is disbursed as program income for CDBG. Section 108 Loans represent funds from the federal government and are collateralized against future City CDBG entitlements. While the Project itself is eligible for CDBG, should these funds be used in an ineligible activity, repayment would be required from non-federal dollars. The recommendations in this report regarding CDD are in compliance with the City's Financial Policies in that loan proceeds are comprised entirely of federal funds.

In addition, the Agency is contributing approximately \$974,000 of Site Specific AB1290 funds and approximately \$10.4 million in SSTI that is pledged to debt service the Section 108 Loan and for any unpaid balance of the loan at maturity. The Agency is only bound by the disclosure provisions of the City's Debt Management Policies; the City Financial Policies are not applicable to the Agency.

**DEBT IMPACT STATEMENT**

The inclusion of the District Square Retail Project (Project) debt service repayment amounts (minus the projected site specific tax revenues for the Project) in the City's debt chart will not cause the City's debt service payments to exceed six percent of General Fund revenues for non-voter approved debt, as established in the City's Financial Policies, Debt Management Section.

## **FINDINGS**

### **1. Basis for Report**

The Community Development Department (CDD) released a transmittal dated May 12, 2010 requesting, among other things, a U.S. Department of Housing and Urban Development (HUD) Section 108 Loan in the amount of \$22.7 million for the development of the District Square Retail Project (Project) located in the Mid-City Recovery Redevelopment Project Area. The Community Redevelopment Agency Board, at its meeting of July 1, 2010, approved the recommendations presented by Agency staff relative to the execution of an Owner Participation Agreement (OPA) which includes a payment of up to \$6,500,000 for the construction of publicly owned improvements with District Square, LLC (Developer). The Chief Legislative Analyst (CLA) and City Administrative Officer (CAO) were requested to report on the matter.

### **2. District Square Retail Project**

The Project is the second phase of a retail complex located at 3570-3670 Crenshaw Boulevard in Los Angeles, Assessor Parcel Numbers (APN) 5033-001 through 024 and 027 through 035.

The first phase, consisting of approximately 64,500 net rentable square feet (nrsf) for several retail stores, was completed in 2003. The following existing tenants are currently on the Project site: Ralphs, Rite-Aid, Rent-To-Own (lessee of Rite Aid), Unity in the Community (lessee of Rite Aid), Cameo Cleaners, Royal (lessee of Cameo Cleaners), King Donuts, and Hong Kong Express. According to the Agency, relocation costs for the tenants have not been determined; however, all costs related to the relocation of all tenants on the site will be borne by the Developer.

This second phase will consist of new construction of a 296,719 nrsf two-story retail center and rooftop parking spaces. The Project is adjacent to two rail lines/stations: 1) the Exposition-Crenshaw Light Rail Line Station; and 2) the Crenshaw Line (approved by the Metropolitan Transportation Authority in December 2009, which will connect to the Exposition-Crenshaw Light Rail Line). The Developer will demolish the existing 78,000 square feet of commercial and retail improvements and replace them with a the new structure. The Agency notes that the Project will be built to the intent of Leadership in Energy and Environmental Design Silver, but will not be required to be certified as such.

The CDD states that the Developer has received a firm commitment from Target and Ralphs and letters of interest from the other proposed tenants (Ross Dress for Less, Marshalls, Panda Express and other general retailers).

### **3. Project Financing**

The total cost of the Project is approximately \$93.5 million. Financing for the Project is comprised of the Section 108 Loan (\$22.7 million), a private loan (\$34 million), \$1.4 million from Community Development Block Grant (CDBG)-American Recovery and Reinvestment Act (ARRA) funds (C.F. 09-2665), \$2.1 million from future CDBG funds,

Developer Direct Equity and Deferred Developer Fee (\$12.2 million), New Market Tax Credit (NMTC) Equity Investment (\$13.7 million) and Tenants Investments (\$7.4 million).

The Borrower will deposit the \$22.7 million Section 108 Loan into a Special Purpose Investment Fund (Investment Fund) to be formed in conjunction with the NMTC funding structure of the Project. The Investment Fund will deposit the proceeds from the Section 108 Loan and other eligible funding (Qualified Equity Investments) into a Community Development Entity (CDE) that will be set up to receive financing for the Project.

a. City Financing

The City will provide a total of \$26,238,527 in federal grants and loans towards the Project consisting of the \$22,674,000 Section 108 Loan, \$1,447,500 CDBG-ARRA (C.F. 09-2665) funds and \$2,052,500 from future CDBG funds, subject to the approval of the Council and the Mayor. Future commitment of CDBG funds is subject to Mayor and Council approval and allocation on an annual basis. In the event that the approval is not provided for future CDBG funds, the Borrower guarantees to provide these funds to close the funding gap. The City's contribution is the payment of debt service for the Section 108 Loan from Project-generated SSTR. In addition to approximately \$26.2 million in federal grants and loans, the City is contributing approximately \$20 million in Project generated SSTR that is pledged to debt service the \$22.7 million Section 108 Loan for a 20-year period beginning in 2013 and expiring in 2032.

Section 108 City Loan:

The CDD requests authority to negotiate and execute a promissory note in favor of HUD and a Loan Agreement with the Borrower to borrow up to \$22,674,000 by the City pursuant to the Section 108 Loan Guarantee program from HUD for the reasonable and eligible development costs of the Project. The \$22,674,000 Section 108 Loan will have a 20-year term. The CDD also requests authorization for an annual budgetary appropriation of an aggregate of 49 percent of the Project SSTR to apply towards debt service and repayment of the \$22,674,000 Section 108 Loan. The Section 108 Loan will be collateralized by a second deed of trust in the Project site.

Prior to release of funds, the Borrower shall procure the guaranty of an independent Guarantor (Guarantor), directly to the City that would guarantee the Section 108 Loan with respect to the following:

1. Any and all shortfalls in the SSTR, AB1290 and SSTI, in amounts sufficient to meet debt service obligations of the Section 108 Loan, that are lesser than the projections in Attachment 3, including the replenishment of Interest Reserves during the Variable Interest Rate (interest only) obligation of the Section 108 Loan);
2. Construction start date and completion guarantees;
3. Prepayment Penalties, as provided in the term sheet attached to this report;
4. Guaranty conversion of the Section 108 Loan from Variable to Fixed Interest Rate, as provided herein; i.e., in an amount sufficient to meet debt service of the Section 108

Loan at the Fixed Interest Rate. The conversion provision may mandate the Guarantor to partially prepay the Section 108 Loan in order to effectuate the conversion to the Fixed Interest Rate as provided in the term sheet attached to this report; and,

5. Guarantor will fund any shortfall up to 100 percent of the required funds to complete the Project if additional private financing is not secured in time and or in the projected amounts.

b. Agency Financing

The Agency requests authority to: 1) execute an OPA with District Square, LLC. (Developer) for the Project which pledges future Agency funds for payments of up to \$6,500,000, plus interest, to reimburse the Developer for a portion of reimbursable publicly owned improvement costs; 2) execute and deliver a Promissory Note (Note) with the Developer, subject to the terms of the OPA; and, 3) submit an application for a U.S. Department of Commerce Economic Development Administrative Grant (EDA) in the amount up to \$2,000,000. Future Agency funds will include SSTI and AB1290 funds attributable to the Project that have been approved and appropriated by the Council for the Project.

If an EDA Grant of up to \$2,000,000 is awarded to the Project, the proceeds will be used to reimburse the Agency for a portion of the financial assistance provided by the OPA. Depending on the timing of the EDA Grant process and the timing of the Phase II public improvement construction, the Agency may or may not receive any EDA Grant funds. If the EDA Grant is awarded, the Agency would return to its Board for authority to enter into agreements required by the EDA Grant; amend its budget to accept the EDA Grant money; and carry out actions associated with the EDA Grant.

The Agency also requests authorization to negotiate and make changes to the OPA, subject to the review of the City Attorney, to comply with federal requirements in connection with the Section 108 Loan that will be provided for the Project, including execution of the Note prior to the completion of the Project. Discussions with CDD indicate that changes to the terms and conditions of the OPA and Note are required pursuant to HUD regulations for the City to accept the pledge of SSTIs from the Project as one of the key sources of funds for repayment of the Section 108 Loan.

c. Section 108 Loan Repayment

The Section 108 Loan will be repaid in full from Interest Reserve funds, net SSTI revenues and AB1290 revenues from the Project and SSTR. A total of \$566,850 in Interest Reserve funds will be set aside to pay interest only debt service payments for two years. The debt service payments for the remaining 18 year term will be as follows:

1. Pledge of 100 percent of Agency's net SSTI revenues of the Borrower and Agency from the Project, as approved on an annual basis by the Council;
2. Pledge of 100 percent of site specific AB 1290 funds from the Project; and,



3. Pledge of a total 49 percent of the SSTR over the life of the Section 108 Loan, as approved on an annual basis by the Council and Mayor in the General Fund Capital Finance Administration Budget.

Any shortfall of SSTI, AB1290 and SSTR debt payments will be the sole responsibility of the Developer. The City will have the right to foreclose or exercise other foreseeable work-out remedial measures should the project face financial difficulties, after for seven years (i.e. the exit of the NMTC investor). The Section 108 Loan represents funds from the federal government and is collateralized against future City CDBG entitlements. Should these funds be used in an ineligible activity, repayment would be required from non-federal dollars.

#### **4. Risks and Mitigation Factors**

The CDD states that there are certain risks to the City's financial investment in the Project. However, the CDD has included conditions in the terms of the Section 108 Loan to mitigate these risks. The risks and mitigation factors include the following:

1. Currently, the Project is partially pre-leased, and thus there is uncertainty with respect to the type, targeted tenants and the possibility of securing tenants that can commit to lease rates at the projected levels.

The anchor and major tenants have already committed to the Project. The currently unleased component is less than four percent of total rentable square footage. The Section 108 Loan is dependent on the Project to generate the projected SSTR, AB 1290 and SSTI. The projected SSTR, AB1290 and SSTI are dependent on the lease-up of the Project and the retail operations to generate the projected taxable sales. However, if for any reason the projected SSTR, AB1290 and SSTI were not available, as projected in Attachment 3 hereto, the Guarantor shall meet any and all shortfalls in meeting the debt service and repayment of the Section 108 Loan.

2. The debt service estimates for the Section 108 Loan are based on a five percent interest rate. At this time it is difficult to determine the rate that will be in effect when interest rate is converted from variable to fixed rate. If the future interest rate is higher, the projected SSTR, AB1290 and SSTI may be insufficient to meet the debt service of the Section 108 Loan at post conversion of the Section 108 Loan to a fixed interest rate.

The Guaranty structure has provided for the mandatory prepayment of the principal amount of the Section 108 Loan by the Guarantor, in an amount sufficient to assure conversion of the Section 108 Loan from Variable to Fixed rate, where the actual SSTR, AB1290 and SSTI from the Project may meet the debt service and repayment obligations of the Section 108 Loan.

3. There may be uncertainty as to the Guarantor's ability to meet financial obligations, as provided in this transmittal.

The risk exposure to the Guarantor is mitigated by the two financial covenants that will assure the continued strong capitalization and sustained sufficiency of cash flows of

the Guarantor. In the course of the Guaranty, the Guarantor shall meet the following covenants: 1) Guarantor's capitalization, as determined by current market value (based on an annual appraisal) shall not fall below \$10,000,000; and 2) Guarantor's annual unencumbered and unrestricted Cash Flows from operation shall not fall below \$1,200,000.

**5. Eligibility and Compliance**

The City's Section 108 Program is pursuant to Title I of the Housing and Community Development Act of 1974. The City's program is designed to create economic opportunity in the City by creating jobs for low to moderate income residents, provide goods and services to low and moderate income communities and eliminate slum and blight. Projects must meet an eligible activity as defined in the CDBG Program regulations. The CDD states that the Project is eligible for funding under HUD guidelines for Special Economic Development Activities, subject to proof of eligibility by the Borrower. The proposed Project meets the HUD Public Benefit requirement for the creation of jobs and the HUD National Objective of benefiting low and moderate income persons by creating jobs. The Project is expected to create up to 600 new jobs at or above the State of California's Prevailing Wage Rate with a minimum of 306 of these jobs (51 percent) to be made available to low and moderate income persons. The CDD will submit a request to HUD for Section 108 assistance after Council and Mayor approval of the Section 108 Loan as required by HUD.

The CDD states that Section 108 funding for the Project is appropriate under federal assistance guidelines and that the Project costs are reasonable. The Developer will be required to retain a Financial Consultant to provide a final opinion on the funding structure for the Project prior to the release of Section 108 funding. The Section 108 Loan Agreement will be executed only when all the other sources of funding for the Project are firmly committed and available to the Project. The release of funds for the Project will be subject to compliance with the California Environmental Quality Act and National Environmental Policy Act. The CDD reports that the proposed funding and terms for the Project were reviewed by its Internal Loan Committee in May 2009 and are within its established underwriting guidelines. In addition, the CDD will ensure that the Borrower is in compliance with all City contracting ordinances before execution of the loan documents.

Based on information provided by CDD, the following chart reflects estimates of the City's debt capacity relative to Section 108 loans:

Basis of Calculation – Entitlement Amount of \$79.4 million *	
Capacity Based on Entitlement Amount,	\$397,000,000
Less the following:	
Los Angeles Housing Department Loans	53,000,000
CDD Existing Loans	162,800,000
Loans Pending HUD Review	60,100,000
Loans Pending Mayor/Council Consideration, including District Square	32,000,000
<b>Remaining Section 108 Debt Capacity (includes Wait-Listed Projects)</b>	<b>\$89,100,000</b>

\* \$79.4 million was the estimated amount of CDBG entitlement funds used to calculate the 36<sup>th</sup> Program Year Budget. The calculation may need to be adjusted to reflect the reduced actual entitlement amount of approximately \$78 million.

Collateral and debt service obligations of City Loans that are funded by Section 108 are the sole responsibility of the borrower and are secured by the security interest in an escrow account and Developer guarantees to prevent any negative impact on City grant resources. In the event the City does not make its scheduled debt service obligation to HUD, pursuant to its Section 108 borrowings, HUD's recourse is to draw payment from current and future CDBG allocations to the City.

## **6. Site Specific Tax Revenues**

### General Fund Debt Obligation

The Council has approved seven projects which propose to use SSTR as the repayment source for the Section 108 Loans (Lawry's California Center, Chesterfield Square, Midtown Crossings, Plaza Pacoima Retail Center Project, Slauson Central Shopping Center, Pico Hauser Retail Plaza Project and Martin Luther King-Figueroa Supermarket). Currently, General Fund monies are provided to pay debt service for the Lawry's and Chesterfield projects (\$529,884 for Fiscal Year 2009-10). The King-Figueroa project was not implemented. The remaining projects are in construction, with debt service payments being provided by the Interest Reserve Fund, the Developer or the Agency.

The proposed SSTR-based Section 108 Loan would require an annual debt service payment of approximately \$20 million over a 18-year period, subject to appropriation by the Mayor and Council through the annual budget process. The CDD analysis indicates that the Project will create a new revenue stream through business, sales and utility tax payments that will be sufficient to reimburse the General Fund for the entire debt service payments.

The use of General Fund revenues, instead of the projects' net operating income, special fund or CDBG, makes Section 108 debt obligations a General Fund obligation. As a result, any General Fund revenues used to pay for Section 108 debt obligations will be added to the City's debt ceiling for non-voter approved debt.

In May 2006, the Mayor and Council adopted a SSTR tracking procedure (C.F. 06-0201). In addition, the Mayor and Council required that all CDD Section 108 Loan Agreements between the City and project developers using SSTR as a repayment source of a loan provision requiring the developers to obtain from project tenants a waiver from the confidentiality provisions of Los Angeles Municipal Code (LAMC) Section 21.17 and State law (C.F. 06-0201). The City Attorney has raised significant concerns relative to the tracking and use of project-generated SSTR. In general, the concerns involve the confidentiality of the information, the use of information for purposes other than tax collection, difficulty in obtaining accurate sales and utility users' tax information, Public Records Act requests and waivers of privacy interests of the project tenants. CDD states that no waivers will be required for this Project in that no one taxpayer accounts for more than 50 percent of the sales/utility user tax data to be reported (per California Revenue & Taxation Code Section 7056).

### Site Specific Tax Revenue-based Loan

The completion of the Project will result in a net increase in SSTR for the General Fund. General Fund revenues from Phase I and Phase II will contribute to the debt service payments for the Project. The CDD states that the Developer requested a Section 108 Loan and the City considered financial assistance to the Developer for Phase I in 2003. Due to timing and the necessity to meet the requests of prospective tenants, the Developer obtained private financing for Phase I. Phase I was completed in 2006 with the understanding that Phase II would be required as part of a completed Project. The SSTR revenues from Phase I that will contribute to the Project are significantly less than the 49 percent that would have been provided if financial assistance was approved for Phase I with SSTR as a designated source of repayment for a Section 108 loan. The Developer is now seeking financial assistance to develop Phase II in order to remedy the conditions of blight and degradation in the subject property. It is likely that if Phase II remains undeveloped there will eventually be a negative impact on the revenues for the tenants of Phase I and reduce potential revenues. These conditions would result in a reduction in SSTR from the Project.

### Capital Finance Administration Fund

The Block Grant Investment Fund Policy allows the use of up to 50 percent of the gross amount of Project-generated revenues collected as a repayment source for Section 108 loans for up to a 20-year period. The City Attorney has indicated that funds for any annual debt service repayment are subject to discretionary appropriation by the Mayor and the Council and be included in the General Fund Capital Finance Administration Budget.

General Fund monies currently are not needed to pay debt service obligations for the \$22,674,000 Section 108 Loan. A total of \$566,850 in Interest Reserve funds will be set aside to pay interest only debt service payments for the first two years of the 20-year loan term. The estimated annual debt service payment beginning in third year through loan maturity will range from \$1.2 million to \$1.4 million.

The use of General Fund revenues, instead of the Projects' net operating income, special fund or CDBG, makes Section 108 debt obligations a General Fund obligation. As a result, any General Fund revenues used to pay for Section 108 debt obligations will be added to the City's debt ceiling for non-voter approved debt. The City's debt ceiling for non-voter approved debt is six percent of General Fund revenues. As of June 2010, the City's non-voter approved debt is 4.93 percent. The addition of the debt service for this loan will not raise the debt ceiling above six percent.

## **7. Financial Reviews**

In addition to CDD's analysis of projected SSTR for the Project, Kosmont Companies, an independent, third-party consultant, has also conducted a preliminary analysis of the revenue assumptions for the Project. Based on both review and revenue assumptions, it is concluded that to pay the debt service for the Section 108 Loan, the City will have to pledge between 49.9 percent and 54.8 percent of SSTR for the Project.

The CDD proposes that the City pledge 49 percent of future revenues, the

maximum allowed under the City's BGIF Policy, over the life of the Section 108 Loan, from the Project toward the debt service payments for the Section 108 Loan. The CDD further states that the Developer will guarantee funding for any shortfalls in debt service payments when SSTR revenues are less than the amount of debt service required for the period. The Developer will receive non-cash credits for the periods when SSTR revenues are greater than 49 percent.

## 8. Status of Litigation


The Agency (CRA/LA) is currently in litigation with an entity (M&A Gabae) affiliated with the Developer with respect to the following cases: 1) Kramer Metals, Inc., M&A Gabae v. CRA/LA (Los Angeles Superior Court No. BS113612); 2) Kramer Metals, Inc., M&A Gabae v. CRA/LA (Los Angeles Superior Court No. BS116648); and, 3) South Central Farmers Action Fund, Kramer Metals, Inc., M&A Gabae v. City of Los Angeles, ex rel. CRA/LA (Los Angeles Superior Court No. BS117561). The Agency indicates that their staff has been working diligently to settle the cases with Gabae. The parties have reached an agreement in principle; however, the final settlement agreement still needs to be drafted, negotiated and approved by the Agency Board. The Agency's obligations under the Note are conditioned upon final settlement with Gabae.

## 9. Environmental Review


The City Planning Commission was the lead agency for the proposed Project for purposes of the California Environmental Quality Act (CEQA). On June 23, 2010, the City Council adopted the Mitigated Negative Declaration (MND), and the Planning and Land Use Management Committee's report, as amended, to reduce the number of off-site liquor licenses for this Project from three to two (C.F. 10-0888).

## 10. Community Benefit

The Project is expected to create approximately 430 construction jobs and approximately 600 permanent full-time equivalent (FTE) jobs, for a total of 1,030 jobs created. In addition, the Developer will target Community Area Residents for the jobs. Because New Market Tax Credits are included as part of the Project financing, forty percent of the new jobs must be filled with low- to moderate-income persons. Another community benefit is that the Project will also provide easy and local access to goods and services at the competitive prices offered by national retailers in a historically-underserved community.



Beryl Taylor  
Senior Administrative Analyst



Annemarie Sauer  
Analyst

MAS/GFM:BLT/AS:02100199

Attachments

**Attachment 1**

Resolution No. \_\_\_\_\_

A JOINT RESOLUTION OF THE LOS ANGELES CITY COUNCIL AND THE BOARD OF COMMISSIONERS OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA, FINDING THAT THE EXPENDITURE OF FUTURE TAX INCREMENT FUNDS IN THE AMOUNT OF UP TO \$6,500,000 (PLUS INTEREST) FOR THE DISTRICT SQUARE RETAIL PROJECT IN CONNECTION WITH THE CONSTRUCTION OF PUBLICLY-OWNED IMPROVEMENTS IS OF BENEFIT TO THE MID-CITY RECOVERY REDEVELOPMENT PROJECT AREA IN ACCORDANCE WITH CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 33445 AND 33421.1.

WHEREAS, The Community Redevelopment Agency of the City of Los Angeles, California (the "CRA/LA"), is engaged in redevelopment and revitalization of the Mid-City Recovery Redevelopment Project Area (the "Project Area") pursuant to the adopted redevelopment plan (the "Redevelopment Plan") for the Mid-City Project Area; and

WHEREAS, the Redevelopment Plan provides for the repair or amelioration of deficient public improvements that contribute to the blighting conditions within the Project Area and adversely affect the recovery of the Project Area; and

WHEREAS, the CRA/LA and the City are now approving an Owner Participation Agreement ("OPA") for the development of the District Square Commercial Project located in the Project Area; and

WHEREAS, in connection with the OPA, the CRA/LA contemplates the provision of CRA/LA funds in an amount up to \$6,500,000 (plus interest) to fund certain public improvements, including without limitation curbs, gutters, exit/entrance ramps, and traffic signals, which are part of the District Square Commercial Project ("Public Improvements"); and

WHEREAS, the CRA/LA assistance is consistent with the Project Area's Five-Year Implementation Plan; and

WHEREAS, other than the CRA/LA assistance, there are no reasonable funding sources available to contribute to the cost of the Public Improvements; and

WHEREAS, Sections 33445 and 33421.1 of the California Health and Safety code requires CRA/LA and the City to make certain findings before CRA/LA funds may be used to pay for the Public Improvements; and

WHEREAS, the Board of Commissioners of the CRA/LA and the City Council of the City have reviewed and considered the facts and information with respect to the Public

Improvements, including those facts and information set forth in the memorandum to the CRA/LA Board of Commissioners to which this resolution is attached.

NOW, THEREFORE, THE LOS ANGELES CITY COUNCIL AND THE BOARD OF COMMISSIONERS OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA, DO HEREBY RESOLVE AS FOLLOWS:

The City and the CRA/LA find, determine, and resolve that:

- 1) The expenditure of CRA/LA funds for the Public Improvements is of benefit to the Project Area because it will help to eliminate blighting conditions such as broken curbs and sidewalks, potholes, and substandard alleys that currently exist.
  
- 2) No other reasonable means of financing the Public Improvements are available to the City or the Project Area. The City's current fiscal problems are prohibitive in correcting the existing deficient public improvements. In addition, the Project Area's annual budget does not have sufficient funds to make these improvements.
  
- 3) The payment of funds for the Public Improvements is consistent with the Project Area's Five-Year Implementation Plan, adopted pursuant to Section 33490, per the "Response to Developer Opportunities" program, wherein the CRA/LA works with developers to ensure that future developments meet the goals and objectives of the Project Area's Redevelopment Plan. The expenditure on the Public Improvements is necessary to effectuate the Redevelopment Plan purposes of providing high-quality public improvements and well-planned vehicular circulation systems.

ADOPTED BY THE CRA/LA: \_\_\_\_\_

ADOPTED BY THE CITY COUNCIL: \_\_\_\_\_

**District Square Retail Project  
Summary of Projected/Estimated Sources of Funding and Uses**

<u>Funding Sources</u>	<u>Amount</u>
Community Development Block Grant (CDBG) - 37th Year (pending approval)	\$2,052,500
CDBG - American Recovery and Reinvestment Act	1,447,500
City Loan - Section 108	22,674,500
Deferred Developer Fee	2,256,000
Developer Land Equity (one day land loan)	9,975,000
New Market Tax Credit (NMTC) Equity Investment	13,697,000
Private Senior Loan	34,000,000
Public Agency Fee Waivers, other	789
Tenants' Investments (Target and Ralphs)	7,350,000
	<hr/>
<b>Total Funding Sources</b>	<b><u><u>\$93,453,289</u></u></b>
<u>Estimated Expenditures</u>	
<u>Pre-Construction Costs</u>	
Land Cost (Repayment of Bridge Loan)	\$4,125,000
Land Appraisal Value in Excess of Loan	9,975,000
<u>Construction Costs</u>	
Construction Cost - Shell Building	\$26,330,652
Construction Cost - Parking Component	17,343,510
Tenant Improvement (Target and Ralphs Pay)	7,350,500
Tenant Improvement (Borrower Pays)	2,775,008
Construction - Value Engineering (Savings)	(1,500,000)
<u>Soft Development Costs</u>	
Architect, Permits and Plan Check Fees	\$10,459,834
Developer Fee (see, Deferral of Fee above)	3,760,000
Hard and Soft Costs Contingency	2,500,000
<u>Financing Fees</u>	
City Loan - Front End Fee	\$113,370
City Loan - Interest Reserve (Two Years)	566,850
Financial Consultant / Loan Broker	170,000
NMTC - Community Development Entity and Investor Front End Fees	2,811,350
NMTC - Investor's Exit Fee	562,270
NMTC - Legal/Consultants Fees	300,000
NMTC Asset Management Fee (Seven Years)	1,967,945
Private Loan - Fees	510,000
Private Loan - Interest Reserve	3,332,000
	<hr/>
<b>Total Estimated Expenditures</b>	<b><u><u>\$93,453,289</u></u></b>



**District Square Retail Project  
Summary of Projected Site Specific Tax Revenues,  
Site Specific Tax Increments and Assembly Bill 1290 Funds**

Years	SSTR Phase II Projection	SSTR Phase I Projection	49 % Total SSTR Pledged	Assembly Bill 1290 Projection	SSTI Projection	Total Available Funds	City Loan Interest \$22,674,000	Projected Principal Amortization	Credit for Projected Excess Funds	Amortized Loan Debt Service \$13,395,842	Interest Only Loan Debt Service \$3,314,000	% SSTR to Pledge
<b>Variable Interest Rate Period (Eight Years)</b>												
1	Construction and Pre-leasing Period		Interest is Capitalized as part of Development Budget									
2	Construction and Pre-leasing Period		Interest is Capitalized as part of Development Budget									
3	\$1,277,230	\$469,608	\$855,951	\$45,495	\$263,902	\$1,165,348	\$283,425	\$881,923		\$1,165,348		
4	\$1,315,547	\$483,697	\$881,630	\$46,405	\$269,179	\$1,197,214	\$272,401	\$924,813		\$1,197,214		
5	\$1,355,014	\$498,208	\$908,078	\$47,333	\$274,563	\$1,229,974	\$260,841	\$969,134		\$1,229,974		
6	\$1,395,664	\$513,154	\$935,321	\$48,280	\$280,055	\$1,263,655	\$248,727	\$1,014,929		\$1,263,655		
7	\$1,437,534	\$528,548	\$963,380	\$49,245	\$285,656	\$1,298,281	\$236,040	\$1,062,241		\$1,298,281		
8	\$1,480,660	\$544,405	\$992,282	\$50,230	\$291,369	\$1,333,881	\$222,762	\$1,111,119		\$1,333,881		
<b>Projected Start of Fixed Interest Rate Period (12 Years)</b>												
9	\$1,525,080	\$560,737	\$1,022,050	\$51,235	\$297,196	\$1,370,482			(\$221,283)	\$1,426,065	\$165,700	59.6%
10	\$1,570,832	\$577,559	\$1,052,712	\$52,259	\$303,141	\$1,408,112			(\$183,653)	\$1,426,065	\$165,700	57.5%
11	\$1,617,957	\$594,886	\$1,084,293	\$53,305	\$309,203	\$1,446,801			(\$144,964)	\$1,426,065	\$165,700	55.6%
12	\$1,666,496	\$612,733	\$1,116,822	\$54,371	\$315,387	\$1,486,580			(\$105,185)	\$1,426,065	\$165,700	53.6%
13	\$1,716,491	\$631,115	\$1,150,327	\$55,458	\$321,695	\$1,527,480			(\$64,285)	\$1,426,065	\$165,700	51.7%
14	\$1,767,986	\$650,048	\$1,184,836	\$56,567	\$328,128	\$1,569,532			(\$22,233)	\$1,426,065	\$165,700	49.9%
15	\$1,821,025	\$669,549	\$1,220,382	\$57,699	\$334,691	\$1,612,771			\$21,006	\$1,426,065	\$165,700	48.2%
16	\$1,875,656	\$689,636	\$1,256,993	\$58,853	\$341,385	\$1,657,230			\$65,465	\$1,426,065	\$165,700	46.4%
17	\$1,931,926	\$710,325	\$1,294,703	\$60,030	\$348,212	\$1,702,945			\$111,180	\$1,426,065	\$165,700	44.8%
18	\$1,989,883	\$731,635	\$1,333,544	\$61,230	\$355,178	\$1,749,952			\$158,187	\$1,426,065	\$165,700	43.2%
19	\$2,049,580	\$753,584	\$1,373,550	\$62,455	\$359,908	\$1,795,913			\$204,148	\$1,426,065	\$165,700	41.7%
20	\$2,111,067	\$776,191	\$1,414,757	\$63,704	\$364,732	\$1,843,193			\$251,428	\$1,426,065	\$165,700	40.3%
<b>Total</b>	<b>\$29,905,629</b>	<b>\$10,995,618</b>	<b>\$20,041,611</b>	<b>\$974,153</b>	<b>\$5,643,578</b>	<b>\$26,659,342</b>	<b>\$1,524,195</b>	<b>\$5,964,158</b>	<b>\$69,809</b>	<b>\$17,112,780</b>	<b>\$1,988,400</b>	<b>48.8%</b>
			<b>NPV (TIs for Years: 3 - 20):</b>		<b>\$3,570,000</b>	<b>\$14,540,000</b>						
21					\$369,656							
22					\$374,676							
23					\$379,798							
24					\$385,020							
25					\$390,348							
26					\$395,782							
27					\$401,325							
28					\$406,979							
29					\$412,745							
30					\$418,627							
31					\$424,628							
32					\$430,747							
<b>Total</b>					<b>\$4,790,331</b>							
			<b>NPV (TIs for Years: 21 - 32):</b>		<b>\$3,314,000</b>							

Notes:  
SSTR - Site Specific Tax Revenue  
SSTR escalated - Years 4-20 at 3.0 percent annually  
Variable Underwriting Interest Rate (Years 3-8) - 1.25 percent (estimated)  
Fixed Underwriting Interest Rate (Years 9-20) - 5 percent (estimated)  
SSTI - Net Site Specific Tax Increment

**Section 108 City Loan Term Sheet  
District Square Retail Project**

The terms of the Section 108 City Loan (City Loan) will include but are not limited to the following:

- Borrower:** Metropolitan Square, LLC. will lend the proceeds from the City Loan to a Special Purpose Investment Fund (Fund), to be formed in conjunction with the New Market Tax Credit (NMTC) funding structure for the District Square Retail Project (Project), subject to the approval of the Community Development Department (CDD). The Fund will invest the City Loan proceeds in a Special Purpose Community Development Entity (CDE) that will fund the Project.
- NMTC Investor:** Affiliate of Goldman Sachs or alternative, subject to the approval of CDD;
- NMTC Allocatee:** One or multiple to be determined.
- City Loan:** \$22,674,000 borrowed by the City for the U.S. Department of Housing and Urban Development (HUD) Section 108 Loan Guarantee Program.
- Project:** The Project is the second phase of a retail complex located at 3570-3670 Crenshaw Boulevard in Los Angeles, Assessor Parcel Numbers (APN) 5033-001 through 024 and 027 through 035. This phase will consist of new construction of a 296,719 net rentable square feet (nrsf) two-story retail center and rooftop parking spaces. The first phase, consisting of approximately 64,500 nrsf for several retail stores, was completed in 2003.
- Stated Maturity:** Twenty (20) years, from inception of the City Loan.
- Front End Fee:** \$113,370, or 0.50 percent of City Loan, payable to the City on closing.
- Collateral:**
1. Pledge and Assignment of SSTI by District Square, LLC and CRA/LA, as provided in this term sheet.
  2. The CDE would hold a first deed of trust in the Project, which is designated by the APNs referenced above, all improvements, leases and revenues thereon. The Borrower will assign its senior security interest in the CDE to the City. The City will give up the right to exercise its direct recourse to the collateral for a period of seven years, until the exit of the NMTC investor. Waiving the right to foreclose for seven years does not prohibit the City from exercising other foreseeable work-out remedial measures should the project face financial difficulties.

From the exit of the NMTC investor through Stated Maturity, the City Loan will be collateralized by a second deed of trust in the Project including the assignment of the leases, rents, and other income.

The Section 108 Loan may be subordinated only to a construction or a permanent loan secured solely by the Project including Phase I, subject to loan to value limitations, as provided hereinafter.

**Section 108 City Loan Term Sheet  
District Square Retail Project**

**Project Appraisal:** The Section 108 Loan is subject to market value appraisal of the Project on an "as built and stabilized" basis; with a ratio of total indebtedness of the Project (including the Section 108 Loan, but not including the portion of the Section 108 Loan attributed to SSTI and Pledged AB1290 Funds) to appraised value not to exceed 80 percent.

**Recourses:** The City Loan will have limited recourse to the Borrower. Debt service of the City Loan until it is repaid in full, including interest amount due thereunder, will be met solely from the following sources:

1. A Interest Reserve;
2. Pledge of 100 percent of net Site Specific Tax Increment (SSTI) revenues of the Borrower and CRA/LA from the Project, as per Attachment Three;
3. Pledge of Assembly Bill (AB) 1290 funds, as per Attachment Three, subject to annual appropriation by the City;
4. Pledge of a total of 49 percent of Site Specific Tax Revenues (SSTR), including the City's share of Sales Tax, Business and Utility taxes from Phase I and Phase II of the Project, over the life of the City Loan, as per Attachment Three subject to annual appropriation by the City. The years that SSTR is generated in excess of the 49 percent shall compensate for the years where SSTR falls short of the 49 percent; and;
5. Guaranty as provided in this Term Sheet.

**Interest Rate:** Interest rate of the City Loan will be the pass-through of the City's cost of funds as charged by HUD, as follows:

For the period from inception of the City Loan through the Conversion to a Fixed Interest Rate: Interest-only obligation of the Section 108 Loan will be at Variable Interest Rate indexed to three months London Interbank Offered Rate, re-set monthly, plus spread of about 0.25 percent, per annum, payable on a quarterly basis.

For the period from Conversion of the Section 108 Loan to Fixed Interest Rate through the Stated Maturity: Quarterly installments of principal and interest will be at the yield of ten (10) years U.S. Treasury Notes plus spread of about 0.5 percent, per annum.

Conversion from Variable Interest Rate to Fixed Interest Rate shall occur at the latest of (a) three (3) years from inception of the Section 108 Loan, (b) Stabilized Operation, as defined hereinafter, or (c) a public offering by the HUD. Stabilized Operation shall mean when the Project generates the aggregate of SSTR and SSTI as projected in Attachment Three.

**Section 108 City Loan Term Sheet  
District Square Retail Project**

Interest Reserve: \$566,850.

The Interest Reserve shall pay for interest-only obligations of the City Loan in the course of the Variable Interest Rate period.

Upon conversion of the City Loan to a fixed interest rate, the unexpended portion of the Interest Reserve, if any, will be paid to the Borrower for reimbursement of the eligible costs of the Project or repayment of the City Loan.

Prepayment Fee: For the period from inception of the Section 108 Loan through the Conversion to a Fixed Interest Rate, there will not be a prepayment penalty.

For the period from Conversion to a Fixed Interest Rate through the Stated Maturity, prepayment of the Section 108 Loan will be subject to penalty. The Prepayment Penalty is an amount to be determined such that if the principal prepayment amount is invested in equivalent term U.S. Treasuries, the City will be made whole, as if the Section 108 Loan was outstanding.

Guaranty: The Borrower shall procure the guaranty of an independent Guarantor (Guarantor), directly to the City that would guarantee the City Loan with respect to the following:

1. In case of shortfall(s) in the Interest Reserve during the Variable Interest Period, the Borrower shall guarantee the immediate replenishment of the Interest Reserve in amount(s) sufficient for the City to meet the on-going interest-only obligations to HUD;
2. Any and all shortfalls in the SSTR and SSTI, in amounts sufficient to meet debt service obligations of the Section 108 Loan, that are lesser than the projections in Attachment Three, including the replenishment of Interest Reserves during the Variable Interest Rate (interest only) obligation of the Section 108 Loan;
3. Construction start date and completion guarantees;
4. Prepayment Penalties, as provided in this term sheet;
5. Guaranty conversion of the Section 108 Loan from Variable to Fixed Interest Rate, as provided herein; i.e., in an amount sufficient to meet debt service of the Section 108 Loan at the Fixed Interest Rate. The conversion provision may mandate the Guarantor to partially prepay the Section 108 Loan in order to effectuate the conversion to the Fixed Interest Rate as provided in this term sheet; and;

**Section 108 City Loan Term Sheet  
District Square Retail Project**

6. In case additional private financing is not secured in time and in the projected amount, the Guarantor shall fund any and all resulting shortfall(s) up to 100 percent of the required funds to complete the Project.

Covenants:

In the course of the Guaranty, the Guarantor shall meet the following covenants:

1. Guarantor's capitalization, as determined by current market value (determined by annual appraisal) shall not fall below \$10,000,000; and
2. Guarantor's annual unencumbered and unrestricted Cash Flows from operation shall not fall below \$1,200,000.

Pledge of SSTI:

The acceptance of the pledge and assignment of SSTI as collateral for the City Loan is subject to the following to be expressed in the agreements between District Square LLC and CRA/LA; (consisting of Owner Participation Agreement (OPA), Promissory Note (Note), attachments to OPA and Note, including the projected SSTI (SSTI Projection), and the Pledge and Assignment Agreement between the Borrower, CRA/LA and CDD (City):

1. CRA/LA (hereinafter, the "Assignor") shall expressly agree for District Square LLC to assign the SSTI, as provided in the OPA, Note and SSTI Projections, solely for the benefit of the City, the U.S. Department of Housing and Urban Development (HUD), and such other financial institutions (collectively, hereinafter "Assignee") that City in its sole and absolute discretion may deem necessary to further pledge and assign the SSTI.
2. The Assignor, shall expressly commit to the Borrower and the Assignee of its pledge and assignment of a one hundred percent (100%) of the SSTI, net of 25 percent (25%) set-aside for housing and specific pass-through charges by third parties (as provided in the attached SSTI Projection), commencing from the execution of the agreement for the pledge and assignment of SSTI to City, through the expiration of the Redevelopment Plan for the Mid-City Recovery Redevelopment Project Area.
3. The Assignor shall remit to CDD, as the primary Assignee, one hundred percent of the SSTI pledged immediately upon receipt.
4. The Assignor shall expressly acknowledge CDD in its sole and absolute discretion will apply, use and utilize the received SSTI funds.
5. The Assignor shall represent to Assignee that Projected SSTI, as attached hereto and which will be incorporated by reference into City Loan Agreement as well as the Pledge and Assignment Agreement, to the best knowledge and information of the Assignee, are the best estimate of the actual SSTI from the Project.

**Section 108 City Loan Term Sheet  
District Square Retail Project**

6. In reciprocal representation, CDD will agree to acknowledge that the Assignor has not made a commitment nor provided assurances to the Assignee that the Projected SSTI will materialize; and the pledge and assignment of the SSTI as described herein shall not extend nor be construed as the Assignor's any other financial commitment to either the Project or the Assignee.

**Appeal Prohibition:** The Borrower and Tenants of the Project shall agree that as long as the City Loan is outstanding, they shall not make any appeal for reduction of the Property Taxes imposed by the Los Angeles County Property Tax Assessor.

**Closing Costs:** As part of the escrow closing of the Section 108 Loan, Borrower shall pay for all the City's costs related to the closing of this transaction.

**Construction:** The labor component of construction for the Project shall comply with the Federal Commercial Davis Bacon Wage Act.

**Monitoring Costs:** The Borrower will be responsible to reimburse CDD for all the costs associated with the CDD monitoring of the Project and the Borrower's compliance with the Federal Commercial Davis Bacon Wage Act, and Jobs Creation.

**Job Creation:** The Borrower shall commit to creation of not less than 600 new permanent full time equivalent jobs in the Project, including Phase I; with 51 percent of the jobs to be made available to low and moderate-income persons.

The Borrower and tenants of the Project shall commit to list all the employment opportunities at the Project with the WorkSource and OneSource Centers administered by the CDD.

**Commitments:** Before or concurrent with the close of the Section 108 Loan, Borrower shall provide the City (a) copies of funding commitments, and (b) proof of the availability of financial resources to complete the planned development of the Project.

**Pre-leasing:** Condition precedent to entering into a funding agreement, is the Borrower's providing necessary and sufficient documentation evidencing that at least 70 percent of the Project is pre-leased, as evidenced by fully executed lease agreements, acceptable to CDD and to the City Attorney as to form and legality.

**Other Conditions:** The Section 108 Loan is subject to satisfactory documentation, compliance with applicable Code of Federal Regulations, City Ordinances, and other rules and regulations, at discretion of the CDD and subject to further approval by the City Attorney.