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CRA File No. 9293
Council District: 9
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Honorable Council of the City of Los Angeles
John Ferraro Council Chamber
200 N. Spring Street
Room 340, City Hall
Los Angeles, CA. 90012

Attention: Sharon Gin, Office of the City Clerk

COUNCIL TRANSMITTAL:

Transmitted herewith, is a Board Memorandum adopted by the Agency Board on December 16, 2010 City Council review and approval in accordance with the "Community Redevelopment Agency Oversight Ordinance" entitled:

VARIOUS ACTIONS RELATED TO:

SETTLEMENT WITH M&A GABAE RE: SLAUSON RETAIL PROJECT. AGREEMENT WITH M&A GABAE, ARMAN GABAY AND THE CHARLES COMPANY TO (1) PROVIDE PAYMENT OF \$300,000, (2) OFFER A FIRST RIGHT OF REFUSAL AND (3) NEGOTIATE AND EXCLUSIVE NEGOTIATE AGREEMENT FOR PROPERTY AT 3990-3914 JEFFERSON STREET IN SETTLEMENT OF ALL EXISTING LAWSUITS AND CLAIMS RELATED TO THE SLAUSON CENTRAL RETAIL PROJECT LOCATED AT SLAUSON AND CENTRAL AVENUES IN THE COUNCIL DISTRICT 9 REDEVELOPMENT PROJECT AREA.
(Councilwoman Perry – CD9)

RECOMMENDATION

That City Council approves recommendations on the attached Board Memorandum.

ENVIRONMENTAL REVIEW

The approval of the settlement agreement and payment of fees by the CRA/LA is not a project under the California Environmental Quality Act (CEQA). If an agreement for the development of property results from the First Right of Refusal or the Exclusive Negotiating Agreement, that agreement will be analyzed under CEQA prior to any approval.

FISCAL IMPACT STATEMENT

There is no fiscal impact to the City's General Fund, as a result of this action.

Christine Essel, Chief Executive Officer



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Council Transmittal

cc: Sharon Gin, Office of the City Clerk (Original & 3 Copies on 3-hole punch)
Lisa Johnson Smith, Office of the CAO
Ivania Sobalvarro, Office of the CLA
Steve Ongele, Office of the Mayor
Noreen Vincent, City Attorney's Office
Jan Perry, CD9

MEMORANDUM

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DATE: DECEMBER 16, 2010
TO: CRA/LA BOARD OF COMMISSIONERS
FROM: CHRISTINE ESSEL, CHIEF EXECUTIVE OFFICER
STAFF: CALVIN E. HOLLIS, CHIEF OPERATING OFFICER
DAVID RICCIHELLO, REGIONAL ADMINISTRATOR
JENNY SCANLIN, PROJECT MANAGER
TIMOTHY J. CHUNG, DEPUTY CITY ATTORNEY

AD1000
100252
C92120

SUBJECT: **Settlement with M&A Gabae RE: Slauson Central Retail Project:** Agreement with M&A Gabae, Arman Gabay and The Charles Company to (1) provide payment of \$300,000, (2) offer a first right of refusal and (3) negotiate an Exclusive Negotiating Agreement for property at 3990-3914 Jefferson Street in settlement of all existing lawsuits and claims related to the Slauson Central Retail Project located at Slauson and Central Avenues in the Council District Nine Corridors Recovery Redevelopment Project Area DOWNTOWN AND MID CITY REGIONS (CD 9 and 10)

RECOMMENDATION(S)

That the CRA/LA Board of Commissioners, subject to City Council approval, approve and authorize the Chief Operating Officer or designee to execute a Settlement Agreement, Release of Claims and Right of First Refusal related to the Slauson Central Retail Project with M&A Gabae, Arman Gabay and The Charles Company to (1) provide a payment of \$300,000 of Council District 9 Tax Increment in Budget Line Economic Development (C92120), (2) offer a first right of refusal and (3) negotiate an Exclusive Negotiating Agreement for property at 3990-3914 Jefferson Street in settlement of all existing lawsuits and claims related to the Slauson Central Retail Project located at Slauson and Central Avenues in the Council District 9 Redevelopment Project Area.

SUMMARY

CRA/LA has been engaged in protracted litigation with M&A Gabae, a California Limited Partnership over the Slauson Central Retail Project since 2004. The CRA/LA initially filed an eminent domain lawsuit to acquire M&A Gabae's property located at 944 – 1010 East Slauson Avenue. M&A Gabae contested the CRA/LA's eminent domain action and also joined with other plaintiffs in filing a series of lawsuits challenging the Slauson Central Retail Project alleging violations of the California Environmental Quality Act, Brown Act and Public Records Act.

CRA/LA has negotiated a settlement agreement with M&A Gabae to resolve all of the disputes between the CRA/LA and M&A Gabae related to the acquisition of M&A Gabae's property and M&A Gabae's claims against the CRA/LA challenging the Slauson Central Retail Project. The essential terms of the settlement are as follows:

Attorney's Fees/Costs: CRA/LA payment of \$300,000 for dismissal by M&A Gabae in the Public Records Act and California Environmental Quality Act cases against the CRA/LA. Since the City is the primary party to the Brown Act case, this case has been carved out for potential settlement with the City at a later date.

Right-of-First Refusal: In the event Slauson Central, LLC (the current development entity made up of Regency Centers and Concerned Citizens) fails to complete the Slauson Central Retail Project, then M&A Gabae would have the opportunity to negotiate a Disposition and Development Agreement with the CRA/LA for development of the shopping center. The settlement would provide that M&A Gabae could assume the transaction currently in place or negotiate for a purchase from the CRA/LA at a "fair reuse" value. Also, in the event the Amended and Restated Disposition and Development Agreement with Slauson Central, LLC is terminated, and the CRA/LA negotiated and entered into an agreement with Gabae to complete the Slauson Central Retail Project, the CRA/LA would be required to defend any claims brought by Slauson Central, LLC, Regency, Concerned Citizens or Curtis Fralin, challenging any future agreement with Gabae to complete the Slauson Retail project.

ENA for Jefferson Street Property: The parties would negotiate an Exclusive Negotiation Agreement for consideration by the CRA/LA Board for the sale of CRA/LA property and development of a commercial office building at 3990-3914 Jefferson Street.

In exchange for the CRA/LA obligations set forth above, M&A Gabae will dismiss or withdraw from all pending litigation challenging the Slauson Central Retail Project, will provide a release of claims and will not pursue or participate in any litigation challenging the Slauson Central Retail Project. It should be noted that while the settlement will resolve all claims between the CRA/LA and M&A Gabae, it will not resolve the pending claims of the other plaintiffs.

PREVIOUS ACTIONS

Initial Action

DISCUSSION & BACKGROUND

The CRA/LA has been engaged in the following lawsuits with M&A Gabae in connection with the Slauson Central Retail Project since approximately 2003:

1. Eminent Domain Lawsuit: CRA/LA v. M&A Gabae (Los Angeles Superior Court Case No. BC312251, Court of Appeal Case No. B202796). Eminent Domain Action filed by CRA/LA to acquire M&A Gabae's property at 944 – 1010 East Slauson Avenue.
2. California Environmental Quality Act (CEQA) Lawsuit: Kramer Metals, Inc., M&A Gabae v. CRA/LA (Los Angeles Superior Court No. BS113612). CEQA lawsuit filed challenging the CRA/LA's approval of the Amended and Restated Disposition and Development Agreement with Slauson Central, LLC for the Slauson Central Retail Project.
3. Kramer Metals, Inc., M&A Gabae v. CRA/LA (Los Angeles Superior Court No. BS116648). Public Records Act lawsuit against the CRA/LA for disclosure of public records.
4. 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). First Brown Act lawsuit challenging the City's approval of the Amended and Restated Disposition and

Development Agreement with Slauson Central, LLC for the Slauson Central Retail Project. The CRA/LA was a real party in interest in this case. Judgment was entered against the City of Los Angeles and a fees motion is pending.

5. Kramer Metals, Inc., M&A Gabae v. City of Los Angeles, ex rel. CRA/LA (Los Angeles Superior Court Case No. BS129409) Brown Act lawsuit challenging the City's re-approval of the Amended and Restated Disposition and Development Agreement with Slauson Central, LLC for the Slauson Central Retail Project. The CRA/LA is a real party in interest in this case. This case was recently filed on November 22, 2010, however, M&A Gabae has confirmed with CRA/LA staff that upon full execution of the Settlement Agreement and CRA/LA's payment of the settlement fee, M&A Gabae will withdraw from participation and/or dismiss itself as a party from this case.

While M&A Gabae will be settling its claims in connection with the Slauson Central Retail Project through this Settlement Agreement, there are other lawsuits maintained by Kramer Metals that will remain pending against the CRA/LA and City.

Location

The Slauson Central Retail Project is located on approximately 6.5 acres at the southwest corner of Slauson Avenue and Central Avenue in Southeast Los Angeles. The land is considered the northern edge of the Goodyear Industrial Tract, a 200+ acre industrial tract built in the early 20th Century to serve Goodyear Tire and Rubber. The properties are zoned industrial but the immediate surrounding area is largely residential. The property previously owned by M&A Gabae is specifically the corner property or 1040 E. Slauson Avenue.

Description and Project Context

The Slauson Central Retail Center is an approximately 76,000 square foot neighborhood shopping center that will include Northgate Gonzalez as the anchor tenant with a store sized at 45,000 square feet, a 13,000 square foot pad for a drug store, a 6,500 square foot pad for a sit down restaurant or other use with similar parking requirements, 10,800 square feet of shop space that will include a variety of other food options and services and 1,000 square feet for an Educational Training Center. Northgate Gonzalez Markets, the proposed major tenant, will include a full service meat department, bakery, tortilleria, and extensive prepared foods and produce sections, with a seating area for consumption of their prepared goods. The project is currently being developed by Slauson Central LLC, who has an active Disposition and Development Agreement with the CRA/LA. Construction of the retail center is expected to begin after the CRA/LA completes remediation of the property which will begin in 2011.

M & A Gabae's property was acquired with eminent domain by the CRA/LA after a Resolution of Necessity was adopted in March 2004. M & A Gabae has litigated with the CRA/LA on various aspects of the project's entitlements, approvals and the CRA/LA's Right to Take. Execution of this settlement agreement will resolve all remaining litigation with M & A Gabae on this project and prevent continued instigation and/or abetting of further law suits related to this matter.

Project History

On April 20, 2000 the CRA/LA authorized the development of the Slauson Central Retail Center at the southwest corner of Slauson Avenue and Central Avenue by Slauson Central, LLC, a Delaware limited liability company and partnership of national retail developer, Regency Realty Group, Inc., and Concerned Citizens of South Central Los Angeles. The Developer was selected through a competitive Request for Proposal ("RFP") process. In June 1999, the owners of the Property were provided with an opportunity to participate in this redevelopment project when the CRA/LA solicited Statements of Interest and through the subsequent RFP pursuant to

the CRA/LA's Owner Participation Rules. Although one of the owners of the subject Property did respond as an interested party, their proposal did not meet the criteria in the RFP and was rejected. The CRA/LA (on April 3, 2003) and the City Council (on May 7, 2003) authorized initiating land assembly for the Slauson Central Retail Center and made necessary environmental findings. Following these actions, a Disposition and Development Agreement was executed on December 1, 2003. As originally adopted, the DDA anticipated the Slauson Central Retail Center to be constructed and operable in calendar year 2005. Due to the extended acquisition process and litigation, the Slauson Central Retail Center is now expected to be fully constructed and operable by March 2012. An Amended and Restated DDA was executed in September 2010 reflecting changes to the economics of the project and allowing the project to move forward.

SOURCE OF FUNDS

CD9 Project Area Tax Increment

PROGRAM AND BUDGET IMPACT

This action is consistent with the amended FY2011 C9 Project Budget and Work Program. Following the approval of this item, \$3,002,400 of \$3,802,400 will remain for the Economic Development Budget Category. Sufficient funds exist to make any legally-required State ERAF in

Fiscal	Year	2011.
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There is no impact on the City's General Fund as a result of this action.

ENVIRONMENTAL REVIEW

The approval of the settlement agreement and payment of fees by the CRA/LA is not a project under the California Environmental Quality Act (CEQA). If an agreement for the development of property results from the First Right of Refusal or the Exclusive Negotiating Agreement, that agreement will be analyzed under CEQA prior to any approval.

AUTHORITY GRANTED TO CEO OR DESIGNEE

If the Settlement Agreement is approved, the CRA/LA Chief Operating Officer or designee would be authorized to take such actions as may be necessary to carry out the Agreement.



Calvin E. Hollis
Chief Executive Officer
Real Estate and Economic Development

There is no conflict of interest known to me which exists with regard to any CRA/LA officer or employee concerning this action, except that CRA/LA's Chief Executive Officer, Christine Essel, had previously disqualified herself from any participation concerning this matter to avoid any conflict of interest due to the fact that in 2009 Arman Gabay, his family members and The Charles Company made contributions to her campaign for City Council.