

**REPORT TO THE
REDEVELOPMENT AGENCY
of the City of Sacramento**

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www.SHRA.org



Staff Report
March 13, 2007

Honorable Chair and Members of the Board

Title: Owner Participation Agreement and Related Loan Documents and Budget Authorization for the Aura Project

Location/Council District: 601 Capitol Mall, Central Business District (District 1)

Recommendation: Adopt a Redevelopment Agency of the City of Sacramento (Agency) Resolution (1) authorizing the approval of an Owner Participation Agreement (OPA) and related legal documents with Aura at 601 Capitol Mall, LLC (Developer) including an Intercreditor and Subordination Agreement to provide a \$10,000,000 loan for the construction of the Aura condominium project at 601 Capitol Mall (2) authorizing a borrowing for the project of \$10 million from Bank of America secured by Merged Downtown tax increment funds (3) appropriating \$10,000,000 of Downtown project funds for the Aura Project and (4) certifying the EIR as adequate for purposes of Agency CEQA reviewing and adopting the CEQA documentation and determinations, including mitigation measures and findings of overriding considerations made by the City for the Aura project.

Contact: Leslie Fritzsche, Downtown Development Manager, 808-5450

Presenters: Leslie Fritzsche, Downtown Development Manager
John Dangberg, Assistant City Manager

Department: Economic Development

Division: Downtown Development Group

Organization No: 4451

Description/Analysis:

Issue: Craig J. Nassi, the managing partner of Aura at 601 Capitol Mall, LLC, (an affiliate of BCN Development) is proposing to construct a 39-story, single-

tower high-rise condominium building at 601 Capitol Mall in downtown Sacramento (see Attachment 1). The project, the Aura, is to be an approximately 268-unit condominium tower of approximately 297,000 square feet of saleable space, approximately 14,196 square feet of retail space and approximately 328 parking spaces.

The Aura is being designed by world renowned architect Daniel Libeskind and the exterior elevations are already familiar to many as a soon-to-be-identifiable downtown Sacramento landmark (see Attachment 2).

As with many condo/housing developers, Aura at 601 Capitol Mall, LLC (the Developer) has been subjected to a downward spiraling housing market resulting in reduced revenues to the project. Concurrently, construction costs (material and labor) have been steadily escalating. It is these two principal phenomena that have resulted in the request for \$10 million in gap financing.

On February 6, 2007, the Agency approved, for purposes of negotiation, a market rate loan of \$10 million for the project. The specific terms of the loan have been negotiated and are outlined in this report. The Owner Participation Agreement and related loan documents are on file with the City and Agency clerks.

Developer Background

The Developer's managing partner, Craig Nassi, President of Denver-based BCN Development LLC, established the firm in 1993 and has developed several impressive buildings in downtown Denver including the Belvedere Tower (1998), The Prado (1999), and the Beauvallon (2000). BCN, along with Lawrence Hallier, have recently completed the Royalton in Houston Texas. This 32-story project contains 253 condominiums overlooking the heart of Houston's central business district and is currently in the sales phase.

Like many successful developers, Mr. Nassi has had some reversals in the condominium marketplace. In November of 2006, Mr. Nassi removed himself as one of the partners of the Palladio Condominiums Project on Reno's riverfront area following complaints from Merrill Lynch Capital that the project was over budget and behind schedule. The partnership filed a petition for a receiver that was granted by the Washoe District Court to complete the 13-story, 92-unit Reno tower.

Project Status

The Developer has been working on the development of the Aura project for over three years. The market response for the project has been quite healthy and the development team has secured deposits for approximately 65% of the units. In order to meet the delivery schedule for the units the foundations need to be

poured by April 2007. The City has issued permits for excavation, grading, foundation work and utilities, but the developer has not yet picked them up. The overall schedule contemplates a 30-month development construction period. If the OPA is approved, the Developer will finalize their remaining financing documents and will actively begin the project. The overall schedule contemplates a 20-month development construction period.

At this time the Developer has secured a reinstated option for the land at 6th Street and Capitol Mall. This option expires on March 31, 2007.

Proposed Owner Participation Agreement and Related Loan Terms

The proposed loan for the project would have the following terms:

- \$10 million three year loan at 6.5% interest rate compounded annually
- REPAYMENT TERMS: Payments on the loan would begin after full repayment of the proposed \$132 million construction loan. Following that, the Agency would receive proportional distribution of net sales proceeds with the mezzanine lender (approximately 25% of the net sales proceeds for each unit to the Agency and approximately 75% provided to the mezzanine lender) until the loan is paid in full. The proportions are determined by amount of financial participation in the project.
- USE: Funds cannot be used for land purchase or any past debts or encumbrances for the project incurred prior to closing; funds will be used for construction period financing.
- ORDER OF DISBURSEMENTS: Agency funds to be placed in the project after: the land has been purchased, a minimum of \$15 million in mezzanine financing is in the project (inclusive of funds utilized for land purchase), and a minimum of \$6 million in equity is in the project.
- CONDITIONS FOR DISBURSEMENT:
Agency approval of evidence of the following:
 - 1) Construction and mezzanine loan amounts and equity sufficient to complete the project as set forth in an approved budget based on an executed maximum price construction contract;
 - 2) A minimum of \$6 million in equity has been expended for the project;
 - 3) Developer site control, i.e., property transfer transaction has been completed and closed;
 - 4) Executed guaranteed maximum price construction contract;
 - 5) Executed documents for primary and mezzanine loans and evidence of loan closings;
 - 6) Executed Intercreditor and Subordination Agreement with terms that do not jeopardize the Agency's ability to cure any default;

- 7) Secured all necessary approvals from Department of Real Estate;
 - 8) Documentation that a minimum of 51% of the units have been sold (figure reflecting that of construction lender, Corus Bank);
 - 9) Building permits for the excavation, grading, foundation work and utilities have been approved by the City and secured subject to any payment of required fees and charges.
- COLLATERAL/SECURITY: Third Deed of Trust on the property at 601 Capitol Mall.

Policy Considerations:

If the Agency approves the OPA and related documents, the resulting proposed project would be consistent with the Amended Merged Downtown Redevelopment Plan; the 2005-2009 Merged Downtown Implementation Plan; and the 2005 Downtown Sacramento Redevelopment Strategy, including:

- The increase in the supply of housing stock in the redevelopment area, and
- The establishment and implementation of performance criteria to assure high-quality site design standards and environmental quality and other design elements, which provide unity and integrity to the entire Merged Downtown Project Area.

Additionally, the proposed project is consistent with the development objectives outlined in the recent JKL Community Workshop process.

Rationale for Recommendation:

At the direction of the Redevelopment Agency Board and the City Council, policy priorities that promote the downtown as a livable city with quality amenities and the ability to act a catalyst for further development are to be encouraged. Along with the Saca Towers project at 301 Capitol Mall, the Aura is considered to be one of the keys to downtown redevelopment and revitalization activities. The construction of this new, architecturally significant building on a now vacant site, will continue the wave of new interest in developments along Capitol Mall. The new structures including the Towers, 500 Capitol Mall, and U.S. Bank Plaza will significantly change the face of Sacramento's most important entrance gateway and will replace sites long vacant and underutilized. Other public benefits include:

- The condominium tower will bring approximately 400 residents to the core of the downtown business district with disposable incomes that will significantly benefit the economic development of the project area.
- The significant architecture, scale and location of the building will make it a City signature landmark.

- Capitol Mall is one of the main arterials and visible streets traversing through downtown Sacramento, with the Aura’s location and features serving to visually frame the Mall corridor.
- The retail component will add complementary goods and services for both condo residents and the downtown population.
- The Aura is a genuine catalyst project that will stimulate additional private sector capitalization to the area and reuse a long underutilized property.
- The use of high-quality materials and design standards will ensure the integrity of the area.
- The regulatory agreement provides restriction on uses that are inconsistent with the goals of the district.
- The project will strengthen the economic base of the Project Area by providing 100 new jobs; and approximately \$1.43 million annually in new tax revenue (property tax, utility user tax and sales tax).

Environmental Considerations:

Environmental review of the project was included in the final Environmental Impact Report for 601 Capitol Mall (“EIR”) that was certified by the City Council on May 15, 2001. The EIR is on file with the City Clerk and copies made available to the Board members for review. The scope of the project remains unchanged, there are no substantial changes with respect to the circumstances under which the project will be undertaken, and there is no new information of substantial importance which would require subsequent environmental review.

Financial Considerations:

The total cost of the project is projected at \$175,750,000:

| | |
|--------------------------|-------------------|
| Land: | \$13,750,000 |
| Construction Hard Costs: | 125,900,000 |
| Soft Costs: | <u>36,100,000</u> |
| | \$175,750,000 |

The construction firm of Plant Construction of San Francisco is acting as the prime contractor for the project. They have prepared a Guaranteed Maximum Price specification book that caps construction hard costs at \$125,900,000. To date, the developer has expended over \$6 million toward architectural renderings, legal findings, civil engineering preparation and deposits for land options and other entitlements.

As of the February 6th Agency report on this project, the developer indicated that equity financing totaling approximately \$12 million had been raised, complementing a Corus

Bank (commercial real estate lender specializing in condominium loans) primary construction loan amount of \$132 million and a mezzanine loan commitment from MeeCorp Capital Markets, LLC of \$14.5 million. In addition he indicated that he had already invested approximately \$6 million of additional equity. The proposed financing structure has changed with an elimination of the additional equity and an increase in the amount of mezzanine financing. The proposed mezzanine financier is no longer Mee Corp Capital Markets but is Kenlin Capital, LLC. The Developer is proposing the following structure:

| | |
|----------------------------------|-------------------|
| Developer expenditures: | \$ 6,000,000 |
| Corus Bank N.A. loan: | 132,000,000 |
| Mezzanine financing: | <u>27,750,000</u> |
| | \$ 165,750,000 |
| Requested Agency/City financing: | <u>10,000,000</u> |
| | \$ 175,750,000 |

The proposed Agency loan would be a market rate loan to provide construction period financing.

The Agency funds for this project will be derived utilizing a Letter of Credit secured by future downtown tax increment funds. The loan rate for the Aura project is based upon the Agency's cost of borrowing the funds with all costs associated with the borrowing passed through to the Developer. Agency staff has secured a commitment from Bank of America to provide the funds under a Letter of Credit.

Downtown Sacramento Partnership (DSP):

The DSP reviewed the project at their Strategic Development Task Force meeting on March 8, 2007. The results of that meeting will be reported at the Agency meeting.

M/WBE Considerations: Minority and Women's Business Enterprise requirements will be applied to all activities to the extent required by federal funding.

March 13, 2007

Respectfully Submitted by: 
David Spaur
Director, Economic Development
on behalf of the Redevelopment Agency

Recommendation Approved:

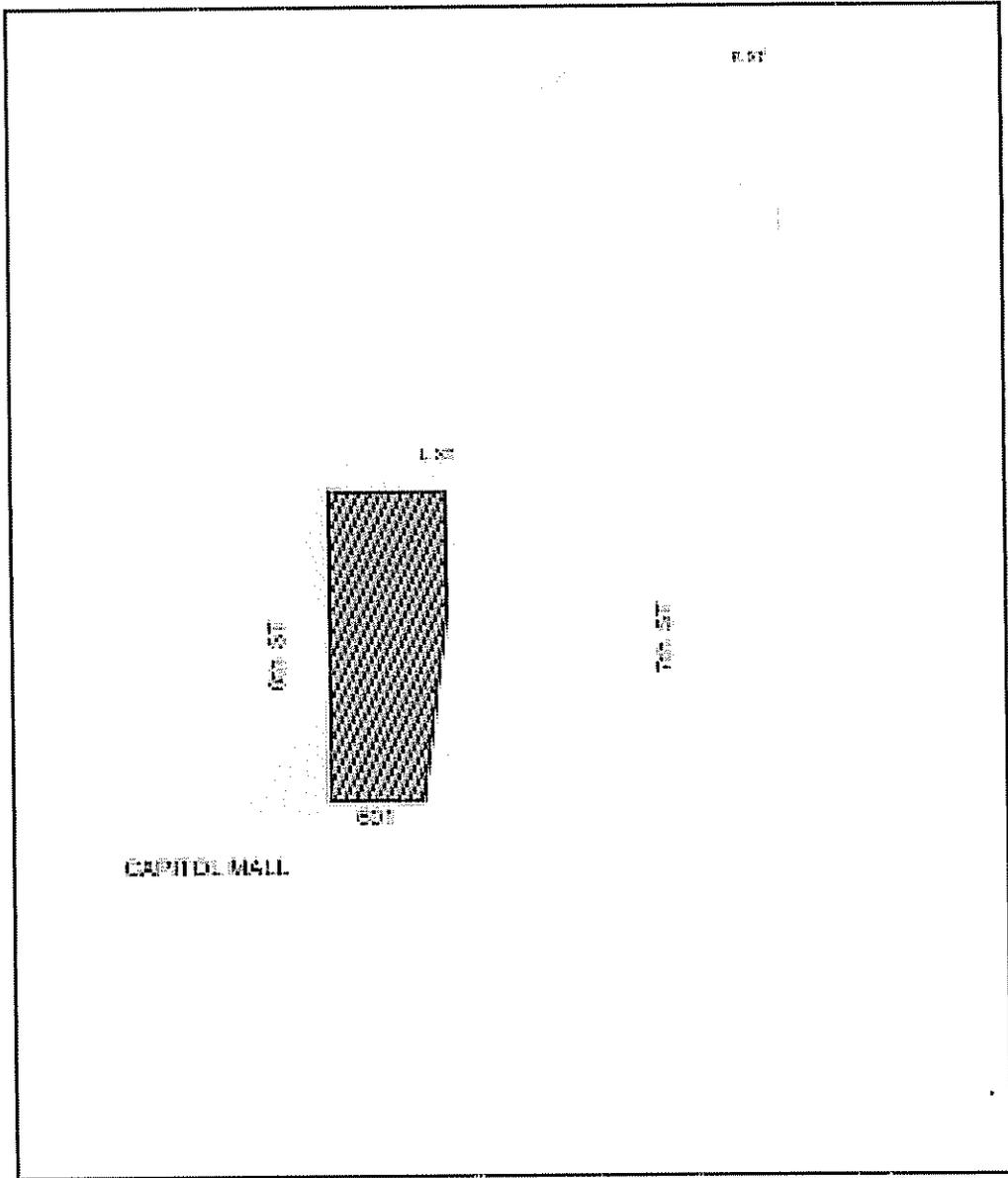

Ray Kerridge
City Manager

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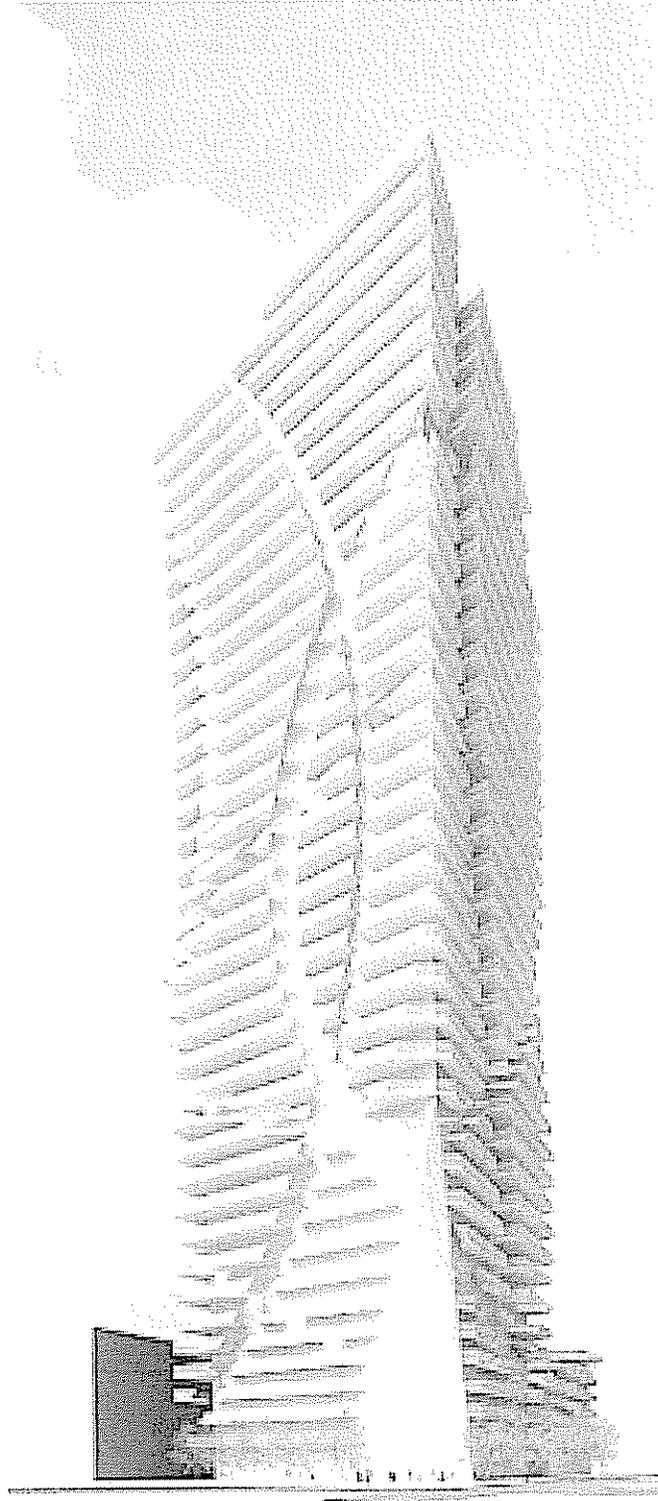
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ATTACHMENT 1

THE AURA SITE



Attachment 2 – Artist’s Rendering of Aura Project



ATTACHMENT 3

RESOLUTION NO. 2007-_____

Adopted by the Redevelopment Agency of the City of Sacramento

**MERGED DOWNTOWN SACRAMENTO REDEVELOPMENT PROJECT AREA:
APPROVAL OF THE AURA PROJECT (601 CAPITAL MALL), AUTHORIZATION FOR
EXECUTION OF AN OWNER PARTICIPATION AGREEMENT WITH AURA AT 601 CAPITAL
MALL, LLC, AUTHORIZATION TO BORROW \$10,000,000 FROM BANK OF AMERICA AND
APPROPRIATION OF AGENCY FUNDS**

BACKGROUND

- A. The Redevelopment Agency of the City of Sacramento ("Agency") has adopted the Merged Downtown Redevelopment Plan ("Redevelopment Plan") and an Implementation Plan for the Merged Downtown Project Area ("Project Area").
- B. Development of additional residential units is in keeping with the Agency's goals of enhancing housing opportunities in the downtown as indicated in the Implementation Plan for the Project Area.
- C. The project will further the redevelopment activities of the Project and continue the program for the elimination of blighting influences in the Project Area in that:
 - The project will bring approximately 400 residents to the core of the downtown business district in the Project Area, with incomes that will significantly benefit the economic development of the project area.
 - Capitol Mall is one of the main arterials and visible streets traversing through the Project Area, and with the project's location and features will significantly enhance the Capitol Mall corridor.
 - The retail component of the project will add complementary goods and services for both project residents and the Project Area population.
 - The project will stimulate the expenditure of additional private sector capital in the Project Area.
 - The project reuses a long underutilized property.
 - The regulatory agreement provides restriction on uses that are inconsistent with the goals of the Project Area and Redevelopment Plan.
 - The project will strengthen the economic base of the Project Area by providing 100 new jobs; and approximately \$1.3 million annually in new property tax revenue.

D. The project was reviewed by the City after preparation of final Environmental Impact Report for 601 Capitol Mall ("EIR") which was certified by the City Council on May 15, 2001. The EIR is on file with the City Clerk and has been reviewed prior to this action. The scope of the project remains unchanged, there are no substantial changes with respect to the circumstances under which the project will be undertaken, and there is no new information of substantial importance, which would require subsequent environmental review.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:

Section 1. The EIR is hereby certified as adequate for purposes of Agency CEQA review and the EIR and all findings of overriding considerations made by the City for the Aura project and all mitigation measures required of the City for the project are hereby adopted.

Section 2. The City Manager or Assistant City Manager of the City of Sacramento is authorized, on behalf of the Agency, to execute a Letter of Credit with Bank of America for \$10,000,000 secured by Merged Downtown tax increment funds, and to take all reasonable actions and to execute all ancillary documents necessary to implement such action, and to amend the Agency budget as necessary to receive the funds and allocate the same to the project.

Section 3. The Owner Participation Agreement ("OPA"), a copy of which is on file with the City and Agency Clerk, and all related documents, collectively are approved and the City Manager or Assistant City Manager of the City of Sacramento is authorized, on behalf of the Agency to execute the OPA and the related documents in substantially the form attached to the OPA and to take all such actions and execute said instruments with Aura at Capital Mall, LLC (Developer).

Section 4. The appropriation of \$10,000,000 of Downtown project funds to the Aura project is approved.

CHAIR

ATTEST:

SECRETARY