TO: Chairperson and Members of the Redevelopment Agency

FROM: Mark Lewis, Executive Director


RECOMMENDATION

It is recommended that the Redevelopment Agency adopt a resolution approving a Memorandum of Understanding between the Redevelopment Agency of the City of Stockton and Atlas Properties outlining the major terms under which Atlas Properties will lease and manage the retail space at the Hotel Stockton and the B&M Building.

SUMMARY

Atlas Properties has agreed to general terms under which they will lease and manage the retail space at the Hotel Stockton and the B&M Building. Final terms are still being negotiated and will be included in a formal agreement between the Redevelopment Agency and Atlas Properties, which will be brought back to the Agency for approval during the first part of 2005.

DISCUSSION

Background

In January 2003, the Redevelopment Agency entered into a Disposition, Development and Loan Agreement (DDA) with Hotel Stockton Investors to renovate the Hotel for residential use. The residential component includes 156 apartment units located on the second through fifth floors. The DDA includes a provision which allows the Agency, or its assignee, the right to operate the approximately 25,000 square feet of retail space at the Hotel. This includes the ground floor and the rooftop terrace, which is on the third floor of the building.

In April 2003 the Redevelopment Agency issued a Request for Qualifications (RFQ) seeking a firm that could develop and lease the retail space in the Hotel Stockton and the B&M Building. The B&M Building, which is located between the Hotel Stockton and the Cineplex, is owned by the Redevelopment Agency and contains approximately 3,000 square feet of leasable space.
Three Statements of Qualifications were received in response to the RFQ. Atlas Properties, whose principals include Anthony Barkett, Edward Barkett and Robert Rishwain and who are the owners of the Cineplex, was selected. It was determined that, in addition to Atlas Properties' other qualifying experience, it was desirable to have one firm managing and leasing all three properties, which are in very close proximity to each other.

Present Situation

Negotiations have been ongoing since the selection of Atlas Properties. The latest discussions provide Atlas Properties with a 24-month option to lease the space. They in turn will sub-lease the space to the tenants.

While discussions have been continuing, and prior to entering into an agreement with the City, Atlas Properties has been assisting with perspective tenants. As a result, Atlas has now entered into a preliminary agreement with Paragarys Restaurant Group for a full-service restaurant with a bar and banquet facility in the Hotel Stockton. The terms of the agreement state that Paragarys will have approximately 10,000 square feet of the ground floor plus the rooftop terrace. It will be a ten-year lease with two five-year options.

Because Atlas Properties is moving forward with preliminary agreements with tenants for space in the Hotel, it is critical that they have some reassurances from the Redevelopment Agency regarding the Agency's intent to enter into an agreement with them regarding the leasing and management of the buildings. The attached MOU outlines preliminary terms for a formal agreement, which will be brought back to the Agency for approval when negotiations are completed. Some of these terms which are outlined in the MOU are:

- The agreement will be for 25 years with two 5-year options.
- The rent shall be $3.00 per square foot per year plus 50% of Net Operating Income in excess of $480,000 per year from both buildings. However, Atlas shall not owe rent on space that is sub-leased at no cost with the Agency's written approval.
- Atlas shall be responsible for all costs of operation (including utilities), maintenance, insurance, and taxes except for costs related to space sub-leased at no cost with Agency's written approval. The Agency shall be responsible for all costs required to repair and replace the structural portions of the buildings.
- The Agency shall pay for or install the plumbing and electrical stub-ins, telephone and television stub-ins, two grease traps, HVAC rough-in, elevators, and the sewer stub-ins.
SUBJECT: APPROVE A MEMORANDUM OF UNDERSTANDING BETWEEN THE
CITY OF STOCKTON REDEVELOPMENT AGENCY AND ATLAS
PROPERTIES, INC., FOR THE LEASING OF THE RETAIL SPACE AT
THE HOTEL STOCKTON AND THE B&M BUILDING

FINANCIAL SUMMARY

Approving the Memorandum of Understanding does not impose any additional financial
burden on the Agency.

Respectfully submitted,

MARK E. LEWIS, EXECUTIVE DIRECTOR
STOCKTON REDEVELOPMENT AGENCY

MEL: LI: jb

Attachment

::ODMA\GRPWISE\COSHRDHRD_Library:60321.1
twenty-four (24) month period, the option on the remaining Space for only that facility shall be extended for an additional twenty-four (24) months.

Section 2  **Master Lease.** The master lease will reflect the following terms and conditions, among others:

(a) **Term:** Twenty five (25) years with two (2) options to extend the Term by five (5) years each, commencing 180 days after Atlas exercises the option as to the first incremental space.

(b) **Rent:** Three Dollars ($3.00) per square foot per year plus fifty percent (50%) of Net Operating Income in excess of $480,000 per year from both buildings; provided that Atlas shall not owe rent on any Space that is sub-leased to a subtenant at no cost at that time, upon the Agency’s written approval.

(c) **Increases:** The base rent shall increase ten percent (10%) every five (5) years.

(d) **Expenses:** Atlas shall be responsible for all costs of operation (including utilities) and maintenance (including regular cleaning) of the optioned Space and for all property taxes and insurance, provided that Atlas shall not be responsible for such costs on any space that is sub-leased to a subtenant at no cost, subject to the Agency’s written approval. The Agency shall be responsible for all costs required to repair and replace the structural portions of the Space.

(e) **Delivery:** In addition to the roof and storefronts, the Agency shall pay for or install the following:

a. Plumbing Stub-Ins
b. Electrical Stub-Ins
c. Telephone & Television Stub-Ins
d. Two Grease Traps with minimum 1 Stub-In each for any restaurant space
e. HVAC Rough-In (not actual units)
f. Elevator
g. Sewer Stub-Ins

Atlas shall pay for or construct at its sole cost all tenant improvements and all costs not listed above.

(f) **Restaurant:** The final terms of the master lease shall be amended to incorporate the ongoing negotiations with a white table
cloth restaurant in The Hotel Stockton. It is contemplated that the Agency will fund all tenant improvements and forgive all rents and operating/maintenance costs for 5 years for a sub-tenant operating a restaurant. In such event, the master lease shall provide that Atlas will fund no improvement costs and pay no master rent and operating/maintenance costs on the restaurant space for the first 5 years.

Section 3.  General Provisions

(a)  **Term.** This MOU shall take effect as of the date it is signed by both parties and shall terminate upon execution of the formal agreements contemplated by this MOU.

(b)  **Amendments.** Neither this MOU nor any of the terms hereof may be amended, modified, waived, or terminated except by a written instrument signed by both the Agency and Atlas. The parties may enter into operating memoranda to implement the provisions of this MOU without formal amendment to this MOU as provided in this MOU.

(c)  **Defaults and Remedies.** Failure or delay by either party to perform any material term or provision of this MOU constitutes a default under this MOU. The non-defaulting party shall notify the defaulting party that a default exists and that the defaulting party must cure or commence to cure such default with thirty (30) days of receipt of the notice of default. The party who so fails or delays must either thirty (30) days of receipt of the notice of default, commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence, and during any period of curing shall not be in default.

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, to require the defaulting party to specifically perform the terms and conditions of this MOU, or to obtain any other remedy consistent with the purpose of this MOU. Such legal actions must be instituted in the Superior Court or other appropriate court of the County of San Joaquin.

(c)  **State Law.** This MOU, and the rights and obligations the parties to this MOU, shall be interpreted and enforced in accordance with and governed by the laws of the State of California. The language in all parts of this MOU shall be, in all cases, construed according to its fair meaning and not strictly for or against the Agency or Atlas.

(d)  **Legal Action.** If litigation is initiated attacking the validity of this MOU, each party in good faith shall defend and seek to uphold this MOU. In the event of litigation between the parties regarding this MOU, the party prevailing in such litigation shall be entitled to recover its reasonable attorneys fees (including costs attributable to in-house counsel) and costs in such litigation from the non-prevailing party.
(e) Successors and Assigns. This MOU shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

(g) Entire Agreement. This MOU constitutes the entire agreement between the Agency and Atlas with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written.

(h) Counterparts. This Agreement may be executed in counterparts and multiple originals.

IN WITNESS WHEREOF, the Agency and Atlas have executed this MOU as of the date first written above.

APPROVED AS TO FORM: OFFICE OF THE CITY ATTORNEY

BY: ____________________________
    Counsel for the Agency

REDEVELOPMENT AGENCY OF THE CITY OF STOCKTON

BY: ____________________________
    GARY PODESTO
    CHAIRPERSON

ATTEST:

KATHERINE GONG MEISSNER
Agency Secretary

ATLAS PROPERTIES, INC., a California corporation

BY: ____________________________
    EDWARD A. BARKETT
    PRESIDENT