
WHEREAS, in January 2003, the Redevelopment Agency entered into a Disposition, Development and Loan Agreement ("DDA") with Hotel Stockton Investors to renovate the Hotel Stockton for residential use; and

WHEREAS, the DDA included a provisions that allowed the Agency, or its assignee, the right to operate the approximately 25,000 square feet of retail space at the Hotel and

WHEREAS, 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; and

WHEREAS, Atlas Properties responded to the RFQ and was selected as the firm to manage and lease the properties; and

WHEREAS, it is necessary to enter into a MOU with Atlas Properties so that they may begin preliminary leasing and managing of the properties; now, therefore,

BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF STOCKTON, AS FOLLOWS:

1. That the Memorandum of Understanding between the Redevelopment Agency of the City of Stockton and Atlas Properties, Inc. to provide management and leasing services for the ground floor and roof terrace spaces of the Hotel Stockton and for the B&M Building (the "Space") is hereby approved.

2. That the Executive Director, on behalf of the Redevelopment Agency, is hereby authorized and directed to execute the Memorandum of Understanding, attached hereto as Exhibit A and by reference made a part hereof.

[Signature]

DATE: DEC 10 2004
3. The Executive Director is hereby authorized and directed to take any and all actions necessary to carry out the purpose and intent of this resolution

PASSED, APPROVED and ADOPTED

DEC 14 2004

GARY A. PODESTO, Executive Director
of the Redevelopment Agency
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
Secretary, Redevelopment Agency
of the City of Stockton
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into as of this 14th day of December, 2004, by and between the Redevelopment Agency of the City of Stockton (the "Agency") and Atlas Properties, Inc., a California corporation ("Atlas"), on the basis of the following facts, purposes, and understandings of the parties.

RECITALS

A. The Agency has entered into an Amended and Restated Disposition, Development, Grant and Loan Agreement (the "DDA"), dated as July 9, 2002, with Hotel Stockton Investors, a California limited partnership (the "Atlas") relating to the renovation of the Hotel Stockton, located at 133 East Weber Avenue, Stockton, California.

B. Pursuant to Section 7.2 of the DDA, the Agency has the rights to operate the approximately 25,000 square feet of retail space on the ground floor of the Hotel Stockton and related terrace space on the roof of the Hotel Stockton.

C. The Agency also owns the B&M Building, located at 125 Bridge Place, Stockton, California.

D. The Agency desires to contract with Atlas to provide management and leasing services for the ground floor and roof terrace spaces of the Hotel Stockton and for the B&M Building (collectively, the "Space").

E. The Agency and Atlas desire to enter into this MOU to set forth certain business understandings which will be formalized in a master lease or similar agreement to be entered into between the parties at a later date.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in this MOU, the parties agree as follows:

AGREEMENT

Section 1 Option. For a period of twenty-four (24) months after the date of this MOU, Atlas shall have the option to master lease the Space. Atlas shall be entitled to exercise the option in increments of one thousand (1,000) square feet as to the Hotel Stockton, and in increments of one floor as to the B&M Building, with rent becoming due on the incremental space on the earlier of three hundred sixty (360) days after Atlas’s exercise of the option for such incremental space, or the date that a business opens operations in the incremental space. If Atlas has not optioned at least fifty percent (50%) of the available space in either the B&M Building or the Hotel Stockton at the end of this twenty-four (24) month period, the Agency can recapture the entire space for any building in which Atlas has not optioned fifty percent (50%) of the Space by such time, by paying Atlas the fair market value of Atlas’s interest in the leased Space, if any. If Atlas has optioned at least fifty percent (50%) of the Space in either facility at the end of the
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.

(d) 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

ATTEST:

KATHERINE GONG MEISSNER
Agency Secretary

REDEVELOPMENT AGENCY OF THE CITY OF STOCKTON

BY: ____________________________
    GARY PODESTO
    CHAIRPERSON

ATLAS PROPERTIES, INC., a California corporation

BY: ____________________________
    EDWARD A. BARKETT
    PRESIDENT