

January 7, 2011

ITEM: 7.F.

RE: CONSIDERATION AND ADOPTION OF A "RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY APPROVING THE AGREEMENT REGARDING THE UTAH THEATER EASEMENT BETWEEN KEARNS BUILDING JOINT VENTURE AND THE REDEVELOPMENT AGENCY OF SALT LAKE CITY."

PROJECT AREA: Central Business District

PREPARED BY: Valda E. Tarbet

EXECUTIVE SUMMARY: Staff has been working with Kearns Building Joint Venture, a subsidiary of Hines Corporation, to resolve issues regarding an easement on the north side of the Utah Theater Building. Terms of the draft Agreement are being presented for the Board's review, revision, and approval.

ALTERNATIVES:

- 1) Adopt the resolution.
- 2) Do not adopt the resolution.
- 3) Revise the terms and adopt the resolution

FUNDING: Not immediately applicable. Up to \$40,000 may be needed at a future date from CBD funds.

ANALYSIS AND ISSUES: The Utah Theater due diligence work showed several easements for emergency exiting for the Utah Theater building. The Agency has successfully negotiated revisions on the easements to the south with Salt Lake County, and discussed operational issues with the 170 South Main Street building owners. The final easement issues relate to the easement that runs to the north across the Kearns Building property.

In 2007, the Kearns Building installed an emergency generator, electrical panel, and gas meter, among other things, that encroach into the easement. In order to understand the emergency exiting requirements, Hines and RDA staff met with the Fire Marshall and the Salt Lake City Fire Protection Engineer. Following is a brief description of the requirements for exiting.

- So long as the use of the Utah Theater property remains the same (either through renovation or new construction) the fire exiting requirements meet the code requirements. This means that the Agency may use the theater with approximately the same number of seats as it was originally built with, and that

the second floor space could be used for limited office use without altering the current fire exiting easements.

- If, however, we change the use or increase the square footage of the building by adding additional floors or uses, then the new building code and fire code requirements will be in place. New fire exiting requirements would be very different from what we have now.
- Assuming the current Utah Theater use is maintained, an alternate exiting route is possible going to the west rather than the east and then north. In order to use the alternative the Agency would need (1) to create a fire rated passage, (2) obtain permission from Rocky Mountain Power to exit onto their property to the west, and (3) the same 10-foot wide exit is created, exiting to the west would meet the code requirement.
- Exiting into the parking structure to the north would not be an acceptable alternative.

Hines has raised the issue of whether the easement is valid. Because the RDA does not have plans or a developer for the Utah Theater property, staff asked RDA Legal Counsel to draft an Agreement that acknowledges the validity of the easement, and obligates the RDA to pay for 50% of the cost of relocating encroachments in the easement, if necessary, up to a maximum of \$40,000. The Term Sheet attached to the draft Resolution includes more details about the terms of the Agreement.

Hines has had an opportunity to review the proposed Agreement and is working to obtain consent from their investor. They are confident that they will have a decision from the investor prior to the RDA Board meeting. Staff will be available to answer questions concerning the proposed Agreement.

ATTACHMENTS. Draft Resolution and Term Sheet

RESOLUTION NO. 688.____

January 11, 2011

RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY APPROVING THE AGREEMENT REGARDING THE UTAH THEATER EASEMENT BETWEEN KEARNS BUILDING JOINT VENTURE AND THE REDEVELOPMENT AGENCY OF SALT LAKE CITY

WHEREAS, the Redevelopment Agency of Salt Lake City ("Agency") was created to transact the business and exercise the powers provided for in the Community Development and Renewal Agencies Act, and

WHEREAS, the Agency adopted a redevelopment plan effective February 11, 1971 entitled "CBD Neighborhood Development Plan"; and

WHEREAS, the Agency amended the CBD Neighborhood Development Plan on May 1, 1982; and

WHEREAS, the Agency purchased the Utah Theater property with the understanding that an emergency exiting easement across the Kearns Building was a part of the purchase price, and

WHEREAS, it has come to the Agency's attention that the Kearns Building Joint Venture has installed equipment within the easement area; and

WHEREAS, the Agency does not currently have a redevelopment plan or developer for the Utah Theater property; and

WHEREAS, the emergency exiting requirements change depending upon the development plan; and

WHEREAS, the Agency and Kearns Building Joint Venture have mutually agreed upon terms regarding the validity and costs of relocating the encroaching equipment.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY, that the Board of Directors does hereby approve the attached Term Sheet between Kearns Building Joint Venture and the Agency, and authorizes the Chief Administrative Officer and Executive Director to execute an Agreement that incorporate such terms as recommended by the Agency's legal counsel.

Passed by the Board of Directors of the Redevelopment Agency of Salt Lake City, Utah this 11th day of January, 2011.

Luke Garrott, Chairperson

ATTEST:

D.J. Baxter, Executive Director

Transmitted to the Chief Administrative Officer on _____. The Chief Administrative Officer:

_____ does not request reconsideration OR
_____ requests reconsideration at the next regular Agency meeting.

Ralph Becker
Chief Administrative Officer

ATTEST:

D. J. Baxter, Executive Director

Approved as to Legal Form:
Jones, Waldo, Holbrook, & McDonough

By _____

TERM SHEET
UTAH THEATER EASEMENT AGREEMENT

Parties: Kearns Building Joint Venture (“KBJV”)
Redevelopment Agency of Salt Lake City (“RDA”)

Terms: The following terms will be incorporated into the Agreement relating to an easement purchased as part of the Utah Theater property acquisition by the RDA.

- KBJV agrees that the Easement is valid and will not dispute the validity based on any action or nonaction by the RDA or its predecessors in interest.
- RDA grants permission for the encroaching items until notice is given that the RDA needs to use the Easement.
- KBJV will have 90 days to relocate the encroaching items.
- KBJV will publicly bid the Relocation Work or, in the alternative, RDA needs to approve a fixed price bid from a contractor approved by the RDA.
- RDA will pay 50% of the costs of the Relocation Work up to a maximum of \$40,000.

Recordation of Documents: The Agreement will be recorded immediately following execution.

All Documents: All documents shall have such other terms and conditions not inconsistent herewith as may be advised by Agency’s legal counsel.