

File No. 100515

Committee Item No. 8

Board Item No. 10

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date May 6, 2010

Board of Supervisors Meeting

Date 5/18/10

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER

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Completed by: Linda Wong

Date May 3, 2010

Completed by: L.W.

Date 5/13/10

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

01

2/18/10

1 [Settlement of Lawsuit]

2
3 **Ordinance authorizing settlement of tax refund lawsuit filed by Blackhawk Parent LLC**
4 **against the City and County of San Francisco for \$250,000; the lawsuit entitled**
5 **Blackhawk Parent LLC v. City and County of San Francisco, Case No. 478-160, filed**
6 **August 1, 2008, in San Francisco Superior Court.**

7
8 Be it ordained by the People of the City and County of San Francisco:

9 Section 1. The City Attorney is hereby authorized to settle the action entitled
10 Blackhawk Parent LLC v. City and County of San Francisco, Case No. 478-160, filed August
11 1, 2008, in San Francisco Superior Court; by the payment of \$250,000 to plaintiff. The City
12 will retain the balance of the \$11,751,374 in Real Estate Transfer Tax that Blackhawk Parent
13 LLC paid to the City under protest. In addition, the authorized settlement resolves the
14 outstanding secured property tax lien on One Market Street. A copy of the settlement
15 agreement is contained in Board File No. 100515.

16 Section 2. The following parties were named in the lawsuits: plaintiff and cross-
17 defendant Blackhawk Parent LLC; defendant City and County of San Francisco; and cross-
18 defendant EOP Operating Limited Partnership.

19 //

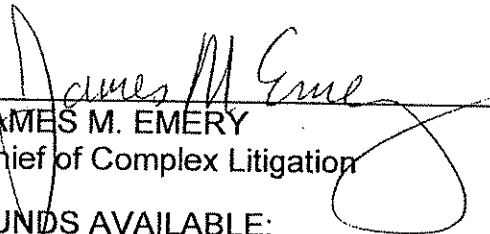
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21 //

1 Section 3. The Board of Supervisors approves and authorizes the City's execution,
2 delivery and performance of the settlement agreement.

3 APPROVED AS TO FORM AND
4 RECOMMENDED:

5 DENNIS J. HERRERA
6 City Attorney

7 
8 JAMES M. EMERY
9 Chief of Complex Litigation

10 FUNDS AVAILABLE:

11 
12 BEN ROSENFELD
13 Controller

14 Index Code: 975031
15 Subobject: 05311

RECOMMENDED:

ASSESSOR-RECORDER

16 
17 PHIL TING

18 TREASURER- TAX COLLECTOR

19 
20 JOSE CISNEROS

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Settlement Agreement and Mutual Release ("Agreement") is entered into as of March 23, 2010, by and among Blackhawk Parent LLC and EOP Operating Limited Partnership (collectively referred to as "Plaintiffs"), and the City and County of San Francisco ("Defendant"). The Parties to this Agreement are herein referred to as the "Parties" and each is individually referred to as a "Party."

DEFINITIONS

"Blackhawk" means Blackhawk Parent LLC, and any of its general or limited partners, any parent companies, subsidiaries, predecessors, successors, partners, officers, directors, shareholders, members, managers, attorneys, employees, agents, managing agents, heirs, successors, assigns, and affiliated persons, partnerships and/or companies.

"EOP" means EOP Operating Limited Partnership, and any of its general or limited partners, any parent companies, subsidiaries, predecessors, successors, partners, officers, directors, shareholders, members, managers, attorneys, employees, agents, managing agents, heirs, successors, assigns, and affiliated persons, partnerships and/or companies.

"City" means the City and County of San Francisco, and any divisions or subdivisions, agencies, and departments thereof, and any predecessors, successors, officers, supervisors, managers, attorneys, employees, agents, managing agents, affiliated persons or entities, or any other person acting on the City's behalf, including, but not limited to, the Assessor, the Recorder and the Tax Collector for the City of San Francisco.

RECITALS

WHEREAS a dispute has arisen concerning application of the City's Real Property Transfer Tax ("Transfer Tax") to transactions involving the transfer of indirect interests in entities that held title to property in San Francisco as a result of the merger that occurred between Blackhawk and EOP in or about February 2007 ("Blackhawk-EOP Merger").

WHEREAS a dispute has also arisen concerning the City's property tax assessment determinations for the transfer of indirect interests in entities holding title to properties as a result of the Blackhawk-EOP Merger.

WHEREAS a dispute has also arisen concerning application of the Transfer Tax as a result of NAPI REIT Inc.'s acquisition from EOP, in July 2005, of interests in legal entities holding title to real property in San Francisco (the "NAPI REIT-EOP Transaction").

WHEREAS a dispute has also arisen concerning the City's placement of a secured property tax lien on One Market Street based on the Tax Collector's assessment of delinquency tax penalties with respect to the termination of EOP's installment payment plan under Revenue and Taxation Code § 4837.5 for property taxes due on One Market Street ("One Market Street Dispute").

WHEREAS on August 1, 2008, Blackhawk filed a refund action in San Francisco Superior Court against the City with respect to transfer taxes paid as a result of the Blackhawk-EOP Merger (*Blackhawk Parent LLC v. City and County of San Francisco*, Case No. 478-160).

WHEREAS on October 29, 2008, the City filed a cross-complaint against Blackhawk and EOP seeking additional transfer taxes owed as a result of the Blackhawk-EOP Merger and the NAPI REIT-EOP Transaction. The complaint and cross-complaint in Case No. 478-160 are referred to herein as the "Action."

WHEREAS the Parties now desire to settle their various tax disputes relating to the Blackhawk-EOP Merger, the NAPI REIT Transaction, the One Market Street Dispute, and further desire to settle, compromise, and forever discharge all claims arising out of and relating to the Action, and have reached agreement disposing of their claims and demands as set for the below.

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants contained herein, the Parties hereto agree as follows.

1. Board Approval: The parties agree that the City's Board of Supervisors must pass legislation authorizing this Settlement Agreement and Mutual Release of Claims prior to its terms becoming effective, and the City's Mayor must sign the legislation. The City Attorney's Office has agreed to use best efforts to present the Settlement to the Board of Supervisors for Approval by no later than April 30, 2010. The date upon which the Mayor signs legislation authorizing this Agreement or legislation becomes effective without his signature shall be the "Effective Date" of this Settlement Agreement and Mutual Release of All Claims.
2. Release: The Parties hereby specifically release and forever discharge any and all claims, demands, causes of action, obligations, liens, damages, losses, costs, attorneys' fees and expenses of every kind and nature whatsoever, known or unknown, foreseen or unforeseen, fixed or contingent, relating to or arising out of any and all claims they now have or may hereafter have that are in any way connected with or resulting from the One Market Street Dispute, or from transfer tax obligations arising out of the Blackhawk-EOP Merger or the NAPI REIT-EOP Transaction. The Parties further specifically release and forever discharge any and all claims, demands, causes of action, obligations, liens, damages, losses, costs, attorneys' fees and expenses of every kind and nature whatsoever currently pending in the Action.
3. Removal of Secured Property Lien: Within 21 days from the Effective Date of this Agreement, the City shall remove the secured property tax lien on One Market Street for any and all penalties, interests and costs relating to the termination of EOP's Revenue & Taxation Code § 4837.5 installment payment plan for One Market Street, which plan the City has asserted did terminate on February 9, 2007 as a result of the EOP-Blackhawk merger.
4. No Challenge to Property Tax Assessments: Plaintiffs Blackhawk and EOP specifically agree that they shall not challenge the City's property tax reassessment determinations for any of EOP's properties relating to the Blackhawk-EOP Merger, other than the City's property tax assessments for the Ferry Building, and the assessed value for the 50% interest in One Post

Street that did not have a change in ownership on or around February 9, 2007 as a result of the merger, and which may still be subject to challenge.

5. Settlement Sum: In consideration of the release and waiver of all claims as set forth in this Agreement, the City hereby agrees to pay to EOP the sum of Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000), within twenty-one (21) days of the Effective Date of this Agreement.

6. Dismissal with Prejudice: Within ten (10) days from the time the City makes full payment of \$250,000 to EOP in accordance with this Agreement, the Parties shall dismiss with prejudice the Action.

7. Scope of Release: As a further consideration and inducement for this Agreement, each party hereto specifically acknowledges that there is a risk that, subsequent to the execution of this Agreement, it may incur, suffer, or sustain losses, damages, attorneys' fees, expenses, or any of these, which are unknown and unanticipated at the time this Agreement is signed, that are related to the Blackhawk-EOP Merger, the NAPI-REIT Transaction, the One Market Street Dispute, or the Action. Each party further acknowledges that there is a risk that such alleged damages as are known may become more serious than it now expects or anticipates and further acknowledges that there may be damages which presently exist or existed in the past but of which it may be unaware. Each party acknowledges that this release has been negotiated and agreed upon in light of those realizations. Each party hereby expressly waives all rights each may have in such unsuspected claims. In doing so, each party has had the benefit of counsel of its own choosing, and has been advised of, understands, and knowingly and specifically waives its rights under any and all statutes, cases, or common law theories similar to California Civil Code section 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR
SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR.**

8. Fees and Costs: Each Party to this Agreement shall bear its own fees and costs, including attorneys' fees.

9. Free and Voluntary Agreement: Each party represents that they have been represented by counsel in the Action and in entering into this Agreement, and that it has had the legal effect of this Agreement explained to it and that this Agreement has been entered into freely and voluntarily.

10. Interpretation of Agreement: This release is a binding agreement and the Parties hereto agree that it is to be interpreted under the laws of the State of California.

11. Authorization and Approval: By signing this Agreement on behalf of a private or public entity, each individual signing on behalf of such entity warrants that he or she has the authority to execute this release on behalf of such entity, subject to the provisions of paragraph 1 of this Agreement.

12. No Modification: This Agreement may not be modified or amended in any manner, except by a written agreement signed by authorized representatives of each party hereto.

13. Signatures in Part and Facsimile Signatures: The Parties hereto may separately sign the signature pages and the signature pages are deemed to be part of the complete Agreement. The Parties agree that in any dispute concerning this Agreement any photocopy or facsimile of the document is deemed to be conclusive evidence of the signed original Agreement.

14. Integration: The undersigned further declare(s) and represent(s) that no promise, inducement or agreement not herein expressed has been made to the undersigned and that this Agreement contains the entire agreement between the Parties hereto, and that the terms of this Agreement are contractual and not a mere recital.

.....
BLACKHAWK PARENT LLC, a Delaware limited liability company

Date: March 23, 2010

By Marikay Klank
Marikay Klank,
Vice President – Tax

On behalf of Blackhawk Parent LLC

EOP OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership

By Blackhawk Parent LLC, a Delaware limited liability company, its general partner

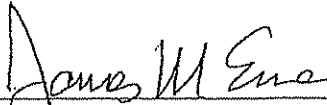
Date: March 23, 2010

By Marikay Klank
Marikay Klank
Vice President – Tax

On behalf of EOP Operating Limited Partnership

CITY AND COUNTY OF SAN FRANCISCO

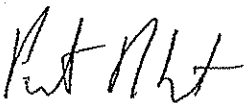
Date: March 29, 2010



James M. Emery, Esq.
Deputy City Attorney
On behalf of the City and County of San Francisco

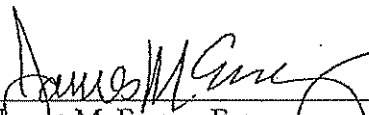
Approved as to form:

Date: March 22, 2010



Peter B. Kanter, Esq.
Counsel for Blackhawk Parent LLC and EOP Operating Limited Partnership

Date: March 29, 2010



James M. Emery, Esq.
Deputy City Attorney

