

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-6

Urgent Routine

AGENDA DATE June 16, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Authorize the Termination of the Lease Agreement By and Between the County of Stanislaus and CSAC Finance Corporation and Acknowledged, Accepted and Agreed to by Mizuho Bank of California Dated as of April 1, 2009 for the Courthouse Block

STAFF RECOMMENDATIONS:

Authorize the Chairman of the Board of Supervisors to sign a Termination of the Lease Agreement By and Between the County of Stanislaus and CSAC Finance Corporation and Acknowledged, Accepted and Agreed To By Mizuho Bank of California Dated as of April 1, 2009; and to Record the Agreement with the Clerk-Recorder of Stanislaus County

FISCAL IMPACT:

There is no cost or fiscal impact associated directly with this action. This action will, if authorized by the Board of Supervisors, officially terminate a County financing which is referred to as a Lease Agreement. This financing was approved on June 1, 1986 as part of a public financing of County facilities. The Lease Agreement, recorded on September 6, 1988, was originally established to allow the California State Association of Counties (CSAC) Financing Corporation to make available to Stanislaus County a portion of the proceeds of Certificates of Participation along with Amador County, El Dorado County, and Tuolumne County. The original Site Lease and Lease Agreement encumbered the entire block owned by
(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2009-404

On motion of Supervisor Chiesa, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Authorize the Termination of the Lease Agreement By and Between the County of Stanislaus and CSAC Finance Corporation and Acknowledged, Accepted and Agreed to by Mizuho Bank of California Dated as of April 1, 2009 for the Courthouse Block
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FISCAL IMPACT: (Continued)

Stanislaus County between 11th and 12th Streets, H and I Streets in downtown Modesto, commonly known as the Modesto Main Courthouse and Men’s Jail site (the “Property”).

Stanislaus County has paid its entire obligation under the terms of the original Lease Agreement; however, a termination of the original Lease Agreement and Site Lease were never completed, leaving the encumbrance in effect against the Property.

Approval of this action will establish that Stanislaus County has fulfilled all of its obligations under the Lease Agreement, allowing the encumbrance against the Property to be cleared.

DISCUSSION:

Passage of the California Trail Court Facilities Act in 2002 by the California Legislature initiated a series of tasks to transfer title and/or responsibility for operation of all of trial court facilities to the State of California. The Modesto Main Courthouse and Hall of Records were identified as being candidates for transfer of title to the State of California in 2008, and the State Administrative Office of the Courts (AOC) conducted a thorough due diligence assessment of the property, along with the court facilities located in Ceres and Turlock.

While researching title records for the Modesto Main Courthouse property, a leasehold encumbrance was identified that included the entire County-owned City block bounded by 11th and 12th Streets, H and I Streets – also known as Assessor’s Parcel Number 105-025-001. The encumbrance on this property prohibits the State Public Works Board from accepting the property as required by the Trail Court Facilities Act of 2002.

Staff research has confirmed that the original debt repayment obligation has been paid and the original Lease Agreement was terminated per the provision of the original Lease terms – however, no official action was taken to record the termination of the leases and, therefore, the title to the Property remains encumbered.

Pursuant to the Courts Transfer Agreement for the Modesto Main Courthouse and Hall of Records, the Property will be divided into four separate parcels and two of the four (Hall of Records and Modesto Main Courthouse buildings; and the Secure Parking Lot) will be transferred to the State. The two remaining properties, the Courthouse lawn (along I Street) and the Downtown Men’s Jail/Sallyport will be retained by Stanislaus County.

In order to complete this transaction, Board of Supervisors’ approval is required to occur first. If Board of Supervisors’ approval is granted, then the CSAC Finance Corporation

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will be able to approve the Termination of the Lease Agreement. Final recordation will then occur.

Approval of this action, signing and recording the Termination of Lease Agreement between the County of Stanislaus and CSAC Financing Corporation, acknowledged, accepted and agreed to by Mizuho Bank of California will clear the encumbrance against the Property and will move the County further toward compliance with the Modesto Main Courthouse and Hall of Records Transfer Agreement as approved by the Board of Supervisors on December 9, 2008.

One additional encumbrance remains on the Secure Parking Lot property due to a County Certificate of Participation financing approved by the Board in 2004. County staff will continue to work toward clearing this last encumbrance to permit the State Public Works Board to accept the two downtown Modesto parcels. Staff will return to the Board of Supervisors at a later date with recommendations relating to the encumbrance against the Secure Parking Lot.

POLICY ISSUE:

This action will meet the legislative intent concerning the transfer of court facilities to the State. As such, this action is consistent with the Board of Supervisors' priority of providing *Efficient delivery of public services*.

STAFFING IMPACTS:

County Chief Executive Office staff and Auditor-Controller staff have been working to resolve the issues associated with this encumbrance; however, there are no long-term staffing impacts of this action.

RECORDING REQUESTED BY:)
COUNTY OF STANISLAUS, CALIFORNIA)
)
WHEN RECORDED MAIL TO:)
Stradling Yocca Carlson & Rauth)
660 Newport Center Drive, Suite 1600)
Newport Beach, California 92660-6441)
Attn: Robert J. Whalen, Esq.)
)

[Space above for Recorder's use.]

This document is recorded for the benefit of the County of Stanislaus, California, and the recording is fee-exempt under Section 27383 of the California Government Code.

TERMINATION OF LEASE AGREEMENT

by and between

COUNTY OF STANISLAUS

and

CSAC FINANCE CORPORATION

and

acknowledged, accepted and agreed to by

MIZUHO BANK OF CALIFORNIA

Dated as of April 1, 2009

TERMINATION OF LEASE AGREEMENT

THIS TERMINATION OF LEASE AGREEMENT (this "Agreement") is dated as of March 1, 2009 and effective as of the date of recordation hereof, by and between the COUNTY OF STANISLAUS, a public body corporate and politic duly organized under and existing under the laws of the State of California (the "County"), and the CSAC FINANCE CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation") and acknowledged, accepted and agreed to by Mizuho Corporate Bank of California ("Mizuho"), as successor trustee to Dai-Ichi Kangyo Bank of California, a state banking corporation duly organized under and existing under the laws of the State of California ("DKB").

RECITALS:

A. The County, as lessor, and the Corporation, as lessee, entered into that certain Site and Facility Lease, dated as of June 1, 1986 and recorded September 6, 1988, as Instrument No. 060350 in the Official Records of the County of Stanislaus, California, (the "Site Lease") pursuant to which the County leased certain property described herein as Exhibit A (the "Site") to the Corporation.

B. For the purposes of financing the acquisition and construction of the Project, the Site was leased back to the County pursuant to that certain Lease Agreement, dated as of June 1, 1986, by and between the Corporation, as lessor, and the County and recorded September 6, 1988, as Instrument No. 060351 in the Official Records of the County of Stanislaus, California (the "Lease Agreement," and, together with the Site Lease, the "Lease Agreements"). Capitalized terms not defined in this Agreement have the meanings ascribed thereto in the Lease Agreement.

C. Pursuant to the Lease Agreement, the Corporation made available to the County a portion of the proceeds from the Certificates of Participation CSAC Finance Corporation, Pooled Financing – B (Amador County, El Dorado County, Stanislaus County and Tuolumne County) executed and delivered in the original aggregate principal amount of \$16,975,000 (the "Certificates"), in part to finance the acquisition and construction of the Project.

D. The Corporation assigned its interest in the Lease Agreements to Bank of America National Trust Savings Association, as original assignee (the "Original Trustee") pursuant to that certain Assignment Agreement, dated as of June 1, 1986, by and between the Corporation and Bank of America National Trust Savings Association, as original assignee (the "Original Trustee"), as recorded on September 6, 1988, as Instrument No. 060352 in the Official Records of the County of Stanislaus, California,

E. DKB assumed the Original Trustee's rights and obligations under the Lease Agreement and Site Lease pursuant to that certain Successor Trustee Assignment Agreement, dated as of March 1, 1988, by and between the DKB and the Original Trustee, as recorded on September 6, 1988, as Instrument No. 060353 in the Official Records of the County of Stanislaus, California (the "Successor Assignment Agreement").

F. Subsequent to the execution and delivery of the Successor Assignment Agreement, DKB changed its name, becoming Mizuho.

G. The County has paid or prepaid all Lease Payments due under the Lease Agreement, and, pursuant to Section 402(a) of the Lease Agreement, the Lease Agreement has been terminated in accordance with its own terms.

H. The County and the Corporation acknowledge that the terms of the Lease Agreements have expired in accordance with their terms and the County and the Corporation now desire to terminate and discharge the Lease Agreements.

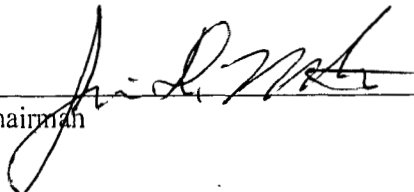
NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Termination of Lease Agreements. Effective as of the recordation of this Agreement, the Corporation and the County hereby acknowledge and agree that the Lease Agreement and Site Lease shall be terminated and discharged and shall be of no further force or effect and from and after the date hereof the Corporation shall have no further interest in the Site.

2. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one agreement. The signature and acknowledgment pages from each counterpart may be removed and attached to a single document in order to create one original instrument.

IN WITNESS WHEREOF, this Termination of Lease Agreements has been executed by each party's respective duly authorized officers, as of the date first above written.

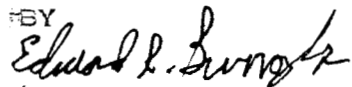
COUNTY OF STANISLAUS

By: 
Its: Chairman

ATTEST:


Clerk of the Board of Supervisors

APPROVED AS TO FORM:
STANISLAUS COUNTY COUNSEL

BY 
Assistant County Counsel

CSAC FINANCE CORPORATION

By: _____
Its: _____

Acknowledged, Accepted and Agreed to by:

MIZUHO BANK OF CALIFORNIA

By: _____
Its: Authorized Officer

State of California)
) ss.
County of Stanislaus)

On _____ before me, _____, Notary
Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

Witness my hand and official seal.

(signature of notary)

State of California)
) ss.
County of Sacramento)

On _____ before me, _____, Notary
Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

Witness my hand and official seal.

(signature of notary)

State of California)
) ss.
County of Los Angeles)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(signature of notary)

EXHIBIT A

DESCRIPTION OF THE SITE

The land referred to herein is situated in the State of California, County of Stanislaus, City of Modesto, and is described as follows:

ALL OF BLOCK 83 OF THE CITY OF MODESTO, FILED IN THE OFFICE OF THE COUNTY RECORDER OF STANISLAUS COUNTY ON DECEMBER 21, 1942, IN VOLUME 15 OF MAPS.

APN: 105-025-001