

FILED  
OFFICE OF THE CITY CLERK  
Approved as to Form and Legality  
2011 FEB 23 PM 5:28  
Oakland City Attorney's Office

## OAKLAND CITY COUNCIL

Resolution No. 83206 C.M.S.

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**RESOLUTION APPROVING SETTLEMENT OF SAVE MART SUPERMARKETS V. CITY OF OAKLAND (ALAMEDA SUPERIOR COURT CASE NO. RG10514461), BY PERMITTING THE CITY TO RETAIN TRANSFER TAXES, PENALTIES AND INTEREST IN THE AMOUNT OF \$553,764.61 IN EXCHANGE FOR PLAINTIFF'S DISMISSAL OF LAWSUIT CHALLENGING IMPOSITION OF THE TRANSFER TAXES, PENALTIES AND INTEREST AND THE CITY'S WAIVER OF CLAIMS TO ADDITIONAL PAYMENTS FROM SAVE MART (FINANCE AND MANAGEMENT AGENCY; REAL PROPERTY TRANSFER TAXES)**

**WHEREAS**, on or about March 30, 2010, the Finance and Management Agency issued a final administrative decision ("Administrative Decision") that Save Mart Supermarkets ("Plaintiff") owed real property transfer taxes, penalties and interest, pursuant to Oakland Municipal Code Chapter 4.20, in the amount of \$553,764.61 (the "Transfer Taxes"), by the acquisition of real property in the City commonly known as 6344 Moraga Avenue/1975 Mountain Boulevard in connection with the acquisitions of Lucky Stores, Inc. in 2006 and 2007; and

**WHEREAS**, Plaintiff paid the Transfer Taxes under protest and, on or about May 11, 2010, filed a Petition for a Writ of Administrative Mandamus, in Alameda Superior Court (Case No. RG10514461, the "Lawsuit") seeking to reverse the Administrative Decision and to obtain a refund of the Transfer Taxes, including on the ground that Oakland Municipal Code Chapter 4.20 (the "Real Property Transfer Tax Ordinance") did not expressly authorize the taxation of the type of transfers at issue; and

**WHEREAS**, on January 18, 2011, the City Council considered whether to approve a settlement of the Lawsuit; and

**WHEREAS**, consistently with the direction provided by the City Council in closed session, the City Attorney's Office and counsel for Plaintiff have prepared

a Settlement Agreement to resolve the Lawsuit, the form of which is attached hereto; now therefore be it resolved

**RESOLVED:** The City Administrator, or his designee, is authorized to enter the Settlement Agreement, in substantially the same form as attached hereto, subject to final approval by the City Attorney.

IN COUNCIL, OAKLAND, CALIFORNIA,

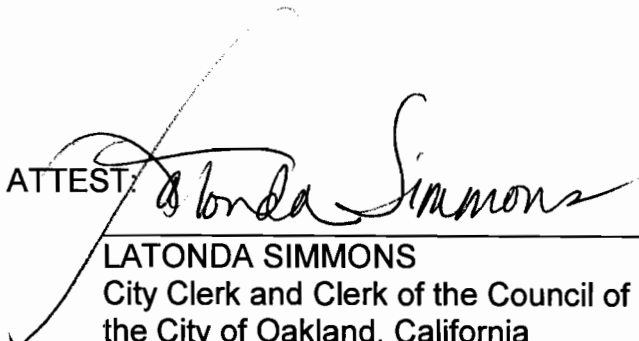
FEB 15 2011

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER DE LA FUENTE, KERNIGHAN, NADEL, <sup>Schaaf,</sup> ~~DEAN~~,  
BROOKS, REID, KAPLAN, AND PRESIDENT REID - 8

NOES - 0  
ABSENT - 0  
ABSTENTION - 0

ATTEST

  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California