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APPROVED AS TO FORM AND LEGALITY:



Agency Counsel

**REVISED
REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND**

RESOLUTION NO. 2009-0044 C.M.S.

AN AGENCY RESOLUTION AUTHORIZING AN AMENDMENT TO THE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY, THE CITY OF OAKLAND AND UPTOWN HOUSING PARTNERS, LP, FOR THE DEVELOPMENT OF A MIXED-USE PROJECT IN THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA, COMMONLY KNOWN AS THE UPTOWN PROJECT (PHASE 1), TO REDUCE THE AGENCY'S CONTRIBUTION TOWARD HAZARDOUS MATERIALS ABATEMENT BY UP TO \$252,000, FROM \$4,085,600 TO \$3,833,600, RESULTING FROM REMEDIATION COST SAVINGS

WHEREAS, pursuant to Agency Resolution No. 2005-59 C.M.S., the Redevelopment Agency of the City of Oakland ("Agency"), the City of Oakland ("City") and Uptown Housing Partners (UHP) are parties to an amended and restated Lease Disposition and Development Agreement ("LDDA"), whereby UHP is the developer of a two block area (the "Property") in the Central District Urban Renewal Area commonly referred to as the Uptown Project (Phase 1) (the "Uptown Mixed-Use Project"); and

WHEREAS, the LDDA sets forth the terms and conditions whereby UHP may purchase and develop the Property; and

WHEREAS, the LDDA requires the Agency to contribute up to \$4,085,600 for hazardous materials remediation costs on the Property (the "Agency Hazardous Materials Contribution"); and

WHEREAS, UHP achieved savings on the Agency's behalf, which could equal up to \$252,000 plus interest, in remediating the Property (the "Remediation Savings") which currently is held in a remediation escrow established pursuant to the LDDA; and

WHEREAS, the parties to the LDDA desire to amend certain terms of the LDDA to reduce the Agency Hazardous Materials Contribution by the Remediation Savings; and

WHEREAS, the Agency is a Responsible Agency for the Uptown Mixed-Use Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"); and

WHEREAS, the City, as the Lead Agency for the Uptown Mixed-Use Project, for purposes of environmental review under the CEQA, previously prepared a focused Environmental Impact Report ("EIR") for the Uptown Mixed-Use Project as proposed by Forest City, analyzing the significant environmental effects and mitigation measures in accordance with the California Environmental Quality Act, Public Resources Code § 21000, et seq.; and

WHEREAS, on February 18, 2004, the Oakland Planning Commission in accordance with CEQA Guidelines § 15090 certified that the Final EIR for the Uptown Mixed-Use Project was completed in compliance with CEQA and the Guidelines for Implementation of the California Environmental Quality Act (14 CCR sections 15000, et seq., the "State EIR Guidelines"), and the City's Environmental Review Regulations; and

WHEREAS, the Agency independently reviewed and considered the information contained in the Final EIR of the Uptown-Mixed Use Project; and

WHEREAS, the Agency, based on its review of the Planning Commission's action with respect to the Final EIR and other substantial evidence in the record, found and determined that the Final EIR for the Uptown Mixed-Use Project examined a reasonable range of alternatives, and that each alternative was rejected as infeasible for various reasons; and

WHEREAS, the Agency found and determined that all adverse environmental effects of the Uptown Mixed-Use Project would be less than significant or reduced to less-than-significant levels after adoption and implementation of the mitigation measures identified in the EIR and the mitigation and monitoring program; and

WHEREAS, the Agency adopted statements of overriding consideration specified in CEQA Guidelines §§ 15091, 15092 and 15093, and found and determined that the important benefits of the Uptown Mixed-Use Project identified in the Statement of Overriding Considerations each separately and independently outweigh the adverse unavoidable environmental effects of the Uptown Mixed-Use Project; and

WHEREAS, on July 20, 2004, the Agency approved the Uptown Mixed-Use Project and a Notice of Determination was subsequently filed with Alameda County; and

WHEREAS, in March of 2006, the City, as the Lead Agency for this Project for purposes of environmental review under CEQA, prepared Addendum #1 to the Final EIR for the Uptown Mixed-Use Project; and

WHEREAS, Addendum #1 to the Final EIR for the Uptown Mixed-Use Project specifically analyzed the potential for any new and/or increased environmental impacts related to relocating a 23-story tower element from Parcel 3 to Parcel 4, the proposed site for the Uptown Project (Phase 2) within the Uptown Mixed-Use Project area, and also included analysis of cultural resources, aesthetics, and transportation, among other topics; and

WHEREAS, based on the analysis included in the Final EIR and Addendum #1, none of the circumstances requiring preparation of a subsequent or supplemental EIR, as specified in CEQA and the State EIR Guidelines, including without limitation, Public Resources Code Section 21166 and State EIR Guidelines Section 15162 and 15163 are present in that (1) there are no changes to the project, new information or changes in circumstances surrounding the project that would result in new significant environmental impacts or substantially more severe impacts from those previously identified in the 2004 FEIR and Addendum #1; (2) the circumstances under which the project is undertaken have not changed substantially since approval of the Final EIR and do not involve new significant impacts or a substantial increase in the severity of previously identified significant effects; and (3) there is no new information of substantial importance (as specified in CEQA Guidelines 15162(a)(3), which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified; and

WHEREAS, the Agency independently reviewed and considered the findings and conclusions of Addendum #1 to the Final EIR of the Uptown Mixed-Use Project; and

WHEREAS, a joint public hearing between the Agency and the City Council of the City of Oakland was held to hear public comments on the proposed amendment to the LDDA; and

WHEREAS, notice of the amendment to the LDDA and the public hearing was given by publication at least once a week for not less than two weeks prior to the public hearing in a newspaper of general circulation in Alameda County; and

WHEREAS, the City approved the amendment to the LDDA by resolution after the public hearing; now, therefore, be it

RESOLVED: That the Agency hereby finds and determines: (1) that it has been presented and has independently reviewed and considered the information contained in the previously certified Final EIR for the Uptown Mixed-Use Project and Addendum #1, and (2) that none of the circumstances necessitating preparation of additional CEQA as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (a) there are no substantial changes proposed in the Uptown Mixed-Use Project or the *circumstances under which the Uptown Mixed-Use Project is undertaken* that would

required major revisions of the due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (b) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); and be it further

RESOLVED: That the Redevelopment Agency hereby authorizes the Agency Administrator or his designee to negotiate and execute an amendment to the LDDA with UHP to reduce the Agency Hazardous Materials Contribution by the Remediation Savings, and to take any other action with respect thereto consistent with this Resolution and its basic purpose; and be it further

RESOLVED: That the Agency place the Remediation Savings from the remediation escrow into the Agency's Preservation Park Loan Repayment Fund (Fund 9562), Capital Improvement Project – Economic Development Organization (#94800), Retail/Entertainment Catalyst Development FY01 (Project P132780); and be it further

RESOLVED: That the Agency finds and determines that this Resolution complies with CEQA and that the City Administrator or his or her designee is directed to file a Notice of Determination with the appropriate agencies within five (5) working days of this Resolution in accordance with CEQA guidelines; and be it further

RESOLVED: That the record before the Agency on this matter includes the information set forth in the Public Resources Code § 21167.6(e), including, without limitation, all final staff reports and final documentation and information produced by or on behalf of the City or Agency including without limitation the Draft EIR, the Final EIR and Addendum #1 for the Uptown Mixed-Use Project and supporting final technical studies and appendices, and all related and supporting material, and all final notices relating to the Uptown Mixed-Use Project and attendant hearings and meetings; all oral and written evidence received by the City Planning Commission, the Agency and City Council during the public hearings on the Uptown Mixed-Use Project; all written evidence received by relevant City and Agency staff before and during public hearings on the Project and appeal; and all matters of common knowledge and all official enactment of the City and Agency such as the General Plan and Oakland Municipal Code, other applicable City policies and regulations and all applicable state and federal laws, rules and regulations; and be it further

RESOLVED: That any and all documents necessary to effectuate the intent of this resolution shall be reviewed and approved as to form by the Agency Counsel prior to execution by the Agency Administrator or her designee; and be it

RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) the Community & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

IN AGENCY, OAKLAND, CALIFORNIA, MAR 31 2009, 2009


PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN,
REID AND CHAIRPERSON BRUNNER - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: 
LATONDA SIMMONS
Secretary of the Redevelopment
Agency of the City of Oakland