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APPROVED AS TO FORM AND LEGALITY:

  
Agency Counsel

REDEVELOPMENT AGENCY  
OF THE CITY OF OAKLAND  
2009 - 0045  
RESOLUTION No. \_\_\_\_\_ C.M.S.

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**AN AGENCY RESOLUTION AUTHORIZING AN AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND FC UPTOWN PARCEL 4 LLC, FOR THE DEVELOPMENT OF A MIXED-USE PROJECT AT 1911 TELEGRAPH AVENUE, COMMONLY KNOWN AS THE UPTOWN PROJECT (PHASE 2), TO: (A) EXTEND THE DATE TO PURCHASE THE PROPERTY BY 36 MONTHS; AND (B) PLACE AN AMOUNT OF UP TO \$70,000 FROM THE SALES PROCEEDS IN ESCROW TO REIMBURSE FC UPTOWN PARCEL 4 LLC FOR CERTAIN HAZARDOUS MATERIALS ABATEMENT COSTS TO BE INCURRED DEVELOPING THE PROJECT**

**WHEREAS**, pursuant to Resolution No. 2006-41 C.M.S, the Redevelopment Agency of the City of Oakland (Agency) and FC Uptown Parcel 4 LLC (FC Uptown) are parties to a Disposition and Development Agreement ("DDA") for the development of a mixed-use project at 1911 Telegraph Avenue (Property), commonly known as the Uptown Project (Phase 2) (the "Project"); and

**WHEREAS**, the DDA sets forth the terms and conditions whereby FC Uptown may purchase and develop the Property; and

**WHEREAS**, the parties to the DDA desire to amend certain terms of the DDA including, among other things, to (1) extend the date to purchase the Project by thirty-six (36) months until July 31, 2011; and (2) place an amount of up to \$70,000 from the sales proceeds in escrow to reimburse FC Uptown for certain hazardous materials abatement costs in to be incurred by FC Uptown in connection with the development of the Property; and

**WHEREAS**, the Agency is a Responsible Agency for this 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, which covered the Property, 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 the Property 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 for applicability to the proposed 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 DDA; and

**WHEREAS**, notice of the amendment to the DDA 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 DDA 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 review 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 for the Uptown Mixed-Use Project or the circumstances under which the Project is undertaken that would require major revisions of the EIR 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 DDA with FC Oakland to (1) extend the date to purchase the Property by thirty-six (36) months until July 31, 2011; and (2) place an amount of up to \$70,000 from the sales proceeds in escrow to reimburse FC Uptown for certain hazardous materials abatement costs to be incurred by FC Uptown in connection with the development of the Property, 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 finds and determines that this Resolution complies with CEQA and that the Agency 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 his designee; and be it further

**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