FILED
OFFICE OF THE CITY CLERK
OAKLAND

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Approved as to Form and Legality

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. 83352 C.M.S.

RESOLUTION APPROVING SETTLEMENT AGREEMENT REGARDING ATTORNEY'S FEES AND COSTS IN COALITION OF ADVOCATES FOR LAKE MERRITT ET AL. V. CITY OF OAKLAND ET AL. (ALAMEDA SUPERIOR COURT CASE NO. RG10514461, FIRST DISTRICT COURT OF APPEAL CASE NO. A130515), WHEREBY DEVELOPERS OAKLAND HARBOR PARTNERS, LLC, ET AL. WILL PAY $450,000 TO PLAINTIFFS ON BEHALF OF DEVELOPERS AS WELL AS THE CITY OF OAKLAND AND OAKLAND REDEVELOPMENT AGENCY, IN EXCHANGE FOR PARTIES' RESPECTIVE DISMISSALS OF APPEALS OF POST-JUDGMENT ORDER RE: ATTORNEY FEES (CEDA; CHALLENGE TO CERTIFICATION OF EIR AND ENTITLEMENTS, INCLUDING DEVELOPMENT AGREEMENT, FOR OAK TO NINTH MIXED USE DEVELOPMENT PROJECT)

WHEREAS, Oakland Harbor Partners, LLC, Signature Properties, Inc., and Reynolds & Brown (collectively, "Developers") proposed to develop a mixed-use community (approximately 3,100 residences, retail uses, parks, etc.) on real property located in the City of Oakland—between the Oakland Estuary, the Embarcadero, I-880, Oak Street and Ninth Avenue—commonly known as the Oak to Ninth Project (the "Project"); and

WHEREAS, in June and July 2006, after consideration of the environmental issues and the merits of the Project, the City of Oakland (the "City") certified an Environmental Impact Report ("EIR") and the City and Oakland Redevelopment Agency (the "Agency") approved entitlements for the Project, including a Development Agreement ("DA"); and

WHEREAS, in July 2006, the Coalition of Advocates for Lake Merritt and Joyce Roy (collectively, "Plaintiffs") filed a lawsuit against the City, the Agency and the Developers (Alameda Superior Court Case No. RG06280471) challenging the certification of the EIR and the approval of Project entitlements, including the DA; and

WHEREAS, on February 23, 2010, the Superior Court entered Judgment, in part for Plaintiffs and in part for the City, Agency and Developers; and

WHEREAS, on April 14, 2010, the Superior Court entered an Order re: Award of Costs, which granted costs in the amount of $5,365.70 to Plaintiffs, to be paid by the City, Agency and Developers; and

WHEREAS, Plaintiffs filed a motion for attorney's fees which sought a fee award of approximately $700,000; and

WHEREAS, on October 6, 2010, the Superior Court entered an Order re: Attorney Fees, which granting in part and denying in part Plaintiffs' motion for attorney's fees, ordered that the City, Agency and Developers are jointly liable to pay attorney's fees to Plaintiffs in the amount of $393,276.68; and

WHEREAS, all parties (City, Agency, Developers and Plaintiffs) appealed the Order re: Attorney Fees to the First District Court of Appeal (Case No. A130515); and

WHEREAS, interest has been accruing on the awards of costs and attorney's fees, in a statutory amount which may be as high as 10% annually; and

WHEREAS, the parties participated in a mediation at which they reached a tentative settlement regarding payment to Plaintiffs of $450,000 and the termination of the above-described litigation, as further described below and in the proposed Settlement Agreement attached hereto;

WHEREAS, the Project Conditions of Approval and the DA obligate the Developers to indemnify the City and Agency and to hold them harmless with respect to the any award of litigation costs and fees; and

WHEREAS, the Settlement Agreement provides, among other things, that the Developers shall pay the $450,000 to Plaintiffs on behalf of themselves as well as the City and the Agency (in two installments), that the Plaintiffs may seek an order compelling the City and Agency to pay in the event of a default by the Developers, and that the parties shall take the necessary steps to terminate the litigation in connection with the satisfaction of the payment to Plaintiffs;

WHEREAS, there remains significant time, expense and risk involved in continuing the litigation, including the risk that Plaintiffs could prevail in their appeal of the Order re: Attorney Fees (and would thereby seek an award of additional attorney's fees);

NOW, THEREFORE, BE IT 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, and following execution of the Settlement Agreement by Developers.

IN COUNCIL, OAKLAND, CALIFORNIA, MAY 17 2011

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER DE LA FUENTE, KERNIGHAN, NADEL, ~~SCHAAF~~ schaaf, BROOKS, REID, KAPLAN, AND PRESIDENT REID – 8

NOES – 0
ABSENT – 0
ABSTENTION – 0

ATTEST: LaTonda Simmons
LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California