

APPROVED AS TO FORM AND LEGALITY:
OFFICE OF THE CITY CLERK
OAKLAND
D. Melner
2005 JUN 15 PM 2:30
Agency Counsel

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.
2005 - 0039

RESOLUTION APPROVING AND AUTHORIZING THE AGENCY ADMINISTRATOR TO ENTER INTO A MUTUAL RELEASE AND COVENANT NOT TO SUE WITH FC OAKLAND, INC. AND THE SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD CONCERNING ALL KNOWN EXISTING CONDITIONS OF POLLUTION AT, UNDER, OR ORIGINATING FROM THE UPTOWN PROJECT AREA, WHICH CONSISTS OF APPROXIMATELY 6.5 ACRES LOCATED BETWEEN SAN PABLO AVENUE ON THE WEST, TELEGRAPH AVENUE ON THE EAST, THOMAS L. BERKLEY WAY (FORMERLY 20TH STREET) ON THE NORTH, AND 19TH STREET ON THE SOUTH IN THE CITY OF OAKLAND, OR FROM ADJACENT AND NEARBY PROPERTIES; AND AUTHORIZING RECORDATION OF A DEED RESTRICTION FOR USE OF UPTOWN PROJECT AREA.

WHEREAS, the City of Oakland ("City"), the Redevelopment Agency of the City of Oakland ("Agency") and FC Oakland, Inc. ("FC Oakland"), successor to Uptown Partners, LLC, are parties to a Lease Disposition and Development Agreement ("FC LDDA") whereby FC Oakland is the developer of the approximately two blocks (6.5 acres) of land bounded by Thomas L. Berkley Way (formerly 20th) on the north, Telegraph Avenue on the east, 19th St. on the south, and San Pablo Avenue on the west in the Uptown Activity Area of the Central District Urban Renewal Area commonly referred to as the Uptown Project; and

WHEREAS, the Agency has conducted extensive environmental site assessments, subsurface investigations, and groundwater investigations at the Property, which have indicated the presence of chemicals in soil, groundwater and soil gas at the southeastern portion of the Property, and residual metals (primarily lead) and chemicals in soils at the Property at multiple locations and depths; and

WHEREAS, the FC LDDA requires the Agency and FC Oakland to secure approvals from the San Francisco Bay Regional Water Quality Control Board (the "Regional Board") of a final Remediation Action Plan/Risk Management Plan (the "RAP/RMP") for the Property; and

WHEREAS, FC Oakland and the Agency have secured approval of the RAP/RMP and will complete soil and groundwater remediation and post-remediation groundwater and soil/gas monitoring in accordance with the approved RAP/RMP, including any amendments thereto; and

WHEREAS, the FC LDDA requires the Agency and FC Oakland to seek a commitment from the Regional Board that it will not name the Agency, FC Oakland, subsequent purchasers, owners, tenants, owners associations, tenants associations, lenders, and any occupants of the Property, as well as all of their respective directors, officers, shareholders, managers, members, employees, partners, affiliates, agents, contractors, successors, and assigns, and their respective successors in interest, as dischargers or responsible parties in any Regional Board enforcement order with regard to known conditions of pollution, solely by virtue of being involved in the purchase, leasing, ownership, and redevelopment of the Property; and

WHEREAS, the Agency and FC had specifically requested that the Regional Board issue a Mutual Release and Covenant Not to Sue ("Mutual Release") to the Agency and FC Oakland for the Property; and

WHEREAS, as a condition of entering into the Mutual Release with the Agency and FC Oakland, the Regional Board intends to approve a Deed of Restriction for Use of Property (the "Deed Restriction") to be recorded with the Alameda County Recorder's Office, which will (1) restrict the excavation of soil and require notification to future owners and occupants of subsurface conditions, (2) restrict the use of groundwater for all uses, including, but not limited to, drinking, irrigation, and industrial uses; and (3) be binding against successors and require that the uses and development of the Property be consistent with the approved RAP/RMP including future amendments thereto; now therefore be it

WHEREAS, the City of Oakland, as the Lead Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"), has prepared a focused Environmental Impact Report 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 City Council in accordance with CEQA Guidelines § 15090 certified that the Final Environmental Impact Report ("EIR") on the Project has been completed in compliance with CEQA, the Guidelines for Implementation of the California Environmental Quality Act (14 CCR sections 15000, et seq.); and

WHEREAS, the Agency, as a "Responsible Agency" under the California Environmental Quality Act of 1970 ("CEQA"), has independently reviewed and considered the environmental effects of the project as shown in the EIR and other information in the record; now, therefore, be it

RESOLVED: That the Agency hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. 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

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present in that (1) there are no substantial changes proposed in the 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 (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); and be it further

RESOLVED: That the Agency Administrator or her designee is hereby authorized to cause to be filed with the appropriate agencies a Notice of Determination for this action; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee to enter into the Mutual Release with the Regional Board and FC Oakland; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator to execute a Deed of Restriction to be recorded with the Alameda County Recorder's Office, which will (1) restrict the excavation of soil and require notification to future owners and occupants of subsurface conditions, (2) restrict the use of groundwater for all uses, including, but not limited to, drinking, irrigation, and industrial uses; and (3) be binding against successors and require that the uses and development of the Property be consistent with the approved RAP/RMP including future amendments thereto; and be it further

RESOLVED: That all documents related to this action shall be reviewed and approved by the Agency's Counsel prior to execution; 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, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

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IN AGENCY, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

- AYES- ~~BROOKS~~, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND CHAIRPERSON DE LA FUENTE, - 7
- NOES- 0
- ABSENT- 0
- ABSTENTION- BROOKS - 1

9005-0039

ATTEST:



LATONDA SIMMONS

Secretary of the Redevelopment Agency
of the City of Oakland, California