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Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION № 0 04 - 37 - C.M.S.

A RESOLUTION AUTHORIZING THE SALE OF REAL PROPERTY LOCATED BETWEEN 14TH STREET, 13TH STREET PEDESTRIAN WALK, JEFFERSON STREET AND MARTIN LUTHER KING, JR. WAY TO OLSON URBAN HOUSING, LLC, FOR \$8.7 MILLION, PLUS PROFIT-SHARING, FOR THE CITY CENTER T-10 RESIDENTIAL PROJECT, AUTHORIZING SELLER FINANCING FROM THE AGENCY OF \$1.7 MILLION, AND AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE PROJECT

WHEREAS, the California Community Redevelopment Law, Health and Safety Code Section 33430, authorizes a redevelopment agency within a survey (project) area or for purposes of redevelopment to sell real property, Section 33432 requires that any sale of real property by a redevelopment agency in a project area must be conditioned on redevelopment and use of the property in conformity with the redevelopment plan, and Section 33439 provides that a redevelopment agency must retain controls and establish restrictions or covenants running with the land for property sold for private use as provided in the redevelopment plan; and

WHEREAS, the Central District Urban Renewal Plan adopted on June 12, 1969, as subsequently amended, as well as the Five-Year Implementation Plan for the Central District (1999-2004) (together, the "Central District Redevelopment Plan" or "Redevelopment Plan"), authorizes the Redevelopment Agency to sell land in the Central District Redevelopment Project Area (the "Central District"); and

WHEREAS, the Agency and the City have initiated the "10K Downtown Housing Program" to attract ten thousand new residents into the Central District, and the Agency has determined that it desires to encourage new housing development in part by offering Agency-owned land to developers for the construction of housing; and

WHEREAS, the Agency owns the block bounded by 14th Street, 13th Street Pedestrian Walk, Jefferson Street and Martin Luther King, Jr. Way and known as the City Center T-10 Block, more fully described in Exhibit A attached to this Resolution (the "Property"); and

WHEREAS, the Property is located within the Central District; and

WHEREAS, Olson Urban Housing, LLC ("Olson") desires to purchase the Property from the Agency in order to develop the City Center T-10 Residential Project consisting of between 200 and 275 residential condominium units, along with parking, and between 2,500 and 5,000 square feet of retail space (the "Project"); and

WHEREAS, staff has negotiated and proposes entering into a Disposition and Development Agreement ("DDA") with Olson which sets forth the terms and conditions of the sale of the Property to Olson or Olson's affiliate and governs the development of the Project and the use of the Property by Olson and any successors to the Property subsequent to sale through recorded covenants running with the land; and

WHEREAS, the DDA provides that the Agency will provide seller financing to Olson in the form of market-rate loan of \$1.7 million; and

WHEREAS, the DDA requires that Olson or Olson's affiliate construct and operate the Project consistent with the Redevelopment Plan and restricts the use of the Property to housing and commercial uses; and

WHEREAS, the DDA and the grant deed that will convey the Property to Olson or Olson's affiliate adequately condition the sale of the Property on the redevelopment and use of the Property in conformity with the Central District Redevelopment Plan, and such documents prohibit discrimination in any aspect of the Project as required under the Central District Redevelopment Plan and the California Community Redevelopment Law; and

WHEREAS, the Project uses are in conformity with the Central District Redevelopment Plan, the Project will assist in the elimination of blight in the Central District, and the Project will help meet the objectives of the Central District Redevelopment Plan; and

WHEREAS, the California Community Redevelopment Law (Health and Safety Code Section 33433) requires that before any property of a redevelopment agency that is acquired in whole or in part with tax increment moneys is sold for development pursuant to a redevelopment plan, the sale must first be approved by the legislative body, i.e., the City Council, by resolution after public hearing; and

WHEREAS, as required by the California Community Redevelopment Law, the Agency has made available to the public for inspection, no later than the first date of publication of the notice for the hearing, a report that contains a copy of the draft DDA and a summary of the cost of the agreement to the Agency, the estimated fair market value of the Property at its highest and best use permitted under the Redevelopment Plan, and an explanation of why the sale of the Property and development of the Project will assist in the elimination of blight, with supporting facts and material; 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 sale of the Property for the Project; and

WHEREAS, notice of the sale of the Property 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 Council has approved the sale of the Property by resolution after the public hearing; and

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

WHEREAS, an Environmental Impact Report ("EIR") was previously prepared for the City Center project as proposed by Shorenstein Realty Partners Three, L.P., which covered the City Center T-10 site; and

WHEREAS, said EIR was independently reviewed and considered by the City Planning Commission in evaluating the City Center project in compliance with CEQA, 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 Planning Commission certified the EIR on April 26, 2000, as being prepared in compliance with CEQA and made all the required CEQA findings, including without limitation: (1) determining that the EIR examined a reasonable range of alternatives, and that each alternative was rejected as infeasible for various reasons; (2) determining there were four significant and unavoidable impacts that could not be mitigated to less than significant levels; and (3) finding and determining that the benefits of the City Center project outweigh any unavoidable adverse impact of the project; and

WHEREAS, the City Planning Commission approved the City Center project in April, 2000, and a Notice of Determination was subsequently filed with Alameda County; and

WHEREAS, on October 13, 2003, Addendum #1 to the EIR was prepared, which analyzed a 400 unit residential project, and the Addendum concluded that none of the changes to the project considered in the EIR, or circumstances under which it will be undertaken, or new information of substantial importance require preparation of a subsequent or supplemental EIR, as specified in CEQA and the CEQA Guidelines, including without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163; and

WHEREAS, the previously certified EIR and Addendum #1 were reviewed for applicability to the proposed Project; now, therefore, be it

RESOLVED: That the Redevelopment Agency hereby finds and determines (1) that it has been presented and has independently reviewed and considered the information contained in the previously certified EIR and Addendum #1, and the EIR and the Addendum comply with CEQA and the CEQA Guidelines' requirements for analysis of the Project's environmental effects and mitigation measures; (2) that the mitigation measures adopted by the Planning Commission and the Agency in considering the EIR and approving the DDA, together with a mitigation monitoring program for the Project, are hereby adopted and amended as specified in the attached Exhibit B; and (3) that none of the changes to the project, or circumstances under which it will be undertaken, or new information of substantial importance require preparation of a subsequent or supplemental EIR; and be it further

RESOLVED: That the Agency hereby finds and determines that the sale of the Property by the Agency to Olson or Olson's affiliate for the Project furthers the purposes of the California Community Redevelopment Law, contributes to the elimination of blight in the Central District Redevelopment Project Area, conforms to the Central District Redevelopment Plan, including its Implementation Plan, and furthers the goals and objectives of said Redevelopment Plan in that: (1) the Project will increase the stock of ownership housing in the Central District, and reestablish residential areas for all economic levels within the Central District; (2) the Project will provide necessary neighborhood-serving commercial facilities lacking in the Central District; (3) the Project, once developed, will create permanent jobs for low and moderate income people, including jobs for area residents; (4) the Project will create a stable 24-hour residential community which will enhance the viability of retail businesses in the area; (5) the Project will redevelop a key underutilized site in the Central District; (6) the Project will improve environmental design within the Central District; and (7) the Project, once developed, will enhance depreciated and stagnant residential and commercial property values in the surrounding City Center and Preservation Park areas, and will encourage efforts to alleviate economic and physical blight conditions in the area, including high business vacancy rates, excessive vacant lots, and abandoned buildings, by enhancing the development potential and overall economic viability of neighboring properties; and be it further

RESOLVED: That the Redevelopment Agency hereby authorizes the Agency Administrator or his or her designee to sell the Property to Olson, or to an affiliated entity satisfactory to the Agency Administrator, for the purchase price of \$8.7 million, plus profit-sharing, subject to the terms and conditions of the DDA; and be it further

RESOLVED: That the Agency hereby approves the grant of an easement to Olson or Olson's affiliate for vacated portions of 13th Street for pedestrian and other uses as negotiated by the Agency Administrator; and be it further

RESOLVED: That the Agency finds and determines that the purchase price of \$8.7 million equals or exceeds the fair market value of the Property at its highest and best use permitted under the Redevelopment Plan, that the seller financing provided by the Agency to Olson is at a prevailing market interest rate for this type of loan, that there

are no Agency or City subsidies to the developer in this transaction, and that therefore the Agency's employment and contracting programs do not apply; and be it further

RESOLVED: That the transaction shall include the following terms and conditions:

- \$7 million of the purchase price to be paid in the form of cash;
- \$1.7 million of the purchase price, plus interest at 8% earned from the close of escrow, to be paid by December 31, 2004;
- Seller financing to be secured by a deed of trust on the Property;
- The Agency to share in profits generated by the sale of Project units as follows:
 - Olson or Olson's affiliate to receive 10.85% of gross sales proceeds as profit
 - The Agency to receive 50% of excess sales proceeds greater than 10.85% but less than 14% of gross sales proceeds
 - The Agency to receive 25% of excess sales proceeds greater than 14% of gross sales proceeds
- The Agency to reserve parking spaces in City Center Garage West for Project occupants as negotiated by the Agency Administrator and Olson;
- Olson or Olson's affiliate to be responsible for the cost of required off-site improvements in connection with the Project;
- Olson or Olson's affiliate to take the Property in its "as-is" condition;
- Olson or Olson's affiliate to comply with provisions of the Central District Redevelopment Plan and nondiscrimination provisions of redevelopment law;
- The plans and specifications for the Project to be reviewed and approved by the Agency;
- Transfer of the Property to be restricted prior to Project completion;
- Project commencement and completion dates to be set in the DDA as negotiated by the Agency Administrator;
- No required application of the Agency's employment and contracting programs (prevailing wage, local employment, local/small local business enterprise contracting, apprenticeship, living wage, or first-source hiring) to the Project;
- The Project to be restricted to residential, parking, and retail uses;
- Any other appropriate terms and conditions as the Agency Administrator or his or her designee may establish in his or her discretion or as the California Community Redevelopment Law or the Redevelopment Plan may require;

and be it further

RESOLVED: That land sale proceeds shall be deposited in the Central District TA Bond fund (fund 9532) and be reallocated back to Uptown – Forest City DDA project from which it was taken to purchase the Property from the City; and be it further

RESOLVED: That the Agency Administrator or his or her designee is hereby authorized to negotiate and execute a Disposition and Development Agreement with

Olson, or an affiliated entity or entities approved by the Agency Administrator, for the Project, as well as negotiate and execute a promissory note and other loan documents for the seller financing from the Agency, and other documents with Olson or its affiliate, Project funding sources, or other parties as necessary to facilitate the sale and development of the Property for the Project; and be it further

RESOLVED: That all documents related to this transaction shall be reviewed and approved by Agency Counsel prior to execution, and copies will be placed on file with the Agency Secretary; and be it further

RESOLVED: That the Agency Administrator or his or her designee is directed to file a Notice of Determination within five (5) working days of this Resolution in accordance with CEQA Guidelines Section 15094; 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 and Economic Development Agency, Redevelopment Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland; (b) the Community and Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland; and be it further

RESOLVED: That the Agency hereby appoints the Agency Administrator or his or her designee as agent of the Redevelopment Agency to conduct negotiations and execute documents with respect to the sale of the Property as necessary to effectuate this transaction, and to take any other action with respect to the Property and Project consistent with this Resolution and its basic purpose.

IN AGENCY, OAKLAND, CALIFORNIA, JUL 6 2004, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- ~~BRUNNER~~, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND CHAIRPERSON DE LA FUENTE, - 7

NOES- 0

ABSENT- 0

ABSTENTION- BROOKS - 1

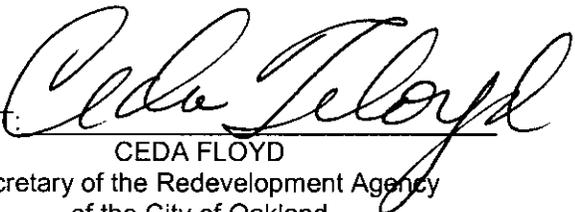
ATTEST: 
CEDA FLOYD
Secretary of the Redevelopment Agency
of the City of Oakland

EXHIBIT A**PROPERTY DESCRIPTION, CITY CENTER T-10 SITE**

REAL PROPERTY in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL ONE:

Lots 1 to 28, inclusive, Block 187 Kellersberger's Map of Oakland, filed September 2, 1853, in Map Book 7, Page 3, Alameda County Records.

PARCEL TWO:

The northeasterly 1/4 width of 13th Street lying between the Southeasterly line of Martin Luther King Jr. Way, formerly Grove Street, and the Northwesterly line of Jefferson Street as said Jefferson Street and Grove Street are shown on the Kellersberger's Map of Oakland, filed September 2, 1853, in Map Book 7, Page 3, Alameda County Records.

EXHIBIT B

MITIGATION MONITORING PROGRAM

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MITIGATION MONITORING PROGRAM

This is a revised Mitigation Monitoring Program that applies only to the T-10 site proposed for housing development. The Planning approvals will be an amendment to the Planned Unit Development (“PUD”) for the four-block City Center project and will have an expanded Mitigation Monitoring Program that will be applied discretely to housing and office development.

CITY CENTER PROJECT

B. TRAFFIC, CIRCULATION, AND PARKING

Impact B.6: The project is likely to increase the demand for bicycle parking in the City Center area, and may be inconsistent with the suggested bicycle parking space recommendations indicated in the Oakland Bicycle Master Plan. This would be a significant impact.

Mitigation Measure B.6: The project shall provide an adequate number of bicycle parking spaces, as determined by the City, in location(s) either on-site or within a three-block radius, or through payment of appropriate in-lieu fees. Implementation of this measure would reduce the anticipated impact to less-than-significant levels.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency, Planning Division; City of Oakland Public Works Agency, Traffic Engineering Division

Monitoring Timeframe: Prior to Final PUD approval for each subsequent phase after Block T9

Impact B.7: Project construction could result in temporary circulation impacts in the project vicinity. This would be a significant impact.

Mitigation Measure B.7: Prior to the start of excavation or construction on all project blocks, the project sponsors (Olson Urban Housing or Shorenstein, or their successors, as applicable) would submit to the City Traffic Engineering Division for review and approval a plan for managing construction-period traffic and parking. This plan would include information on routing of construction traffic, provision of off-street parking for construction workers, and off-street equipment staging. Implementation of this measure would reduce the anticipated impact to less-than-significant levels.

Monitoring Responsibility: City of Oakland Public Works Agency, Traffic Engineering Division

Monitoring Timeframe: Prior to issuance of building permits for each building

C. AIR QUALITY

Impact C.1: Fugitive dust generated by construction activities would be substantial and would increase PM-10 concentrations in the immediate project vicinity. This would be a significant impact.

Mitigation Measure C.1: The project sponsors (Olson Urban Housing or Shorenstein, or their successors, as applicable) shall require the construction contractor to implement a dust abatement program.

Elements of this program shall include the following:

- Water all active construction areas at least twice daily;
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer);
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
- Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets; and
- Designate a person or persons to oversee the implementation of a comprehensive dust control program and to increase watering, as necessary.

The above list of measures are recommended by BAAQMD as feasible control measures to reduce construction dust emissions at sites, such as the individual development blocks associated with the project, which are less than four acres in area. With implementation of these mitigation measures, the residual effect would be less than significant.

In addition, the following measures, which are identified in the EIR on the *Oakland General Plan Land Use and Transportation Element* (City of Oakland, 1997; p. III.E-26) for future development projects, are recommended to minimize construction equipment emissions during the construction period:

- Demonstrate compliance with BAAQMD Regulation 2, Rule 1 (General Requirements) for all portable construction equipment subject to that rule. BAAQMD Regulation 2, Rule1 requires an authority to construct and permit to operate certain types of portable equipment used for construction purposes (e.g., gasoline or diesel-powered engines used in conjunction with power generation, pumps, compressors, and cranes) unless such equipment complies with all applicable requirements of the “CAPCOA Portable Equipment Registration Rule” or with all applicable requirements of the Statewide Portable Equipment Registration Program. This exemption is provided in BAAQMD Rule 2-1-105.
- Perform low- NO_x tune-ups on all diesel-powered construction equipment greater than 50 horsepower (no more than 30 days prior to the start of use of that equipment). Periodic tune-ups (every 90 days) should be performed for such equipment used continuously during the construction period.

Implementation of these measures would reduce the anticipated impact to less-than-significant levels.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency, Building Services Division

Monitoring Timeframe: Implementation will occur throughout construction and grading activities on the sites

D. NOISE

Impact D.1: Construction activities would intermittently and temporarily generate noise levels above existing ambient levels in the project vicinity. This would be a significant impact.

Mitigation Measure D.1a: To avoid the potential for significant nighttime noise impacts due to construction, the project sponsors (Olson Urban Housing or Shorenstein, or their successors, as applicable) shall require their construction contractors to limit noisy construction activities to 8:00 a.m. to 7:00 p.m., Monday through Friday. Pile driving and/or other extreme noise generating activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday, with no extreme noise generating activity permitted between 12:30 and 1:30 p.m. No construction activities shall be allowed on weekends until after the building is enclosed, without prior authorization of the Building Services Division, and no extreme noise generating activities shall be allowed on weekends and holidays. Implementation of this measure would reduce the anticipated impact to less-than-significant levels.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency, Building Services Division

Monitoring Timeframe: Implementation will occur throughout duration of construction and grading activities on each site

Mitigation Measure D.1b: To reduce daytime noise impacts due to construction, construction contractors shall be required to achieve the Noise Ordinance standards of 65 dB for residential uses across from Block T10 on 14th Street and 70 dB at commercial uses elsewhere by implementing the following measures:

- Equipment and trucks used for project construction shall utilize the best available noise control techniques (*e.g.*, improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible and necessary);
- Impact tools (*e.g.*, jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dB. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dB. Quieter procedures shall be used such as drilling rather than impact equipment whenever feasible; and
- Stationary noise sources shall be located as far from sensitive receptors as possible. If they must be located near existing receptors, they shall be muffled to the extent feasible and enclosed within temporary sheds.
- If feasible, the noisiest phases of construction (such as pile driving) shall be limited to less than 10 days at a time to comply with the local noise ordinance.

Mitigation Measure D.1c: To further mitigate potential pile driving and/or other extreme noise generating construction impacts, if applicable, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the City to ensure that *maximum feasible noise attenuation will be achieved*. These attenuation measures shall include as many of the following control strategies as feasible:

- Erect temporary plywood noise barriers around the construction site, particularly along the eastern boundary along 14th Street to shield the adjacent multi-family residential buildings;

- Implement “quiet” pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings; and

Monitor the effectiveness of noise attenuation measures by taking noise measurements.

Mitigation Measure D.1d: Prior to the issuance of each building permit, along with the submission of construction documents, the project sponsors (Olson Urban Housing or Shorenstein, or their successors, as applicable) shall submit to the City Building Department a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

- A procedure for notifying the City Building Division staff and Oakland Police Department;
- A plan for posting signs on-site pertaining to permitted construction days and hours and complaint procedures and who to notify in the event of a problem;
- A listing of telephone numbers (during regular construction hours and off-hours);
- The designation of an on-site construction complaint manager for the project;
- Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of pile-driving activities about the estimated duration of the activity; and
- A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

Implementation of these measures would reduce the anticipated impact to less-than-significant levels.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency, Building Services Division

Monitoring Timeframe: Implementation will occur throughout duration of construction and grading activities on each site