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APPROVED AS TO FORM AND LEGALITY:

BY: *Deann Miller*
ORSA COUNSEL

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

Resolution No. 2017 017 007

A SUCCESSOR AGENCY RESOLUTION AUTHORIZING AN AMENDMENT TO A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT ("LDDA") BETWEEN THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY ("ORSA") AND W/L BROADWAY TELEGRAPH OWNER VII, LLC, OR AN AFFILIATE ("BTO"), FOR PROPERTY LOCATED AT 2000-2016 TELEGRAPH AVENUE AND 490 THOMAS L. BERKELEY WAY TO: (1) CHANGE THE PROJECT FROM PRIMARILY AUTOMOTIVE TO RESIDENTIAL AND RETAIL USES, (2) EXTEND PERFORMANCE DATES FOR THE PROJECT; (3) ESTABLISH AND ACCEPT EXTENSION FEES OF \$50,000 TO \$125,000; (4) REDUCE A CONTINGENT PAYMENT OBLIGATION TO BTO FROM \$1,575,000 TO \$1,550,000; AND (5) CONFORM LDDA TERMS TO REFLECT A SALE TO THE DEVELOPER RATHER THAN A LEASE WITH A PURCHASE OPTION; RELYING ON THE 2004 UPTOWN MIXED USE PROJECT ENVIRONMENTAL IMPACT REPORT (EIR) AND THE "2016 TELEGRAPH AVENUE PROJECT CEQA ANALYSIS" ADDENDUM THERETO, FINDING THAT THE PROJECT IS EXEMPT FROM ADDITIONAL ENVIRONMENTAL REVIEW PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTIONS 15162-15164, 15168, 15180, 15183 AND 15183.3, AND ADOPTING RELATED CEQA FINDINGS

WHEREAS, on October 18, 2005, the dissolved Redevelopment Agency ("Agency"), pursuant to Resolution No. 2005-38 C.M.S., entered into a Lease Disposition and Development Agreement ("LDDA") with Sears Development Company ("Sears") for the development of a new primarily automotive service facility on property located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way (the "LDDA Property"); and

WHEREAS, the Agency acquired property located at 1911 Telegraph from Sears for the Uptown Project, and as part of the purchase price, the parties agreed that Sears, at its option, would receive either: (1) the LDDA Property; or (2) a payment by

the Agency of \$1.6 million (representing the proportional value of the 1911 Telegraph property); and

WHEREAS, the Agency dissolved on February 1, 2012; and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Agency pursuant to Health and Safety Code Sections 34171(j) and 34173; and

WHEREAS, ORSA has listed the LDDA, including the contingent payment, as an enforceable obligation on its Recognized Obligation Payment Schedule ("ROPS") and was, until the subsequent transfer of rights under the LDDA, obligated to pay Sears \$1,600,000 if Sears, or a successor in interest, does not develop the LDDA Property, whether or not Sears is in default; and

WHEREAS, on October 7, 2014, ORSA, pursuant to Resolution No. 14-10 C.M.S., authorized an amendment to the LDDA to (1) assign the LDDA to BTO, (2) extend development completion deadlines for the Project by up to 96 months, changing it from October 2010 to October 2018, (3) reduce a contingent payment obligation from \$1,600,000 to \$1,575,000; and (4) require payment of \$100,000 to ORSA as consideration of the assignment and extension; and

WHEREAS, BTO desires to develop the LDDA Property as an 18-story mixed-use residential and retail building, as well as a parking garage (the "Project"), instead of a new primarily automotive service facility as specified in the LDDA; and

WHEREAS, BTO's mixed-use development proposal better serves the objectives of the City for the Uptown area than a primarily automotive service facility; and

WHEREAS, in return for the change of use from primarily automotive to residential and retail uses, BTO has agreed to a reduction of the \$1,575,000 contingent payment obligation of ORSA to \$1,550,000; and

WHEREAS, BTO has requested that the LDDA be amended to extend development deadlines per the following schedule and upon making certain payments to the City:

- (a) Change the current Construction Completion deadline of October 18, 2018 to the new Construction Commencement deadline with a new Construction Completion Date of April 18, 2021, for payment of an extension fee to ORSA of \$50,000 upon execution of the amendment;
- (b) Extend the new October 18, 2018 Commencement of Construction deadline by twelve (12) months to a new Commencement of Construction deadline of October 18, 2019, with a new Completion of Construction deadline of April 18,

2022 for payment of an extension fee to ORSA of \$25,000 prior October 18, 2018.

- (c) Extend the October 18, 2019 Commencement of Construction deadline by twelve (12) months to a new Commencement of Construction date of October 18, 2020, and a new Completion of Construction date of April 18, 2023 for payment of an extension fee to ORSA of \$25,000 prior October 18, 2019.
- (d) Extend the October 18, 2020 Commencement of Construction deadline by twelve (12) months to a new Commencement of Construction date of October 18, 2021, and a new Completion of Construction date of April 18, 2024, for payment of an extension fee to ORSA of \$25,000 prior October 18, 2020; and

WHEREAS, the Agency and Sears originally contemplated that Sears would take early delivery of the LDDA Property by the Agency transferring to Sears the Agency's possessory right under a ground lease because the Agency had not yet acquired full legal title to the LDDA Property; and

WHEREAS, said ground lease would contain an option for Sears to later acquire full legal title for the LDDA Property after the Agency had completed the process of acquiring legal title; and

WHEREAS, due to delays in development of the LDDA Property, the Agency completed the process of acquiring fee title to the LDDA Property before it was obligated to lease the LDDA Property to Sears; and

WHEREAS, ORSA can now transfer fee title to the LDDA Property rather than leasing the site to BTO, Sears' successor in interest, with an option to purchase; and

WHEREAS, the LDDA provisions regarding the ground lease must be amended to reflect a delivery of the LDDA Property to BTO by transfer of the fee title, rather than ground lease with an option to purchase; and

WHEREAS, an amendment allowing conformance to these new circumstances does not change the character of the transaction or its economic terms, only the form of the transfer to BTO; and

WHEREAS, ORSA desires to approve the change of use from primarily automotive to residential and retail uses, to extend the development deadlines set forth in the LDDA, and conform LDDA terms to reflect a sale to BTO rather than a lease with a purchase option; and

WHEREAS, California Health and Safety Code Section 34181(e) authorizes a successor agency, with the approval of the oversight board and the California Department of Finance, to amend agreements if the amendment (1) reduces liabilities to the taxing entities, (2) increases net revenues to the taxing entities, and (3) is in the best interests of the taxing entities; and

WHEREAS, the proposed amendment to the LDDA will reduce liabilities to the taxing entities by reducing the amount of the contingent payment obligation, which is a liability now faced by the taxing entities since such payment would be made under the ROPS from Real Property Tax Trust Funds otherwise distributed to the taxing entities; and

WHEREAS, the proposed amendment will increase net revenues to the taxing entities in the form of the payment to ORSA in consideration for ORSA's approval of extensions of development deadlines; and

WHEREAS, the proposed amendment will be in the best interests of the taxing entities by reducing the liabilities of and increasing net revenues to the taxing entities, as well as facilitating development of the Project, which will have fiscal and other benefits to the taxing entities over and above those benefits that would have resulted from a new automotive service facility; and

WHEREAS, the City, as the Lead Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.; "CEQA") and the CEQA Guidelines (Cal. Code Regs., title 14, section 15000 et seq.; "CEQA Guidelines"), conducted a detailed evaluation entitled "2016 Telegraph Avenue Project CEQA Analysis" dated June 2017 ("2016 CEQA Analysis") of the proposed Project, which concludes that the Project qualifies for an addendum, and, each as a separate and independent basis, as an exemption from additional environmental review, in accordance with Public Resources Code Sections 21083.3, 21094.5, 21090 and 21166; and CEQA Guidelines Sections 15162 -15164, 15168, 15180, 15183, and 15183.3; and

WHEREAS, ORSA is a Responsible Agency for the Project for purposes of environmental review under CEQA; and

WHEREAS, ORSA has independently reviewed and considered the environmental effects of the Project as shown in the 2016 CEQA Analysis and other information in the record; now therefore be it

RESOLVED: That ORSA hereby finds and determines, after independent review and consideration of (1) the 2016 CEQA Analysis dated June 2017 to the previously certified 2004 Uptown EIR, (2) the previously certified 1998 General Plan Land Use and Transportation Element EIR, (3) the Oakland Housing Element Update EIR and Addendum, and (4) the previously certified 2011 Redevelopment Plan Amendments EIR, as supported by substantial evidence in the record and for the reasons set forth in the CEQA findings, and, each as a separate and independent basis, that the proposed BTO Project is exempt from any additional CEQA Analysis under the "Community Plan Exemption" of Public Resources Code section 21083.3 (CEQA Guidelines §15183) and/or the "Qualified Infill Exemption" under Public Resources section 21094.5 (CEQA Guidelines §15183.3) and/or the "Redevelopment Projects" under Public Resources

Code section 21090 (CEQA Guidelines §15180), and that the 2016 CEQA Analysis also constitutes an Addendum to the 2004 Uptown EIR pursuant to Public Resources Code section 21166 (CEQA Guidelines §15162 and §15164), and that such Addendum determines 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 (1) there are no substantial changes proposed in the BTO Project or the circumstances under which the BTO 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 Successor Agency Administrator or her designee is hereby authorized to amend the LDDA to (1) change the use from primarily automotive to residential and retail uses; (2) extend development deadlines for the project by up to 66 months and require payment of \$50,000 to \$125,000, per the following schedule:

- (a) Change the current Construction Completion deadline of October 18, 2018 to the new Construction Commencement deadline with a new Construction Completion Date of April 18, 2021, for payment of an extension fee to ORSA of \$50,000 upon execution of the amendment;
 - (b) Extend the new October 18, 2018 Commencement of Construction deadline by twelve (12) months to a new Commencement of Construction deadline of October 18, 2019, with a new Completion of Construction deadline of April 18, 2022 for payment of an extension fee to ORSA of \$25,000 prior October 18, 2018.
 - (c) Extend the October 18, 2019 Commencement of Construction deadline by twelve (12) months to a new Commencement of Construction date of October 18, 2020, and a new Completion of Construction date of April 18, 2023 for payment of an extension fee to ORSA of \$25,000 prior October 18, 2019.
 - (d) Extend the October 18, 2020 Commencement of Construction deadline by twelve (12) months to a new Commencement of Construction date of October 18, 2021, and a new Completion of Construction date of April 18, 2024, for payment of an extension fee to ORSA of \$25,000 prior October 18, 2020; and
- (3) reduce the contingent payment to BTO from \$1,575,000 to \$1,550,000; and (4) conform LDDA terms to reflect a sale to the developer rather than a lease with a purchase option; and be it further

RESOLVED: That any payments made to ORSA for the assignment and extension of development deadlines in the LDDA shall be deposited into SRA Central District: Operations Fund (Fund 9710); Organization: Central District Redevelopment (#85245), with a new project to be created; and be it further

RESOLVED: That the amendment to the LDDA and all documents necessary to carry out this Resolution as authorized hereunder shall be approved as to form and legality by ORSA Counsel and filed with the ORSA Secretary; and be it further

RESOLVED: That the amendment to the LDDA shall be submitted to the Oakland Oversight Board and the California Department of Finance for approval.

IN SUCCESSOR AGENCY, OAKLAND, CALIFORNIA, OCT 03 2017, 2017

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON McELHANEY, GUILLEN, KALB, KAPLAN, and CHAIRPERSON REID — 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST:



LATONDA SIMMONS

Secretary, Oakland Redevelopment Successor Agency