


OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL



2006 JUN -8 PM 7:30 RESOLUTION No. 79985 C. M. S.

INTRODUCED BY COUNCILMEMBER PAT KERNIGHAN

A RESOLUTION AUTHORIZING AND DIRECTING THE REDEVELOPMENT AGENCY ADMINISTRATOR TO EXECUTE AN AGREEMENT THAT ENSURES THAT THE CITY AND REDEVELOPMENT AGENCY'S COMMITMENT TO BUILD AFFORDABLE HOUSING AT OAK TO NINTH PURSUANT IS LEGALLY ENFORCEABLE BY THE PUBLIC.

WHEREAS, affordable housing is in scarce supply in the City of Oakland; and

WHEREAS, the City has worked with the Oak to Ninth Affordable Housing Coalition to identify how to build and pay for affordable housing to be constructed in connection with the Oak to Ninth Mixed Use Development Project; and

WHEREAS, the City has agreed to memorialize the terms related to the agreed-upon affordable housing in legal documents; and


RESOLVED: that the Oakland City Council authorizes and directs the Redevelopment Agency Administrator to execute an agreement that ensures that the City and Redevelopment Agency's commitment to build affordable housing at Oak to Ninth pursuant to the terms in the Development Agreement such that they are legally enforceable by the public.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 20 2006 2006

PASSED BY THE FOLLOWING VOTE:

AYES- 7
NOES- 0
ABSENT- 0
ABSTENTION- ~~BROOKS~~ - 1

~~BROOKS~~ BRUNNER, CHANG,
NADEL, REID, QUAN, KERNIGHAN
AND PRESIDENT DE LA FUENTE

ATTEST: 
LaFonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

NO FEE DOCUMENT

Recording requested by:

Redevelopment Agency of the City of Oakland

When recorded mail to:

City of Oakland,
Community and Economic Development Agency
250 Frank Ogawa Plaza, 5th Floor
Oakland, CA 94612
Att'n.: Director, Housing and Community Development

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions (the "Declaration") is made this _____ day of _____, _____, by the Redevelopment Agency of the City of Oakland ("Owner" or the "Agency"), a community redevelopment agency organized and existing under the California Community Redevelopment Law.

RECITALS

This Declaration is entered into based on the following facts and understandings:

A. Owner is a party to a Development Agreement (the "Development Agreement") entered into on _____, 2006, with the City of Oakland (the "City"), and Oakland Harbor Partners, LLC, and recorded as document no. _____ on _____, 2006, with the Alameda County Recorder. The Development Agreement governs the development of the Oak to Ninth project along the Oakland Estuary.

B. The Development Agreement includes, among other things, a commitment by the Agency to purchase a portion of the Oak to Ninth project site known as Parcel F and Parcel G for the development of affordable housing by an affordable housing developer or developers chosen pursuant to the Development Agreement. The Development Agreement provides that such parcels will be subject to recorded restrictions restricting the use of the property to affordable rental housing.

C. The covenants in this Declaration are intended to run with the land and be binding on Owner and Owner's successors to the property designated for affordable housing in the Development Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals Owner hereby declares and agrees as follows:

1. DEFINED TERMS. The following terms and their derivatives have the meanings set forth in this section wherever used in this Declaration or attached exhibits:

“Affordable Rent” shall be as defined in California Health and Safety Code Section 50053(b)(3) and its implementing regulations.

“Area Median Income” or **“AMI”** shall have the meaning set forth in California Health and Safety Code Section 50093 and its implementing regulations.

The **“California Community Redevelopment Law”** means California Health and Safety Code Section 33000, et seq.

The **“Oak to Ninth Project”** means that development project described in the Development Agreement to be developed by Oakland Harbor Partners, LLC, or its successors.

“Parcel F” and **“Parcel G”** shall be as those parcels are described in the Development Agreement, as the Development Agreement may be amended.

“Project Unit” means any housing unit developed on the Property.

“Property” means the real property described in the attached Exhibit A and any buildings or improvements now or hereafter situated on such real property.

2. AFFORDABILITY RESTRICTIONS. Owner by and for itself and any successors-in-interest to and transferees of the Property, hereby declares and covenants that the Property is restricted only to the development and use of affordable rental housing and uses ancillary to such housing. All Project Units shall be provided at an Affordable Rent to households earning from 30 percent to 60 percent of Area Median Income.

Notwithstanding the above, that portion of the Property identified in the Development Agreement as Parcel G may include development of that commercial component described in Section _____ of Exhibit L-1 to the Development Agreement.

3. PROJECT UNIT TYPE RESTRICTIONS. Not more than 25 percent of all Project Units may be provided exclusively as senior housing. No fewer than 30 percent of all non-senior Project Units must be three bedroom units, and no fewer than 20 percent of all non-senior Project Units must be two bedroom units.

4. PROJECT DEVELOPMENT AND SCHEDULE. The project developed on Parcel F will consist of one phase of approximately 150 Project Units, while the project developed on Parcel G will consist of approximately 315 Project Units, along with the commercial component described in the Development Agreement. The Parcel G affordable housing project will be developed in three phases. (Each phase is referred to herein as an “Affordable Housing Project.”) Owner shall cause the development of the Affordable Housing Projects on the Property subject to economic feasibility, according to the schedule set forth below. For purposes of this Declaration, an Affordable Housing Project shall be considered

economically feasible when, given (1) the projected cost of development (hard and soft costs) of the Affordable Housing Project, (2) the planned levels of affordability of the Affordable Housing Project, and (3) the Agency and City's guidelines and policies for providing development funding to affordable housing projects then in effect, adequate private and public financing and subsidy sources (such as bond proceeds, low income housing tax credits, state funding, federal funding, tax increment revenue from the Central City East Redevelopment Area, and the Agency's Low and Moderate Income Housing Fund) are available to complete construction of and operate the Affordable Housing Project. Notwithstanding the above, an Affordable Housing Project shall be considered economically feasible if Low and Moderate Income Housing Funds generated by the Oak to Ninth Project and reserved for affordable housing development on the Property pursuant to the Development Agreement are sufficient along with other available sources to complete construction and operate the project, irrespective of whether the use of such reserved funds is consistent with the Agency's guidelines and policies for funding affordable housing. The Agency's governing board shall annually review the projected level of funding that would be available to develop the Property as affordable housing, relative to the Agency's overall projected levels of affordable housing funds and current and proposed Agency commitments to fund other affordable housing development. Subject to economic feasibility, Owner shall [endeavor to] cause the commencement of construction of the Affordable Housing Projects according to the following schedule:

- a. Parcel F, Phase 1 (150 units): Not later than the later of (1) July 1, 2013, or (2) the completion of the 1,000th market rate unit in the Oak to Ninth Project.
- b. Parcel G, Phase II (132 units): Not later than the later of (1) July 1, 2016, or (2) the completion of the 1,800th market rate unit in the Project.
- c. Parcel G, Phase III (77 units): Not later than the later of (1) July 1, 2017, or (2) the completion of the 2,100th market rate unit in the Project.
- d. Parcel G, Phase IV (106 units): Not later than the later of (1) July 1, 2018, or (2) the completion of the 2,300th market rate unit in the Project.

Owner may elect to cause the construction of the affordable housing projects sooner, provided sufficient funding is available.

5. NONDISCRIMINATION. Owner shall not discriminate or segregate in the use, enjoyment, occupancy, or conveyance of the Property or Project Units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis.

6. RELEASE OF RESTRICTIONS. This Declaration may be terminated and released from the Property by Owner only under any of the following circumstances:

- A. This Declaration shall be released as to that portion of Parcel G to be developed for commercial development pursuant to Section ___ of Exhibit L-1 to the Development Agreement. Notwithstanding the above, the obligations set forth in this Declaration shall remain in effect as to the remainder of Parcel G.

- B. Subject to Section ___ of this Declaration, this Declaration may be released as to Parcel G upon a purchase of the right to develop market rate units or the transfer of development rights to develop affordable housing units to another location, if approved by the Agency pursuant to Section ___ of Exhibit L-1 to the Development Agreement.
- C. This Declaration shall be released upon a transfer of the Property or portions thereof to an affordable housing developer chosen pursuant to Section _____ of Exhibit L to the Development Agreement, and replaced with a regulatory agreement between the Agency and the affordable housing developer with terms consistent with this Declaration. The regulatory agreement shall include, but not be limited to, recorded covenants running with the land that are enforceable by the Agency and the City, restricting the use of the Property to uses consistent with Sections 2, 3 and 5 of this Declaration for at least 55 years.
- D. This Declaration may be released as to an Affordable Housing Project upon a finding by the Agency's governing body, after a public hearing, and based upon substantial evidence, that development of that Affordable Housing Project as required by this Declaration is not economically feasible, but no earlier than the following dates:
- a. Parcel F, Phase 1 (150 units): 10 years after the completion of the 1,000th market rate unit in the Oak to Ninth Project.
 - b. Parcel G, Phase II (132 units): 10 years after the completion of the 1,800th market rate unit in the Project.
 - c. Parcel G, Phase III (77 units): 10 years after the completion of the 2,100th market rate unit in the Project.
 - d. Parcel G, Phase IV (106 units): 10 years after the completion of the 2,300th market rate unit in the Project.

7. TRANSFER OF DEVELOPMENT OBLIGATIONS OFF-SITE. With the authorization of the Agency's governing body, Owner may develop units otherwise required under this Declaration at a location other than the Property ("Off-Site Units"), subject to the following limitations:

- A. Owner may transfer the obligation to develop a maximum of 77 Project Units to Off-Site Units
- B. Owner must develop 1.33 Off-Site Units for every Project Unit not developed on the Property, rounded up to the next unit in the case of fractional units.
- C. All Off-Site Units must be developed within the Central City East Redevelopment Project Area west of 27th Avenue.
- D. All Off-Site Units must meet the same affordability restrictions and unit type restrictions imposed under this Declaration for Project Units.

Such a transfer of development obligations may be combined with a negotiated purchase of the right to develop market rate units on the Property pursuant to Section ___ of Exhibit L-1 to the Development Agreement.

Notwithstanding the above, Owner may develop Off-Site Units irrespective of these limitations if consented to by the representative of the Oak to Ninth Coalition designated by any Cooperation Agreement that may be entered into between the Agency and members of the Oak to Ninth Coalition that have participated in negotiations with the Agency regarding this Declaration.

8. COVENANTS RUNNING WITH THE LAND. Owner, by and for itself and each successor to any interest to the Property, hereby specifically acknowledges and agrees to be bound by the covenants contained herein. The covenants and agreements established in this Declaration, without regard to technical classification and designation, shall be binding upon all parties having any right, title, or interest in the Property or any portion thereof, and on their heirs, successors-in-interest, and assigns until the covenants terminate. The term "Owner" as used in this Declaration shall include all such assigns, successors-in-interest, and transferees. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property. Owner may not amend or modify this Declaration except for an amendment or release of the obligations herein as authorized under Sections 6 or 7.

9. TERM OF DECLARATION. This Declaration shall be in full force and effect until released.

10. ENFORCEMENT. Any person may bring an action for equitable relief seeking the specific performance by Owner of the terms and conditions of this Declaration, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief. This includes the right to challenge any release of this Declaration with regard to any portion of the Property that is not authorized under Section 6 of this Declaration. This enforcement right shall survive any such unauthorized release.

11. GOVERNING LAW. This Declaration shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

12. NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications to Owner shall be given by registered or certified mail, postage prepaid, return receipt requested, or shall be delivered personally, to the principal offices of Owner as follows, or if any such office is relocated, to the new address specified by Owner:

City of Oakland
c/o: Community and Economic Development Agency
250 Frank Ogawa Plaza, 5th Floor
Oakland, CA 94612
Attn.: Director of Housing and Community Development

13. SEVERABILITY. Every provision of this Declaration is intended to be severable. If any provision of this Declaration is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

[SIGNATURE BLOCK ON NEXT PAGE]

DRAFT

IN WITNESS WHEREOF, Owner has executed this Declaration, effective as of the date first written above.

“OWNER”

**REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND,
a community redevelopment agency organized and existing under the California
Community Redevelopment Law**

By: _____
Agency Administrator

Approved as to form and legality:

By: _____
Agency Counsel

[SIGNATURE(S) MUST BE ACKNOWLEDGED]

DRAFT

STATE OF CALIFORNIA)
) ss.

COUNTY OF _____)

On _____, 20__ before me, _____ the undersigned, personally appeared _____

- () personally known to me
- () proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) (is/are) subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity(ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

STATE OF CALIFORNIA)
) ss.

COUNTY OF _____)

On _____, 20__ before me, _____ the undersigned, personally appeared _____

- () personally known to me
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WITNESS my hand and official seal.

Signature _____

DECLARATION OF RESTRICTIONS

EXHIBIT A
PROPERTY DESCRIPTION

[insert legal description of Parcels F & G here]

DRAFT