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APPROVED AS TO FORM AND LEGALITY:

Shirley Mullin

Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO EXECUTE A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASES, AND RELATED DOCUMENTS WITH THE CITY OF OAKLAND, AND UPTOWN PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, FOR THE DEVELOPMENT OF A MIXED-USE RESIDENTIAL RENTAL AND RETAIL DEVELOPMENT PROJECT IN THE UPTOWN ACTIVITY AREA OF THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA

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 or lease real property, Section 33432 requires that any sale or lease 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 or leased 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 or lease 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 Redevelopment Plan authorizes the Agency to pursue redevelopment, including increased housing opportunities to address the need for additional housing and retail in the Uptown Retail and Entertainment Area ("Uptown Activity Area"); and

WHEREAS, there exists within the Uptown Activity Area approximately two blocks 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, collectively referred to as the "Project Area" or the "Property" as identified on Exhibit A-1 and A-2 attached to this Resolution; and

WHEREAS, the City, the Agency and Uptown Partners, LLC, a California limited liability company ("Uptown Partners") previously evaluated the design and financial feasibility of a proposed mixed-use residential and retail project in the Project Area; and

WHEREAS, Forest City Residential West, Inc. ("Forest City"), an affiliate of Uptown Partners, currently owns three parcels of land in the Project Area; and

WHEREAS, the Agency currently owns 30 parcels in the Project Area; and

WHEREAS, the parcels in the Project Area not owned by the Agency or Forest City are currently owned by a number of third parties ("Privately Owned Parcels"); and

WHEREAS, Uptown Partners desires that the Agency acquire and assemble all the parcels comprising the Property in the Project Area, and lease the Property to Uptown Partners in order to develop at least 700 units of residential housing, including 25% affordable units (of which 80% shall be affordable to households earning incomes not exceeding 50% of area median income ("AMI"), and 20% shall be affordable to households earning incomes not exceeding 120% of AMI), at least 14,500 square feet of neighborhood-serving retail, related parking facilities, and a public park (the "Project"); and

WHEREAS, staff and Uptown Partners have negotiated the terms of a Lease Disposition and Development Agreement ("LDDA") and its exhibits, including two ground leases (one for each of two development phases; herein "Ground Leases") which sets forth the terms and conditions of the lease of the Property to Uptown Partners, and governs the development of the Project and the use of the Property by Uptown Partners and any successors to the Property subsequent to the lease; and

WHEREAS, the LDDA provides that the Agency shall take all commercially reasonable efforts to acquire title to the Privately Owned Parcels by purchase, gift, eminent domain, or other method available to the Agency under law; provided, however, that the institution of eminent domain proceedings shall be at the sole and absolute discretion of the Agency, with the Agency exercising its independent discretion whether or not to acquire any parcel by eminent domain, and provided further, that the Agency shall have no obligation whatsoever to acquire any parcel by eminent domain, and shall not be liable in any respect to Uptown Partners for failure to acquire any Privately Owned Parcels by eminent domain; and

WHEREAS, the Agency has adopted by separate resolution a replacement housing plan for any housing units that may be demolished at the Westerner Hotel, 1918-1954 San Pablo

Avenue, for the Project (the "Replacement Housing Plan"), which plan must be adopted at least 30 days before the LDDA is executed; and

WHEREAS, Uptown Partners desires to develop the Project in one phase, but may have to develop the Project in two phases (Phase 1 and Phase 2, respectively, as defined in the LDDA) depending on availability of financing; and

WHEREAS, if Uptown Partners if unable to obtain financing to develop the Project as a whole, it will be necessary for the parties to execute two separate LDDAs (along with its respective Ground Lease attachment)- one LDDA for Phase 1 of the Project, and the second LDDA for Phase 2 of the Project; and

WHEREAS, the public park will be constructed during Phase 1 of the Project, will be located between buildings constructed for the residential rental units, is an integral part of and will be interwoven with the construction of the residential rental and retail components of the Project; and

WHEREAS, it would be more cost effective for Uptown Partners' licensed contractor(s) for the Project to also construct the public park because: (1) Uptown Partners anticipates obtaining a guaranteed fixed price contract for environmental remediation covering the entire Project site, including the public park site; (2) using Uptown Partners' contractor would save time thus decreasing the risk of increased costs; and (3) the integrated nature of the public park with the rest of the Project components makes it more practical and cost effective to construct both by the same contractor at the same time; and

WHEREAS, because the public park is so integrated with the development of the Project, it is not practicable that the park be constructed by separate contract, and that competitive bidding would result in greater public costs for the reasons mentioned above; and

WHEREAS, under the LDDA, the Agency and the City will enter into Ground Leases with Uptown Partners for the two phases of the Project, both of which provides, among other matters, *for the Agency to cooperate with Uptown Partners to issue tax-exempt multi-family housing bonds to be issued by the Agency as a conduit, subject to the grant of an allocation by the California Debt Limit Advisory Commission; and*

WHEREAS, the LDDA also requires the City to provide Uptown Partners with direct gap financial assistance in the amount of \$5,300,000, and reimburse Uptown Partners up to \$1,000,000 for construction of the public park, and requires the Agency to: (1) make a contribution to Uptown Partners of tax increment funds generated by the Project; (2) reimburse Uptown Partners an amount measured by business taxes generated from the Project and paid to the City, but only if necessary to fund a tax increment gap; (3) provide direct gap financial assistance in the amount of \$8,335,749 and (4) reimburse Uptown Partners for: (a) up to \$5,700,000 for off-site improvements; and (b) up to \$2,586,000 for hazardous materials remediation costs, all on the terms and conditions set forth in the Ground Leases; and

WHEREAS, funds will be available from: (1) Central District Capital Funds for Fiscal Year 2003-05; (2) proceeds from the sale of Agency-owned property, which is bound by Jefferson Street, Martin Luther King, Jr. Way, 14th Street and the 13th Street Pedestrian Walk in Downtown

Oakland, commonly known as "T-10"; (3) proceeds from the sale of Agency-owned property located on the block bounded by Martin Luther King, Jr. Way, 12th Street, Castro Street, and 14th Street in the Central District, commonly known as "Preservation Park"; (4) a Brownfields Grant in the Central District Grants Fund (Fund 9215); (5) the City Capital Reserves Fund (Fund 5510); (6) an Urban Development Action Grant (Fund 2999, Project G84040); and (7) Project-generated Net Available Tax Increment and annual Agency set-aside measured by the annual business taxes paid by Uptown Partners to the City; and

WHEREAS, in return for the Agency's lease of the Property to Uptown Partners, and the financial assistance the City and Agency provides to Uptown Partners under the Ground Leases, Uptown Partners is required to pay to the City and the Agency Participation Rent, and a share of refinance and sales proceeds, all on the terms and conditions as set forth in the Ground Leases; and

WHEREAS, the initial terms of the Ground Leases shall commence on the date possession is delivered under the LDDA, and continue for 66 years from the commencement date, with an option in favor of Uptown Partners to extend the lease for an additional 33 years, all on the terms and conditions as described in the respective Ground Leases; and

WHEREAS, under the Ground Leases, the Agency shall retain ownership of the Project at all times, unless Uptown Partners executes its option to purchase the Property on the terms set forth in the Ground Leases; and

WHEREAS, a copy of the proposed LDDA and its exhibits, including the Ground Leases, is on file with the Agency Secretary; and

WHEREAS, the Schematic Drawings for the Project are attached to the LDDA showing the general design of the Project; and

WHEREAS, the "Scope of Development" attached to the LDDA provides general design objectives and development standards for the Project; and

WHEREAS, the Agency has reviewed the Schematic Drawings in accordance with the design and development standards of the Redevelopment Plan and the Scope of Development; and

WHEREAS, the LDDA requires that Uptown Partners construct and operate the Project consistent with the Redevelopment Plan and restricts the use of the Property to housing and commercial retail uses; and

WHEREAS, the City's Consolidated Plan for Housing and Community Development indicates that there is a need for affordable housing, and has identified this activity as a priority; and

WHEREAS, the Project will increase and improve the supply of low and moderate income housing available in the City, and is an eligible use of the Agency's Low and Moderate Income Housing Fund under California Health and Safety Code Sections 33334.2 and 33334.3; and

WHEREAS, no other reasonable means of private or commercial financing of the affordable housing units in the Project at the same level of affordability and quantity are reasonably available to Uptown Partners, other than the Low and Moderate Income Housing Fund; and

WHEREAS, the Agency has adopted a resolution authorizing the Agency Administrator to execute a Cooperation Agreement with the City of Oakland, and the Coalition for Workforce Housing ("Coalition"), an unincorporated association of affordable housing advocacy organizations that, among other things, provides for: (1) the Coalition's release of claims regarding the Uptown Project, and (2) the agreement of the City and the Agency to facilitate development of a 100% affordable housing project on Agency-owned land defined as Parcel Six in the LDDA, an approximately 37,000 square foot lot, located between 18th and 19th Streets and between the Fox Theatre and San Pablo Avenue; and

WHEREAS, to fulfill its obligations under the Cooperation Agreement, the Agency has, among other things, included as a condition of its obligations to close the transaction under the LDDA, that the licensed contractor for the Project will, subject to the Agency's approval, construct certain off-site improvements for the Parcel Six development; and

WHEREAS, the development of the Parcel Six project and the Project are interconnected in that: (1) Parcel Six was originally a component of the Project; (2) the Agency and the Coalition are proposing to enter into the Cooperation Agreement whereby Parcel Six will be removed from the Project because of the Coalition's concerns regarding the Project; (3) the Cooperation Agreement provides that the Agency will not issue the Parcel Six RFP unless Uptown Partners closes escrow under the LDDA for Phase 1 of the Project; and (4) Uptown Partners has a limited right to require that the Parcel Six development be consistent with visual design guidelines of the Project; and

WHEREAS, it would save the public money by having the licensed contractor for Uptown Partners construct the Parcel Six off-site improvements because of the interconnected relationship between the Parcel Six and Project developments; and

WHEREAS, it is not practicable that the Parcel Six off-site improvements be constructed by separate contract, and that competitive bidding would result in greater public costs for the reasons mentioned above; and

WHEREAS, Agency staff will return to the Agency for approval of the actual construction contract for the Parcel Six off-site improvements; and

WHEREAS, the LDDA and the Ground Leases condition the lease 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 Redevelopment Area, and the Project will help meet the objectives of the Central District Redevelopment Plan; and

WHEREAS, the California Community Redevelopment Law (Health & 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 or leased 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 contained a copy of the draft LDDA 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 lease 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 lease of the Property for the Project; and

WHEREAS, notice of the lease 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 lease of the Property by resolution after the public hearing; and

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, the Oakland Planning Commission on February 18, 2004, 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., the "State EIR Guidelines), and the City's Environmental Review Regulations; and

WHEREAS, the EIR was presented to the Agency Board as the decision making body of the Agency, and the Agency reviewed and considered the information contained in the final EIR prior to approving the Project; and

WHEREAS, the EIR reflects the Agency's independent judgment and analysis; and

WHEREAS, the Agency, based on its review of the Planning Commission actions with respect to the EIR and other substantial evidence in the record, hereby makes the findings and statement of overriding considerations specified in CEQA Guidelines §§ 15091, 15092 and 15093, as more fully set forth in Exhibit B to this Resolution; now, therefore, be it

RESOLVED: That the Agency hereby finds and determines (1) that it has been presented and has independently reviewed and considered the information contained in the EIR prior to approving the Project, and that the EIR is adequate for use by the Agency for its approval of the Project; (2) that the alternatives identified in the EIR other than the Project are not feasible and will not attain the Project objectives for the reasons set forth in the Planning Commission's staff report on the Project, and are therefore rejected as infeasible; (3) that all adverse environmental effects of the Project, except as described in the EIR and/or Exhibit B would be less than significant or reduced to less-than-significant levels after implementation of the mitigation measures identified in the EIR and the Mitigation Monitoring Program; and (4) that it adopts that Statement of Overriding Considerations set forth in Exhibit B to this Resolution and finds and determines that the important benefits of the Project identified in that Statement of Overriding Considerations each separately and independently outweigh the adverse unavoidable environmental effects of the Project; and be it further

RESOLVED: That the Agency hereby adopts mitigation measures identified in the EIR, as they may have been revised by the Agency, as set forth in the Mitigation Monitoring and Reporting Program ("MMRP") attached as Exhibit C to this Resolution, which is incorporated by this reference, and directs the Agency Administrator to ensure that these are duly and diligently implemented and enforced; and be it further

RESOLVED: That the Agency hereby finds and determines that the lease of the Property by the Agency to Uptown Partners 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 rental housing, including affordable 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 help 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 vacant and 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 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 Agency hereby authorizes the Agency Administrator or her designee to lease the Property to Uptown Partners, subject to and on the terms and conditions of the LDDA; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee to allocate funding in the amount of \$30,816,349 for the implementation of the Uptown Project; and be it further

RESOLVED: That the Agency hereby authorizes payment to Uptown Partners of the net tax increment (including the housing set-aside, but after deducting other mandated pass-throughs and the ERAF diversion) generated by the Project starting in the first fiscal year after a certificate of occupancy is issued for any building in the Project and ending on June 12, 2020, estimated to have a Net Present Value of \$12,114,708 (based on a discount rate of 6 percent applied to the term of the Agency's payment obligation), all on the terms and conditions set forth in the Ground Leases; and be it further

RESOLVED: That the Agency hereby authorizes payment to Uptown Partners of up to an amount measured by the annual business taxes generated by the Project and paid by Uptown Partners to the City, but only to fill a gap, if any, in payment of net tax increment, all on the terms and conditions set forth in the Ground Leases; and be it further

RESOLVED: That Agency funds in the amount of \$30,816,349 for the implementation of the LDDA and related documents shall be allocated as follows: \$1,040,069 from the Central District Tax Allocation Bond Series 1986 Fund (Fund 9516, Project P221520), \$14,100,000 from the Central District Tax Allocation Bond Series 2003 Fund (Fund 9532, Project T245610), \$3,790,280 from the Unrestricted Land Sale Proceeds Fund (Fund 9553, Project P125910), \$200,000 from the United States Environmental Protection Agency's (EPA) Brownfields Grant Program in Central District Grant Funds (Fund 9215), \$5,986,000 from Preservation Park Land Sale Proceeds authorized pursuant to Resolution No. 2004-04 C.M.S.; \$5,700,000 from the Agency's Central District Tax Allocation Bond Series 2003 Fund (Fund 9532, Project T245610) from sale proceeds generated by the sale of Agency-owned property, commonly known as "T-10", and an amount measured by the annual business taxes generated by the Project and paid by Uptown Partners to the City, but only if necessary to cover any gap in net tax increment; and be it further

RESOLVED: That the Agency finds and determines that the Participation Rent and other consideration that the Agency and the City will receive under the Ground Leases equals or exceeds the reuse value of the Property taking into account the uses, covenants, conditions, and development costs required by the LDDA, and be it further

RESOLVED: That because the Agency is providing subsidies to Uptown Partners in this transaction, the Agency's employment and contracting programs will apply to the Project; and be it further

RESOLVED: That the Agency Administrator or her designee is hereby authorized to negotiate and execute: (1) the LDDA with the City, and Uptown Partners for the Project, but no earlier than 30 days after the Agency's adoption of the Replacement Housing Plan, (2) if Uptown Partners is unable to obtain financing for development of both phases of the Project at one time, two separate LDDAs for Phase 1 and Phase 2, respectively, of the Project, (3) upon satisfaction or waiver of the conditions precedent, the Ground Lease(s); (4) such other additions, amendments or other modifications to the LDDA(s) or the Ground Lease(s) (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) that the Agency Administrator, in consultation with the Agency Counsel, determines are in the best interests of the Agency, do not conflict with the terms of the Cooperation Agreement, do not materially increase the obligations or liabilities of the Agency, and are necessary or advisable to complete the transactions which the

LDDA(s) or Ground Lease(s) contemplate to be conclusively evidenced by the execution and delivery by the Agency Administrator of the LDDA(s), Ground Lease(s), and any such amendments thereto; and (5) such other documents as necessary or appropriate, in consultation with the Agency Counsel, to facilitate the lease and development of the Property for the Project in order to consummate the transaction under the LDDA(s) or Ground Lease(s) in accordance with this Resolution, or to otherwise effectuate the purpose and intent of this Resolution and its basic purpose; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee in his or her discretion to subordinate the priority of the Agency 's recorded affordable housing restrictions to a lien or encumbrance of another private or governmental entity providing financial assistance to the Project, if the Agency Administrator or her designee determines that: (1) *an economically feasible alternative method of financing the Project on substantially comparable terms and conditions but without subordination is not reasonably available;* (2) the Agency's investment in the Project in the event of default is reasonably protected; and (3) subordination is in the best interests of the Agency; and be it further

RESOLVED: That the Agency Administrator shall determine satisfaction of conditions precedent under the LDDA to the conveyance of the leasehold estates in the Project, such determination to be conclusively evidenced by the execution and delivery by the Agency Administrator of the Ground Lease(s); and be it further

RESOLVED: That the Agency hereby approves the Schematic Drawings 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 staff is directed to undertake the clerical task of amending the approved MMRP and/or the Project Conditions of Approval, as may be necessary, to conform to this Resolution; and be it further

RESOLVED: That the Agency finds and determines that this Resolution complies with CEQA and that staff is directed to cause to be filed a Notice of Determination with the appropriate agencies; and be it further

RESOLVED: That the record before the Agency on this matter includes the information set forth in Public Resources Code § 21167.6(e), including, without limitation, all final staff reports and final documentation and information produced by or on behalf of the City or Agency, including without limitation the Draft EIR and the Final EIR and supporting final technical studies and appendices, and all related and supporting material, and all final notices relating to the Project and attendant hearings and meetings; all oral and written evidence received by the City Planning Commission, the Agency and City Council during the public hearings on Project; all written evidence received by relevant City or Agency staff before and during public hearings on the Project and appeal; and all matters of common knowledge and all official enactments of the City and Agency such as the General Plan and Oakland Municipal Code, other applicable City

policies and regulations and all applicable state and federal laws, rules and regulations; 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, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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