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June 15, 2004

HONORABLE CITY COUNCIL
Oakland, California

President De La Fuente and Members of the City Council:


**Subject: Swinerton & Walberg v. City of Oakland, et al.
Alameda County Superior Court Case No. 2002-050928
Our File No: X01660 –Redevelopment Agency**

Pursuant to Section 401 of the Charter, the City Attorney has prepared a resolution authorizing and recommends settlement of the above-captioned matter according to the terms set forth in the attached resolution.

This action arises from Swinerton & Walberg Co.'s foreclosure of a mechanics' lien and claim for unpaid labor and materials supplied in connection with the construction of the Hilton Garden Inn hotel on Broadway between 11th and 12th Streets. The underlying action arose on or about November 19, 2001. The City Council approved the terms of the original settlement at closed session on March 16, 2004.

The attached resolution reflects the terms of a new settlement between Swinerton and the Agency. All the terms in the new settlement were contained in the original settlement, and were previously approved by the City Council. Under the original settlement, Swinerton and/or Old West would market the property for nine months and try to sell the property. If there were no acceptable offers above \$2.3 million dollars, Swinerton had the option to proceed with litigation against the Agency. Under the new settlement, this term has been deleted and Swinerton has agreed to dismiss the Agency from this action with prejudice.

Respectfully submitted,


JOHN A. RUSSO
City Attorney

Attorney Assigned:
Jannie L. Wong
Dan Rossi

10.6CC
ORA/COUNCIL
JUN 15 2004

By: *A.M.H.*
Agency Counsel

**REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND**

RESOLUTION No. _____ C.M.S.

JLW:kj

**RESOLUTION AUTHORIZING AND DIRECTING AGENCY
COUNSEL TO COMPROMISE AND SETTLE THE CASE
OF SWINERTON & WALBERG CO. v. AMIN-BROADWAY
LLC, ET AL., SUPERIOR COURT, COUNTY OF
ALAMEDA, CASE NO. 2002-050928 INVOLVING A CLAIM
FOR FORECLOSURE OF A MECHANICS' LIEN
RELATING TO THE CONSTRUCTION OF THE
KEYSTONE HILTON HOTEL**

WHEREAS, Amin-Broadway LLC ("Amin-Broadway") entered into a Disposition and Development Agreement ("DDA") with the Redevelopment Agency on April 13, 2000, for the construction of a 214-room Hilton Garden Inn hotel on the so-called Keystone Hotel site along Broadway between 11th and 12th Streets; and

WHEREAS, the property was subsequently sold by the Agency to Amin-Broadway; and

WHEREAS, Amin-Broadway began construction on the site in 2001, but construction was halted in its early stages; and

WHEREAS, the general building contractor for the project, Swinerton & Walberg ("Swinerton") filed a lawsuit in 2002 for breach of contract, common counts and foreclosure of mechanics' lien against the developer; and

WHEREAS, Swinerton named the Redevelopment Agency and the construction lender, Old West Annuity and Life Insurance Company ("Old West"), in the mechanics' lien cause of action because of the Agency's and Old West's respective interests in the property; and

WHEREAS, the parties wish to settle the lawsuit; now, therefore, be it

RESOLVED: That Agency Counsel is authorized and directed to compromise and settle the case of Swinerton & Walberg Co.v. Amin-Broadway LLC, et al., City Attorney's File No. x01660 according to the terms set forth below:

1. In the event that Swinerton acquires ownership of the property, the Agency would remove the current DDA from the property (unless the new buyer is Amin-Broadway or an affiliated entity of Amin-Broadway), and replace it with a new recorded Owner Participation Agreement ("OPA") between the Agency and the new owner. The new OPA would obligate the owner to commence construction on a redevelopment project on the property within three years of the date of the sale, and thereafter diligently pursue the project to completion. The OPA would not specify the nature of the project, except that any new project on the vacant parcel must have a minimum overall Floor Area Ratio (FAR) of 4.0. If the new owner fails to commence construction within the three-year period or fails to complete the project, the owner would pay \$400,000 to the Agency in liquidated damages. The Agency would remain open to negotiating different terms with the new owner if the owner so wishes. Pursuant to the current DDA, the Agency would retain the right to pursue collection on the \$400,000 in liquidated damages that has already accrued against Amin-Broadway and its guarantors.

FURTHER RESOLVED: That Agency Counsel is further authorized and directed to take whatever steps as may be necessary to effect said settlement.

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, California

10.600

ORA/COUNCIL

JUN 15 2004