

ORIGINAL

APPROVED AS TO FORM AND LEGALITY:

H. Miller
City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 79314 C.M.S.

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF: (1) A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY, THE AGENCY AND SEARS, DEVELOPMENT COMPANY FOR THE AGENCY'S ACQUISITION OF PROPERTY LOCATED AT 1911 TELEGRAPH AVENUE FOR PURCHASE CONSIDERATION EQUAL TO AN AMOUNT NOT TO EXCEED \$12.5 MILLION; AND (2) A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASE AND RELATED DOCUMENTS BETWEEN THE AGENCY AND SEARS, DEVELOPMENT COMPANY FOR THE CONSTRUCTION OF A SEARS AUTO CENTER ON TWO PROPERTIES LOCATED AT 2000-2016 TELEGRAPH AVENUE AND 490 THOMAS L. BERKELEY WAY

WHEREAS, the City of Oakland ("City"), the Redevelopment Agency of the City of Oakland ("Agency") and FC Oakland, Inc. ("FC Oakland"), successor to Uptown Partners, LLC, are parties to a Lease Disposition and Development Agreement ("FC LDDA") whereby FC Oakland is the developer of the 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 in the Uptown Activity Area of the Central District Urban Renewal Area commonly referred to as the Uptown Project; and

WHEREAS, the FC LDDA requires the Agency to use commercially reasonable efforts to acquire the privately owned parcels comprising the Uptown Project site to transfer to FC Oakland for the Uptown Project; provided that the Agency has no obligation to acquire any property by eminent domain; and

WHEREAS, Sears Roebuck & Co. operates a retail store in downtown Oakland adjacent to the Uptown Project site; and

WHEREAS, Sears Development Company ("Sears") owns property at 1911 Telegraph Avenue (immediately across the street from the Sears retail store) on which is located an auto center and a parking garage for employees, the public and patrons of the Sears retail store, a legal description of which is attached hereto as Exhibit A (the "Sears Property"), and

WHEREAS, the Sears Property is one of the privately-owned parcels comprising the Uptown Project site; and

WHEREAS, pursuant to its obligations under the FC LDDA, the Agency desires to purchase from Sears the Sears Property; and

WHEREAS, the Agency also desires to retain the Sears retail store in downtown Oakland; and

WHEREAS, Sears wishes to sell the Sears Property to the Agency to assist the Agency in its development of the Uptown Project on the condition that the Agency provide Sears with a site on which it can relocate and build a new auto center and provide substitute parking for its employees and patrons in close proximity to the existing Sears retail store; and

WHEREAS, the Agency previously identified property in the Central District (as hereinafter defined) at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way, a legal description of which is attached hereto as Exhibit B (the "New Site") as a possible relocation site for the Sears auto center; and

WHEREAS, in order to induce Sears to sell the Sears Property to the Agency so that the Uptown Project could proceed, and in order to help retain the existing Sears retail store in downtown Oakland, the Agency sought to obtain possession of and title to the New Site by initiating eminent domain proceedings against the owners of the New Site; and

WHEREAS, in January 2005, the Agency commenced a condemnation proceeding against the owners of the New Site, Alex K. Hahn and Jae H. Hahn, Trustees of the April 10, 2002 Hahn Family Trust, and Sang E. Hahn and Haitan Hahn, Trustees of the February 8, 2002 Hahn Family Trust and other third party defendants (the "Condemnation Litigation"); and

WHEREAS, an Order for Possession was issued to the Agency by the Alameda County Superior Court on January 26, 2005, which Order became effective on April 26, 2005; the Order granted to the Agency the right of immediate possession and use of the New Site, including the right to remove all improvements and structures situated thereon; and

WHEREAS, the Agency, the City, and Sears have agreed to execute a Purchase and Sale Agreement whereby the Agency will acquire the Sears Property from Sears for the following consideration: (1) the Agency will pay to Sears \$9,700,000, subject to an escrow holdback of \$350,000 for Sears potential contribution to environmental cleanup on the Sears Property; (2) the Agency will convey to Sears under a Lease Disposition and Development Agreement ("Sears LDDA") and ground lease, with an option to purchase ("Ground Lease"), the New Site to allow Sears to relocate and build a new auto center (the "Sears Project"); (3) the Agency will lease back to Sears the existing auto center for a reasonable period of time estimated at 20 months to allow Sears to complete construction of its auto center ("Lease"); and (4) the City will allow Sears to use 50 parking spaces in a City-owned garage at Telegraph and 21st Street in Oakland for its employees, customers and invitees on the terms set forth in a license agreement ("License"); and

WHEREAS, the total value of the consideration that the Agency has agreed to pay to Sears for the Sears Property as described above is a maximum of \$12,500,000, and that such amount is equal to the fair market value of the Sears Property; and

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 Redevelopment Plan authorizes the Agency to pursue redevelopment, including increased housing and retail opportunities to address the need for additional housing and retail in the Uptown Retail and Entertainment Area ("Uptown Activity Area"); and

WHEREAS, in order to encourage the construction of new housing and retail in the Central District, the Agency and FC Oakland executed the FC LDDA whereby FC Oakland will build the Uptown Project, a mixed-use residential housing and retail project; and

WHEREAS, to facilitate development of the Uptown Project, the Agency plans to acquire the Sears Property; and

WHEREAS, the Agency also wishes to retain the existing Sears retail store in accordance with the redevelopment goals for the Central District; and

WHEREAS, the Agency is able to facilitate development of the Uptown Project and help retain the Sears retail store by purchasing the Sears Property for the Uptown Project, and offering Sears substitute space for relocation of its auto center, and substitute parking for Sears employees and patrons in a nearby City-owned garage; and

WHEREAS, staff, on behalf of the Agency and the City, and Sears have negotiated the terms of a Purchase and Sale Agreement, the Sears LDDA, the Ground Lease, Lease, and License, which set forth the terms and conditions of the Agency's purchase of the Sears Property and Sears' development of the Sears Project; and

WHEREAS, the initial term of the Ground Lease shall commence on the date possession is delivered under the Sears LDDA, and continue for 30 years from the commencement date, with an option in favor of Sears to extend the lease for an additional period up to 69 years, all on the terms and conditions as described in the Ground Lease; and

WHEREAS, under the Ground Lease, Sears will pay the Agency \$1.00 annual rent, and will have the option to purchase the Agency's interests in the New Site for \$1.00 on the terms set forth in the Ground Lease; and

WHEREAS, the Agency will lease back the existing Sears auto center site and related parking to Sears for \$1.00 per year prorated for the term set forth in the Lease; and

WHEREAS, the City will provide 50 nonexclusive parking spaces at no cost to Sears for 25 years on the terms set forth in the License; and

WHEREAS, Pursuant to Agency Resolution 2004-38 C.M.S., the Agency appropriated \$14,100,000 from the Central District Tax Allocation Bond Series Fund 2003 (Fund 9532, Project T245610) and \$95,000 from the Central District Tax Allocation Bond Series Fund 1986 (Fund 9516, Project P221520) to cover all site acquisition costs for the Uptown Project, including the acquisition of the Sears Property; additional funds in the amount of \$2,800,000 will be appropriated from the Central District Tax Allocation Bond Series Fund 2005 (Fund 9533, Project P103460), which will be available on July 1, 2005; and

WHEREAS, a copy of the proposed Sears LDDA and its exhibits, including the Ground Lease are on file with the City Clerk; and

WHEREAS, the Sears LDDA and the Ground Lease condition the lease of the New Site on the redevelopment and use of the New Site in conformity with the Central District Redevelopment Plan, and such documents prohibit discrimination in any aspect of development or operation of the Sears Project as required under the Central District Redevelopment Plan and the California Community Redevelopment Law; and

WHEREAS, the Sears Project uses are in conformity with the Central District Redevelopment Plan, the Sears Project will assist in the elimination of blight in the Central District Redevelopment Area, and the Sears 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 Sears LDDA and a summary of the cost of the agreement to the Agency, the estimated fair market value of the New Site at its highest and best use permitted under the Redevelopment Plan, and an explanation of why the lease of the New Site and development of the Sears 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 New Site for the Sears Project; and

WHEREAS, notice of the lease of the New Site 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 Agency has approved the execution of the lease of the New Site 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, on February 18, 2004, the City Council 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.); and

WHEREAS, the Agency, as a "Responsible Agency" under the California Environmental Quality Act of 1970 ("CEQA"), has independently reviewed the EIR and other information in the record; now, therefore, be it

RESOLVED: That the City hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. 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 project or the circumstances under which the 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 City hereby finds and determines that the lease of the New Site by the Agency to Sears for the Sears 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 Sears Project will help retain desired retail in the Central District; (2) the Sears Project will provide necessary neighborhood-serving retail facilities lacking in the Central District; (3) the Sears Project, once developed, may create permanent jobs for low and moderate income people, including jobs for area residents; (4) the Sears Project will redevelop a underutilized site in the Central District; (6) the Sears Project will improve environmental design within the Central District; and (7) the Sears 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 City hereby authorizes and directs the City Administrator to negotiate and execute: (1) a Purchase and Sale Agreement and related documents with Sears and the Agency allowing the Agency to purchase the Sears Property on the terms set forth in this Resolution; (2) such other additions, amendments or other modifications to the Purchase and Sale Agreement and related documents (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) that the City Administrator, in consultation with the City Attorney, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions which the Purchase and Sale Agreement or related documents contemplate to be conclusively evidenced by the execution and delivery by the City Administrator of the Purchase and Sale Agreement or related documents, and any such amendments thereto; and (3) such other documents as necessary or appropriate, in consultation with the City Attorney, to facilitate the purchase and sale of the Sears Property in order to consummate the transaction 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 City hereby approves the Agency's lease of the New Property to Sears on the terms and conditions of the Sears LDDA, the Ground Lease and related documents as described in this Resolution and as negotiated by the Agency Administration under the terms of the Agency Resolution approving the Sears LDDA, Ground Lease and related documents; and be it further

RESOLVED: That because the Agency and the City are not providing subsidies to Sears in this transaction, the City's employment and contracting programs will not apply to the Sears Project; and be it further

RESOLVED: That the City finds that the value of the Sears Property acquisition and other consideration that the Agency will receive from Sears equals or exceeds the reuse value of the New Site taking into account the uses, covenants, conditions, and development costs required by the Sears LDDA, and be it further

RESOLVED: That, the City Administrator shall determine satisfaction of conditions precedent in favor of the City under the Purchase and Sale Agreement and related documents; and be it further

RESOLVED: That all documents related to this transaction shall be reviewed and approved by the City Attorney prior to execution; and be it further

RESOLVED: That the City 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 custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City'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 COUNCIL, OAKLAND, CALIFORNIA, JUN 21 2005, 2005

PASSED BY THE FOLLOWING VOTE:

AYES- ~~BROOKS~~, BRUNNER, CHANG, KERNIGHAN, NADEL,
REID, QUAN, AND PRESIDENT DE LA FUENTE -7

NOES- ϕ

ABSENT- ϕ

ABSTENTION- ~~BROOKS~~ -1

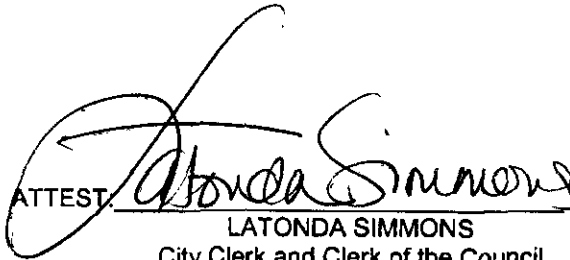
ATTEST 
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A

Property Address: 1911 Telegraph Avenue

APN: 008-0643-001-01

**EXHIBIT "A"
LEGAL DESCRIPTION**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA, CITY OF OAKLAND, AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERN LINE OF TELEGRAPH AVENUE WITH THE NORTHEASTERN LINE OF 19TH STREET; THENCE ALONG THE LAST NAMED LINE NORTH 78 DEGREES 47 MINUTES 08 SECONDS WEST (THE BEARING OF THE SAID NORTHEASTERN LINE OF 19TH STREET BEING TAKEN AS NORTH 78 DEGREES 47 MINUTES 08 SECONDS WEST FOR THE PURPOSE OF MAKING THIS DESCRIPTION) 744.49 FEET TO THE NORTHEASTERN LINE OF SAN PABLO AVENUE; THENCE ALONG THE LAST NAMED LINE NORTH 14 DEGREES 24 MINUTES WEST 106.08 FEET TO THE NORTHWESTERN LINE OF LOT 4 IN BLOCK 2001, AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP OF THE HOGAN TRACT, OAKLAND, ALAMEDA COUNTY, CALIFORNIA, FILED JUNE 19, 1876, MAP BOOK 2, PAGE 2, ALAMEDA COUNTY RECORDS; THENCE ALONG THE LAST NAMED LINE NORTH 75 DEGREES 36 MINUTES EAST 77.75 FEET TO THE SOUTHWESTERN LINE OF LOT 8 IN BLOCK 2001, AS SHOWN ON SAID MAP; THENCE ALONG THE LAST NAMED LINE NORTH 14 DEGREES 24 MINUTES WEST 51.83 FEET TO THE SOUTHWESTERN LINE OF WILLIAM STREET; THENCE ALONG THE LAST NAMED LINE SOUTH 78 DEGREES 47 MINUTES 08 SECONDS EAST 742.65 FEET TO THE SAID NORTHWESTERN LINE OF TELEGRAPH AVENUE; THENCE ALONG THE LAST NAMED LINE SOUTH 11 DEGREES 12 MINUTES 52 SECONDS WEST 176 FEET TO THE POINT OF BEGINNING.

APN 008-0643-001-01

Exhibit B

Property Address: 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way

APN: 008-0649-009
008-0649-010

Exhibit B-1

Property Address: 490 Thomas L. Berkeley Way

APN: 008-0649-009

LEGAL DESCRIPTION

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

Beginning at a point on the Northeastern line of 20th Street, distant thereon South 63° 45' East 100 feet from the point of intersection thereof with the Eastern line of Telegraph Avenue, as said Telegraph Avenue existed June 28, 1907; running thence South 63° 45' East along said line of 20th Street, 86.58 feet to a point distant thereon North 63° 45' West, 165.50 feet from the point of intersection thereof with the Northwestern line of Broadway; thence North 26° 15' East 100 feet; thence North 63° 45' West 105.81 feet to a line drawn parallel with said Eastern line of Telegraph Avenue and distant 104 feet Easterly therefrom, measured along a line drawn parallel with the Southern line of Hobart Street; thence South 11° 13' West parallel with said line of Telegraph Avenue 74 feet; more or less, to the point of intersection with a line drawn North 26° 15' East from the point of beginning; thence South 26° 15' West 28 feet, more or less, to the point of beginning.

APN: 008-0649-009

Exhibit B-2

Property Address: 2000-2016 Telegraph Avenue and

APN: 008-0649-010

LEGAL DESCRIPTION

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

Beginning at the point of intersection of the Northeastern line of 20th Street, formerly Delger Street, with the Eastern line of Telegraph Avenue, as said Telegraph Avenue existed June 28, 1907, running thence North $11^{\circ} 13'$ East along said line of Telegraph Avenue 90.91 feet; thence South $78^{\circ} 27' 20''$ East 104 feet; thence South $11^{\circ} 13'$ West 90 feet, more or less, to the point of intersection with a line drawn North $26^{\circ} 15'$ East from a point on said Northern line of 20th Street, distant thereon 100 feet Easterly from the intersection thereof with said Eastern line of Telegraph Avenue; thence South $26^{\circ} 15'$ West 28 feet, more or less, to said Northeastern line of 20th Street; and thence North $63^{\circ} 45'$ West 100 feet to the point of beginning.

APN: 008-0649-010