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APPROVED AS TO FORM AND LEGALITY:

BY: *W. Meene*
ORSA COUNSEL

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

Resolution No. 2014- 010

A SUCCESSOR AGENCY RESOLUTION AUTHORIZING AN AMENDMENT TO A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT ("LDDA") WITH SEARS DEVELOPMENT COMPANY FOR AN AUTOMOTIVE SERVICE PROJECT LOCATED AT 2000-2016 TELEGRAPH AVENUE AND 490 THOMAS L. BERKELEY WAY TO: (1) APPROVE THE ASSIGNMENT OF THE LDDA TO W/L BROADWAY TELEGRAPH OWNER VII, LLC, OR AN AFFILIATED ENTITY, OR AN AFFILIATE OF LANE PARTNERS, LLC AND/OR WALTON STREET CAPITAL, LLC; (2) EXTEND DEVELOPMENT DEADLINES FOR THE PROJECT; (3) REDUCE A CONTINGENT PAYMENT OBLIGATION TO THE OWNER FROM \$1,600,000 TO \$1,575,000; AND (4) REQUIRE THE PAYMENT OF \$100,000 TO THE SUCCESSOR AGENCY AS CONSIDERATION FOR THE ASSIGNMENT AND EXTENSION

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 automotive service facility (the "Project") on property located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way (the "LDDA Property"); and

WHEREAS, the Agency acquired other property at 1911 Telegraph from Sears for the Uptown Project, and instead of paying Sears, 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 and must pay Sears \$1.6 million if Sears, or a successor in interest, does not develop the LDDA Property, whether or not Sears is in default; and

WHEREAS, Sears made good faith efforts to complete the Project by October 2010, as specified in the LDDA, but was unable to do so because the continuation of adverse economic conditions in downtown Oakland's real estate markets made development of the Project financially infeasible; and

WHEREAS, Sears has sold its department store and, subject to ORSA's approval, its rights to the LDDA to W/L Broadway Telegraph Owner VII, LLC ("BTO"); and

WHEREAS, Sears has requested that the LDDA be transferred to BTO or an affiliate to assume responsibility for development of the LDDA Property, and BTO has asked that the LDDA be amended to extend missed development deadlines in return for a payment of \$100,000 to ORSA; and

WHEREAS, BTO and its founding members present a qualified development company based in the Bay Area that has the financial capacity and experience to develop the Project; and

WHEREAS, in return for the assignment of the LDDA, BTO has agreed to a reduction of the \$1.6 million contingent payment obligation of ORSA to \$1,575,000; and

WHEREAS, ORSA desires to approve the transfer of the LDDA to BTO or an affiliated entity, and to extend to the development deadlines set forth in the LDDA; 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 the assignment and extension; 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; 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"), prepared a focused Environmental Impact Report for the Uptown project, which included environmental review of the Project, analyzing the significant environmental effects and mitigation measures in accordance with the California Environmental Quality Act, Public Resources Code § 21000, et seq.; and

WHEREAS, ORSA is a Responsible Agency for the Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"); 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 Uptown project, which included 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, ORSA has independently reviewed and considered the environmental effects of the Project as shown in the EIR and other information in the record; now therefore be it

RESOLVED: That ORSA 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, and 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 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 Successor Agency Administrator or his designee is hereby authorized to amend the LDDA to (1) approve the assignment of the LDDA to W/L Broadway Telegraph Owner VII, LLC, or an affiliated entity, or an affiliate of Lane Partners, LLC, and/or Walton Street Capital, LLC; (2) extend development deadlines for the Project by up to 96 months, changing it from the currently stipulated date of October 2010 to October 2018; (3) reduce the contingent payment to BTO from \$1,600,000 to

\$1,575,000; and (4) require payment of \$100,000 to ORSA as consideration for the assignment and extension; 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 (#02445), with a new project to be created; and be it further

RESOLVED: That the Successor Agency Administrator or his designee is authorized to negotiate and execute an amendment to the LDDA and any other document necessary to transfer the LDDA, extend development deadlines, receive payment of \$100,000 as consideration for the assignment and extension and transfer the LDDA to BTO, or an affiliated entity, reduce a contingent payment to BTO from \$1,600,000 to \$1,575,000, and take whatever action is necessary with respect to the amendment of the LDDA consistent with this Resolution and its basic purposes; and be it further

RESOLVED: That the Successor Agency Administrator or his designee is authorized to release Sears from any obligations under the LDDA after an assignment of its rights under the LDDA to BTO has been approved by ORSA; 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 07, 2014

PASSED BY THE FOLLOWING VOTE:

AYES - ~~Brooks~~, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF, and CHAIRPERSON KERNIGHAN - 7

NOES-

ABSENT-

ABSTENTION- Brooks - 1

Successor Agency

ATTEST:


LATONDA SIMMONS

Secretary, Oakland Redevelopment