CITY OF OAKLAND

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AGENDA REPORT

TO: Sabrina B. Landreth
City/Successor Agency Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: 2016 Telegraph Avenue

DATE: May 21, 2018

Successor Agency Administrator Approval Date: 5/31/18

RECOMMENDATION

Staff Recommends That The Oakland Redevelopment Successor Agency ("ORSA") Adopt A Successor Agency Resolution Authorizing The Agency Administrator Or Designee To Execute A Consent To (A) The Assignment By W/L Broadway Telegraph Owner VII, LLC To 2016 Telegraph Owner LLC, Or A Related Entity, Of The Assignor's Interest In The Disposition And Development Agreement For Development Of Property Located At 2000-2016 Telegraph Avenue And 490 Thomas L. Berkeley Way, And (B) The Transfer Of All Of The Ownership Interest In 2016 Telegraph Owner LLC, Or A Related Entity, To NASH – Holland 2016 Telegraph Investors, LLC, Or A Related Entity; And Authorizing A Fourth Amendment To The Disposition And Development Agreement To (1) Waive Performance And Payment Bond Requirements; (2) Waive The Successor Agency's Repurchase Right; (3) Extend The Date For Completion Of Construction From 30 To 36 Months; (4) Require Payment Of $100,000 To The Successor Agency As Consideration For The Amendment; (5) Require That Holland Partner Group Investments, LLC , Or A Related Entity, Guaranty Completion; (6) Require That 2016 Telegraph Owner LLC, Or A Related Entity, Provide A Letter Of Credit In The Amount Of $1,000,000 To The Successor Agency Payable In Up To Six Installments Only If The Project Is Not Completed Per Established Development Deadlines; And (7) Reduce A Contingent Payment Obligation From The Successor Agency To Telegraph Owner LLC, Or An Affiliate, From $1,550,000 To $1,525,000; Relying On The 2004 Uptown Mixed-Use Project Environmental Impact Report And The "2016 Telegraph Avenue Project CEQA Analysis" Addendum Thereto, Finding That The Project Is Exempt From Additional Environmental Review Pursuant To CEQA Sections 15162-15164, 15168, 15180, 15183 And 15183.3, And Adopting Related CEQA Findings

EXECUTIVE SUMMARY

The Oakland Redevelopment Successor Agency ("ORSA") has a Disposition and Development Agreement ("DDA") with W/L Broadway Telegraph Owner VII, LLC ("BTO"). The DDA outlines certain terms under which BTO can obtain fee title and develop ORSA-owned property located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkley Way (the "Property").

BTO wishes to assign its rights under the DDA and is requesting that ORSA consent to a transfer of BTO's rights under the DDA to a wholly owned subsidiary, 2016 Telegraph Owner LLC ("Telegraph Owner"), or an affiliate, which will be owned by NASH – Holland 2016 Telegraph Investors, LLC, or a related entity, a joint venture between affiliates of the Holland Partner Group ("HPG") and North America Sekisui House, LLC ("NASH"). Telegraph Owner proposes to develop an 18-story mixed-use residential tower, including 230 apartments, 4,600 square feet of retail, and 78 parking spaces (the "Project") on the Property. Affiliates of HPG will take the lead in all aspects of Project development and operation, while NASH will provide debt and equity capital.

BTO and Telegraph Owner have also asked for a fourth amendment (the "Fourth Amendment") to the DDA to extend development deadlines, to waive ORSA's payment and performance bond requirement, and to relinquish its right to repurchase the Property in the event of a developer default. Telegraph Owner is prepared to pay a fee of $100,000 for the amendment. Telegraph Owner will also accept a reduction of a contingent payment obligation from ORSA to Telegraph Owner by $25,000 from $1.55 million to $1.525 million. Lastly, HPG's affiliate, Holland Partner Group Investments, LLC ("HPGI"), or an affiliate, will guaranty completion and provide a Project completion guaranty (the "Guaranty") and post a letter of credit in the amount of $1 million that would be payable to ORSA in up to six installments if the Project is not completed within established development completion deadlines.

Staff has determined that HPG and its affiliates have the requisite development experience and financial resources to complete the proposed Project per the terms of the DDA. Staff therefore recommends that ORSA consent to the assignment of the DDA from BTO to Telegraph Owner.

Staff further recommends that ORSA adopt legislation authorizing the Fourth Amendment to the DDA to (1) waive performance and payment bond requirements; (2) waive the Successor Agency's repurchase right; (3) extend the date for Project completion from 30 to 36 months, (4) require payment of $100,000 to the Successor Agency as consideration for the amendment; (5) require that HPGI guaranty completion; (6) that Telegraph Owner, or a related entity, provide a letter of credit in the amount of $1 million payable to the Successor Agency in up to six installments in the event that the Project is not completed per established development deadlines; and (7) reduce a contingent payment obligation from ORSA to Telegraph Owner by $25,000 from $1.55 million to $1.525 million.

BACKGROUND / LEGISLATIVE HISTORY

On October 3, 2017, ORSA, pursuant to Resolution No. 2017-007 C.M.S., authorized an amendment to a Lease Disposition and Development Agreement ("LDDA") between ORSA and BTO to (1) change the project from a primarily automotive use (and secondarily, retail residential and parking uses) to a mix of residential and retail uses; (2) extend development deadlines for the Project by up to 66 months, changing the currently stipulated completion date of October 2018 to a new construction commencement of October 2018 with a completion date of no earlier than April 2021, but no later than April 2024, if BTO desires further extensions to the construction commencement date; (3) reduce a contingent payment obligation from ORSA to BTO from $1.575 million to $1.55 million; (4) require a payment to ORSA as consideration for the use change and deadline extensions, scaled relative to the development deadline extension required, with a $50,000 fee for a construction commencement date of October 2018 with a completion date of April 2021 and an additional $25,000 fee for every 12-month extension of the new commencement date through April 2024, resulting in a maximum possible fee of $125,000; and (5) conform LDDA terms to reflect a sale of the Property to BTO rather than a ground lease with a purchase option, which effectively turned the LDDA into a DDA. The Property is listed on ORSA's Long-Range Property Management Plan as property to be held to satisfy an existing contractual obligation, namely the DDA with BTO. The proposed Fourth Amendment will therefore require Oversight Board and California Department of Finance ("DOF") approval.

ANALYSIS AND POLICY ALTERNATIVES

Assignment of the DDA to Telegraph Owner

BTO has requested that ORSA consent to the assignment of BTO's interest in the DDA to Telegraph Owner and a subsequent sale of all the ownership interest in the Telegraph Owner entity to NASH – Holland 2016 Telegraph Investors, LLC, or a related entity.
The terms of the DDA do not permit BTO to sell the ownership of Telegraph Owner to an unrelated third party without express consent and authorization by ORSA. DDA Section 11.3 limits ORSA's basis for approving a transfer to whether such transfer is being made to an entity or individual that has the expertise and financial capability to develop the Property.

Telegraph Owner is a limited liability corporation that will be owned by NASH – Holland 2016 Telegraph Investors, LLC. NASH is a subsidiary of Sekisui House, Ltd., the largest publicly traded homebuilder in Japan, responsible for all of Sekisui House, Ltd.'s operations in North America. NASH and its affiliate, Nash Financing, LLC, will provide equity and debt capital for the Project. HPG's affiliates, Holland Development, LLC, Holland Construction Management, LLC, Holland Construction, Inc. and Holland Residential, LLC, will provide development, construction and property management services to Telegraph Owner. Since NASH and its affiliates will only provide debt and equity capital for the Project, the following analysis will focus on HPG and its affiliates' residential development experience and financial capacity.

Developer Experience

HPG was founded in 2001 and is based in Vancouver, Washington. HPG is an established developer of multi-story and multi-family residential properties in the Western United States. HPG consists of five vertically integrated operating companies, including development, construction, acquisition, redevelopment and property management. HPG and its affiliates have completed 30 projects (7,583 units) in Washington, Oregon, California, Arizona and Colorado and have 24 projects (8,423 units) in predevelopment or under construction. In Oakland, HPG and its affiliates, in partnership with NASH, are implementing the development of three residential projects as summarized in **Table 1**.

Table 1 - Oakland Projects

Address	Floors	Number of Units	Parking Spaces	Retail	Office	Status
1721 Webster Street	24	247	250	2,500 sf	5,000 sf	Under Construction
24th & Harrison Street	18	405	443	60,250 sf	-	Building Permits filed. Construction to start in June 2018.
226 13th Street	7	261		15,000 sf	-	Under Construction

Based on its review of HPG's portfolio and current development activities, staff has determined that HPG is well-qualified to undertake the development of the Project.

Financial Capacity

HPGI is the investment entity of Holland's organizational platform. HPGI's assets under management total multiple billion dollars and include garden-style, mid-rise and high-rise buildings in major metropolitan markets in Colorado, California, Oregon and Washington State. HPGI will provide the Guaranty for the Project.

Staff enlisted Century Urban, a real estate investment, advisory and project management company, to review HPGI's financial statements. HPGI has stated that it will finance approximately 65 percent of the Project's cost with a construction loan from NASH. HGPI also anticipates that its capital partner will provide a substantial amount of the equity required to build the project. HPGI will therefore only be responsible for a small percentage of the equity necessary to complete the Project.

This approach to financing is consistent with a typical joint venture equity arrangement and with HPGI's real estate activities to date. HPGI has worked with several of the top national lending and equity platforms, most considered "institutional", such as UBS, Blackstone and Pacific Life. These financial partners have funded debt and equity on many of HPG's individual developments in the multi-hundred million-dollar range, and several projects substantially larger than the proposed development at 2016 Telegraph Avenue.

Century Urban concluded that HPGI's self-reported net worth, which is reflected on a Statement of Net Worth and Liquidity as "Collateral value available to support guarantee obligations" as of December 31, 2017, meets the net worth requirement set by the DDA to provide the Guaranty.

Century Urban also found that because of its large number of equity and debt partners and its proven experience financing and completing projects at the scale of the proposed Project, HPGI appears likely to be able to finance and complete the Project pursuant to the terms of the DDA under current economic conditions. HPGI's contemplated joint venture partner, NASH, is currently invested with HPG and its affiliates in many development projects across the West Coast, indicating a strong relationship between the two groups. The Project would represent only a small part of HPGI's development project portfolio and would not require HPGI to take on an investment or project at a size or scope that is new to the company.

Waive Bond Requirements

The DDA requires the developer to provide performance and payment bonds to ensure satisfactory completion of the Project by the general contractor and its subcontractors.

The estimated cost of the bonding requirement is up to one percent of the contract amount, adding significantly to the total Project costs, which are currently estimated at $155 million. The developer proposes that the bonding requirement be waived because HPGI will provide a Guaranty.

Pros:

- If the bonds are called upon, they would not directly benefit ORSA because failure to pay workers and suppliers is a liability against the developer and the contractor, not ORSA.
- Waiving the bond requirement will lower costs and make the Project more financially feasible.
- While waiving the bonds removes a safeguard that would provide ORSA with additional protection to ensure Project completion, staff believes that the Guaranty posted by HPGI, which has net worth in excess of the total Project costs, is sufficient security for the City.

Cons:

- Waiving the bond requirement will remove an extra level of assurance that contractors and suppliers get paid, perhaps avoiding events that could lead to delays or foreclosure on the Project by its lender.
- Waiving the bonding requirement for the Project may be viewed as setting a precedent and prompt other developers to ask ORSA and/or the City to also waive bonds.

Staff recommends waiving the bond requirement because the Guaranty to be provided by HPGI is sufficient protection for ORSA to ensure completion of the Project.

Eliminate ORSA's Repurchase Right

In the event Telegraph Owner does not complete Project construction in accordance with the terms of the DDA, ORSA currently has the option to repurchase the Property for $1.55 million. Telegraph Owner has requested that ORSA eliminate this repurchase right because NASH Financing, LLC, will not provide subordinate debt financing with this provision remaining in place. As any typical institutional lender, NASH Financing, LLC, will not finance the construction of the Project, either in the form of a temporary construction loan or permanent financing, without a security interest in the Property. If the DDA provides that ORSA has the option to reacquire the Property at the price of $1.55 million, if certain conditions are not timely satisfied, then NASH Financing, LLC, is concerned that it would lose the security for its investment towards the cost of improvements to the Property up to the time of the default.

ORSA will not have any funds to repurchase the Property once the site is transferred to Telegraph Owner. When the former Redevelopment Agency acquired property at 1911 Telegraph Avenue from Sears for the Uptown Project in 2005, rather than paying Sears for the 1911 Telegraph property at that time, the parties agreed that Sears, at its option, would receive either: (1) the Property; or (2) a payment by the Successor Agency of $1.6 million (representing the proportional value of the 1911 Telegraph property at the time). Since ORSA has not yet transferred the Property, it carries the amount of the contingent liability, which is currently $1.55 million on its Recognized Obligation Payment Schedule ("ROPS") as an enforceable obligation of the former Redevelopment Agency related to the DDA with BTO. Upon transfer of the DDA to Telegraph Owner, this financial obligation will be removed from the ROPS and ORSA will no longer have the financial means to repurchase the Property. Hence, it is uncertain if ORSA would be able to exercise its repurchase rights in the event of a default by Telegraph Owner. There are several considerations for and against keeping ORSA's repurchase right.

Pros:

- Keeping its repurchase right gives ORSA control over the development of the Property, especially if current economic conditions change and the developer cannot perform.
- Elimination of the repurchase right may set a precedent for other development properties owned by the City or ORSA.

Cons:

- HPGI will provide a Guaranty to complete the Project.
- The legal process involved in seeking a remedy like the repurchase right in the event of a developer default will be costly and time-consuming and would delay subsequent completion of the Project.
- ORSA does not have any funding to repurchase the Property, although the City might be willing to lend the money to ORSA for this purpose.
- If ORSA recovers the land from Telegraph Owner, it would be responsible for maintaining the Property at its sole expense until a sale.
- Depending on the status of the Project at the time of a developer default, it is not certain whether it would be financially feasible for another developer to take over development of a project that is under construction. Another residential developer would incur higher costs during predevelopment and construction based on a new project and escalating construction costs.
- If a lender forecloses on Telegraph Owner and takes the Property, it will likely identify another development entity that can complete the Project.

Letter of Credit

Staff recommends that Telegraph Owner be required to deposit with ORSA an unconditional, irrevocable letter of credit in the initial amount of $1 million that will be payable to ORSA if Telegraph Owner does not complete the Project within the established development schedule. Specifically, if the developer does not finish work on the Project within the proposed 36-month construction period, then $500,000 of the letter of credit amount will be released to ORSA. ORSA will be entitled to subsequent draws on the letter of credit in increments of $100,000 each over a period of up to five years, if Telegraph Owner does not complete the Project within the next five 12-month periods following the first 36-month construction period.

Extension of Construction Completion Date

Currently, the outside date for the completion of Project construction is 30 months. Accordingly, construction would have to be completed within a 30-month period following the start of work or no later than April 2021, but no later than April 2024, if HPG desires further extensions to the construction commencement date. This required period to complete construction was generally based on the time needed to build a Type V or low-rise wood-frame project on the site.

HPG is requesting 6 months of additional time or up to 36 months to complete construction of the Project because they are planning to develop an 18-story residential tower. This type of project is classified as Type I construction with a structure consisting of steel and concrete, which can typically be built within 30 to 36 months. Therefore, staff is recommending an extension of the DDA date for completion of Project construction from 30 to 36 months, or from April 2021 to October 2021, following commencement of Project construction, as extended. Telegraph Owner is planning to start construction in late spring or early summer of 2019.

Oakland Oversight Board and California Department of Finance Approvals

The proposed Fourth Amendment to the DDA must be submitted to the Oakland Oversight Board and DOF for approval. California Health and Safety Code Section 34181(e) authorizes a successor agency, with the approval of the oversight board and DOF, 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.

The proposed amendment to the DDA will reduce liabilities to the taxing entities by decreasing the amount of the contingent payment obligation to BTO by $25,000 from $1.55 million to $1.525 million. The $1.55 million payment is currently a contingent liability of ORSA, and by extension of the taxing entities, since it is listed on the Recognized Obligation Payment Schedule ("ROPS") and would have to be made with property tax proceeds deposited in the Real Property Tax Trust Fund ("RPTTF"), which would otherwise be distributed to the taxing entities, including the City.

The proposed amendment will increase net revenues to the taxing entities by requiring a payment of $100,000 to ORSA as consideration for the amendment, which will be applied to cover ORSA's existing obligations currently identified on the ROPS, and thus result in a reduction of funding in an equal amount that would have been received by ORSA from RPTTF to pay for such obligations.

In the event of a default by the developer for failure to complete Project construction, ORSA will be able to call on the completion guaranty and draw on a letter of credit as described above. Such funds would be used to offset other ROPS obligations, reducing ORSA's claim on RPTTF and increasing funds available to the taxing entities, including the City.

Lastly, 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.

FISCAL IMPACT

The DDA Amendment Fee

Telegraph Owner will pay ORSA a fee in the amount of $100,000 for the proposed amendment. These funds will be deposited into the Successor Redevelopment Agency (SRA) Central District: Operations Fund (Fund 9710), Organization: Central District Redevelopment (#85245), Project: 2016 Telegraph (ORSA 9710) (#1004327), to cover existing obligations, which will result in a reduction of funding in an equal amount that would have been received from RPTTF to pay for such obligations.

The Letter of Credit

If Telegraph Owner does not complete the Project pursuant to the terms of the DDA, ORSA may draw on a letter of credit in up to six installments of $500,000 in the first year, and $100,000 for each of the following five years during which the Project is not completed. If Telegraph Owner must make any of these payments to ORSA, these funds will be deposited into the Successor Redevelopment Agency (SRA) Central District: Operations Fund (Fund 9710), Organization: Central District Redevelopment (#85245), Project: 2016 Telegraph (ORSA 9710) (#1004327).

Payment to Telegraph Owner

The DDA requires ORSA to pay Telegraph Owner $1.55 million if Telegraph Owner does not develop the Property, whether the developer is in default or not. The potential obligation of $1.55 million is currently listed on the ROPS. Telegraph Owner has agreed to a reduction of this contingent payment by $25,000 to $1.525 million, which will be reflected in the ROPS for Fiscal Year 2019/20.

PUBLIC OUTREACH

No public outreach or coordination is required for this legislation other than the posting of the staff report on the City's website.

COORDINATION

The Office of the City Attorney and the Controller's Bureau were consulted during the preparation of this report.

SUSTAINABLE OPPORTUNITIES

Economic: Eventual development of the Project will bring an underutilized site in the heart of the Uptown district back to economically viable use.

Environmental: Telegraph Owner will comply with the City's Green Building Ordinance.

Social Equity: Several of the potential construction and permanent jobs to be created by the development of the Project may be available to low and moderate income individuals, including area residents. In addition, Telegraph Owner must remit housing impact fees of at least $2.645 million depending on the date on which the developer is submitting a complete building permit application for the Project, which will be applied toward the development of affordable housing in Oakland.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

On July 20, 2004, the Oakland City Council adopted Resolution No. 78728 C.M.S., which certified the Uptown Mixed Use Project Environmental Impact Report ("EIR"). The 2004 Uptown EIR directly applies to the Project and provided the basis for preparation of an EIR addendum to assess the current proposed Project.

Separate and independently, qualified planning level documents, specifically program level EIRs, that can be used as a basis to provide additional clearance under the California Environmental Quality Act (Public Resources Code section 21000 et seq.; "CEQA") of the proposed Project (all or in part) under specific CEQA provisions include (1) Oakland's 1998 General Plan Land Use and Transportation Element EIR, (2) the Oakland Housing Element Update EIR and Addendum and (3) the 2011 Central District Urban Renewal Plan Amendments EIR (or "Redevelopment Plan Amendments EIR").

The City conducted a detailed evaluation entitled "2016 Telegraph Avenue Project CEQA Analysis", dated June 2017 ("2016 CEQA Analysis") of the proposed Project pursuant to CEQA and the CEQA Guidelines (Cal. Code Regs., title 14, section 15000 et seq.; "CEQA Guidelines"), which concludes that the Project qualifies for an Addendum to the EIR, as well as an exemption from additional environmental review, in accordance with Public Resources Code Sections 21083.3, 21094.5, 21090 and 21166; and CEQA Guidelines Sections 15162-15164, 15168, 15180, 15183, and 15183.3.

The 2016 CEQA Analysis constitutes an Addendum to the 2004 Uptown EIR pursuant to Public Resources Code section 21166 (CEQA Guidelines §15162-15164), which determined that no changes have occurred in the circumstances under which the proposed Project would be implemented, and that no new information has emerged that would materially change the analyses or conclusions set forth in the 2004 Uptown EIR, and that the proposed Project would not result in any new significant environmental impacts, result in any substantial increases in the significance of previously identified effects, or necessitate implementation of additional or considerably different mitigation measures than those identified in the 2004 Uptown EIR, nor render any mitigation measures or alternatives found not to be feasible, feasible, and therefore that no Subsequent or Supplemental EIR or additional environmental analysis of the Project beyond that contained in the Uptown EIR and the 2016 CEQA Analysis is necessary.

ORSA finds and determines, after separate and independent review and consideration of (1) the 2016 CEQA Analysis and Addendum to the previously certified 2004 Uptown EIR, (2) the previously certified 1998 General Plan Land Use and Transportation Element EIR, (3) the Oakland Housing Element Update EIR and Addendum, and (4) the previously certified 2011 Redevelopment Plan Amendments EIR, that the proposed Project is exempt from any additional CEQA Analysis under the "Community Plan Exemption" of Public Resources Code section 21083.3 (CEQA Guidelines §15183) and/or the "Qualified Infill Exemption" under Public Resources section 21094.5 (CEQA Guidelines §15183.3) and/or the "Redevelopment Projects" under Public Resources Code section 21090 (CEQA Guidelines §15180) and affirms and adopts the CEQA findings made by the Zoning Manager.

The CEQA Analysis document is available to the public at 250 Frank Ogawa Plaza, Suite 3315, Oakland, CA 94612 during normal business hours.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The Oakland Redevelopment Successor Agency ("ORSA") Adopt A Successor Agency Resolution Authorizing The Agency Administrator Or Designee To Execute A Consent To (A) The Assignment By W/L Broadway Telegraph Owner VII, LLC To 2016 Telegraph Owner LLC, Or A Related Entity, Of The Assignor's Interest In The Disposition And Development Agreement For Development Of Property Located At 2000-2016 Telegraph Avenue And 490 Thomas L. Berkeley Way, And (B) The Transfer Of All Of The Ownership Interest In 2016 Telegraph Owner LLC, Or A Related Entity, To NASH – Holland 2016 Telegraph Investors, LLC, Or A Related Entity; And Authorizing A Fourth Amendment To The Disposition And Development Agreement To (1) Waive Performance And Payment Bond Requirements; (2) Waive The Successor Agency's Repurchase Right; (3) Extend The Date For Completion Of Construction From 30 To 36 Months; (4) Require Payment Of $100,000 To The Successor Agency As Consideration For The Amendment; (5) Require That Holland Partner Group Investments, LLC , Or A Related Entity, Guaranty Completion; (6) Require That 2016 Telegraph Owner LLC, Or A Related Entity, Provide A Letter Of Credit In The Amount Of $1,000,000 To The Successor Agency Payable In Up To Six Installments Only If The Project Is Not Completed Per Established Development Deadlines; And (7) Reduce A Contingent Payment Obligation From The Successor Agency To Telegraph Owner LLC, Or An Affiliate, From $1,550,000 To $1,525,000; Relying On The 2004 Uptown Mixed-Use Project Environmental Impact Report And The "2016 Telegraph Avenue Project CEQA Analysis" Addendum Thereto, Finding That The Project Is Exempt From Additional Environmental Review Pursuant To CEQA Sections 15162-15164, 15168, 15180, 15183 And 15183.3, And Adopting Related CEQA Findings.

For questions regarding this report, please contact Jens Hillmer, Office of Economic and Workforce Development at (510) 238-3317.

Respectfully submitted,

MARK SAWICKI
Director, Economic & Workforce Development

Reviewed by:
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APPROVED AS TO FORM AND LEGALITY:
BY: [signature]
ORSA COUNSEL

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

Resolution No. 2018-____________

A Successor Agency Resolution Authorizing The Agency Administrator Or Designee To Execute A Consent To (A) The Assignment By W/L Broadway Telegraph Owner VII, LLC To 2016 Telegraph Owner LLC, Or A Related Entity, Of the Assignor's Interest In The Disposition And Development Agreement For Development Of Property Located At 2000-2016 Telegraph Avenue And 490 Thomas L. Berkeley Way, and (B) The Transfer Of All Of The Ownership Interest In 2016 Telegraph Owner LLR, Or A Related Entity, to NASH – Holland 2016 Telegraph Investors, LLC, Or A Related Entity; And Authorizing A Fourth Amendment To The Disposition And Development Agreement To (1) Waive Performance And Payment Bond Requirements; (2) Waive The Successor Agency's Repurchase Right; (3) Extend The Date For Completion Of Construction From 30 To 36 Months; (4) Require Payment Of $100,000 To The Successor Agency As Consideration For The Amendment; (5) Require That Holland Partner Group Investments, LLC, Or A Related Entity, Guaranty Completion; (6) Require That 2016 Telegraph Owner LLC, Or A Related Entity, Provide A Letter Of Credit In The Amount Of $1,000,000 To The Successor Agency Payable In Up To Six Installments Only If The Project Is Not Completed Per Established Development Deadlines; And (7) Reduce A Contingent Payment Obligation From the Successor Agency To Telegraph Owner LLC, Or An Affiliate, From $1,550,000 To $1,525,000; Relying On The 2004 Uptown Mixed-Use Project Environmental Impact Report And The "2016 Telegraph Avenue Project CEQA Analysis" Addendum Thereto, Finding That The Project Is Exempt From Additional Environmental Review Pursuant To CEQA Sections 15162-15164, 15168, 15180, 15183 And 15183.3, And Adopting Related CEQA Findings

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") has a Disposition and Development Agreement (the "DDA") with W/L Broadway Telegraph Owner VII, LLC ("BTO"); and

WHEREAS, ORSA has listed the DDA, including a contingent payment of $1.55 million from ORSA to BTO, as an enforceable obligation on its Recognized Obligation Payment Schedule ("ROPS"), and is obligated to pay Telegraph Owner, BTO's successor in interest under the DDA, $1.55 million if the developer does not develop the Property, whether the developer is in default or not; and

WHEREAS, on October 3, 2017, ORSA, pursuant to Resolution No. 2017-007 C.M.S., authorized an amendment to the DDA between ORSA and BTO to (1) change the project from a primarily automotive use (and secondarily, retail residential and parking uses) to a mix of residential and retail uses, (2) extend development deadlines for the Project by up to 66 months, changing the currently stipulated completion date of October 2018 to a new construction commencement of October 2018 with a completion date of no earlier than April 2021, but no later than April 2024, if BTO desires further extensions to the construction commencement date; (3) reduce a contingent payment obligation from ORSA to BTO from $1.575 million to $1.55 million; (4) require a payment to ORSA as consideration for the use change and deadline extensions, scaled relative to the development deadline extension required, with a $50,000 fee for a construction commencement date of October 2018 with a completion date of April 2021 and an additional $25,000 fee for every 12-month extension of the new commencement date through April 2024, resulting in a maximum possible fee of $125,000; and (5) conform DDA terms to reflect a sale of the Property to BTO rather than a ground lease with a purchase option; and

WHEREAS, BTO wishes to assign its rights under the DDA and is requesting that ORSA consent to the assignment of its interest in the DDA to a wholly owned subsidiary, 2016 Telegraph Owner LLC ("Telegraph Owner"), or an affiliate, which will be owned by NASH – Holland 2016 Telegraph Investors, LLC, a joint venture between affiliates of the Holland Partner Group ("HPG") and North America Sekisui House, LLC ("NASH"); and

WHEREAS, Telegraph Owner plans to develop an 18-story mixed-use residential tower, including 230 apartments, 4,600 square feet of retail, and 78 parking spaces (the "Project") on the Property; and

WHEREAS, Telegraph Owner and its members and affiliates represent a qualified residential development company that has the financial capacity and experience to develop the Project in accordance with the terms of the DDA; and

WHEREAS, BTO and Telegraph Owner have requested that the DDA be amended to waive a performance and payment bond requirement and ORSA's right to repurchase the Property, and to extend the construction completion schedule by six (6) months from 30 to 36 months (the "Fourth Amendment") as follows:

- Extend the current Construction Completion deadline by six (6) months from April 18, 2021 to October 18, 2021;

- If the Commencement of Construction deadline is extended by twelve (12) months or from October 18, 2018 to October 18, 2019, then extend the

Completion of Construction deadline by six (6) months from April 18, 2022 to October 18, 2022;

- If the Commencement of Construction deadline is extended by another twelve (12) months, or from October 18, 2019 to October 18, 2020, then extend the Completion of Construction deadline by six (6) months from April 18, 2023 to October 18, 2023; and

- If the Commencement of Construction deadline is extended by another twelve (12) months, or from October 18, 2020 to October 18, 2021, then extend the Completion of Construction deadline by six (6) months from April 18, 2024 to October 18, 2024.

WHEREAS, Telegraph Owner has agreed to a reduction of the contingent payment obligation of ORSA to Telegraph Owner by $25,000 from $1.55 million to $1.525 million, and for payment of $100,000 to ORSA in return for the Fourth Amendment; and

WHEREAS, HPGI, or a related entity, will provide a completion guaranty; and

WHEREAS Telegraph Owner, or a related entity, will provide an unconditional, irrevocable letter of credit in favor of ORSA in the amount of $1 million, of which $500,000 will be released to ORSA, if the developer does not finish work on the Project within the 36-month construction period, followed by subsequent draws on the letter of credit in increments of $100,000 each over a period of up to five years, if Telegraph Owner does not complete the Project within the next five 12-month periods following the first 36-month construction period; and

WHEREAS, ORSA desires to approve the transfer of the ownership interest in the DDA from BTO to Telegraph Owner, and the subsequent transfer of the ownership of Telegraph Owner to NASH – Holland 2016 Telegraph Investors, LLC, or an affiliated entity or related party, to waive performance and payment bond requirements, to eliminate ORSA's repurchase rights and to extend development deadlines set forth in the DDA; 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 DDA will reduce liabilities to the taxing entities by reducing the amount of the contingent payment obligation by $25,000 from $1.55 million to $1.525 million, 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 by paying $100,000 to ORSA in consideration for ORSA's approval of the Fourth Amendment; 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, as the Lead Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.; "CEQA") and the CEQA Guidelines (Cal. Code Regs., title 14, section 15000 et seq.; "CEQA Guidelines"), conducted a detailed evaluation entitled "2016 Telegraph Avenue Project CEQA Analysis", dated June 2017 ("2016 CEQA Analysis") of the proposed Project, which concludes that the Project qualifies for an addendum, as well as an exemption from additional environmental review, in accordance with Public Resources Code Sections 21083.3, 21094.5, 21090 and 21166; and CEQA Guidelines Sections 15162 -15164, 15168, 15180, 15183, and 15183.3; and

WHEREAS, ORSA is a Responsible Agency for the Project for purposes of environmental review under CEQA; and

WHEREAS, ORSA has independently reviewed and considered the environmental effects of the Project as shown in the 2016 CEQA Analysis and other information in the record; now therefore be it

RESOLVED: That ORSA hereby finds and determines, after independent review and consideration of (1) the 2016 CEQA Analysis dated June 2017 to the previously certified 2004 Uptown EIR, (2) the previously certified 1998 General Plan Land Use and Transportation Element EIR, (3) the Oakland Housing Element Update EIR and Addendum, and (4) the previously certified 2011 Redevelopment Plan Amendments EIR, as supported by substantial evidence in the record and for the reasons set forth in the CEQA findings, and, each as a separate and independent basis, that the proposed Project is exempt from any additional CEQA Analysis under the "Community Plan Exemption" of Public Resources Code section 21083.3 (CEQA Guidelines §15183) and/or the "Qualified Infill Exemption" under Public Resources section 21094.5 (CEQA Guidelines §15183.3) and/or the "Redevelopment Projects" under Public Resources Code section 21090 (CEQA Guidelines §15180), and that the 2016 CEQA Analysis also constitutes an Addendum to the 2004 Uptown EIR pursuant to Public Resources Code section 21166 (CEQA Guidelines §15162 and §15164), and that such Addendum determines 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 that these findings and determinations reflect the independent judgment and analysis of ORSA; and be it further

RESOLVED: That the Successor Agency Administrator or her designee is hereby authorized to consent to the assignment by BTO of its interest in the DDA for development of the Property to 2016 Telegraph Owner LLC, or a related entity, and (B) the transfer of all of the ownership interest in 2016 Telegraph Owner LLC, or a related entity to NASH – Holland 2016 Telegraph Investors, LLC, or a related entity; and to execute a Fourth Amendment to the DDA and any other document necessary to (1) waive performance and payment bond requirements; (2) waive the Successor Agency's repurchase right during Project construction; (3) require payment of $100,000 to the Successor Agency as consideration for the amendment; (4) require that HPGI, or a related entity, provide a completion guaranty; (5) require that Telegraph Owner, or a related entity, provide a letter of credit in the amount of $1 million payable to the Successor Agency in up to six installments in the event that the Project is not completed per established development deadlines; (6) reduce a contingent payment obligation from ORSA to Telegraph Owner from $1.55 million to $1.525 million; and (7) and to extend the construction completion schedule by six (6) months from 30 to 36 months as follows:

(a) Extend the current Construction Completion deadline by six (6) months from April 18, 2021 to October 18, 2021;

(b) If the Commencement of Construction deadline is extended by twelve (12) months or from October 18, 2018 to October 18, 2019, then extend the Completion of Construction deadline by six (6) months from April 18, 2022 to October 18, 2022;

(c) If the Commencement of Construction deadline is extended by another twelve (12) months, or from October 18, 2019 to October 18, 2020, then extend the Completion of Construction deadline by six (6) months from April 18, 2023 to October 21, 2023; and

(d) If the Commencement of Construction deadline is extended by another twelve (12) months, or from October 18, 2020 to October 18, 2021, then extend the Completion of Construction deadline by six (6) months from April 18, 2024 to October 18, 2024.

RESOLVED: That any payments made to ORSA for the extension of development deadlines in the DDA or for payments made from the letter of credit shall be deposited into SRA Central District: Operations Fund (Fund 9710); Organization: Central District Redevelopment (#85245), Project: 2016 Telegraph (ORSA 9710) (#1004327); and be it further

RESOLVED: That the amendment to the DDA 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 DDA shall be submitted to the Oakland Oversight Board and the California Department of Finance for approval.

IN SUCCESSOR AGENCY, OAKLAND, CALIFORNIA,____________________, 2018

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON McELHANEY, GUILLEN, KALB, KAPLAN, and CHAIRPERSON REID

NOES-

ABSENT-

ABSTENTION-

ATTEST:__________________________
LATONDA SIMMONS
Secretary, Oakland Redevelopment Successor Agency