

# OAKLAND OVERSIGHT BOARD

RESOLUTION No. 2017-\_\_\_\_\_

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**RESOLUTION AUTHORIZING AN AMENDMENT TO A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT ("LDDA") BETWEEN THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY AND W/L BROADWAY TELEGRAPH OWNER VII, LLC, OR AN AFFILIATE, FOR PROPERTY LOCATED AT 2000-2016 TELEGRAPH AVENUE AND 490 THOMAS L. BERKELEY WAY TO: (1) CHANGE THE PROJECT FROM PRIMARILY AUTOMOTIVE TO RESIDENTIAL AND RETAIL USES; (2) EXTEND PERFORMANCE DATES FOR THE PROJECT; (3) ESTABLISH AND ACCEPT EXTENSION FEES OF \$50,000 TO \$125,000; (4) REDUCE A CONTINGENT PAYMENT OBLIGATION FROM \$1,575,000 TO \$1,550,000; AND (5) CONFORM LDDA TERMS TO REFLECT A SALE TO THE DEVELOPER RATHER THAN A LEASE WITH A PURCHASE OPTION**

**WHEREAS**, the dissolved Redevelopment Agency of the City of Oakland ("Redevelopment Agency") acquired property located at 1911 Telegraph from Sears Development Company ("Sears") for the Uptown Project, and as part of the purchase price, the parties agreed that Sears, at its option, would receive either: (1) property located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way (the "LDDA Property"), subject to a Lease Disposition and Development Agreement (the "LDDA") with the Redevelopment Agency; or (2) a contingent payment of \$1.6 million (the "Contingent Payment"), representing the proportional value of the 1911 Telegraph property; and

**WHEREAS**, on October 18, 2005, the Redevelopment Agency, pursuant to Resolution No. 2005-38 C.M.S., entered into a LDDA with Sears for the development of a new automotive service facility (the "Project") on the LDDA Property; and

**WHEREAS**, the Redevelopment Agency dissolved on February 1, 2012; and

**WHEREAS**, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Redevelopment Agency pursuant to Health and Safety Code Sections 34171(j) and 34173; and

**WHEREAS**, ORSA has included the LDDA Property in its Long-Range Property Management Plan as property to be held to satisfy existing enforceable obligations, namely the LDDA and the Contingent Payment obligation; and

**WHEREAS**, ORSA has listed the LDDA, including the Contingent Payment obligation, as an enforceable obligation on its Recognized Obligation Payment Schedule (“ROPS”) and is obligated to pay the Contingent Obligation if the developer does not develop the LDDA Property, whether or not they are in default; and

**WHEREAS**, on October 7, 2014, ORSA, pursuant to ORSA Resolution No. 2014-010, approved an amendment to the LDDA with Sears to (1) assign the LDDA to W/L Broadway Telegraph Owner VII, LLC (“BTO”) or an affiliate, (2) extend development deadlines; (3) reduce the contingent payment obligation from \$1.6 million to \$1.575 million; and (4) require payment of a \$100,000 fee for the assignment and performance extensions; and

**WHEREAS**, on September 29, 2014, the Oversight Board, pursuant to Oversight Board Resolution No. 2014-6 approved ORSA’s action; and

**WHEREAS**, BTO now desires to develop the LDDA Property as an 18-story mixed-use residential and retail building, as well as associated parking (the “BTO Project”), instead of a new primarily automotive service facility as specified in the LDDA; and

**WHEREAS**, BTO’s mixed-use development proposal better serves the objectives of the City of Oakland (“City”) for the Uptown area than a primarily automotive service facility; and

**WHEREAS**, in return for the change of use from primarily automotive to residential and retail uses, BTO has agreed to a reduction of the \$1.575 million Contingent Payment obligation of ORSA to \$1.55 million; and

**WHEREAS**, BTO has requested that the LDDA be amended to extend development deadlines per the following schedule and upon making certain payments to ORSA:

- (a) Change the current construction completion deadline of October 18, 2018 to a new construction completion deadline of April 18, 2021, in exchange for payment of an extension fee to ORSA of \$50,000 upon execution of the amendment.
- (b) Extend the new October 18, 2018 commencement of construction deadline by twelve (12) months to a new commencement of construction deadline of October 18, 2019, and a new completion of construction deadline of April 18, 2022 in exchange for payment of an extension fee to ORSA of \$25,000 prior to October 18, 2018.
- (c) Extend the October 18, 2019 commencement of construction deadline by twelve (12) months to a new commencement of construction date of October 18, 2020, and a new completion of construction date of April 18, 2023 in exchange for payment of an extension fee to ORSA of \$25,000 prior to October 18, 2019.

- (d) Extend the October 18, 2020 commencement of construction deadline by twelve (12) months to a new commencement of construction date of October 18, 2021, and a new completion of construction date of April 18, 2024, in exchange for payment of an extension fee to ORSA of \$25,000 prior to October 18, 2020; and

**WHEREAS**, the Redevelopment Agency and Sears originally contemplated that Sears would take early delivery of the LDDA Property by the Redevelopment Agency transferring to Sears the Redevelopment Agency's possessory right under a ground lease because the Redevelopment Agency had not yet acquired full legal title to the LDDA Property; and

**WHEREAS**, said ground lease would contain an option for Sears to later acquire full legal title to the LDDA Property after the Redevelopment Agency had completed the process of securing legal title; and

**WHEREAS**, due to delays in development of the LDDA Property, the Redevelopment Agency completed the process of acquiring fee title to the LDDA Property before it was obligated to lease the LDDA Property to Sears; and

**WHEREAS**, ORSA can now transfer fee title to the LDDA Property, rather than leasing the site to BTO with an option to purchase; and

**WHEREAS**, the LDDA provisions regarding the ground lease must be amended to reflect a delivery of the LDDA Property to BTO by transfer of the fee title, rather than ground lease with an option to purchase; and

**WHEREAS**, an amendment allowing conformance to these new circumstances does not change the character of the transaction or its economic terms, only the form of the transfer to BTO; and

**WHEREAS**, on October 3, 2017, ORSA, pursuant to Resolution No. 2017-007 C.M.S., approved this amendment; 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 from \$1.575 million to \$1.55 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 in the form of the payments to ORSA in consideration of ORSA's approval of extensions of development deadlines; and

**WHEREAS**, the proposed amendment will be in the best interests of the taxing entities by reducing current ORSA enforceable obligations and increasing current ORSA revenues, as well as facilitating development of the BTO Project, which will have fiscal and other benefits to the taxing entities over and above those benefits that would have resulted from a new automotive service facility; now therefore

Based on the foregoing recitals and the documentation presented to the Oakland Oversight Board at a public meeting, the Oakland Oversight Board does resolve as follows:

**SECTION 1.** The Oakland Oversight Board finds and determines that the proposed amendment to the LDDA to: (1) change the Project from primarily automotive to residential and retail uses; (2) extend performance dates for the BTO Project; (3) establish and accept extension fees of \$50,000 to \$125,000; (4) reduce the Contingent Payment obligation to BTO from \$1.575 million to \$1.55 million; and (5) conform LDDA terms to reflect a sale to BTO rather than a lease with a purchase option as described herein, will benefit the taxing entities because the amendment will:

- (1) reduce liabilities to the taxing entities by decreasing the amount of the Contingent Payment obligation to BTO from \$1.575 million to \$1.55 million currently listed on the ROPS; and
- (2) increase net revenues to the taxing entities by requiring an initial payment of \$50,000 to ORSA as consideration for the initial extension, and as much as \$75,000 for additional extensions, in up to three payments of \$25,000, which will be applied to cover existing obligations identified on the ROPS, and thus result in a reduction of funding in an equal amount that would have been received from the Real Property Tax Trust Fund ("RPTTF") to pay for such obligations; and
- (3) be in the best interest of the taxing entities because it both reduces ORSA liabilities and increases tax revenues and funds that will flow to the taxing entities.

**SECTION 2.** The Oakland Oversight Board hereby consents to and approves the LDDA amendment to: (1) change the Project from primarily automotive to residential and retail uses; (2) extend performance dates for the BTO Project; (3) establish and accept extension fees of \$50,000 to \$125,000; (4) reduce the Contingent Payment obligation to BTO from \$1.575 million to \$1.55 million; and (5) conform LDDA terms to reflect a sale to BTO rather than a lease with a purchase option.

ADOPTED, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2017

**PASSED BY THE FOLLOWING VOTE:**

AYES- BYRD, CHAIR CARSON, LITTLE, MULVEY, ORTIZ, TUCKER,

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
SECRETARY, OAKLAND  
OVERSIGHT BOARD