

# OAKLAND OVERSIGHT BOARD

RESOLUTION NO. 2014- 6

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A RESOLUTION AUTHORIZING AN AMENDMENT TO A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT ("LDDA") WITH SEARS DEVELOPMENT CO. FOR AN AUTOMOTIVE SERVICE FACILITY PROJECT LOCATED AT 2000-2016 TELEGRAPH AVENUE AND 490 THOMAS L. BERKELEY WAY TO: (1) ASSIGN THE LDDA TO W/L BROADWAY TELEGRAPH OWNER VII, LLC., OR AN AFFILIATE OF LANE PARTNERS, LLC AND/OR WALTON STREET CAPITAL, LLC, OR AN AFFILIATED ENTITY; (2) EXTEND DEVELOPMENT DEADLINES FOR THE PROJECT ; AND 3) REQUIRE THE PAYMENT OF ONE HUNDRED THOUSAND DOLLARS TO THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY AS CONSIDERATION FOR THE ASSIGNMENT AND EXTENSION

**WHEREAS**, on October 18, 2005, the former Redevelopment Agency of the City of Oakland (the "Redevelopment Agency") entered into a LeaseDisposition and Development Agreement ("LDDA") with Sears Development Co. ("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") in the Central District Redevelopment Project Area; and

**WHEREAS**, the Redevelopment Agency acquired other property at 1911 Telegraph from Sears for the Uptown Project, and instead of paying a purchase price to Sears, the parties agreed that Sears, at its option, would receive either: (1) the LDDA Property; or (2) a payment by the Redevelopment Agency of \$1.6 million (representing the purchase price of the 1911 Telegraph property); and

**WHEREAS**, the Oakland Redevelopment Successor Agency ("ORSA") has listed the LDDA, including the contingent purchase price 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; 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 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 for BTO 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 purchase price payment obligation of ORSA to \$1,575,000; and

**WHEREAS**, the ORSA board approved 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 purchase price 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 extension fee payment of \$100,000 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 LDDA as modified will increase net revenues to the taxing entities in the form of the extension fee, as well as encourage BTO to stay with the Project resulting in the long-term fiscal benefits to the taxing entities from completion of Project noted above; and

**WHEREAS**, termination of the LDDA would leave the future of the Property and the Project uncertain; 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:

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 assignment and amendments to the LDDA as approved by ORSA will benefit the taxing entities by providing additional property taxes from the Property, that the amendments will increase net revenue to the taxing entities, and that the proposed amendments under such conditions and yielding such benefits will best maximize the value of the Property for the taxing entities.

**SECTION 2.** The Oakland Oversight Board hereby approves the action of the ORSA board authorizing the ORSA Administrator to negotiate and enter into an amendment to the LDDA and assign the LDDA to BTO consistent with the terms of this Resolution, and consistent with all applicable laws, to

- (1) approve the assignment of the LDDA to BTO, 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 October 2010 to October 2018;

- (3) reduce the contingent purchase price 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

This approval is contingent on the ORSA board approving the modified terms of the LDDA.

**SECTION 3.** The Oakland Oversight Board requires that the amendment to the LDDA shall be reviewed and approved as to form and legality by ORSA and Oversight Board General Counsel prior to execution by ORSA, and shall be placed on file with the ORSA Secretary.

ADOPTED, OAKLAND, CALIFORNIA, September 29, 2014

**PASSED BY THE FOLLOWING VOTE:**

AYES- CARSON, MULVEY, ORTIZ, <sup>COWAN</sup> ~~QUAN~~, <sup>BULLS</sup> RINNE, TUCKER

NOES-

ABSENT- RINNE

ABSTENTION-

ATTEST:   
SECRETARY, OAKLAND  
OVERSIGHT BOARD