

OAKLAND OVERSIGHT BOARD

AMENDED AND RESTATED RESOLUTION No. 2012-_____

AN AMENDED AND RESTATED RESOLUTION AUTHORIZING THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY ("ORSA") TO ENTER INTO A DISPOSITION AND DEVELOPMENT AGREEMENT WITH THE CITY OF OAKLAND AND SUNFIELD DEVELOPMENT, LLC, OR ITS APPROVED AFFILIATE ("SUNFIELD"), FOR THE SALE OF PROPERTY AT FOOTHILL BOULEVARD AND SEMINARY AVENUE (the "PROPERTY") FOR NO LESS THAN \$6,000 FOR DEVELOPMENT AS A RETAIL SHOPPING CENTER, AND AUTHORIZING AN AGREEMENT WITH THE CITY OF OAKLAND TO PROVIDE \$150,000 FOR REMEDIATION/DEMOLITION OF THE SITE; THE SALE OF THE PROPERTY FROM ORSA TO DEVELOPER BEING CONTINGENT UPON TITLE TO THE PROPERTY BEING VESTED IN ORSA, AND THE PROVISION OF \$150,000 BEING CONTINGENT UPON \$150,000 FROM THE FUNDING AGREEMENT (DEFINED HEREIN) HAVING BEEN TRANSFERRED TO AND HELD BY ORSA.

WHEREAS, on August 20, 2012, the Oakland Oversight Board (the "Board") unanimously approved ORSA's disposition of the Property pursuant to California Health and Safety Code ("HSC") Section 34181 (a), pursuant to Oakland Oversight Board Resolution No. 2012-10 (the "Board's Resolution"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, in a letter dated October 26, 2012 (the "DOF Decision"), the Department of Finance ("DOF") disallowed the Board's Resolution, and stated in its Decision that it was returning the Resolution to the Board for reconsideration by the Board pursuant to HSC Section 34179 (h); and

WHEREAS, given the importance to all of the taxing entities of the sale of the Property now to Sunfield, the Board has decided to reconsider the facts and the express provisions of AB 26 and AB 1484, as well as the over-arching policy of the legislation to provide fiscal benefits to the taxing entities; and

WHEREAS; ORSA requested a meet and confer with the DOF on its Decision, and submitted its written justification for the actions approved of in the Board's

Resolution, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference (the "Meet and Confer Request"); and

WHEREAS, the DOF declined ORSA's Meet and Confer Request; and

WHEREAS, the Board agrees with the contents of the Meet and Confer Request; and

WHEREAS, the DOF Decision states, as part of its reasoning in disallowing the sale of the Property, that "HSC Section 34191.3 suspended the requirements of HSC Section 34181 (a) and the successor agency's ability to dispose of non-governmental assets until Finance has issued a finding of completion and has approved a long range management plan"; and

WHEREAS, the express language of HSC Section 34191.3 is as follows: "the requirements specified in subdivision (e) of Section 34177 and subdivision (a) of Section 34181 shall be suspended ... until the Department of Finance has approved a long range management plan..." (emphasis added); and

WHEREAS; Section 34177 (e) requires the disposition of assets and properties as expeditiously as possible and in a manner aimed at maximizing value, and Section and 34181 (a) states that the Board shall direct the Successor Agency to dispose of assets and properties of the former redevelopment agency and that such disposal is to be done expeditiously and in a manner aimed at maximizing value; and

WHEREAS, AB 26 and AS 1484, generally speaking, require the Successor Agency to wind down the activities of the former Redevelopment Agency for the benefit of the taxing entities, and AB 1484 (in Section 34191.3) provides that the requirement for an expeditious sale of assets and properties is suspended pending approval of the long-range management plan; and

WHEREAS, HSC Section 34191.3 suspends the requirements of Sections 34177(e) and 34181 (a), and **a suspension of a mandatory expeditious liquidation of assets and properties is not equal to a prohibition of sales prior to the approval of the long-range management plan if such sales are in the interest of and to the fiscal benefit of the taxing entities**; and

WHEREAS, jurisdictions (each a taxing entity in Alameda County and a member of the Board) have submitted individual letters to DOF (the "Taxing Entity Letters") to show that the sale of the Property to Sunfield is in the best interests of the taxing entities and will generate financial benefits for all of the taxing entities in the form of increased property taxes, business licenses, sales taxes and utility taxes, and such sale will not be available at a later time, copies the Taxing Entity Letters are attached hereto as Exhibit C and incorporated herein by this reference; and

WHEREAS, although it may be more efficient and convenient for the DOF to consider the sale of properties in the context of the long-range management plan process, the fact of the matter is that the sale of this Property to Sunfield will not be possible if ORSA must wait until the approval of the long-range property management plan, and most importantly, **by its express terms, AB 1484 does not prohibit the voluntary sale of Property by a Successor Agency, especially when it is in the best interests of the taxing entities and desired by all of the affected taxing entities, as is the case here; and**

WHEREAS, public notice of the specific action proposed in this Resolution was provided on the Oakland Oversight Board's website on November 21, 2012, ten days' in advance of the December 3, 2012 Oversight Board meeting; and

WHEREAS, as set forth in the Board's Resolution and as confirmed in the Taxing Entity Letters, the sale of the Property will soon generate financial benefits in the form of property taxes, sales taxes and other taxes and taxes will be distributed to specified taxing entities in Alameda County pursuant to state law and the sale of the Property to Sunfield cannot wait until the long-range management plan process – the sale will be lost if not made now.

Based on the foregoing recitals, the Exhibits attached to this Resolution and the documentation presented to the Oakland Oversight Board at a public meeting, the Oakland Oversight Board is reconsidering the facts and the express provisions of AB 26 and AB 1484, as well as the over-arching policy of the legislation to provide fiscal benefit to the taxing entities, and does resolve as follows:

SECTION 1. The Oakland Oversight Board finds and determines that the disposition of the Property will be of benefit to the taxing entities that will reap substantial additional property taxes, sales taxes, business license taxes, and utility taxes from the Property sale, that yielding such benefits will best maximize the value of the Property for the taxing entities, and that such sale to Sunfield now is not prohibited by AB 26 or AB 1484, but in fact is in accordance with the express language and the over-arching intent of AB 26 and AB 1484 to provide fiscal benefits to the taxing entities, that all of the affected taxing entities in Alameda County are in favor of the sale of the Property now to Sunfield, and that if the sale is postponed until the approval of the long-range property management plan, the sale will be lost, along with the loss of benefit to the affected taxing entities.

SECTION 2. The Oakland Oversight Board hereby authorizes and approves the conveyance of the Property to Sunfield, or an affiliated entity approved by the ORSA Administrator, for the price of no less than \$6,000, in return for an agreement by the Sunfield, or its approved affiliate, to expeditiously develop and operate the Property as a neighborhood-serving commercial retail center; the sale of the Property from ORSA to the Sunfield being contingent upon title to the Property being held by ORSA.

SECTION 3. The Oakland Oversight Board hereby authorizes the ORSA Administrator to negotiate and enter into an agreement with the City to approve the use of \$150,000 from the Funding Agreement advance from the Central City East TA Bonds Series 2006A-T (Taxable) Fund (5643) as an allowance to the Sunfeild, or its approved affiliate, for environmental remediation/demolition of the Property; the approval of the use of the \$150,000 being contingent upon the \$150,000 having been transferred to and being held by ORSA.

SECTION 4. The Oakland Oversight Board hereby authorizes the ORSA Administrator or her designee to negotiate and execute a DDA with Sunfield, or its approved affiliate, along with the City, for the sale and development of the Property consistent with the terms of this Resolution, and consistent with all applicable laws, as well as to negotiate and execute grant deeds and any other agreements or documents as necessary to convey the Property to Sunfield, or its approved affiliate, upon the satisfaction of any preconveyance conditions imposed by the ORSA Administrator or her designee, should ORSA acquire title to the Property or otherwise be required to execute such documents.

SECTION 5. The Oakland Oversight Board requires that all agreements associated with the Property, including without limitation the DDA, 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.

PASSED BY THE FOLLOWING VOTE:

AYES- CARSON, GERARD, LEVIN, ORTIZ, QUAN, SMITH, TUCKER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
SECRETARY, OAKLAND
OVERSIGHT BOARD