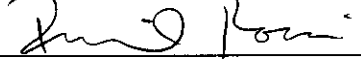


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**REVISED 11/15/2005**

APPROVED AS TO FORM AND LEGALITY:

By:   
Agency Counsel

## **REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND**

**RESOLUTION No. 2005-0067 C.M.S.**

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**A RESOLUTION AUTHORIZING THE SALE OF REAL PROPERTY LOCATED ON PORTIONS OF THE BLOCK BOUNDED BY SAN PABLO AVENUE, 18<sup>TH</sup> STREET, 19<sup>TH</sup> STREET, AND TELEGRAPH AVENUE, ADJACENT TO THE FOX THEATER TO RESOURCES FOR COMMUNITY DEVELOPMENT FOR ITS DEVELOPMENT AS AFFORDABLE HOUSING, AUTHORIZING A PREDEVELOPMENT AND DEVELOPMENT LOAN FOR THE PROJECT IN AN AMOUNT NOT TO EXCEED \$2,464,400, AND AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE PROJECT**

**WHEREAS**, the California Community Redevelopment Law, Health and Safety Code Section 33430, authorizes a redevelopment agency within a survey (project) area or for purposes of redevelopment to sell real property, Section 33432 requires that any sale of real property by a redevelopment agency in a project area must be conditioned on redevelopment and use of the property in conformity with the redevelopment plan, and Section 33439 provides that a redevelopment agency must retain controls and establish restrictions or covenants running with the land for property sold for private use as provided in the redevelopment plan; and

**WHEREAS**, Health and Safety Code Sections 33334.2(e) and 33449 authorize an agency to donate land and provide subsidies to provide housing for persons and families of low and moderate income; and

**WHEREAS**, the Central District Urban Renewal Plan adopted on June 12, 1969, as subsequently amended, as well as the Five-Year Implementation Plan for the Central District (1999-2004) (together, the "Central District Redevelopment Plan" or "Redevelopment Plan"), authorizes the Redevelopment Agency to sell land in the Central District Redevelopment Project Area (the "Central District"); and

**WHEREAS**, the Agency and the City have initiated the "10K Downtown Housing Program" to attract ten thousand new residents into the Central District, and the Agency has determined that it desires to encourage new housing development in part by offering Agency-owned land to developers for the construction of housing; and

**WHEREAS**, the Agency owns real property on the block bounded by San Pablo Avenue, 18<sup>th</sup> Street, 19<sup>th</sup> Street, and Telegraph Avenue, adjacent to the Fox Theater (the "Property"), located within the Central District, more specifically described in Exhibit A attached to this Resolution; and

**WHEREAS**, on November 19, 2004, pursuant to Agency Resolution No. 2004-0039 C.M.S., the Coalition for Workforce Housing, the City of Oakland, and the Redevelopment Agency entered into a Cooperation Agreement to increase the supply of affordable housing in the Uptown area; and

**WHEREAS**, pursuant to the terms of the Cooperation Agreement, on December 16, 2004, the Agency issued a Request for Proposals ("RFP") that called for proposals to develop at least 70 units of affordable housing on the Property; and

**WHEREAS**, in response to the RFP, Resources for Community Development ("RCD"), a nonprofit corporation dedicated to the development of affordable housing, submitted a proposal to develop housing affordable to low income and very low income households, as well as other uses; and

**WHEREAS**, Agency Resolution No. 2005-0037 C.M.S. authorized negotiations with RCD on their proposal; and

**WHEREAS**, RCD desires to purchase the Property from the Agency in order to develop the Fox Courts project consisting of 80 residential rental units, 79 of which will be affordable to low income and very low income households, along with parking and approximately 4,000 square feet of community space (the "Project"); and

**WHEREAS**, staff has negotiated and proposes entering into a Disposition and Development Agreement ("DDA") with RCD which sets forth the terms and conditions of the sale of the Property to RCD or RCD's affiliate and governs the development of the Project and the use of the Property by RCD and any successors to the Property subsequent to sale through recorded covenants running with the land, including occupancy and rent limits; and

**WHEREAS**, the DDA provides that the Agency will provide predevelopment and development financing to RCD under certain conditions in an amount not to exceed \$2,464,400; and

**WHEREAS**, certain funding appropriations in the amount of \$700,000 for the Uptown Project authorized by Resolution No. 2004-38 C.M.S. will be reallocated to the Project to fund the Agency's development financing to RCD; and

**WHEREAS**, funding in the specified amounts is available from the following sources: (1) \$2,000,000 from the Central District TA Bond Series 2003 Fund (#9532), Uptown Forest City DDA 9532 Project (#T245610); and (2) \$464,400 from the Preservation Park Loan Repayment Fund (#9562), Project Retail/Entertainment District Catalyst Project FY01 (#P132780); and

**WHEREAS**, the DDA requires that RCD or RCD's affiliate construct and operate the Project consistent with the Redevelopment Plan and restricts the use of the Property to affordable housing and related uses; and

**WHEREAS**, the DDA and the grant deed that will convey the Property to RCD or RCD's affiliate adequately condition the sale of the Property on the redevelopment and use of the Property in conformity with the Central District Redevelopment Plan, and such documents prohibit discrimination in any aspect of the Project as required under the Central District Redevelopment Plan and the California Community Redevelopment Law; and

**WHEREAS**, the Project uses are in conformity with the Central District Redevelopment Plan, the Project will assist in the elimination of blight in the Central District, the Project will increase the supply of low and moderate income housing in the Central District, and the Project will help meet the objectives of the Central District Redevelopment Plan; and

**WHEREAS**, the City of Oakland's Consolidated Plan for Housing and Community Development indicates that there is a need for affordable rental housing, and has identified this activity as a priority; and

**WHEREAS**, the Project is consistent with the Agency's Project Development Guidelines for Affordable Housing Development, and RCD meets the Agency's Threshold Developer Criteria; and

**WHEREAS**, the Project will increase and improve the supply of low and moderate income housing available in the City of Oakland, is an eligible use of the Agency's Low and Moderate Income Housing Fund under California Health and Safety Code Sections 33334.2 and 33334.3, and will benefit the redevelopment project areas in the City of Oakland by providing affordable housing opportunities within the community that will enhance the economic viability and redevelopment potential of the project areas; and

**WHEREAS**, funds are available from the Agency's Low and Moderate Income Housing Fund, as well as other Central District tax increment funds, to assist the Project; and

**WHEREAS**, no other reasonable means of private or commercial financing of the Project at the same level of affordability and quantity are reasonably available to

RCD other than the Low and Moderate Income Housing Fund and other redevelopment funds; and

**WHEREAS**, the California Community Redevelopment Law (Health and Safety Code Section 33433) requires that before any property of a redevelopment agency that is acquired in whole or in part with tax increment moneys is sold for development pursuant to a redevelopment plan, the sale must first be approved by the legislative body, i.e., the City Council, by resolution after public hearing; and

**WHEREAS**, as required by the California Community Redevelopment Law, the Agency has made available to the public for inspection, no later than the first date of publication of the notice for the hearing, a report that contains a copy of the draft DDA and a summary of the cost of the agreement to the Agency, the estimated fair market value of the Property at its highest and best use permitted under the Redevelopment Plan, the estimated value of the Property determined at the use and with the conditions, covenants and development costs required by the sale, an explanation of the reasons for the difference between the two values, and an explanation of why the sale of the Property and development of the Project will assist in the elimination of blight, with supporting facts and material; and

**WHEREAS**, a joint public hearing between the Agency and the City Council of the City of Oakland was held to hear public comments on the sale of the Property for the Project; and

**WHEREAS**, notice of the sale of the Property and the public hearing was given by publication at least once a week for not less than two weeks prior to the public hearing in a newspaper of general circulation in Alameda County; and

**WHEREAS**, the City Council has approved the sale of the Property by resolution after the public hearing; and

**WHEREAS**, the City of Oakland, as the Lead Agency for the Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"), has prepared a focused Environmental Impact Report, the Uptown Mixed Use Project Environmental Impact Report (the "EIR"), which covers 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**, on February 18, 2004, the City Council in accordance with CEQA Guidelines § 15090 certified that the Final EIR has been completed in compliance with CEQA and the Guidelines for Implementation of the California Environmental Quality Act (14 CCR sections 15000, et seq.); and

**WHEREAS**, the Agency, as a "Responsible Agency" under CEQA 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 the Agency 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 Agency hereby finds and determines that the sale of the Property by the Agency to RCD or RCD’s affiliate for the Project furthers the purposes of the California Community Redevelopment Law, contributes to the elimination of blight in the Central District Redevelopment Project Area, conforms to the Central District Redevelopment Plan, including its Implementation Plan, and furthers the goals and objectives of said Redevelopment Plan in that: (1) the Project will increase the stock of housing affordable to low and very low income households in the Central District, and reestablish residential areas for all economic levels within the Central District; (2) the Project will provide necessary community facilities lacking in the Central District; (3) the Project, once developed, will create permanent jobs for low and moderate income people, including jobs for area residents; (4) the Project will create a stable 24-hour residential community which will enhance the viability of retail businesses in the area; (5) the Project will redevelop a key underutilized site in the Central District; (6) the Project will improve environmental design within the Central District; and (7) the Project, once developed, will enhance depreciated and stagnant residential and commercial property values in the surrounding Uptown areas, and will encourage efforts to alleviate economic and physical blight conditions in the area, including high business vacancy rates, excessive vacant lots, and abandoned buildings, by enhancing the development potential and overall economic viability of neighboring properties; and be it further

**RESOLVED:** That the Agency hereby authorizes the Agency Administrator or his or her designee to sell the Property to RCD, subject to the terms and conditions of the DDA; and be it further

**RESOLVED:** That the Agency finds and determines that the consideration for the sale of the Property is not less than its fair reuse value at the use and with the covenants and conditions and development costs authorized under the DDA, for the reasons set forth in the report prepared in accordance with Health and Safety Code Section 33433; and be it further

**RESOLVED:** That the conveyancing transaction shall include the following terms and conditions:

- The Property to be sold to RCD or its affiliate at no cost;
- 79 of the 80 Project units to be restricted at an affordable rent to households at or below 60% of area median income for a period of 55 years;
- The Agency to cause to be constructed required off-site improvements in connection with the Project, at a maximum cost of \$500,000;
- RCD or its affiliate to comply with provisions of the Central District Redevelopment Plan and nondiscrimination provisions of redevelopment law;
- The plans and specifications for the Project to be reviewed and approved by the Agency;
- Transfer of the Property to be restricted prior to Project completion;
- Project commencement and completion dates to be set in the DDA as negotiated by the Agency Administrator;
- RCD or its affiliate to comply with the Agency's employment and contracting programs (prevailing wage, local employment, local/small local business enterprise contracting, apprenticeship, living wage, and first-source hiring) for the Project;
- Any other appropriate terms and conditions as the Agency Administrator or his or her designee may establish in his or her discretion or as the California Community Redevelopment Law or the Redevelopment Plan may require;

and be it further

**RESOLVED:** That the Agency hereby authorizes the Agency Administrator or her designee to take whatever action is necessary to make the Property available for conveyance to RCD by September 1, 2007; and be it further

**RESOLVED:** That the Agency hereby authorizes the Agency Administrator or her designee to provide a predevelopment and development loan in an amount not to exceed \$2,464,400 to RCD, or to an affiliated entity approved by the Agency Administrator or his or her designee, to be used for the Project; and be it further

**RESOLVED:** That (1) \$2,000,000 of the loan funds shall come from the Central District TA Bond Series 2003 Fund (#9532), Uptown Forest City DDA 9532 Project (#T245610); and (2) \$464,400 of the loan funds shall come from the Preservation Park Loan Repayment Fund (#9562), Project Retail/Entertainment District Catalyst Project FY01 (#P132780); and be it further

**RESOLVED:** That the loan is contingent on the availability of sufficient funds in the Low and Moderate Income Housing Fund and other funds to cover the loan; and be it further

**RESOLVED:** That the loan shall be for a maximum term of 55 years, at no interest, with repayment to the Agency from surplus cash flow from the Project and other available funds during the term of the loan with the balance due at the end of the term, or on such other repayment terms and schedule as the Agency Administrator or his or her designee determines are in the best interests of the Agency and the Project; and be it further

**RESOLVED:** That as a condition of the loan, the Agency will require that appropriate restrictions on Project occupancy, rents and operations be recorded against Project improvements; and be it further

**RESOLVED:** That the loan shall be secured by a deed of trust on the Property, other than that portion of the loan designated for predevelopment costs, which will be unsecured until the Property is conveyed to RCD; and be it further

**RESOLVED:** That a portion of the loan in an amount not to exceed \$770,000 shall be available as a predevelopment loan to prepare 50% construction drawings; and be it further

**RESOLVED:** That the Agency will not require repayment of the predevelopment loan prior to the date that the Property is made available to RCD, unless there is a developer default under the DDA or the loan agreement; and be it further

**RESOLVED:** That the making of the loan shall be contingent on and subject to such other appropriate terms and conditions as the Agency Administrator or his or her designee may establish; and be it further

**RESOLVED:** That the Agency hereby authorizes the Agency Administrator or his or her designee in his or her discretion to subordinate the priority of the Agency's deed of trust and/or recorded restrictions to a lien or encumbrance of another private or governmental entity providing financial assistance to the Project, if the Agency Administrator or his or her designee determines that (1) an economically feasible alternative method of financing the Project on substantially comparable terms and conditions but without subordination is not reasonably available, (2) the Agency's investment in the Project in the event of default is reasonably protected, and (3) subordination is in the best interests of the Agency; and be it further

**RESOLVED:** That the Agency Administrator or his or her designee is hereby authorized to negotiate and execute a Disposition and Development Agreement with RCD, or an affiliated entity or entities approved by the Agency Administrator, for the Project, as well as negotiate and execute loan documents for the Agency loan and other documents with RCD or its affiliate, Project funding sources, or other parties as necessary to facilitate the sale and development of the Property for the Project; and be it further

**RESOLVED:** That all documents related to this transaction shall be reviewed and approved by Agency Counsel prior to execution, and copies will be placed on file with the Agency Secretary; and be it further

**RESOLVED:** That the Agency Administrator or his or her designee is directed to file a Notice of Determination within five (5) working days of this Resolution in accordance with CEQA Guidelines Section 15094; and be it further

**RESOLVED:** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) the Community and Economic Development Agency, Redevelopment Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland; (b) the Community and Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland; and be it further

**RESOLVED:** That the Agency hereby appoints the Agency Administrator or his or her designee as agent of the Redevelopment Agency to take any other action with respect to the Property, the Project, and the Agency loan consistent with this Resolution and its basic purpose.

**NOV 15 2005**

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2005

**PASSED BY THE FOLLOWING VOTE:**

AYES- ~~BROOKS~~, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
CHAIRPERSON DE LA FUENTE - 7

NOES- Brooks - 1

ABSENT- 0

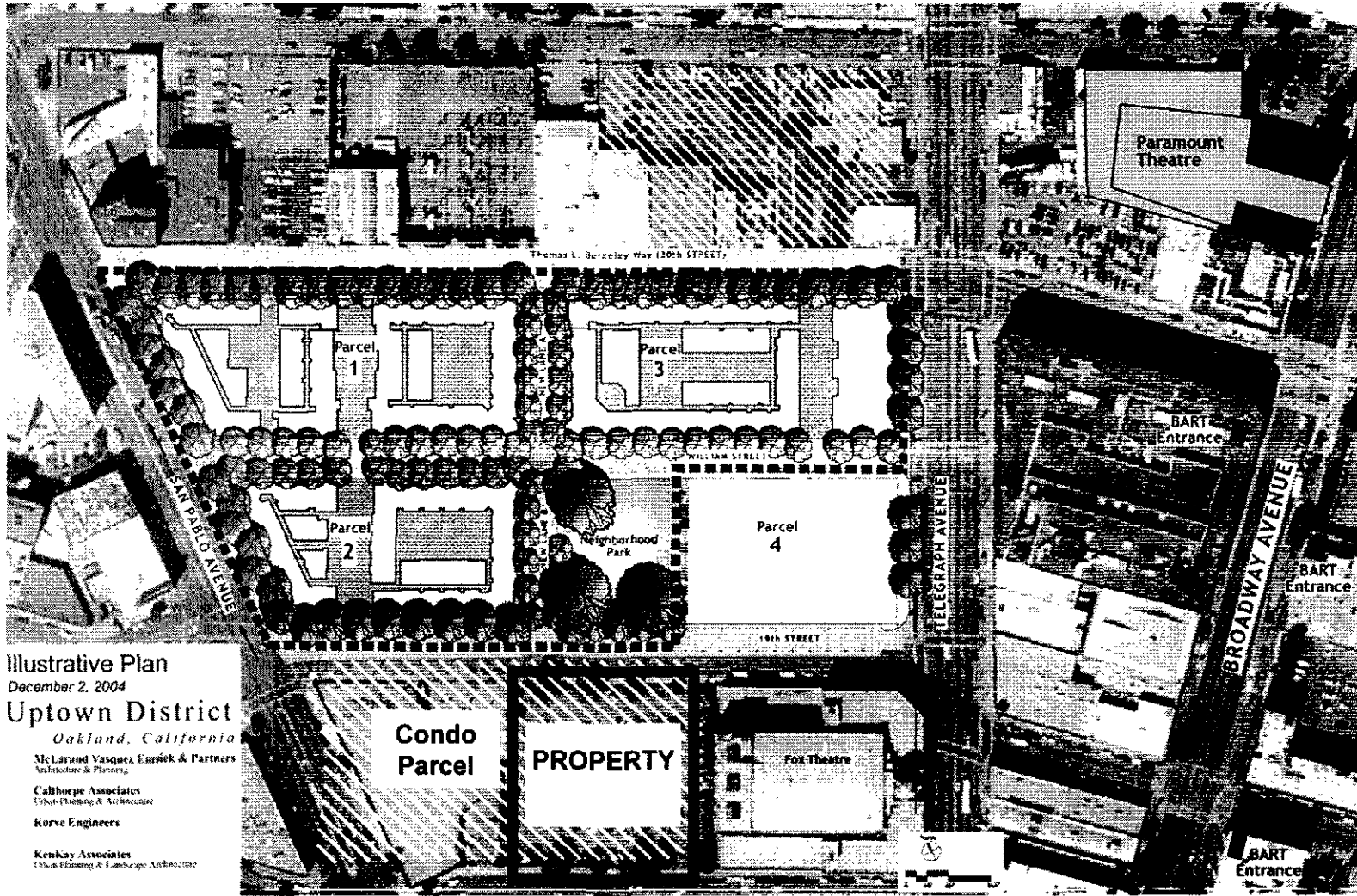
ABSTENTION- 0

ATTEST *Latonda Simmons*  
LATONDA SIMMONS  
Secretary of the Redevelopment Agency  
of the City of Oakland



EXHIBIT A  
PROPERTY DESCRIPTION

# Attachment A Property



Illustrative Plan  
December 2, 2004  
Uptown District  
Oakland, California

McLarand Vasquez Emsiek & Partners  
Architecture & Planning

Callhorne Associates  
Urban Planning & Architecture

Korve Engineers

KenKay Associates  
Urban Planning & Landscape Architecture

Condo  
Parcel PROPERTY

Fox Theatre

Paramount  
Theatre

BART  
Entrance

BART  
Entrance

BART  
Entrance