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REVISED

APPROVED AS TO FORM AND LEGALITY:



Deputy City Attorney

OAKLAND CITY COUNCIL
RESOLUTION NO. ---79541- C.M.S.

A RESOLUTION (1) APPROVING AMENDMENTS TO THE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASE, AND RELATED DOCUMENTS BETWEEN THE REDEVELOPMENT AGENCY, THE CITY, AND FC OAKLAND, INC. OR RELATED ENTITIES, FOR THE DEVELOPMENT OF A MIXED-USE RESIDENTIAL RENTAL AND RETAIL DEVELOPMENT PROJECT IN THE UPTOWN ACTIVITY AREA OF THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA TO (A) MODIFY PUBLIC PARK MAINTENANCE OBLIGATIONS, (B) CHANGE THE DATE FOR RECEIPT OF NET AVAILABLE INCREMENT, (C) CHANGE THE NOISE REDUCTION PLAN FOR THE OAKLAND SCHOOL FOR THE ARTS, (D) MODIFY THE REPAYMENT SCHEDULE; AND (E) ADD VARIOUS OTHER AMENDMENTS; (2) APPROVING THE REVISED SITE PLAN FOR THE PROJECT; AND (3) CHANGING THE USE OF CITY FUNDS FOR THE IMPLEMENTATION OF THE PROJECT

WHEREAS, the City of Oakland ("City"), the Redevelopment Agency of the City of Oakland ("Agency") and FC Oakland, Inc., an affiliate of Forest City Residential West, Inc., or other affiliate(s) of Forest City Residential West, Inc., ("FC") are parties to a Lease Disposition and Development Agreement ("LDDA") whereby FC, is the developer of approximately one and a half blocks of land bounded by Thomas L. Berkley Way (formerly 20th) on the north, Telegraph Avenue on the east, 19th St. on the south, and San Pablo Avenue on the west (the "Uptown Project Area") in the Uptown Activity Area of the Central District Urban Renewal Area commonly referred to as the Project Area; and

WHEREAS, the LDDA sets forth the terms and conditions whereby FC may lease and develop the various parcels within the Uptown Project, including a form of a ground lease that will be entered into by the parties (the "Ground Lease"); and

WHEREAS, pursuant to the terms of the LDDA, FC intends to redevelop the Project Area corresponding to Parcels 1, 2, 3 and the Public Park Parcel into a mixed-income housing project and related uses and a public park, as required by the LDDA (the "Project"); and

WHEREAS, the parties to the LDDA desire to amend certain terms of the LDDA, the Ground Lease, and related documents to, among other things: (A) modify public park maintenance

obligations; (B) change the date for receipt of net available tax increment; (C) change the noise reduction plan for the Oakland School for the Arts ("OSA"), (D) modify the repayment schedule; and (E) add various other amendments; and

WHEREAS, the site plan has been modified to move the location of the public park from a parcel bounded by Thomas L. Berkley Way (formerly 20th Street) on the north, Parcel 3 on the east, William Street on the south and a New Street on the west to a new parcel bounded by William Street on the north, Parcel 4 on the east, William Street on the north and 19th Street on the south; and

WHEREAS, the City Council desires to approve the revised site plan which is attached to this Resolution as Attachment A; and

WHEREAS, pursuant to Agency Resolution No. 2005-33 C.M.S. and City Resolution No. 79314 C.M.S., the LDDA requires the City to provide FC with direct gap financial assistance in the amount of \$5,300,000, and reimbursement of up to \$1,000,000 for construction of the public park, and requires the Agency to: (1) make a contribution to FC of tax increment funds generated by the Project; (2) reimburse FC for an amount measured by business taxes generated from the Project and paid to the City, but only if necessary to fund a tax increment gap; (3) provide direct gap financial assistance in the amount of \$8,335,749 and (4) reimburse FC for: (a) up to \$5,700,000 for off-site improvements; and (b) up to \$4,085,600 for hazardous materials remediation costs, all on the terms and condition set forth in the Ground Lease; and

WHEREAS, the Agency and City desire to modify the use of its respective contributions toward direct gap funding assistance and the construction of off-site improvements; 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"), has prepared a focused Environmental Impact Report 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 Environmental Impact Report ("EIR") on the Project has been completed in compliance with the California Environmental Quality Act of 1970 ("CEQA"), and the Guidelines for Implementation of the California Environmental Quality Act (14 CCR sections 15000, et seq.); and

WHEREAS, notice of the public hearing regarding the proposed amendments 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, as required by Section 33433 of 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 supplemental report that contained a copy of the draft amendments; and

WHEREAS, the Agency is not incurring any additional costs resulting from the amendments;
and

WHEREAS, the Agency has approved the execution of the amendments by resolution after the public hearing; now, therefore, be it

RESOLVED: That the City Council 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 City Administrator, or her designee, is hereby authorized to negotiate and execute amendments to the LDDA, Ground Lease, and related documents with the following terms:

- Payment to FC of the net tax increment generated by the Project, as well as annual business taxes generated by the Project and by FC to the City, but only to fill a gap, if any, in payment of net tax increments, shall start on the first day of fiscal year 2007-08.
- The noise reduction plan for the OSA shall allow for demolition of the public parking structure currently located on Parcel 3 during any time of the year, subject to the written consent by the Director or Board of Directors for the OSA.
- FC shall maintain the park with the City indemnifying FC for negligence excepting its gross negligence; the City to have the right to terminate the maintenance agreement at any time in its sole and absolute discretion, in which event FC would then pay the City an annual park maintenance fee as negotiated by the parties.
- Modify FC's obligation to repay the City and Agency to a fixed schedule.
- Include various other amendments, along with the above amendments, to be embodied in an Amended and Restated LDDA, and Ground Lease, and related documents.
- Other administrative modifications as determined necessary or appropriate by the City Administrator consistent with this Council action and previous Council actions.

and be it further

RESOLVED: That, if the City terminates FC's park maintenance agreement and FC then begins making park maintenance payments, such funds shall be deposited in the City's Landscape and Lighting Assessment District Fund (Fund 2310), in which a new Project number will be created once the payments from FC to the City commences; and be it further

Attachment A

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Revised Site Plan

