

FILED
OFFICE OF THE CITY CLERK
OAKLAND

**REDEVELOPMENT AGENCY
AND THE CITY OF OAKLAND**

2009 MAR 11 PM 1:52

AGENDA REPORT

TO: Office of the City/Agency Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: March 24, 2009

RE: **A Total of Three Agency and Two City Resolutions Regarding Redevelopment Activities in the Uptown Activity Area of the Central District Redevelopment Project Area:**

An Agency Resolution Authorizing an Amendment to the Disposition and Development Agreement Between the Redevelopment Agency and FC Uptown Parcel 4 LLC, for the Development of a Mixed-use Project at 1911 Telegraph Avenue, Commonly Known as the Uptown Project (Phase 2), to: (A) Extend the Date to Purchase the Property by 36 Months; and (B) Place an Amount of Up to \$70,000 from the Sales Proceeds in Escrow to Reimburse FC Uptown Parcel 4 LLC for Certain Hazardous Materials Abatement Costs to be Incurred in Developing the Project

An Agency Resolution Authorizing an Amendment to the Lease Disposition and Development Agreement Between the Redevelopment Agency, the City of Oakland and Uptown Housing Partners, LP, for the Development of a Mixed-use Project in the Central District Redevelopment Project Area, Commonly Known as the Uptown Project (Phase 1), to: (A) Reduce the Agency's Contribution Toward Hazardous Materials Abatement by Up to \$252,000, from \$4,085,600 to \$3,833,600, Resulting from Remediation Cost Savings; and (B) Reallocate Up to \$182,000 of the Remediation Cost Savings Toward the Construction of the Public Park in the Uptown Project (Phase 1)

A City Resolution Approving an Amendment to the Disposition and Development Agreement Between the Redevelopment Agency and FC Uptown Parcel 4 LLC, for the Development of a Mixed-use Project at 1911 Telegraph Avenue, Commonly Known as the Uptown Project (Phase 2), to: (A) Extend the Date to Purchase the Property by 36 Months; and (B) Place an Amount of Up to \$70,000 from the Sales Proceeds in Escrow to Reimburse FC Uptown Parcel 4 LLC for Certain Hazardous Materials Abatement Costs to be Incurred in Developing the Project

A City Resolution Authorizing an Amendment to the Lease Disposition and Development Agreement Between the City of Oakland, the Redevelopment Agency and Uptown Housing Partners LP for the Development of a Mixed-use Project in the Central District Redevelopment Project Area, Commonly Known as the Uptown Project (Phase 1), to: (A) Reduce the Agency's Contribution

Item: 7

Community and Economic Development Committee
March 24, 2009

Toward Hazardous Materials Abatement by Up to \$252,000, from \$4,085,600 to \$3,833,600, Resulting from Remediation Cost Savings; and (B) Reallocate Up to \$182,000 of the Remediation Cost Savings Toward the Construction of the Public Park in the Uptown Project (Phase 1)

An Agency Resolution Authorizing the Agency Administrator To Execute a Lease with FC Uptown Parcel 4 Parking, LLC, or Related Entities, for a Term of Up to 36 Months to Reconstruct and Operate a Parking Lot at 1911 Telegraph Avenue

SUMMARY

Staff is recommending that the Agency/Council adopt three Agency and two City resolutions related to the Uptown Project (Phases 1 and 2) located in the Uptown Activity Area of the Central District Redevelopment Project Area. The proposed resolutions would authorize amendments to the following agreements:

- A Disposition and Development Agreement (DDA) between the Agency and FC Uptown Parcel 4, LLC (FC Uptown) for the sale of Agency-owned property located at 1911 Telegraph Avenue (the “Property”) and development of a mixed-use residential project, the Uptown Project (Phase 2), and
- A Lease Disposition and Development Agreement (LDDA) between the Redevelopment Agency (Agency), the City of Oakland (City) and Uptown Housing Partners LLC (UHP), for the development of the Uptown Project (Phase 1)

UHP and FC Uptown are affiliates of Forest City, created for the development of each phase of the Uptown Project.

The proposed amendment to the DDA with FC Uptown for the Uptown Project (Phase 2) will (1) extend the date to purchase the Property by 36 months, and (2) provide for placement of up to \$70,000 from the sales price in escrow to reimburse FC Uptown for the installation of a toxic vapor barrier, which would reduce the Agency’s income from the future sale proceeds by \$70,000 from \$6.9 million to \$6,830,000 (minus closing costs).

The proposed amendment to the LDDA with UHP will (1) reduce the Agency’s contribution toward hazardous materials abatement by up to \$252,000, from \$4,085,600 to \$3,833,600, and (2) reallocate up to \$182,000 of this amount to cover construction cost increases at Fox Square, the new public park at the Uptown Project (Phase 1). The proposed amendments to the LDDA and DDA do not increase the Agency’s funding assistance to the Uptown Project (Phases 1 and 2).

Lastly, staff also recommends legislation authorizing the Agency Administrator to execute a lease with FC Uptown Parcel 4 Parking, LLC, for a term of up to 36 months to reconstruct and operate a temporary parking lot at 1911 Telegraph Avenue to serve the patrons of the Fox Theater and the Oakland Ice Rink, as well as other local businesses in the area.

FISCAL IMPACT

The proposed legislation will have the following fiscal impact on the Agency:

The DDA Amendment and LDDA Amendment

The DDA with FC Uptown for the development of the Uptown Project (Phase 2) requires that FC Uptown purchase the Property from the Agency for \$6.9 million in July of 2008. FC Uptown has been unable to meet this deadline and proposes to amend the DDA to extend the date to purchase the Uptown Project (Phase 2) by 36 months. As a result, the Agency did not receive any land sale proceeds, which were originally budgeted in the Unrestricted Land Sales Proceeds fund (Fund 9553) for FY 2008-09. The Agency eliminated the anticipated revenue from the Unrestricted Land Sales Proceeds fund (Fund 9553) during the FY 2008-09 Mid-cycle Budget revisions. The Agency compensated for the lost revenue by (1) deleting the Central District Site Acquisition Project from the Unrestricted Land Sales Proceeds Fund (Fund 9533); (2) substituting accumulated unspent operating funds in the Oakland Ice Center Fund (Fund 9515), and (3) transferring payment of the Agency's FY 2008-09 contribution to the Public Arts from the Unrestricted Land Sales Proceeds Fund (Fund 9553) to the 1986 Bonds Fund (Fund 9504).

The LDDA between the Agency, City and UHP calls for the Agency to deposit \$4,085,600 into a remediation escrow to reimburse UHP for the cost of hazardous materials abatement in connection with the development of the Uptown Project (Phases 1 & 2). Hazardous materials abatement costs include up to \$70,000 for installation of a toxic vapor barrier underneath the proposed new building at the Uptown Project (Phase 2). Remediation activities at 1911 Telegraph Avenue have been completed, except for the installation of the toxic vapor barrier, which is part of the construction of the Uptown Project (Phase 2) beginning in October of 2011. All but approximately \$252,000 of hazardous materials abatement funds were disbursed to UHP during the environmental clean-up of the Property. The Agency will close out the remediation escrow account and return up to \$252,000, plus interest, to the Agency's Preservation Park Loan Repayment Fund (Fund 9562), Capital Improvement Project – Economic Development Organization (#94800), Retail/Entertainment Catalyst Development FY01 (Project P132780). Monies for the deposit into the remediation escrow were withdrawn from this fund in October of 2005.

Staff proposes to make the payment for the vapor barrier by amending the DDA with FC Uptown for the sale of 1911 Telegraph to provide for placement of up to \$70,000 from the sales price in a

new escrow before the new projected close of the sale in July 2011. The escrow deposit will reduce the Agency's future net sales proceeds by \$70,000, from \$6,900,000 to \$6,830,000 (minus closing costs).

The development costs for Fox Square, which were originally estimated at \$1 million, have exceeded the budget by \$643,000. The Agency will reduce its contribution toward hazardous materials abatement by up to \$252,000, from \$4,085,600 to \$3,833,600, and reallocate up to \$182,000 from the Remediation Cost Savings to cover up to 28 percent of the construction cost increases at Fox Square once all remaining funds from the remediation escrow account have been returned to the Agency. UHP will pay for the balance of at least \$461,000 in park development cost overages. Funding in the amount of up to \$182,000 for payment toward the development cost increases for the public park will be available in the Agency's Preservation Park Loan Repayment Fund (Fund 9562), Capital Improvement Project – Economic Development Organization (94800), Retail/Entertainment Catalyst Development FY01 (Project P132780).

The Land Lease

The Agency is proposing to lease the Property at 1911 Telegraph Avenue to FC Uptown Parcel 4 Parking, LLC for a term of up to 36 months for the development and operation of a temporary parking lot serving local businesses and the patrons of the Fox Theater. FC Uptown Parcel 4 Parking LLC will develop the parking lot at its sole expense. During the term of the lease, FC Uptown Parcel 4 Parking, LLC will be entitled to receive all net parking revenues of up to \$300,000, plus annual interest of 10 percent on this amount, to recover a portion of their development costs. The Agency will be entitled to all net revenue collected thereafter, which will be deposited in the Central District TAB Series 2006T (Fund 9535), Capital Improvement Project – Economic Development Organization (94800), Uptown Forest 9535 (Project T245630). The proposed parking lot will also generate permit fees, as well as business and parking taxes for the City.

BACKGROUND

On February 27, 2007, pursuant to Resolution No. 2006-41 C.M.S., the Agency and FC Uptown entered into a DDA for the sale of Agency-owned property located at 1911 Telegraph Avenue for \$6.9 million, and development of a mixed-use residential project, the Uptown Project (Phase 2). The current schedule of performance of the DDA calls for the sale of the Property to close in July of 2008. FC Uptown was unable to meet this deadline because of the protracted downturn of the regional housing market and the national financial crisis. FC Uptown has requested an amendment to the DDA to extend the dates to purchase the Property and start construction by 36 months. FC Uptown has also proposed to lease the Property from the Agency during the proposed 36-month extension term to develop and operate a temporary surface parking lot.

Item: _____

Community and Economic Development Committee

March 24, 2009

On October 28, 2005, pursuant to Agency Resolution No. 2005-59 C.M.S., the Agency, the City and UHP entered into a LDDA for the long-term lease of Agency-owned property and the development of the Uptown Project (Phase 1). The LDDA calls for the Agency to place \$4,085,600 in a remediation escrow to reimburse UHP for the cost of hazardous materials abatement in connection with the development of the Uptown Project (Phase 1 & 2). UHP contributed \$1.5 million toward environmental cleanup costs, and Forest City and its affiliates completed remediation activities (except for on-going ground water monitoring) at the Uptown Project (Phases 1 and 2) site in 2008. The Agency holds unexpended funds of up to \$252,000, plus interest, in the remediation escrow. Of this amount, the Agency needs to reimburse FC Uptown for up to \$70,000 toward the future installation of a toxic vapor barrier underneath the proposed building at the Uptown Project (Phase 2). This leaves net savings of up to \$182,000 for the Agency.

The LDDA also provides for payment by the City of up to \$1 million for the development of a new public park, Fox Square. The park was completed in October of 2008. Development costs exceed the budget of \$1 million by \$643,000 because of unanticipated design changes, higher construction costs and unforeseen poor soils conditions. Forest City has requested that the Agency reallocate funding of up to \$182,000 of the remediation cost savings / hazardous materials abatement cost savings to park construction costs.

Forest City's Uptown Project (Phase 1 and 2) are key components of the Agency's redevelopment strategy for the Uptown Activity Area of the Central District Redevelopment Project Area. The Agency's partnership with Forest City began in 1999, and thus far has culminated in the completion of the Uptown Project (Phase 1) in December of 2008.

PROJECT DESCRIPTION

The Uptown Project (Phases 1 & 2) consists of the redevelopment of two City blocks bounded by 19th Street, San Pablo Avenue, Thomas L. Berkley Way, and Telegraph Avenue by Forest City and its affiliates. In December of 2008, three years after the start of construction, UHP completed the first phase of the Uptown Project. The multifamily housing development, which is also known as the "Uptown", covers three blocks generally bounded by 19th Street, San Pablo Avenue, Thomas L. Berkley Way, Telegraph Avenue, William Street, and Rashida Muhammad Street in downtown Oakland (refer to site plan on Attachment 1). The project features:

- 665 affordable and market rate rental apartments
- 9,000 square feet of neighborhood-serving retail on Telegraph Avenue between William Street and Thomas L. Berkley Way
- Fox Square, a 25,000 square-foot City-owned public park between Rashida Muhammad Street, William Street and 19th Street

Forest City’s proposal for the second phase of the Uptown Project is to acquire a remaining one-acre Agency-owned parcel at 1911 Telegraph Avenue for \$6.9 million and to develop a mixed-use project with up to 220 housing units, and a 20,000 square-foot retail component fronting on Telegraph Avenue, 19th Street and William Street. The previously contaminated site was cleaned up (except for on-going groundwater monitoring) as part of the adjacent Uptown Project (Phase 1).

If the amendment to the DDA to extend the date for the purchase of the Property is approved, FC Uptown Parcel 4 Parking, LLC has offered to reconstruct and operate a temporary surface parking lot on the Property that would serve local businesses, as well as the Fox Theater and the Oakland Ice Center. The parking lot would provide approximately 130 parking spaces and be landscaped around its perimeter on 19th Street, Telegraph Avenue and William Street. The proposed lease would be for a term of up to 36 months. The lot would operate all week and also offer evening parking during shows at the adjacent Fox Theater. Parking fees would be based on prevailing market rates.

KEY ISSUES AND IMPACTS

The Schedule of Performance Extension for the Uptown Project (Phase 2)

The current schedule of performance in the DDA for 1911 Telegraph Avenue provided for the sale of the Property to occur in July of 2008. FC Uptown was unable to meet this deadline because the protracted downturn of the regional housing market and the national financial crisis made it infeasible for the developer to secure funding. FC Uptown has requested a 36-months extension to the date for purchase of the Property and the start of project construction. The new schedule includes the following performance milestones:

Design review by Planning Commission	May 2010
Completion of Construction Documents	April 2011
Building Permit Issuance	June 2011
Close of Escrow	July 2011
Start of Construction	October 2011
Completion of Construction	October 2014

Item: _____

Community and Economic Development Committee
March 24, 2009

Forest City, in partnership with the Agency and City, has demonstrated its ability to carry out a complex long-term redevelopment project. The Uptown Project Phase 2 is an integral component of Forest City's long-term vision for the district. The Agency should grant Forest City's request for an extension to develop the project because the national recession adversely affected their efforts to proceed with the project as scheduled, and because of their excellent track record in Oakland.

Fox Square

The LDDA provides for the City to pay \$1 million for the development of Fox Square, a new public park that was completed by an affiliate of Forest City in October of 2008. Development costs for the park exceeded the \$1 million budget by \$643,000. Forest City covered these extra costs. The City has no legal obligation to reimburse Forest City for the extra costs. However, Forest City is requesting that the Agency reallocate funding of up to \$182,000 that was saved during the environmental clean-up of the Uptown Project (Phases 1 and 2) site to reimburse them for up to 28 percent of the cost overruns at Fox Square. Forest City will pay for the balance of \$461,000.

The design for Fox Square was significantly modified when the City Council declared the park to be the future location for Mario Chiodo's "Remember Them" bronze sculpture in September of 2006. Furthermore, high construction costs and adverse soil conditions at the park site resulted in further budget increases. Collectively, these factors created unforeseen costs that could not be eliminated by park design changes, scope reductions or material substitutions. It is recommended that the Agency reallocate up to \$182,000 from remediation cost savings to park development costs because the new open space and its future public art display augment the Agency's redevelopment efforts in the area, and will attract many new visitors to this part of downtown Oakland. The proposed reallocation of funds to a different project component does not increase the Agency's total funding assistance to the Uptown Project (Phases 1 and 2).

The Toxic Vapor Barrier at Uptown Project (Phase 2)

The LDDA between the Agency, City and UHP also calls for the Agency to reimburse UHP from the remediation escrow for an amount of up to \$70,000 to cover 50 percent of the cost of installing a toxic vapor barrier underneath the proposed new building at the Uptown Project (Phase 2) site. The environmental cleanup of the Uptown (Phase 2) site is complete, but the mixed-use project, pursuant to the proposed DDA amendment, may not start construction until the fall of 2011. The Agency will close out the remediation escrow account and proposes to amend the DDA with FC Uptown for the sale 1911 Telegraph to place \$70,000 from the sales price of \$6,900,000 in a new escrow for the installation of the vapor barrier once the Uptown Project (Phase 2) has started construction. The Agency will reallocate up to \$70,000 from the Uptown Project (Phase 1) environmental escrow to other redevelopment activities.

Item: _____

Community and Economic Development Committee

March 24, 2009

The Parking Lot Lease

In November of 2005, UHP began to clear two large City blocks for the development of the Uptown Project (Phases 1 and 2). The project site, which includes the Property, was primarily occupied by surface parking lots and a parking structure providing approximately 1,100 public parking spaces. The Property included approximately 110 public parking spaces on a surface lot. The development of the Uptown Project (Phases 1 and 2) eliminated these spaces during the environmental clean-up of the Property, which resulted in a significant off-street parking shortfall in the Uptown Activity Area. The Agency is investigating several options to develop new permanent off-street parking at an Agency-owned parcel located behind the Fox Theater along San Pablo Avenue and at Telegraph Parking Plaza to address this parking deficit. New parking garages with significant private participation will likely not be developed for another 2 to 4 years because of the state of the economy. In the meantime, the Fox Theater, which is adjacent to the proposed temporary parking lot at 1911 Telegraph, opened in February of 2009. According to the venue's current performance calendar, there are as many as 10 shows per month, each attracting between 1,800 and 2,500 patrons. After the elimination of 1,100 parking spaces in the area, there is not enough off-street parking to accommodate these concertgoers.

The Agency is proposing to lease the Property at 1911 Telegraph Avenue to FC Uptown Parcel 4 Parking, LLC for a term of up to 36 months to reconstruct and operate a temporary parking lot that would serve the patrons of the Fox Theater, the Oakland Ice Rink and other local businesses in the area. It is critical, especially in these early days of establishing the Fox Theater as a premier performing arts venue in the Bay Area, that sufficient parking for its patrons is available nearby. During the lease term, FC Uptown Parcel 4 Parking, LLC will reconstruct the former parking lot and receive all net parking revenues of up to \$300,000, plus annual interest of 10 percent on this amount, to recover a portion of their development costs (which are estimated between \$400,000 and \$500,000). The Agency will receive all net revenue thereafter until the sale of the Property to FC Uptown in October of 2011. The proposed land use, namely to reestablish automotive fee parking / commercial activities at the Property, would be subject to a determination by Planning staff as to whether any land use entitlements would be required to reconstruct and operate the parking lot in its former location. The lease could not take effect until land use entitlements have been granted.

ENVIRONMENTAL REVIEW

Until November of 2005, the Property located at 1911 Telegraph Avenue was occupied by a Sears Auto Center and a surface parking lot providing approximately 110 parking spaces. Pursuant to the terms of the LDDA, UHP was required to remediate hazardous materials in the soil and groundwater which necessitated the demolition of all existing improvements on the site. Per the LDDA, the Property would have been returned to its original condition after UHP's completion of the environmental cleanup, but the DDA with FC Uptown called for the sale of the

Property to FC Uptown and start of construction on the Uptown Project (Phase 2) by July of 2008. Consequently, the former surface parking lot was not restored to avoid unnecessary reconstruction costs. At this time, FC Uptown is requesting a 36-month extension to the date to purchase the Property. The Agency and Forest City would like to reconstruct and operate an interim 130-space surface parking lot at the Property until the land is sold to FC Uptown, which would basically restore the previous use of the site for a limited duration controlled by the terms of the proposed lease between the Agency and FC Uptown Parcel 4 Parking, LLC.

On February 18, 2004, the Oakland Planning Commission certified the Final Environmental Impact Report (FEIR) for the Uptown Mixed-Use Project. An addendum (Addendum #1) to the FEIR was subsequently prepared in March of 2006. Based on the analysis included in the Final EIR and Addendum #1, none of the circumstances requiring preparation of a subsequent or supplemental EIR are associated with the current proposed actions. The project changes would require no substantive revisions to the 2004 Uptown Mixed-Use Project FEIR. The proposed interim reconstruction and operation of the surface parking lot poses no new significant impacts or substantially more severe impacts than what was originally analyzed in the 2004 FEIR. UHP, pursuant to sections HAZ-1a through HAZ-1c, and section HAZ-3 through HAZ-5 of the Mitigation Monitoring and Reporting Program (MMRP), had to conduct extensive environmental investigations and remediation of hazardous material on the Property at 1911 Telegraph Avenue. On August 25, 2006, and November 21, 2007, respectively, the Agency and Forest City received “No Further Action” letters from the California Regional Water Quality Control Board after the removal of metal and fuel affected soils at the Property, as required by the MMRP of 2004. The temporary surface lot will be landscaped around its perimeter on 19th Street, Telegraph Avenue and William Street to improve its aesthetic appearance.

There are no changes to the project, new information, or changes in circumstances surrounding the project that would result in new significant environmental impacts or substantially more severe impacts from those previously identified in the 2004 FEIR and Addendum #1. Therefore, no further environmental evaluation is required, and no Supplemental/Subsequent EIR is needed pursuant to State CEQA Guidelines Section 15162. Moreover, the MMRP of 2004 for the Uptown Mixed-Use Project is still in effect.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities that apply to the proposed amendments to the LDDA and DDA, or the lease for the temporary parking lot. However, once the Uptown Project (Phase 2) proceeds, this infill development will take an underutilized site and transform it into an economically productive use by constructing a mixed-use building that would include a significant retail component. The proposed development of the Property will continue to contribute to the revitalization of adjacent vacant retail spaces in the area and stimulate job creation through increased demand for local services and shopping/dining opportunities.

Environmental: There are no sustainable environmental opportunities that apply to these particular actions. The Uptown Project (Phase 1) is Oakland's first LEED Silver certified residential building. FC Uptown will incorporate green building components into the design of the Uptown Project (Phase 2). Moreover, by developing in already built-up areas, the project would reduce the pressure to construct on agricultural and other undeveloped land, and thereby contribute to the prevention of urban sprawl. The location of the Property in proximity to major public transportation nodes will likely encourage project residents and retail customers to use BART and AC Transit.

Social Equity: There are no social equity opportunities that apply to this particular action. UHP fully complied with the City's employment and contracting programs, including the Small/Local Business Construction Program, the Small/Local Business Professional Services Program (L/SLBE) and the Local Employment Program, as well as with the requirements of the Prevailing and the Living Wage Ordinances during the development of the Uptown Project (Phase 1). The DDA, which calls for a purchase price that equals or exceeds the fair market value of the Property, does not contemplate any subsidies to the developer, and therefore the Agency's employment and contracting programs do not apply to the transaction. However, FC Uptown Parcel 4 Parking, LLC, will have to comply with the City's employment and contracting programs for the development and operation of the temporary surface parking lot.

DISABILITY AND SENIOR CITIZEN ACCESS

The proposed amendments to the LDDA and DDA do not involve issues related to disability and senior citizen access. If the Council/Agency approves the 36-months lease for development of a temporary surface parking lot at 1911 Telegraph Avenue, FC Uptown Parcel 4 Parking, LLC, will have to comply with the requirements of the Americans with Disabilities Act (ADA) in the design of the parking lot.

RECOMMENDATIONS AND RATIONALE

Staff recommends that the Council/Agency adopt three Agency and two City resolutions related to the Uptown Project (Phases 1 and 2) located in the Uptown Activity Area of the Central District Redevelopment Project Area. The proposed resolutions authorize certain amendments to agreements that will assist in the Agency's overall development strategy in the Uptown Activity Area.

First, it is recommended that the DDA with FC Uptown for the sale and development of 1911 Telegraph be amended to extend the date to purchase the Property for a number of reasons:

- The current sales price for the Property is \$6.9 million based on a fair market value appraisal prepared in 2006. If the Agency does not extend the date for FC Uptown to

purchase the Property and issues a new Request for Proposals, it is unlikely that a current reappraisal of the Property will yield the same fair market value since property values in the area have decreased over the last 24 months.

- FC Uptown contributed \$461,000 of its funds toward the completion of Fox Square without any legal obligation.
- Forest City is prepared to develop and operate a temporary surface parking lot, with all net revenues above \$300,000, plus 10 percent interest on this amount, going to the Agency. The proposed parking lot will also generate permit fees, as well as business and parking taxes for the City.
- Forest City has an excellent track record in Oakland.
- The global recession adversely affected Forest City's efforts to proceed with the project as scheduled.

Second, it is recommended that the LDDA with UHP be amended to (1) reduce the Agency's contribution toward hazardous materials abatement by up to \$252,000, from \$4,085,600 to \$3,833,600, and (2) reallocate up to \$182,000 from remediation cost savings to cover construction cost increases at Fox Square, the new public park at the Uptown Project (Phase 1), because of the overall benefits of the new open space to the area and Forest City's willingness to contribute \$461,000 or up to 72 percent of the development cost overruns.

Third, it is recommended that the DDA with FC Uptown be amended to provide for placement in escrow of up to \$70,000 from the sales price to reimburse FC Uptown for the installation of a toxic vapor barrier because of the proposed extension of the development schedule for the Uptown Project (Phase 2). Authorization of the amendment will permit the Agency to reallocate \$70,000 currently in escrow for the Uptown Project (Phase 1) to other redevelopment activities.

Fourth, it is recommended that the Council approve a lease of up to 36 months between the Agency and FC Uptown Parcel 4 Parking, LLC, to reconstruct and operate a temporary surface parking lot at 1911 Telegraph Avenue because the facility will assist the Agency in addressing immediate parking needs in the area, while evaluating long-term options to develop a new parking garage.

Item: _____

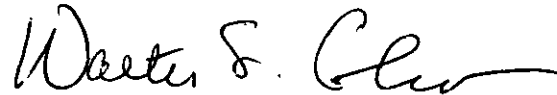
Community and Economic Development Committee

March 24, 2009

ACTION REQUESTED OF THE AGENCY/CITY COUNCIL

Staff recommends that the adoption of three Agency and two City resolutions related to the Uptown Project (Phases 1 and 2) located in the Uptown Activity Area of the Central District Redevelopment Project Area. The proposed resolutions would authorize certain amendments to a DDA between the Agency and FC Uptown for the sale of Agency-owned property located at 1911 Telegraph Avenue and development of a mixed-use residential project, the Uptown Project (Phase 2), and a LDDA between the Agency, the City and UHP, for the development of the Uptown Project (Phase 1). Lastly, staff also recommends legislation authorizing the Agency Administrator to execute a lease with FC Uptown Parcel 4 Parking, LLC, for a term of up to 36 months to reconstruct and operate a temporary parking lot at 1911 Telegraph Avenue.

Respectfully submitted,

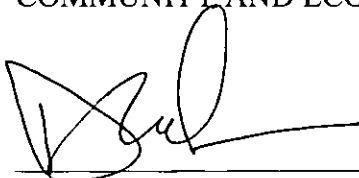


Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Gregory Hunter, Deputy Director
Economic Development and Redevelopment

Prepared by:
Jens Hillmer
Urban Economic Coordinator

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:

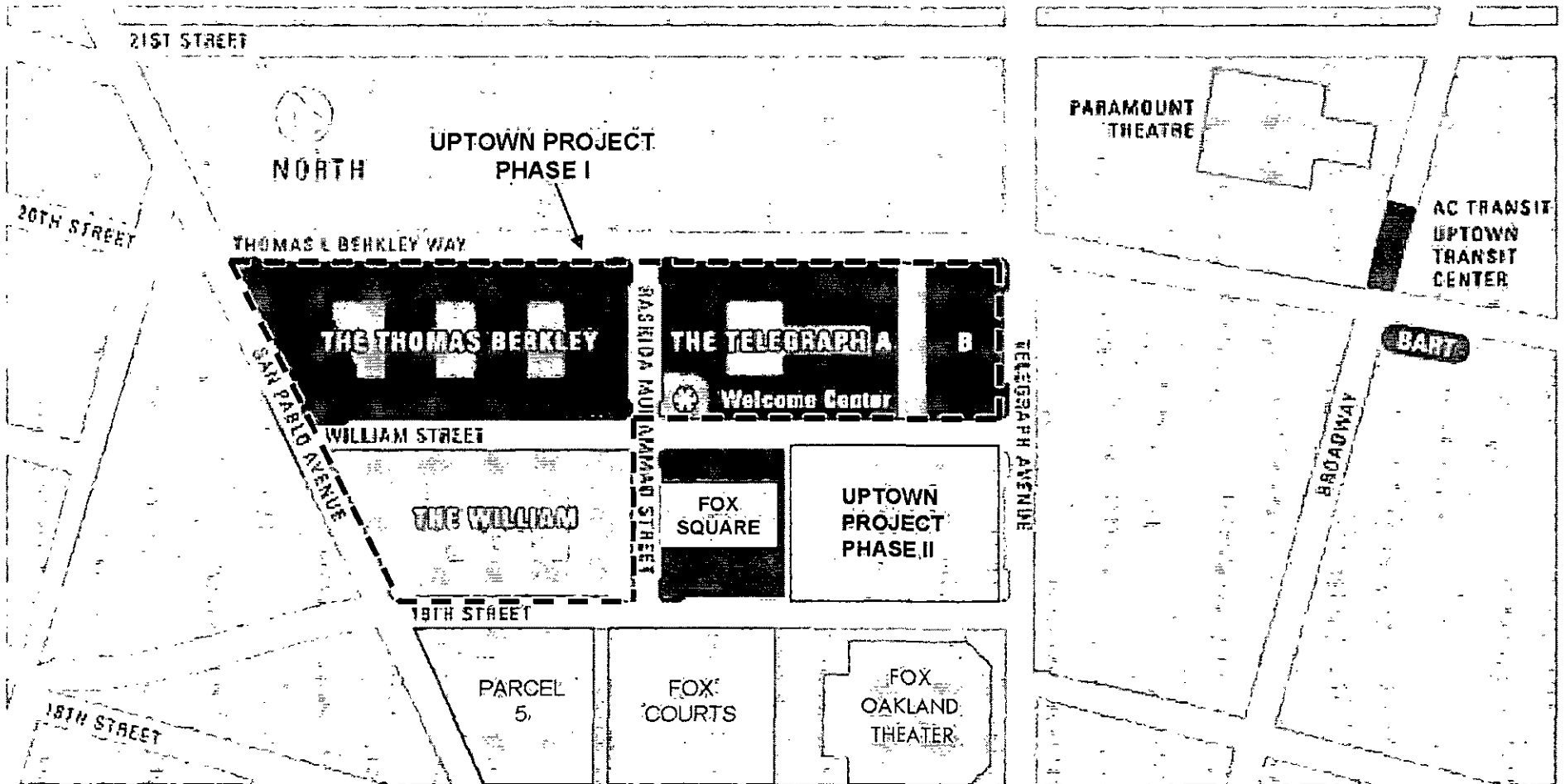


Office of the City/Agency Administrator

Item: 7

Community and Economic Development Committee
March 24, 2009

ATTACHMENT 1



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 MAR 11 PM 1:52

APPROVED AS TO FORM AND LEGALITY:



Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

AN AGENCY RESOLUTION AUTHORIZING AN AMENDMENT TO THE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY, THE CITY OF OAKLAND AND UPTOWN HOUSING PARTNERS, LP, FOR THE DEVELOPMENT OF A MIXED-USE PROJECT IN THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA, COMMONLY KNOWN AS THE UPTOWN PROJECT (PHASE 1), TO: (A) REDUCE THE AGENCY'S CONTRIBUTION TOWARD HAZARDOUS MATERIALS ABATEMENT BY UP TO \$252,000, FROM \$4,085,600 TO \$3,833,600, RESULTING FROM REMEDIATION COST SAVINGS; AND (B) REALLOCATE UP TO \$182,000 OF THE REMEDIATION COST SAVINGS TOWARD THE CONSTRUCTION OF THE PUBLIC PARK IN THE UPTOWN PROJECT (PHASE 1)

WHEREAS, pursuant to Agency Resolution No. 2005-59 C.M.S., the Redevelopment Agency of the City of Oakland ("Agency"), the City of Oakland ("City") and Uptown Housing Partners (UHP) are parties to an amended and restated Lease Disposition and Development Agreement ("LDDA"), whereby UHP is the developer of a two block area (the "Property") in the Central District Urban Renewal Area commonly referred to as the Uptown Project (Phase 1) (the "Uptown Mixed-Use Project"); and

WHEREAS, the LDDA sets forth the terms and conditions whereby UHP may purchase and develop the Property; and

WHEREAS, the LDDA requires the Agency to contribute up to \$4,085,600 for hazardous materials remediation costs on the Property (the "Agency Hazardous Materials Contribution"); and

WHEREAS, UHP achieved savings on the Agency's behalf, which could equal up to \$252,000 plus interest, in remediating the Property (the "Remediation Savings") which currently is held in a remediation escrow established pursuant to the LDDA; and

WHEREAS, the parties to the LDDA desire to amend certain terms of the LDDA to, (1) reduce the Agency Hazardous Materials Contribution by the Remediation Savings, and (2) reallocate up to \$182,000 of the Remediation Savings, toward the construction cost of the public park at the Uptown Project (Phase 1); and

WHEREAS, the Agency is a Responsible Agency for the Uptown Mixed-Use Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"); and

WHEREAS, the City, as the Lead Agency for the Uptown Mixed-Use Project, for purposes of environmental review under the CEQA, previously prepared a focused Environmental Impact Report ("EIR") for the Uptown Mixed-Use Project as proposed by Forest City, 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 Oakland Planning Commission in accordance with CEQA Guidelines § 15090 certified that the Final EIR for the Uptown Mixed-Use Project was completed in compliance with CEQA and the Guidelines for Implementation of the California Environmental Quality Act (14 CCR sections 15000, et seq., the "State EIR Guidelines"), and the City's Environmental Review Regulations; and

WHEREAS, the Agency independently reviewed and considered the information contained in the Final EIR of the Uptown-Mixed Use Project; and

WHEREAS, the Agency, based on its review of the Planning Commission's action with respect to the Final EIR and other substantial evidence in the record, found and determined that the Final EIR for the Uptown Mixed-Use Project examined a reasonable range of alternatives, and that each alternative was rejected as infeasible for various reasons; and

WHEREAS, the Agency found and determined that all adverse environmental effects of the Uptown Mixed-Use Project would be less than significant or reduced to less-than-significant levels after adoption and implementation of the mitigation measures identified in the EIR and the mitigation and monitoring program; and

WHEREAS, the Agency adopted statements of overriding consideration specified in CEQA Guidelines §§ 15091, 15092 and 15093, and found and determined that the important benefits of the Uptown Mixed-Use Project identified in the Statement of Overriding Considerations each separately and independently outweigh the adverse unavoidable environmental effects of the Uptown Mixed-Use Project; and

WHEREAS, on July 20, 2004, the Agency approved the Uptown Mixed-Use Project and a Notice of Determination was subsequently filed with Alameda County; and

WHEREAS, in March of 2006, the City, as the Lead Agency for this Project for purposes of environmental review under CEQA, prepared Addendum #1 to the Final EIR for the Uptown Mixed-Use Project; and

WHEREAS, Addendum #1 to the Final EIR for the Uptown Mixed-Use Project specifically analyzed the potential for any new and/or increased environmental impacts related to relocating a 23-story tower element from Parcel 3 to Parcel 4, the proposed site for the Uptown Project (Phase 2) within the Uptown Mixed-Use Project area, and also included analysis of cultural resources, aesthetics, and transportation, among other topics; and

WHEREAS, based on the analysis included in the Final EIR and Addendum #1, none of the circumstances requiring preparation of a subsequent or supplemental EIR, as specified in CEQA and the State EIR Guidelines, including without limitation, Public Resources Code Section 21166 and State EIR Guidelines Section 15162 and 15163 are present in that (1) there are no changes to the project, new information or changes in circumstances surrounding the project that would result in new significant environmental impacts or substantially more severe impacts from those previously identified in the 2004 FEIR and Addendum #1; (2) the circumstances under which the project is undertaken have not changed substantially since approval of the Final EIR and do not involve new significant impacts or a substantial increase in the severity of previously identified significant effects; and (3) there is no new information of substantial importance (as specified in CEQA Guidelines 15162(a)(3), which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified; and

WHEREAS, the Agency independently reviewed and considered the findings and conclusions of Addendum #1 to the Final EIR of the Uptown Mixed-Use Project; 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 proposed amendment to the LDDA; and

WHEREAS, notice of the amendment to the LDDA 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 approved the amendment to the LDDA by resolution after the public hearing; now, therefore, be it

RESOLVED: That the Agency hereby finds and determines: (1) that it has been presented and has independently reviewed and considered the information contained in the previously certified Final EIR for the Uptown Mixed-Use Project and Addendum #1, and (2) that none of the circumstances necessitating preparation of additional CEQA 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 (a) there are no substantial changes proposed in the Uptown Mixed-Use Project or the circumstances under which the Uptown Mixed-Use Project is undertaken that would

required major revisions of the due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (b) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); and be it further

RESOLVED: That the Redevelopment Agency hereby authorizes the Agency Administrator or his designee to negotiate and execute an amendment to the LDDA with UHP to (1) reduce the Agency Hazardous Materials Contribution by the Remediation Savings, and (2) reallocate up to \$182,000 of the Remediation Savings toward the construction cost of the public park at the Uptown Project (Phase 1); and to take any other action with respect thereto consistent with this Resolution and its basic purpose; and be it further

RESOLVED: That the Agency place the Remediation Savings from the remediation escrow into the Agency's Preservation Park Loan Repayment Fund (Fund 9562), Capital Improvement Project – Economic Development Organization (#94800), Retail/Entertainment Catalyst Development FY01 (Project P132780); and be it further

RESOLVED: That funding in an amount not to exceed \$182,000 toward the construction cost of the public park at the Uptown Project (Phase 1) will be available in the Agency's Preservation Park Loan Repayment Fund (Fund 9562), Capital Improvement Project – Economic Development Organization (#94800), Retail/Entertainment Catalyst Development FY01 (Project P132780), Agency Revenue Account (#48727) upon the deposit of the Remediation Savings from the remediation escrow; and be it further

RESOLVED: That the Agency finds and determines that this Resolution complies with CEQA and that the City Administrator or his or her designee is directed to file a Notice of Determination with the appropriate agencies within five (5) working days of this Resolution in accordance with CEQA guidelines; and be it further

RESOLVED: That the record before the Agency on this matter includes the information set forth in the Public Resources Code § 21167.6(e), including, without limitation, all final staff reports and final documentation and information produced by or on behalf of the City or Agency including without limitation the Draft EIR, the Final EIR and Addendum #1 for the Uptown Mixed-Use Project and supporting final technical studies and appendices, and all related and supporting material, and all final notices relating to the Uptown Mixed-Use Project and attendant hearings and meetings; all oral and written evidence received by the City Planning Commission, the Agency and City Council during the public hearings on the Uptown Mixed-Use Project; all written evidence received by relevant City and Agency staff before and during public hearings on the Project and appeal; and all matters of common knowledge and all official enactment of the City and Agency such as the General Plan and Oakland Municipal Code, other applicable City policies and regulations and all applicable state and federal laws, rules and regulations; and be it further

RESOLVED: That any and all documents necessary to effectuate the intent of this resolution shall be reviewed and approved as to form by the Agency Counsel prior to execution by the Agency Administrator or her designee; and be it

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 & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN,
REID AND CHAIRPERSON BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
Secretary of the Redevelopment
Agency of the City of Oakland

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 MAR 11 PM 1:53

APPROVED AS TO FORM AND LEGALITY:



Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A CITY RESOLUTION AUTHORIZING AN AMENDMENT TO THE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND, THE REDEVELOPMENT AGENCY AND UPTOWN HOUSING PARTNERS LP FOR THE DEVELOPMENT OF A MIXED-USE PROJECT IN THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA, COMMONLY KNOWN AS THE UPTOWN PROJECT (PHASE 1), TO: (A) REDUCE THE AGENCY'S CONTRIBUTION TOWARD HAZARDOUS MATERIALS ABATEMENT BY UP TO \$252,000, FROM \$4,085,600 TO \$3,833,600, RESULTING FROM REMEDIATION COST SAVINGS; AND (B) REALLOCATE UP TO \$182,000 OF THE REMEDIATION COST SAVINGS TOWARD THE CONSTRUCTION OF THE PUBLIC PARK IN THE UPTOWN PROJECT (PHASE 1)

WHEREAS, pursuant to City Resolution No. 79541 C.M.S., the City of Oakland ("City"), the Redevelopment Agency of the City of Oakland ("Agency") and Uptown Housing Partners (UHP) are parties to an amended and restated Lease Disposition and Development Agreement ("LDDA"), whereby UHP is the developer of a two block area (the "Property") in the Central District Urban Renewal Area commonly referred to as the Uptown Project (Phase 1) (the "Uptown Mixed-Use Project"); and

WHEREAS, the LDDA sets forth the terms and conditions whereby UHP may purchase and develop the Property; and

WHEREAS, the LDDA requires the Agency to contribute up to \$4,085,600 for hazardous materials remediation costs on the Property (the "Agency Hazardous Materials Contribution"); and

WHEREAS, UHP achieved savings on the Agency's behalf, which could equal up to \$252,000 plus interest, in remediating the Property (the "Remediation Savings") which currently is held in a remediation escrow established pursuant to the LDDA; and

WHEREAS, the parties to the LDDA desire to amend certain terms of the LDDA to (1) reduce the Agency Hazardous Materials Contribution by the Remediation

Savings, and (2) reallocate up to \$182,000 of the Remediation Savings toward the construction cost of the public park at the Uptown Project (Phase 1); and

WHEREAS, the City is the Lead Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"), and

WHEREAS, an Environmental Impact Report (EIR) (certified by the Planning Commission on February 18, 2004) , has been prepared for the Uptown Mixed-Use Project, including the Property, as proposed by Forest City, and has been independently reviewed and considered by the City in evaluating the Uptown Mixed-Use Project in compliance with CEQA, The Guidelines for Implementation of the California Environmental Quality Act (14 CCR Sections 15000, et seq., the "State EIR Guidelines"), and the City's Environmental Review Regulation; and

WHEREAS, the City, based on its review of the Planning Commission's action with respect to the Final EIR and other substantial evidence in the record, found and determined that the Final EIR for the Uptown Mixed-Use Project examined a reasonable range of alternatives, and that each alternative was rejected as feasible for various reasons; and

WHEREAS, the City adopted statements of overriding consideration specified in CEQA Guidelines §§ 15091, 15092 and 15093; and found and determined that the important benefits of the Uptown Mixed-Use Project identified in the Statement of Overriding Considerations each separately and independently outweigh the adverse environmental effects of the Uptown Mixed-Use Project; and

WHEREAS, on July 20, 2004, the City approved the Uptown Mixed-Use Project and a Notice of Determination was subsequently filed with Alameda County; and

WHEREAS, in March of 2006, 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"), prepared Addendum #1 to the Final EIR for the Uptown Mixed-Use Project, which specifically analyzed the potential for any new and/or increased environmental impacts related to relocating a 23-story tower element from Parcel 3 to Parcel 4 (which comprises the "Property") of the Uptown Mixed-Use Project Area, and includes analysis of cultural resources, aesthetics, and transportation, among other topics; and

WHEREAS, based on the analysis contained in the Final EIR and Addendum #1, there are no changes to the project or the circumstances under which the project will be undertaken, or new information of substantial importance, as specified in CEQA and the State EIR Guidelines, including without limitation, Public Resources Code Section 21166 and State EIR Guidelines Section 15162 and 15163, that require preparation of a subsequent or supplemental EIR; and

WHEREAS, the City independently reviewed and considered the findings and conclusions of Addendum #1 to the Final EIR for the Uptown Mixed-Use Project for applicability to the proposed amendment; and

WHEREAS, the EIR and Addendum #1 reflect the City's independent judgment and analysis; 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 proposed amendment to the DDA; and

WHEREAS, the Agency approved the amendment to the LDDA by resolution after the public hearing; and

WHEREAS, notice of the amendment to the LDDA 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; now, therefore, be it

RESOLVED: That the City hereby finds and determines (1) that it has been presented and has independently reviewed and considered the information contained in the previously certified Final EIR and Addendum #1, and (2) that none of the changes to the Uptown Mixed-Use Project, or circumstances under which it will be undertaken, or new information of substantial importance require preparation of a subsequent or supplemental EIR, as specified in CEQA and the State EIR Guidelines, including without limitation, Public Resources Code Section 21166 and State EIR Guidelines Section 15162 and 15163; and be it further

RESOLVED: That the City finds and determines that this Resolution complies with CEQA and that the City Administrator or his or her designee is directed to file a Notice of Determination with the appropriate agencies within five (5) working days of this Resolution in accordance with CEQA guidelines; and be it further

RESOLVED: That the City hereby approves the amendment to the LDDA to (1) reduce the Agency Hazardous Materials Contribution by the Remediation Savings, and (2) reallocate up to \$182,000 of the Remediation Savings toward the construction cost of the public park at the Uptown Project (Phase 1); and be it further

RESOLVED: That the City hereby authorizes the City Administrator or his designee to negotiate and execute an amendment to the LDDA with UHP, as set forth hereinabove and to take any other action with respect thereto consistent with this Resolution and its basic purpose; and be it further

RESOLVED: That the record before the City on this matter includes the information set forth in the Public Resources Code § 21167.6(e), including, without limitation, all final staff reports and final documentation and information produced by or on behalf of the City or Agency including without limitation the Draft EIR, the Final EIR and Addendum #1 for the Uptown Mixed-Use Project and supporting final technical studies and

appendices, and all related and supporting material, and all final notices relating to the Uptown Mixed-Use Project and attendant hearings and meetings; all oral and written evidence received by the City Planning Commission, the Agency and City Council during the public hearings on the Uptown Mixed-Use Project; all written evidence received by relevant City and Agency staff before and during public hearings on the Project and appeal; and all matters of common knowledge and all official enactment of the City and Agency such as the General Plan and Oakland Municipal Code, other applicable City policies and regulations and all applicable state and federal laws, rules and regulations; and be it further

RESOLVED: That any and all documents necessary to effectuate the intent of this resolution shall be reviewed and approved as to form by the City Attorney prior to execution by the City Administrator or his designee; 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 City'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.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID AND PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the
Council of the City of Oakland

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2009 MAR 11 PM 1:53

APPROVED AS TO FORM AND LEGALITY:



City Attorney

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

AN AGENCY RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO EXECUTE A LEASE WITH FC UPTOWN PARCEL 4 PARKING, LLC, OR RELATED ENTITIES, FOR A TERM OF UP TO 36 MONTHS TO RECONSTRUCT AND OPERATE A PARKING LOT AT 1911 TELEGRAPH AVENUE

WHEREAS, the Redevelopment Agency ("Agency") owns property located at 1911 Telegraph Avenue ("Property") in the Uptown Activity Area of the Central District Redevelopment Project Area; and

WHEREAS, the Property was previously occupied by a Sears Auto Center and a surface parking lot serving the patrons of the Sears department store and the public at large; and

WHEREAS, on February 27, 2007, pursuant to Resolution No. 2006-41 C.M.S., the Agency and FC Uptown Parcel 4 LLC (FC Uptown) entered into a Disposition and Development Agreement (DDA) for the Uptown Project (Phase 2), a proposed mixed-use residential project; and

WHEREAS, the DDA has been amended to extend the date for purchase of the Property by thirty-six (36) months; and

WHEREAS, there is a significant shortage of public parking in the Uptown Activity Area because of recent redevelopment activities that eliminated 1,100 parking spaces, including those previously provided on the Property; and

WHEREAS, FC Uptown Parcel 4 Parking, LLC, an affiliate of Forest City, has proposed to lease the Property from the Agency for up to thirty-six (36) months, and to reconstruct and operate an interim surface parking lot on the Property to serve businesses in the area during the lease term (the "Project"); and

WHEREAS, the Agency is a Responsible Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"); and

WHEREAS, the City of Oakland, as the Lead Agency for the Uptown Mixed-Use Project, for purposes of environmental review under the CEQA, previously prepared a focused Environmental Impact Report ("EIR") for the Uptown Mixed-Use Project as proposed by Forest City, which covered

the Property, 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 Oakland Planning Commission in accordance with CEQA Guidelines § 15090 certified that the Final EIR for the Uptown Mixed-Use Project was completed in compliance with CEQA and the Guidelines for Implementation of the California Environmental Quality Act (14 CCR sections 15000, et seq., the "State EIR Guidelines"), and the City's Environmental Review Regulations; and

WHEREAS, the Agency independently reviewed and considered the information contained in the Final EIR of the Uptown-Mixed Use Project; and

WHEREAS, the Agency, based on its review of the Planning Commission's action with respect to the Final EIR and other substantial evidence in the record, found and determined that the Final EIR for the Uptown Mixed-Use Project examined a reasonable range of alternatives, and that each alternative was rejected as infeasible for various reasons; and

WHEREAS, the Agency found and determined that all adverse environmental effects of the Uptown Mixed-Use Project would be less than significant or reduced to less-than-significant levels after adoption and implementation of the mitigation measures identified in the EIR and the mitigation and monitoring program; and

WHEREAS, the Agency adopted statements of overriding consideration specified in CEQA Guidelines §§ 15091, 15092 and 15093, and found and determined that the important benefits of the Uptown Mixed-Use Project identified in the Statement of Overriding Considerations each separately and independently outweigh the adverse unavoidable environmental effects of the Uptown Mixed-Use Project; and

WHEREAS, on July 20, 2004, the Agency approved the Uptown Mixed-Use Project and a Notice of Determination was subsequently filed with Alameda County; and

WHEREAS, in March of 2006, the City, as the Lead Agency for this Project for purposes of environmental review under CEQA, prepared Addendum #1 to the Final EIR for the Uptown Mixed-Use Project; and

WHEREAS, Addendum #1 to the Final EIR for the Uptown Mixed-Use Project specifically analyzed the potential for any new and/or increased environmental impacts related to relocating a 23-story tower element from Parcel 3 to the Property within the Uptown Mixed-Use Project area, and also included analysis of cultural resources, aesthetics, and transportation, among other topics; and

WHEREAS, based on the analysis included in the Final EIR and Addendum #1, none of the circumstances requiring preparation of a subsequent or supplemental EIR, as specified in CEQA and the State EIR Guidelines, including without limitation, Public Resources Code Section 21166 and State EIR Guidelines Section 15162 and 15163 are present in that (1) the proposed interim reconstruction and operation of the surface parking lot poses no new significant impacts or substantially more severe impacts than those originally analyzed in the 2004 FEIR; (2) there are no

changes to the project, new information, or changes in circumstances surrounding the project that would result in new significant environmental impacts or substantially more severe impacts from those previously identified in the 2004 FEIR and Addendum #1; (3) the circumstances under which the project is undertaken have not changed substantially since approval of the Final EIR and do not involve new significant impacts or a substantial increase in the severity of previously identified significant effects; and (4) there is no new information of substantial importance (as specified in CEQA Guidelines section 15162(a)(3)), which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified; and

WHEREAS, the Agency independently reviewed and considered the findings and conclusions of Addendum #1 to the Final EIR of the Uptown Mixed-Use Project for applicability to the proposed Project; 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 proposed amendment to the DDA; and

WHEREAS, notice of the amendment to the DDA 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 approved the amendment to the DDA by resolution after the public hearing; now, therefore, be it

RESOLVED: That the Agency hereby finds and determines: (1) that it has been presented and has independently reviewed and considered the information contained in the previously certified Final EIR for the Uptown Mixed-Use Project and Addendum #1, and (2) 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 21166 and CEQA Guidelines Section 15162, are present that that (a) there are no substantial changes proposed for the Uptown Mixed-Use 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 (b) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); and be it further

RESOLVED: That the Redevelopment Agency hereby authorizes the Agency Administrator or his designee to negotiate and execute an lease with FC Uptown Parcel 4 Parking, LLC for the reconstruction and operation of an interim surface parking lot for a term of up to thirty-six (36) months, and to take any other action with respect thereto consistent with this Resolution and its basic purpose; and be it further

RESOLVED: That the Agency place all net parking revenue into the Central District TAB Series 2006T (Fund 9535), Capital Improvement Project – Economic Development Organization (#94800), Uptown Forest 9535 (Project T245630); and be it further

RESOLVED: That the Agency finds and determines that this Resolution complies with CEQA and that the Agency Administrator or his or her designee is directed to file a Notice of Determination

with the appropriate agencies within five (5) working days of this Resolution in accordance with CEQA guidelines; and be it further

RESOLVED: That the record before the Agency on this matter includes the information set forth in the Public Resources Code § 21167.6(e), including, without limitation, all final staff reports and final documentation and information produced by or on behalf of the City or Agency including without limitation the Draft EIR, the Final EIR and Addendum #1 for the Uptown Mixed-Use Project and supporting final technical studies and appendices, and all related and supporting material, and all final notices relating to the Uptown Mixed-Use Project and attendant hearings and meetings; all oral and written evidence received by the City Planning Commission, the Agency and City Council during the public hearings on the Uptown Mixed-Use Project; all written evidence received by relevant City and Agency staff before and during public hearings on the Project and appeal; and all matters of common knowledge and all official enactment of the City and Agency such as the General Plan and Oakland Municipal Code, other applicable City policies and regulations and all applicable state and federal laws, rules and regulations; and be it further

RESOLVED: That any and all documents necessary to effectuate the intent of this resolution shall be reviewed and approved as to form by the Agency Counsel prior to execution by the Agency Administrator or his designee; 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 & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID AND CHAIRPERSON
BRUNNER

NOES-

ABSENT-

ABSTENTION-


ATTEST: _____

LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 MAR 11 PM 1:52

APPROVED AS TO FORM AND LEGALITY:


Agency Counsel

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

AN AGENCY RESOLUTION AUTHORIZING AN AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND FC UPTOWN PARCEL 4 LLC, FOR THE DEVELOPMENT OF A MIXED-USE PROJECT AT 1911 TELEGRAPH AVENUE, COMMONLY KNOWN AS THE UPTOWN PROJECT (PHASE 2), TO: (A) EXTEND THE DATE TO PURCHASE THE PROPERTY BY 36 MONTHS; AND (B) PLACE AN AMOUNT OF UP TO \$70,000 FROM THE SALES PROCEEDS IN ESCROW TO REIMBURSE FC UPTOWN PARCEL 4 LLC FOR CERTAIN HAZARDOUS MATERIALS ABATEMENT COSTS TO BE INCURRED DEVELOPING THE PROJECT

WHEREAS, pursuant to Resolution No. 2006-41 C.M.S, the Redevelopment Agency of the City of Oakland (Agency) and FC Uptown Parcel 4 LLC (FC Uptown) are parties to a Disposition and Development Agreement ("DDA") for the development of a mixed-use project at 1911 Telegraph Avenue (Property), commonly known as the Uptown Project (Phase 2) (the "Project"); and

WHEREAS, the DDA sets forth the terms and conditions whereby FC Uptown may purchase and develop the Property; and

WHEREAS, the parties to the DDA desire to amend certain terms of the DDA including, among other things, to (1) extend the date to purchase the Project by thirty-six (36) months until July 31, 2011; and (2) place an amount of up to \$70,000 from the sales proceeds in escrow to reimburse FC Uptown for certain hazardous materials abatement costs to be incurred by FC Uptown in connection with the development of the Property; and

WHEREAS, the Agency is a Responsible Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"); and

WHEREAS, the City, as the Lead Agency for the Uptown Mixed-Use Project, for purposes of environmental review under the CEQA, previously prepared a focused Environmental Impact Report ("EIR") for the Uptown Mixed-Use Project as proposed by Forest City, which covered the Property, 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 Oakland Planning Commission in accordance with CEQA Guidelines § 15090 certified that the Final EIR for the Uptown Mixed-Use Project was completed in compliance with CEQA and the Guidelines for Implementation of the California Environmental Quality Act (14 CCR sections 15000, et seq., the "State EIR Guidelines"), and the City's Environmental Review Regulations; and

WHEREAS, the Agency independently reviewed and considered the information contained in the Final EIR of the Uptown-Mixed Use Project; and

WHEREAS, the Agency, based on its review of the Planning Commission's action with respect to the Final EIR and other substantial evidence in the record, found and determined that the Final EIR for the Uptown Mixed-Use Project examined a reasonable range of alternatives, and that each alternative was rejected as infeasible for various reasons; and

WHEREAS, the Agency found and determined that all adverse environmental effects of the Uptown Mixed-Use Project would be less than significant or reduced to less-than-significant levels after adoption and implementation of the mitigation measures identified in the EIR and the mitigation and monitoring program; and

WHEREAS, the Agency adopted statements of overriding consideration specified in CEQA Guidelines §§ 15091, 15092 and 15093, and found and determined that the important benefits of the Uptown Mixed-Use Project identified in the Statement of Overriding Considerations each separately and independently outweigh the adverse unavoidable environmental effects of the Uptown Mixed-Use Project; and

WHEREAS, on July 20, 2004, the Agency approved the Uptown Mixed-Use Project and a Notice of Determination was subsequently filed with Alameda County; and

WHEREAS, in March of 2006, the City, as the Lead Agency for this Project for purposes of environmental review under CEQA, prepared Addendum #1 to the Final EIR for the Uptown Mixed-Use Project; and

WHEREAS, Addendum #1 to the Final EIR for the Uptown Mixed-Use Project specifically analyzed the potential for any new and/or increased environmental impacts related to relocating a 23-story tower element from Parcel 3 to the Property within the Uptown Mixed-Use Project area, and also included analysis of cultural resources, aesthetics, and transportation, among other topics, and;

WHEREAS, based on the analysis included in the Final EIR and Addendum #1, none of the circumstances requiring preparation of a subsequent or supplemental EIR, as specified in CEQA and the State EIR Guidelines, including without limitation, Public Resources Code Section 21166 and State EIR Guidelines Section 15162 and 15163 are present in that (1) there are no changes to the project, new information or changes in circumstances surrounding the project that would result in new significant environmental impacts or substantially more severe impacts from those previously identified in the 2004 FEIR and Addendum #1; (2) the circumstances under which the project is undertaken have not changed substantially since approval of the Final EIR and do not involve new significant impacts or a substantial increase in the severity of previously identified significant effects;

and (3) there is no new information of substantial importance (as specified in CEQA Guidelines 15162(a)(3), which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified; and

WHEREAS, the Agency independently reviewed and considered the findings and conclusions of Addendum #1 to the Final EIR of the Uptown Mixed-Use Project for applicability to the proposed Project; 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 proposed amendment to the DDA; and

WHEREAS, notice of the amendment to the DDA 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 approved the amendment to the DDA by resolution after the public hearing; now, therefore, be it

RESOLVED: That the Agency hereby finds and determines: (1) that it has been presented and has independently reviewed and considered the information contained in the previously certified Final EIR for the Uptown Mixed-Use Project and Addendum #1, and (2) 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 (a) there are no substantial changes proposed for the Uptown Mixed-Use 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 (b) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); and be it further

RESOLVED: That the Redevelopment Agency hereby authorizes the Agency Administrator or his designee to negotiate and execute an amendment to the DDA with FC Oakland to (1) extend the date to purchase the Property by thirty-six (36) months until July 31, 2011; and (2) place an amount of up to \$70,000 from the sales proceeds in escrow to reimburse FC Uptown for certain hazardous materials abatement costs to be incurred by FC Uptown in connection with the development of the Property, and to take any other action with respect thereto consistent with this Resolution and its basic purpose; and be it further

RESOLVED: That the Agency finds and determines that this Resolution complies with CEQA and that the Agency Administrator or his or her designee is directed to file a Notice of Determination with the appropriate agencies within five (5) working days of this Resolution in accordance with CEQA guidelines; and be it further

RESOLVED: That the record before the Agency on this matter includes the information set forth in the Public Resources Code § 21167.6(e), including, without limitation, all final staff reports and final documentation and information produced by or on behalf of the City or Agency including without limitation the Draft EIR, the Final EIR and Addendum #1 for the Uptown Mixed-Use Project

and supporting final technical studies and appendices, and all related and supporting material, and all final notices relating to the Uptown Mixed-Use Project and attendant hearings and meetings; all oral and written evidence received by the City Planning Commission, the Agency and City Council during the public hearings on the Uptown Mixed-Use Project; all written evidence received by relevant City and Agency staff before and during public hearings on the Project and appeal; and all matters of common knowledge and all official enactment of the City and Agency such as the General Plan and Oakland Municipal Code, other applicable City policies and regulations and all applicable state and federal laws, rules and regulations; and be it further

RESOLVED: That any and all documents necessary to effectuate the intent of this resolution shall be reviewed and approved as to form by the Agency Counsel prior to execution by the Agency Administrator or his designee; 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 & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID AND CHAIRPERSON BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 MAR 11 PM 1:53

APPROVED AS TO FORM AND LEGALITY:



Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A CITY RESOLUTION APPROVING AN AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND FC UPTOWN PARCEL 4 LLC, FOR THE DEVELOPMENT OF A MIXED-USE PROJECT AT 1911 TELEGRAPH AVENUE, COMMONLY KNOWN AS THE UPTOWN PROJECT (PHASE 2), TO: (A) EXTEND THE DATE TO PURCHASE THE PROPERTY BY 36 MONTHS; AND (B) PLACE AN AMOUNT OF UP TO \$70,000 FROM THE SALES PROCEEDS IN ESCROW TO REIMBURSE FC UPTOWN PARCEL 4 LLC FOR CERTAIN HAZARDOUS MATERIALS ABATEMENT COSTS TO BE INCURRED IN DEVELOPING THE PROJECT

WHEREAS, pursuant to Resolution No. 79910 C.M.S, the City approved a Disposition and Development Agreement ("DDA") between the Redevelopment Agency of the City of Oakland (Agency) and FC Uptown Parcel 4 LLC (FC Uptown) for the development of a mixed-use project at 1911 Telegraph Avenue (Property), commonly known as the Uptown Project (Phase 2) (the "Project"); and

WHEREAS, the DDA sets forth the terms and conditions whereby FC Uptown may purchase and develop the Property; and

WHEREAS, the parties to the DDA desire to amend certain terms of the DDA including, among other things, to (1) extend the date to purchase the Project by thirty-six months until July 31, 2011; and (2) place an amount of up to \$70,000 from the sales proceeds in escrow to reimburse FC Uptown for certain hazardous materials abatement costs in to be incurred by FC Uptown in connection with the development of the Property; and

WHEREAS, the City is the Lead Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"), and

WHEREAS, an Environmental Impact Report (EIR) (certified by the Planning Commission on February 18, 2004) , has been prepared for the Uptown Mixed-Use

Project, including the Property, as proposed by Forest City, and has been independently reviewed and considered by the City in evaluating the Uptown Mixed-Use Project in compliance with CEQA, The Guidelines for Implementation of the California Environmental Quality Act (14 CCR Sections 15000, et seq., the "State EIR Guidelines"), and the City's Environmental Review Regulation; and

WHEREAS, the City, based on its review of the Planning Commission's action with respect to the *Final EIR and other substantial evidence in the record*, found and determined that the Final EIR for the Uptown Mixed-Use Project examined a reasonable range of alternatives, and that each alternative was rejected as feasible for various reasons; and

WHEREAS, the City adopted statements of overriding consideration specified in CEQA Guidelines §§ 15091, 15092 and 15093; and found and determined that the important benefits of the Uptown Mixed-Use Project identified in the Statement of Overriding Considerations each separately and independently outweigh the adverse environmental effects of the Uptown Mixed-Use Project; and

WHEREAS, on July 20, 2004, the City approved the Uptown Mixed-Use Project and a Notice of Determination was subsequently filed with Alameda County; and

WHEREAS, in March of 2006, 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"), prepared Addendum #1 to the Final EIR for the Uptown Mixed-Use Project, which specifically analyzed the potential for any new and/or increased environmental impacts related to relocating a 23-story tower element from Parcel 3 to Parcel 4 (which comprises the "Property") of the Uptown Mixed-Use Project Area, and includes analysis of cultural resources, aesthetics, and transportation, among other topics; and

WHEREAS, based on the analysis contained in the Final EIR and Addendum #1, there are no changes to the project or the circumstances under which the project will be undertaken, or new information of substantial importance, as specified in CEQA and the State EIR Guidelines, including without limitation, Public Resources Code Section 21166 and State EIR Guidelines Section 15162 and 15163, that require preparation of a subsequent or supplemental EIR; and

WHEREAS, the City independently reviewed and considered the findings and conclusions of *Addendum #1 to the Final EIR for the Uptown Mixed-Use Project* for applicability to the proposed amendment; and

WHEREAS, the EIR and Addendum #1 reflect the City's independent judgment and analysis; 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 proposed amendment to the DDA; and

WHEREAS, notice of the amendment to the DDA 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 Agency approved the amendment to the DDA by resolution after the public hearing; now, therefore, be it

RESOLVED: That the City hereby finds and determines (1) that it has been presented and has independently reviewed and considered the information contained in the previously certified Final EIR and Addendum #1, and (2) that none of the changes to the Uptown Mixed-Use Project, or circumstances under which it will be undertaken, or new information of substantial importance require preparation of a subsequent or supplemental EIR, as specified in CEQA and the State EIR Guidelines, including without limitation, Public Resources Code Section 21166 and State EIR Guidelines Section 15162 and 15163; and be it further

RESOLVED: That the City finds and determines that this Resolution complies with CEQA and that the City Administrator or his or her designee is directed to file a Notice of Determination with the appropriate agencies within five (5) working days of this Resolution in accordance with CEQA guidelines; and be it further

RESOLVED: That the City hereby approves the amendment to the DDA including, among other things, to (1) extend the date to purchase the Project by thirty-six months until July 31, 2011; and (2) place an amount of up to \$70,000 from the sales proceeds in escrow to reimburse FC Uptown for certain hazardous materials abatement costs to be incurred by FC Uptown in connection with the development of the Property, subject to and on the terms and conditions of the DDA; and be it further

RESOLVED: That the record before the City on this matter includes the information set forth in the Public Resources Code § 21167.6(e), including, without limitation, all final staff reports and final documentation and information produced by or on behalf of the City or Agency including without limitation the Draft EIR, the Final EIR and Addendum #1 for the Uptown Mixed-Use Project and supporting final technical studies and appendices, and all related and supporting material, and all final notices relating to the Uptown Mixed-Use Project and attendant hearings and meetings; all oral and written evidence received by the City Planning Commission, the Agency and City Council during the public hearings on the Uptown Mixed-Use Project; all written evidence received by relevant City and Agency staff before and during public hearings on the Project and appeal; and all matters of common knowledge and all official enactment of the City and Agency such as the General Plan and Oakland Municipal Code, other applicable City policies and regulations and all applicable state and federal laws, rules and regulations; and be it further

RESOLVED: That any and all documents necessary to effectuate the intent of this resolution shall be reviewed and approved as to form by the City Attorney prior to execution by the City Administrator or his designee; 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 City'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.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN,
 REID AND PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
 LATONDA SIMMONS
 City Clerk and Clerk of the
 Council of the City of Oakland