

REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
OAKLAND
2005 MAY 12 PM 7:11

TO: Office of the City Manager / Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: May 24, 2005

RE: **A TOTAL OF FOUR CITY AND AGENCY RESOLUTIONS REGARDING REDEVELOPMENT ACTIVITIES IN THE UPTOWN ACTIVITY AREA OF THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA:**

AGENCY AND CITY RESOLUTIONS APPROVING AND AUTHORIZING EXECUTION OF: (1) AMENDMENTS TO A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASE, AND RELATED DOCUMENTS BETWEEN THE REDEVELOPMENT AGENCY, THE CITY OF OAKLAND, AND FC OAKLAND, INC. (SUCCESSOR TO UPTOWN PARTNERS, LLC), 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 INCREASING THE PROPERTY ACQUISITION CEILING FROM \$14,195,000 TO \$16,995,000, AND INCREASING THE AGENCY CONTRIBUTION TOWARD HAZARDOUS MATERIALS ABATEMENT FROM \$2,585,600 TO \$4,085,600; AND (2)(A) A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY, THE AGENCY AND SEARS DEVELOPMENT COMPANY FOR THE AGENCY'S ACQUISITION OF PROPERTY LOCATED AT 1911 TELEGRAPH AVENUE FOR PURCHASE CONSIDERATION EQUAL TO AN AMOUNT NOT TO EXCEED \$12.5 MILLION; AND (B) A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASE AND RELATED DOCUMENTS BETWEEN THE AGENCY AND SEARS, DEVELOPMENT COMPANY FOR THE CONSTRUCTION OF A SEARS AUTO CENTER ON TWO PROPERTIES LOCATED AT 2000-2016 TELEGRAPH AVENUE AND 490 THOMAS L. BERKLEY WAY.

SUMMARY

The Community and Economic Development Agency (CEDA) is recommending approval of two Agency and two City resolutions regarding redevelopment activities in the Uptown Activity Area of the Central District Redevelopment Project Area. Specifically, staff is proposing that the City Council and the Redevelopment Agency take the following actions:

Item: _____
Community and Economic Development Committee
May 24, 2005

- Authorize execution of certain amendments to a lease disposition and development agreement (the "LDDA"), a ground lease (the "Ground Lease"), and related documents between the Agency, the City of Oakland and FC Oakland, Inc, a California Corporation ("FC Oakland"), successor to Uptown Partners, LLC, for the development of a mixed-use rental housing and retail development project (the "Uptown Project") in the area generally bounded by Thomas L. Berkley Way (formerly 20th Street) on the north, Telegraph Avenue on the east, 19th Street on the south and San Pablo Avenue on the west (the "Uptown Project Area"). FC Oakland is a corporate entity established by Forest City Residential West, Inc. ("Forest City") specifically for the development of the Uptown Project.
- Authorize the Agency Administrator and City Administrator to negotiate a Purchase and Sales Agreement (the "Purchase Agreement") with Sears Development Co. ("Sears") for the acquisition of the Sears-owned property 1911 Telegraph Avenue (the "Property") for purchase consideration equal to an amount not to exceed \$12.5 million.
- Authorize a disposition and development agreement (the "DDA"), ground lease and related documents between the Agency and Sears for the construction of a Sears Auto Center on two properties located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkley Way (the "Hahn Properties").

The LDDA Amendments

The LDDA Amendments are as follows:

- The Agency will increase the site assembly cost acquisition ceiling by \$2.8 million, from \$14,195,000 to \$16,995,000, to allow for the Agency's acquisition of the Sears-owned Property.
- The Agency will increase its contribution to the hazardous materials cleanup costs of the Project site by \$1.5 million, from \$2,585,600 to \$4,085,600. The additional funding is subject to a cost sharing agreement between the Agency and FC Oakland, as more particularly described in the Key Impacts section of this report.

Sears Purchase and Sales Agreement

Agency staff is recommending that the Council approve a Purchase Agreement with Sears for the Agency's acquisition of the Property. Total purchase consideration to Sears for the Property will be in an amount not to exceed \$12.5 million. Staff further recommends that closing of the transaction with Sears be contingent upon the Agency's success in negotiating an agreement with ChevronTexaco under which ChevronTexaco would pay part of the environmental remediation costs for the former service station at the Property. Generally, the Agency and Sears have agreed to the following terms and conditions:

- Cash. The Agency will pay to Sears \$9,700,000, subject to reduction pursuant to a \$350,000 environmental holdback escrow.

- Environmental Hold-back. Sears has agreed that \$350,000 of the purchase price the Agency pays will remain in an escrow account for at least 36 months and will be used to fund a portion of the environmental cleanup of the Property.
- New Sears Auto Center Site. The Agency will enter into a DDA with Sears for the properties located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkley Way for the purpose of enabling Sears to build a new Sears Auto Center.
- Leaseback of Existing Sears Auto Center to Sears. After the Agency buys Sears' Property, the Agency will lease back to Sears for 20 months that portion of the Property currently occupied by the Sears Auto Center and related surface parking to allow Sears to build its new auto center. The leaseback period currently is estimated to be 20 months.
- Sears' Employee Parking Spaces. The City will provide to Sears at no cost fifty (50) non-exclusive parking spaces in the garage located at 2101 Telegraph for the earlier of 25 years or until Sears no longer operates a department store in downtown Oakland.

The DDA for the new Sears Auto Center

The proposed Purchase Agreement with Sears requires the Agency to enter into a DDA and ground lease with Sears for the Agency's interests in two parcels located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkley Way currently owned by the Hahn family. These parcels are located outside the Project Area, but are adjacent to Sears' retail store in downtown Oakland. The ground lease will allow Sears to relocate its existing Sears Auto Center, an integral component of Sears' retail operations in downtown Oakland, from the Property, and build a new Sears Auto Center and related facilities on the Hahn properties. The Agency determined that ground lease of the properties, which are currently in eminent domain proceedings, will retain the integrity of Sears' department store operations and its attendant parking and automotive facilities. Sears operates the only major retail department store in the downtown area and thus controls a key element contributing to the revitalization of this central downtown district.

The Agency currently has legal possession of the Hahn Properties, but will not acquire fee title to them until the eminent domain actions are successfully concluded. Per the proposed DDA, the Agency will ground lease its interests in the Hahn Properties to Sears for 30 years (with an option to extend for up to 69 more years) so Sears can relocate its existing automotive facilities by building a new Auto Center on the Hahn Properties. Sears will pay \$1.00 annual rent under the ground lease. When the Agency acquires actual fee title to the Hahn Properties after the eminent domain actions are concluded, Sears will be able to buy the Agency's fee interests for \$1.00. The proposed DDA will govern the schedule and submission requirements for the development of the Sears Auto Center. A term sheet for the DDA is attached as Exhibit A.

FISCAL IMPACT

Pursuant to Agency Resolution 2004-38 C.M.S., the Agency appropriated \$14,100,000 from the Central District Tax Allocation Bond Series 2003 (Fund 9532, Project T245610) and

\$95,000 from the Central District Tax Allocation Bond Series 1986 (Fund 9516, Project P221520) to cover all site acquisition costs for the Uptown Project. Pursuant to the same resolution, the Agency appropriated \$200,000 from Central District Grants (Fund 9215) and \$2,385,600 million from Preservation Park Land Sale Proceeds to cover the Agency's initial contribution towards the cost of hazardous materials remediation.

The additional funds for site acquisition in the amount of \$2,800,000 will be appropriated from the Central District Tax Allocation Bond Series 2005 (Fund 9533, Project P103460), and the extra \$1,500,000 for hazardous materials remediation will also be appropriated out of the Central District Tax Allocation Bond Series 2005 (Fund 9533, Project P 103450). These funds from the Central District Tax Allocation Bond Series 2005 have been included in the Agency's proposed capital project budget request for Fiscal Year 2005-07. Hence, these funds will not be available until July 1, 2005, which marks the beginning of Fiscal Year 2005-06.

The additional requested funds for site acquisition and hazardous materials abatement will increase the Agency's total funding contribution to the Uptown Project, exclusive of the separate affordable housing development to be developed behind the Fox Theater, from \$55.7 million to \$60 million.

BACKGROUND

On July 20, 2004, the Agency approved Resolution No. 2004-38 C.M.S., and the City approved Resolution No. 78728 C.M.S., authorizing the Agency Administrator and the City Administrator to enter into a LDDA, ground lease and related documents with Uptown Partners, LLC, predecessor to FC Oakland, a single purpose entity Forest City formed to develop the Uptown Project. The LDDA was executed on October 14, 2004. Among other obligations on the part of the Agency, City and FC Oakland, the LDDA sets forth the following:

- The Agency is responsible for the assembly and transfer of 38 properties comprising the Uptown Project Area to FC Oakland, Inc.¹ Before it approved the LDDA, the Agency had acquired 30 parcels. The LDDA establishes a cost ceiling of \$14.2 million for the acquisition of the 8 remaining properties, which include the 3-acre Property owned by Sears. The LDDA gives the Agency the option to terminate the LDDA if the Agency has to pay more than \$14.2 million on property acquisition, unless FC Oakland elects to pay the amount above the cost ceiling. The Agency allocated \$9.7 million of the \$14.2 million to acquire the Property and the remaining \$4.5 million for all other site assembly costs.
- The Agency has allocated \$2,585,600 for hazardous materials remediation activities in the Uptown Project Area. The LDDA also incorporates an incremental cost sharing plan (subject to Council approval) agreed to by Agency staff and FC Oakland, which covers potential additional remediation costs that exceed the initial allocation of \$2,585,600.

¹ The LDDA provides that the Agency has sole and absolute discretion whether to acquire any property by eminent domain, and that the Agency will have no liability whatsoever to FC Oakland if the Agency elects not to acquire any property.

This cost sharing agreement, if approved, would commit the Agency to spend up to an additional \$1.5 million toward remediation costs, thereby increasing the Agency's total financial contribution to the Uptown Project for hazardous materials remediation from \$2,585,600 million to potentially \$4,085,600 million. FC Oakland would pay up to another \$1.5 million. FC's contribution would increase total available remediation cost funding to \$5,585,600, to cover total potential cleanup costs of up to \$5.2 million plus any additional liability arising out of Sears' limited financial contribution to the remediation of benzene related contamination on its Property, as described in more detail in the Key Impacts section of this report.

PROJECT DESCRIPTION

The LDDA and Ground Lease Business Terms

The LDDA and the Ground Lease include the following business terms:

- The Agency will assemble and lease certain Agency-owned properties in the Uptown Project Area to FC Oakland.
- The Agency will seek to acquire, at its sole and absolute discretion, and at its sole expense (up to \$14.2 million), additional parcels in the Uptown Project Area, including the Sears-owned Property, and lease these to FC Oakland under the Ground Lease.
- The Ground Lease will have an initial term of 66 years, and an option to extend the lease term by an additional 33 years.
- FC Oakland will develop at least 700 residential units, including 25 percent affordable units in the Uptown Project Area, in two project phases.
- FC Oakland will also develop at least 14,500 square feet of neighborhood-serving commercial space and parking facilities in the Uptown Project Area.
- The Agency and the City will provide the following financial assistance to FC Oakland to ensure the financial feasibility of the Uptown Project:
 - (1) Annual Agency reimbursements of the net available tax increment to be collected from the Uptown Project, and, if necessary, Agency reimbursement of up to an amount measured by FC Oakland's actual payment of Business Taxes to the City. The Agency will make these two payments to FC Oakland until 2020. The Agency's payments shall not exceed a maximum combined present value of approximately \$12.1 million.
 - (2) Direct Agency financial assistance in an amount not to exceed \$8.3 million dollars.
 - (3) Direct City financial assistance in an amount not to exceed \$5.3 million dollars.
- FC Oakland, in consideration of the financial assistance provided by the Agency and City, will pay to the Agency:

- (1) Participation rent based on FC Oakland's cash flow from the Uptown Project, after receipt of a specified preferred return on equity (12% per year), until the Agency and the City have been fully repaid the financing assistance to the project.
- (2) A share of net proceeds from sale of the Uptown Project, and a share of net proceeds from refinancing (subject to the availability of sufficient proceeds from such a refinancing) the first mortgage for the Uptown Project to repay the City's and Agency's financial assistance amount.

The Agency has assigned all payments to the City.

- The City will provide funding in an amount not to exceed \$1.0 million to FC Oakland for the design and construction of a public park on a 25,000 square-foot parcel of land located in the Uptown Project Area to be owned by the City or the Agency.
- The Agency will reimburse FC Oakland in an amount not to exceed \$5.7 million for the costs of any off-site improvements required by the Uptown Project and the affordable housing project behind the Fox Theater.
- The Agency will reimburse FC Oakland for the costs associated with any hazardous materials cleanup in the Uptown Project Area in an amount not to exceed \$2,585,600.

The Sears Property

As part of the site assembly for the Uptown Project, the Agency plans to acquire Sears' Property. The Property comprises almost a full block between William Street to the north, Telegraph Avenue to the east, 19th Street to the south and San Pablo Avenue to the west. The total land area for the entire parcel is approximately 132,900 square feet. The Property is improved with a four-story garage structure that provides 620 parking spaces for Sears' customers and the public, a free-standing Sears Auto Center on Telegraph Avenue across from Sears' department store and an auto service station building that is no longer in use. In addition, the site includes about 125 surface parking spaces for Sears' staff and patrons. The Sears Auto Center is an integral part of Sears' department store and contributes significantly to Sears' retail operation revenues in downtown Oakland.

FC Oakland plans to create a new street which will bisect the Property and create two new Parcels known as Parcel 2 and Parcel 4. Parcel 2 will be developed as part of the first phase of the Uptown Project and Parcel 4 will be the second phase.

KEY IMPACTS

Site Assembly and the Sears Property

Before it approved the LDDA, the Agency had acquired 30 parcels in the Uptown Project Area at a total cost of approximately \$6.5 million, including demolition and relocation expenses. FC Oakland also owns 3 parcels in the Project area. The LDDA establishes a cost ceiling of \$14.2 million for the acquisition of the 8 remaining properties, which include the 3-acre Property

owned by Sears. The Agency allocated \$9.7 million of the \$14.2 million to acquire the Property and the remaining \$4.5 million for all other site assembly costs. The LDDA gives the Agency the option to terminate the LDDA if the Agency has to pay more than \$14.2 million on property acquisition, unless FC Oakland elects to pay the amount above the ceiling.

After LDDA approval, the Agency obtained possession of 7 additional properties and 6 billboards by filing eminent domain actions against the owners. As required by eminent domain law, the Agency deposited its appraised fair market value for the properties (\$3.3 million) with the State Condemnation Deposit Fund.² The Agency has also spent \$125,000 on residential and business relocation. The Agency will need the remaining \$1.1 million to pay for additional residential and business relocation and legal settlement costs that were budgeted for acquiring those properties not owned by Sears. If settlement negotiations or court judgments result in condemnation prices that exceed available funding, staff will return to the Council to seek additional appropriations to cover such site assembly expenses.

The Agency also deposited into the State Condemnation Deposit Fund the fair market value of \$1.6 million for the purchase of two properties owned by the Hahn Trust that are subject to the proposed transaction with Sears. The Agency has expended \$5.0 million on site assembly cost to date, leaving an available balance of \$9.2 million toward the \$14.2 LDDA acquisition cost ceiling. Once the extra \$1.1 million needed for relocation and legal settlement costs are subtracted from the \$9.2 million, the Agency has a remaining cash balance of \$8.1 million and the market value of the Hahn Properties (\$1.6 million) to complete the acquisition of the Property from Sears. The proposed purchase terms for the Sears Property (which equal a total purchase consideration of \$12.5 million) will exceed the current acquisition cost ceiling by \$2.8 million. In order for the Uptown Project to proceed, the Agency may waive its right to terminate the LDDA and proceed with the Property acquisition or require FC Oakland to pay for the additional acquisition costs. However, FC Oakland has declined to assume any extra site acquisition costs because it will impair the financial feasibility of the Project. Alternatively, the Agency could elect to terminate the LDDA.

The Purchase Agreement for the Sears Property

Agency staff has been in discussions with Sears over the acquisition of the Property for almost 5 years. During this time, there were major and numerous personnel changes that affected the Agency's as well as Sears' negotiation teams. FC Oakland had also committed to assist the Agency in its negotiation efforts, but their contacts at Sears' Real Estate Division were removed from their positions in early 2004. Changes in the top real estate positions at Sears in 2003 and 2004 further complicated negotiations. More recently, the corporate merger between Kmart and Sears that took place in November of 2004 cast further doubts on the prospects of reaching a deal with the new corporate entity over the sale of its Property in Oakland. Despite

² The Agency's deposit does not finally determine the price the Agency must pay for the properties it is seeking to condemn, although it is a reflection of the fair market value of the property at the time of initiating eminent domain proceedings. The actual condemnation prices will be established only when the parties settle, or, if the parties cannot settle, after a jury or judge determines what the Agency is required to pay the landowners.

these significant obstacles, in early April, Agency staff and Sears were able to reach general agreement on business terms for the transaction.

Prior to Council approval of the LDDA, the Agency estimated the fair market value for the Sears Property to be approximately \$9.7 million or \$75.00 per square foot. On October 22, 2004, the Agency received a new appraisal for the Property, which determined a fair market value of \$12.6 million, or \$95.00 per square foot. This significant appreciation is largely attributable to rapidly rising property values in downtown Oakland and the Uptown Area, which are driven by speculation and strong demand for underutilized properties that are ideal candidates for the development of for-sale residential projects. Staff based its negotiations with Sears' team on the most recent appraisal because Sears (which prepared its own in-house appraisal) would not accept any compensation that was significantly below the current fair market value of the Property.

The proposed business terms with Sears reflect a total purchase consideration of \$12.5 million. The Agency's remaining acquisition funds available total \$9.7 million (the fair market value of \$1.6 million for the Hahn Properties plus the Agency's remaining cash balance for the Sears Property of \$8.1 million). The additional funding required to complete the purchase from Sears will exceed the LDDA's acquisition cost ceiling for the Uptown properties by \$2.8 million.

The proposed business terms for the Property acquisition are as follows:

1. Cash. The Agency will pay to Sears \$9,700,000, subject to reduction pursuant to a \$350,000 environmental holdback escrow (see below).
2. Environmental Hold-back. Sears has agreed that \$350,000 of the purchase price the Agency pays will remain in an escrow account for at least 36 months and will be used to fund a portion of the environmental cleanup of the Property (see below). Preliminary estimates of the cleanup costs from ChevronTexaco range from \$1.2 to \$1.5 million. Any funds remaining in the Environmental Hold-back account after cleanup completion will be released to Sears.
3. New Sears Auto Center Site. As noted above, the Agency has commenced eminent domain actions and deposited \$1.6 million with the State Condemnation Deposit Fund to acquire two properties owned by the Hahn family located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkley Way. The Hahn Properties are outside the Uptown Project area, but are across the street on Telegraph Avenue from Sears' downtown Oakland department store. The Agency will enter into a DDA and Ground lease with Sears for the Hahn Properties for the purpose of enabling Sears to build a new Sears Auto Center.
4. Leaseback of Existing Sears Auto Center to Sears. After the Agency buys Sears' Property, the Agency will lease back to Sears that portion of the Property currently occupied by the Sears Auto Center and related surface parking, which measures approximately 15,000 square feet. The leaseback will give Sears time to build its new

Auto Center on the Hahn properties site. The current estimated leaseback period is approximately 20 months. The value of the leaseback arrangement is estimated to be approximately \$240,000, or 10 percent per year of the property value.

5. Sears' Employee Parking Spaces. The City will provide to Sears at no cost fifty (50) non-exclusive parking spaces in the garage located at 2101 Telegraph for the earlier of 25 years or until Sears no longer operates a department store in downtown Oakland, whichever occurs first. The value of the Parking License is estimated to be approximately \$960,000.

The DDA with Sears for the Hahn properties

Pursuant to the Purchase Agreement with Sears, the Agency and Sears will enter into a DDA and ground lease with an option to purchase the Hahn Properties for the purpose of building a new Sears Auto Center and related facilities. The Agency currently has legal possession of the Hahn Properties, but will not acquire fee title to them until the eminent domain proceedings are successfully concluded. The Agency will ground lease the Hahn Properties to Sears for 30 years (with an option to extend for up to 69 more years) so Sears can build a new Auto Center on the Hahn Properties. Sears will pay \$1.00 annual rent under the ground lease. Upon the successful conclusion of the eminent domain action and Agency receipt of fee title to the Hahn Properties, Sears will have the option to buy the Agency's fee interests for \$1.00.

The DDA requires Sears to develop a new Auto Center within a reasonable period of time (to be negotiated) after execution of the DDA. In the event that Sears is unable to complete such development, the Agency has the right to repurchase the property on the terms to be set forth in the DDA. The DDA provides the Agency will approval rights over the design. It also requires that Sears provide evidence of sufficient financing to build the new Auto Center.

Environmental Contamination on the Sears Property

In late 2003, the Agency learned that certain samples from groundwater monitoring wells installed on the Property by Emporium Capwell in 1988 and 1993, respectively, for the first time showed high concentrations of petroleum hydrocarbons in the vicinity of the abandoned gasoline service station location. Subsequent testing on the Property in June of 2004 confirmed that releases of petroleum hydrocarbons from previously excavated underground storage tanks had impacted subsurface soils and groundwater at the Property.

Agency research indicated that ChevronTexaco operated the gas station on the Property from 1962 until 1978, and that Emporium Capwell managed it from 1979 to 1988. Sears, as the current owner of the site, is liable under state law for costs associated with the contamination on and migrating from its property.

After the Agency contacted ChevronTexaco in the fall of 2004, the parties met and conferred about the nature and extent of the petroleum contamination and methods by which such contamination could be cleaned up consistent with the redevelopment objectives and

schedules contemplated in the LDDA. ChevronTexaco agreed to take the lead on developing an appropriate cleanup plan and to pay 62 percent of the costs associated with the cleanup. ChevronTexaco based the calculation of its share of costs on a "site tenure" formula that divides the number of years during which ChevronTexaco managed the gas station by the total number of years of garage operation. Based on ChevronTexaco's calculation, some combination of Sears and Emporium Capwell is responsible for the remaining 38 percent of total remediation costs.³

At this time, ChevronTexaco is prepared to test a remediation approach that is consistent with the objectives of a Remedial Action Plan/Risk Management Plan ("RAP/RMP"). A RAP/RMP for a contaminated site describes cleanup methods and goals that will be implemented to achieve the redevelopment objectives for the area. The RAP/RMP for the Project Area was prepared by the Agency and FC Oakland in cooperation with the California Regional Water Quality Control Board, San Francisco Bay Region (the "Regional Board"). The RAP/RMP bases the ultimate cleanup goals for the Sears Property on the anticipated residential project to be developed there. However, Sears has insisted that it should not have to comply with cleanup goals associated with residential redevelopment of the Property because Sears would only remediate the Property to a cleanup level required to permit on-going operation of the public parking facilities and the Sears Auto Center.

ChevronTexaco's initial estimates indicate a total cleanup cost between \$1.2 million and \$1.5 million for the Property. Sears' alternative cleanup approach may cost considerably less because it would not require the same amount of soil excavation, nor rely on ChevronTexaco's faster, but more costly groundwater cleanup method that is designed to meet FC Oakland's project development schedule. As a result, Sears has maintained that its exposure be limited to \$350,000 (or approximately 38 percent of \$921,000). Agency staff and FC Oakland have conceptually agreed to share any additional remediation costs allocable to Sears (i.e. applied to the Sears 38 percent liability) pursuant to the current incremental cost sharing arrangement outlined in the LDDA, which is subject to the proposed LDDA amendment that is also addressed in this report. If the Agency and FC Oakland split the remediation cost differential between Sears' payment and 38 percent of the higher Chevron's estimate of \$1.5 million, then the Agency and FC Oakland would be responsible for \$110,000 each. This amount would be covered by the funding contributions of up to \$1.5 million that would each be made by the Agency and FC Oakland pursuant to the recommended incremental cost-sharing approach.

FC Oakland has expressed its strong preference to limit its potential liability for the share of cleanup costs that exceed Sears' contribution of \$350,000. As a result, FC Oakland has

³ Under applicable environmental statutes, Sears and ChevronTexaco could be found jointly and severally liable for the cleanup costs, meaning either could be forced to pay for 100 percent of the costs. However, each of them also has a valid argument that their liability should be apportioned (i.e. several but not joint and several) based on some measure of their relative contributions to the problem. ChevronTexaco's tenure-based formula is a fairly common apportionment method for sites where on business with multiple historic owners/operators has caused the contamination. Regardless of whether the liability for a particular site would be found to be joint and several, or only several, it is very common for responsible parties like ChevronTexaco and Sears to allocate cleanup costs amongst themselves based on some type of mutually acceptable formula. Negotiated resolutions allow the parties to consider a wide variety of factors and to avoid litigation costs.

proposed an alternative which would include ChevronTexaco's cleanup work on the Sears Property in the scope of work for the fixed-price contractor that will be responsible for the required cleanup in the remaining Project Area. Under this scenario, ChevronTexaco would pay a fixed amount that represents 62 percent of total projected remediation costs. ChevronTexaco's remediation scope would then be completed by the fixed-price contractor for a set price. Any cost overruns would be covered by the remediation cost cap insurance policy. This approach is only workable if ChevronTexaco is willing to pay to the Agency an amount in excess of \$1.1 million in order to be relieved from its cleanup responsibility. This amount plus Sears' contribution would cover the projected cleanup cost range for the contamination on the Sears Property of \$1.2 to \$1.5 million, with no further cost to the Agency.

Agency negotiations with ChevronTexaco can yield two outcomes. ChevronTexaco will either contribute a lump sum cash payment toward a separate guaranteed fixed-price contract that would include the remediation of benzene on the Sears Property, or ChevronTexaco will take the lead in remediating the benzene contamination on the Sears Property and pay 62 percent of all related costs. *The final agreement with ChevronTexaco will depend on how much ChevronTexaco would be prepared to pay in cash toward a separate fixed-price contract.* If the Agency and ChevronTexaco reach an agreement that embodies the latter of the two scenarios, the Agency and FC Oakland may have to amend the LDDA in the future to account for any cost overruns that cannot be covered by Sears' \$350,000 environmental hold-back amount and ChevronTexaco's 62 percent share of cleanup costs. Hence, when staff returns to Council after the summer recess to present the agreement with ChevronTexaco, Council will have the following options: (1) approve an agreement with ChevronTexaco that calls for a lump sum cash payment from ChevronTexaco (and Sears) toward a guaranteed fixed-price contract, (2) authorize ChevronTexaco to complete the work and thus accept the contingent obligation of additional cost-sharing with FC Oakland; or (3) decide not to enter into an agreement with ChevronTexaco. If the Council does not authorize the agreement with ChevronTexaco, the transaction with Sears will not be closed.

Since negotiations with ChevronTexaco are on-going, the Agency's obligation to close under the executed Sears purchase and sale agreement is conditioned on the Agency's subsequent approval of an acceptable agreement with ChevronTexaco. While it would be desirable to bring the Sears and ChevronTexaco agreements to the Council simultaneously, this is not possible since the California Debt Limit Allocation Committee (CDLAC) requires the Agency and FC Oakland to demonstrate site control by July 20th, 2005, or the Agency will lose its allocation of tax-exempt multi-family housing revenue bonds in the amount of \$100 million.

Hazardous Materials Abatement Cost Sharing

Previous conceptual cost estimates for hazardous remediation in the Uptown Project Area based on available historical information indicated that total cleanup costs could be as high as \$3.0 million. This estimate included an allocation of \$414,400 to pay for potential remediation costs on a site behind the Fox Theater that is designated for the development of a separate 100 percent affordable housing project. The current LDDA obligation to cover cleanup costs in the Project Area is limited to \$2,585,600.

In the summer and fall of 2004, the Agency completed a comprehensive soils and groundwater assessment program to further identify and characterize the contaminants present on and beneath the Project Area. The findings of the environmental assessment were used to prepare the aforementioned RAP/RMP that establishes the cleanup methods, scope and standards to be implemented at the Project site.

Preparation of a RAP/RMP that is acceptable to the Regional Board is a prerequisite for the Regional Board to enter into a mutual release and covenant not to sue (the "Mutual Release") with the Agency and FC Oakland. This Mutual Release was previously identified as a Prospective Purchaser Agreement in the staff report approving the LDDA between FC Oakland and the Agency. Pursuant to the Mutual Release, the Regional Board would agree not to take legal action against FC Oakland and the Agency relating to the known contaminants present at the Project Area once the cleanup is completed in accordance with the RAP/RMP. However, the Mutual Release applies only to the Regional Board and the Regional Board authority, and not to other state and federal agencies.

Once the RAP/RMP had been completed, the document also served to delineate the scope of work for obtaining bids from guaranteed, fixed-price contractors for the clean-up work in the Project Area. The request for bids also included a requirement to include the procurement costs for remediation cost cap and pollution legal liability insurance policies. FC Oakland received two bids for \$4.8 and \$5.2 million, respectively. These bids do not include the work to be completed by ChevronTexaco on the Sears Property. The Agency and FC Oakland are now completing a review of bids for the Project Area clean-up work.

In anticipation of the potential for rising cleanup costs, the LDDA already includes a provision (subject to Council approval) which stipulates that any costs above the Agency's initial environmental cleanup contribution of \$2,585,600 million be covered by additional contributions from each party as follows: any costs in excess of the Agency's contribution of \$2,585,600 million, but not to exceed \$1.0 million, will be borne by the Agency. The next layer of costs of up to \$1.0 million will be covered by FC Oakland, while the last layer of potential remediation costs of up to \$1.0 million will be shared equally with contributions of \$500,000 by the Agency and FC Oakland, respectively. Hence, total available cleanup funds will be in an amount of \$5,585,600.

The cleanup bids from guaranteed, fixed-price contractors for all work in the Project Area, excluding the excavation of petroleum-impacted soil and the remediation of petroleum-impacted groundwater on the Sears Property, are below the total cleanup budget that will be available if the Council approves additional funding associated with the recommended incremental cost-sharing approach. FC Oakland and the Agency are also evaluating alternative fixed-price bids which include the remediation work on the Sears Property without having ChevronTexaco perform the work. This analysis will be completed before the Council returns from its summer recess.

Additional Project Approvals

At this time, there are additional Agency approvals necessary to proceed with the Uptown Project.

1. The proposed agreement with ChevronTexaco for the cleanup of the Sears Property will require Agency authorization, which will be presented to the Agency after the summer recess.
2. The "Mutual Release and Covenant not to Sue" between the Agency, FC Oakland and the Regional Board will require Agency Board approval. This item will be presented to the Community and Economic Development Committee on June 28, 2005 and to the full Council at its regular meeting of July 19, 2005.
3. FC Oakland has presented a new site plan (attached hereto as Exhibit B), which reflects an increase in the number of project units for the first phase from 590 to approximately 665 units, and switches the location of the public park from Parcel 3 to Parcel 4. These modifications will require Council approval and an additional amendment to the LDDA may be needed to address the impact of the revised project configuration on the second phase of the Uptown Project has been evaluated.
4. The Agency and FC Oakland are discussing the maintenance of the public park. The LDDA calls for management of the park by FC Oakland. However, FC Oakland has requested instead to have the City take over that responsibility and receive cost reimbursement from FC Oakland. Staff is evaluating the maintenance costs and associated levels of maintenance service. Once the design of the park is more developed, an amendment to the LDDA will be necessary to reflect this requested change for park maintenance.

Additional Project Costs

There are potential additional project costs that may have to be incurred by the Agency in the future. These are as follows:

1. The cost of settling the eminent domain actions for the 7 properties that the Agency is seeking to condemn will not be known until the parties settle, or, if the parties cannot settle, after a jury or judge determines what the Agency is required to pay the landowners. Hence, there may be additional site acquisition costs to be incurred by the Agency at that time.
2. The Agency conducted a Phase II Environmental Assessment report for the Hahn Property, which indicates that no cleanup will be necessary. If Sears, in the course of their due diligence for the Hahn Property, discovers currently unknown contamination, the Agency may be liable for such costs.
3. If FC Oakland and the Agency cannot reach agreement with ChevronTexaco to make a sufficient contribution to a fixed-price contract for cleanup of the Sears Property, and if ChevronTexaco proceeds to perform the cleanup work itself and actual costs exceed the current estimate of \$1.5 million (\$1.5 million represents the high end of the cleanup estimate for the Sears Property), then FC Oakland will likely request that the Agency

share at least 50 percent of Sears' 38 percent share of cost overruns that are in excess of Sears contribution of \$350,000. For example, if remediation costs as much as \$2.5 million, a \$1 million cost overrun, then that portion of Sears' share which cannot be covered by the remediation funds that will be available if the Council approves the incremental cost sharing approach, would be divided between FC Oakland and the Agency. The additional amount to be split between the parties would be approximately \$220,000, or \$110,000 each. There is currently no agreement between FC Oakland and the Agency to share in cost overruns beyond the recommended additional contributions to environmental remediation of \$1.5 million each. If the Agency cannot reach agreement with ChevronTexaco to contribute to a fixed-price contract, then provisions will have to be made to cover potential cost overruns with Agency exposure limited to 50 percent of 38 percent of the overrun. There is no way of predict the magnitude of any cost overruns until remediation commences and the nature of cleanup requirements is fully known. However, remediation experts have indicated that, based on currently known facts, the cleanup cost range of \$1.2 to \$1.5 million for the benzene contamination on the Sears Property should be sufficient to cover remediation at the Property.

SUSTAINABLE OPPORTUNITIES

Economic

This redevelopment infill project will take blighted, underutilized and contaminated sites and turn them into an economically productive use by building a large-scale housing project that includes a retail component. The development of approximately 1,000 housing units in the Project Area should attract over 2,000 new residents to downtown Oakland, which will contribute to the revitalization of vacant retail sites and stimulate job creation through increased demand for local services and shopping opportunities.

Environmental

By developing in already built-up areas, this project reduces the pressure to construct on agricultural and other undeveloped land, and thereby contributes to the prevention of urban sprawl. Moreover, the redevelopment of a "brownfield" site, contaminated by hazardous materials, into productive use contributes greatly to the revitalization of this underutilized neighborhood in the Central District.

The location of the Uptown Project in proximity to major public transportation nodes will likely encourage project residents and retail customers to use BART and AC Transit. Specifically, FC Oakland and City staff has established the following list of sustainability measures that are either goals or requirements for the developer:

- Limit or eliminate the use of potable water for landscape irrigation.
- Use low-emitting building materials.
- Exceed Title 24 Energy Standards by 15 percent.

- Divert 75% of construction waste from landfills and redirect recyclable material back to the manufacturing process.
- Use recycled content materials for construction.
- Provide views and natural day lighting in 75% of indoor spaces.
- Maximize the production of electricity from renewable/solar energy.
- Incorporate a sufficient number of green building attributes from the LEED scorecard to insure a LEED-certified rating by the U.S. Green Building Council.

Items 3 and 7 of this list are currently identified as requirements. If FC Oakland cannot meet these requirements and wants to change them to goals, they can submit pertinent documentation evidencing that these requirements are not reasonably and cost-effectively attainable. FC Oakland must submit such documentation prior to the close of escrow.

Equity

The Uptown Project will expand the supply of affordable housing in Oakland by making 20 percent of the units affordable to households earning 50 percent or less of the area's median income. FC Oakland will comply with the City's contracting programs, including the Small/Local Business Construction Program, the Small/Local Business Professional Services Program (L/SLBE) and the Local Employment Program. All of the workers performing construction work for Agency funded projects must be paid prevailing wage rates. FC Oakland will also be subject to the Living Wage Ordinance.

DISABILITY AND SENIOR CITIZEN ACCESS

FC Oakland's project design must comply with the requirements of the Americans with Disabilities Act.

RECOMMENDATIONS AND RATIONALE

Staff recommends that the Council and Agency approve the terms and authorize negotiation and execution of the proposed Purchase Agreement between the City, Agency and Sears to acquire the Property, with closing contingent upon the Agency's success in negotiating an agreement with ChevronTexaco under which Chevron Texaco would pay part of the environmental remediation costs for the former service station at the Property. A term sheet for the Purchase Agreement is attached hereto as Exhibit C. Staff further recommends that the Agency and Council approve the terms and authorize negotiation and execution of the disposition and development agreement, ground lease and related documents between the Agency and Sears for the development of a new Sears Auto Center at the Hahn Properties. Lastly, staff recommends Council and Agency approval of the proposed amendments to the LDDA increasing the site acquisition cost ceiling from \$14,195,000 to \$16,995,000 and increasing the Agency's contribution for hazardous materials remediation from \$2,585,600 to \$4,085,600 in accordance with the incremental cost sharing plan outlined above.

The successful redevelopment of the Uptown Project Area by FC Oakland will transform a blighted and underutilized area located in the center of downtown Oakland into productive economic use by creating an attractive transit-oriented residential development. The project will also leverage significant private investment and act as a catalyst project leading to additional investment and development in the Uptown area. For example, intense residential development along San Pablo Avenue in the Project Area may lead to more residential development in the three blocks between 17th and 20th Street on the west side of San Pablo. Similarly, Telegraph Avenue will undergo general changes as the project revitalizes this commercial area by increasing demand for retail services which in turn will decrease commercial vacancy rates. The Uptown Project will also meet the following objectives for the Uptown Activity Area, as stated in Central District Urban Renewal Plan (as amended through July 24, 2001)

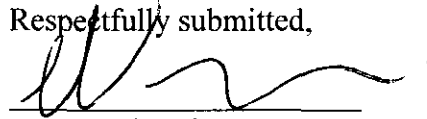
1. Revitalization and strengthening of the Oakland Central District's historical role as the major regional retail center for the Metropolitan Oakland Area.
2. Improved physical design within the Activity Area, including creation of a definite sense of place, clear gateways, emphatic focal points and physical design which expresses and respects the special nature of each sub-area within the Activity Area.
3. Elimination of existing blighted structures and conditions within the Activity Area.
4. Increased residential opportunities in and/or near the Activity Area both to address the need additional housing and to allow the area to benefit from more "eyes on the street."

The Central District Urban Renewal Plan also calls for the elimination of urban blight within the Project Area through utilization of key transit nodes to support transit oriented development.

ACTION REQUESTED OF THE AGENCY AND CITY COUNCIL

It is recommended that the City Council and Agency authorize a total of four City and Agency resolutions regarding redevelopment activities in the Uptown Activity Area of the Central District Redevelopment Project Area.

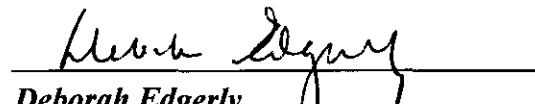
Respectfully submitted,



Dan Vanderprie
Director of Redevelopment,
Economic Development, Housing
and Community Development

Prepared by:
Jens Hillmer
Urban Economic Coordinator
Redevelopment Division

***APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE***



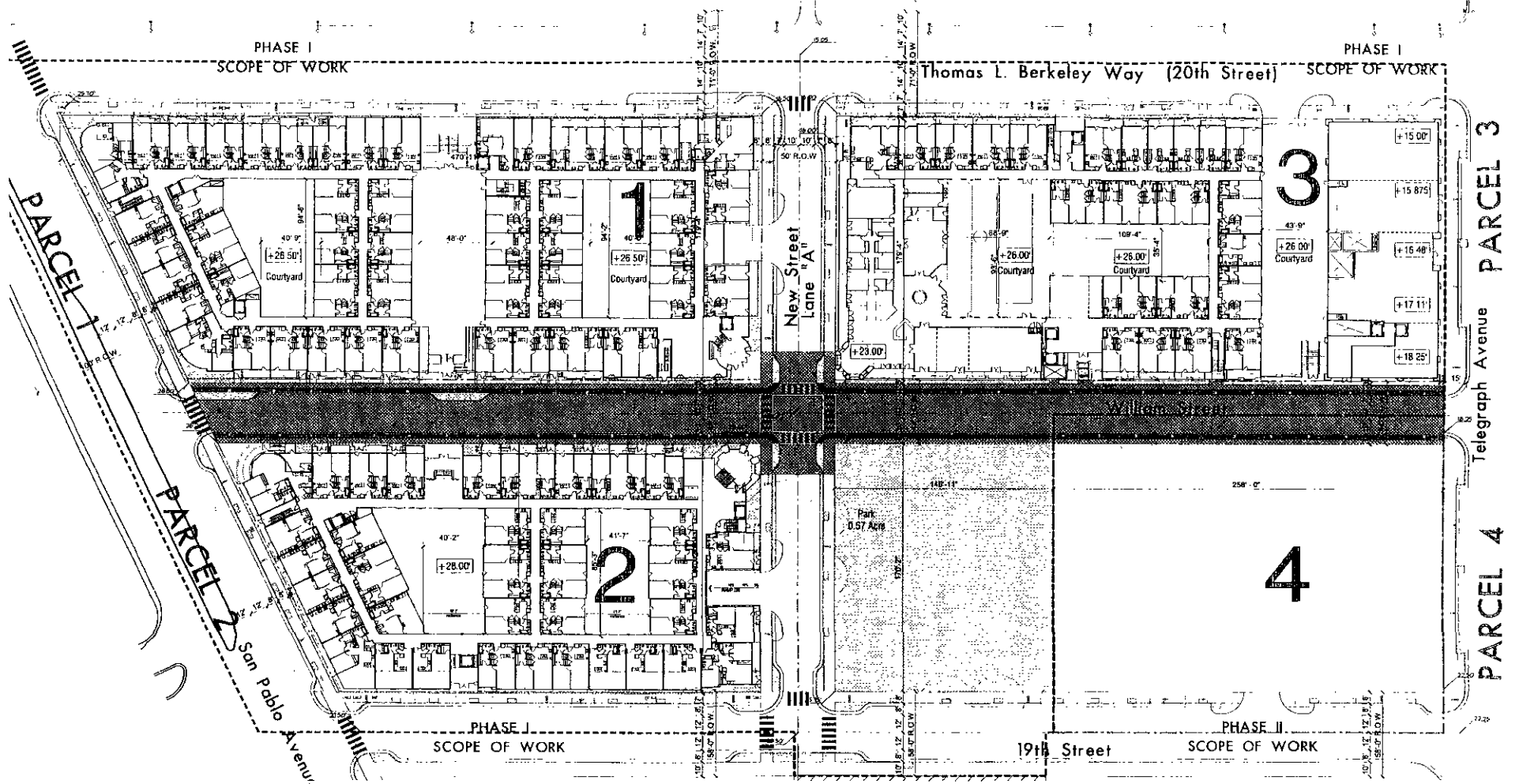
Deborah Edgerly
Agency/City Administrator

EXHIBIT A

Term Sheet

- Agreement:** Lease Disposition and Development Agreement and ground lease, with an option to purchase
- Parties:** Oakland Redevelopment Agency and Sears Development Corporation
- Real Property Address:** 2000-2016 Telegraph Avenue and 490 Thomas L. Berkley Way
- Consideration:** A portion of the Sears-owned property located at 1911 Telegraph Avenue, measuring approximately 16,900 square feet, which carries a fair market value equivalent to the fair market value of \$1.6 million of the properties referenced above. The Agency will ground lease the Hahn Properties to Sears for 30 years (with an option to extend for up to 69 more years) so Sears can build a new Auto Center on the Hahn Properties. Sears will pay \$1.00 annual rent under the ground lease. Upon the successful conclusion of the eminent domain action and Agency receipt of fee title to the properties, Sears will have the option to buy the Agency's fee interests for \$1.00.
- Development Requirements:** The DDA requires Sears to develop a new Auto Center and related facilities within a reasonable period of time not to exceed 5 years after execution of the DDA. In the event that Sears is unable to complete the new Auto Center within the stipulated schedule, the Agency has the right to repurchase the property for \$1.6 million. The DDA provides the Agency will approval rights over the design. It also requires that Sears provide evidence of sufficient financing to build the new Auto Center.

EXHIBIT B



SCHEMATIC DESIGN 04.04.05

McLARAND VASQUEZ EMSIEK & PARTNERS

SITE PLAN PARCELS 1, 2 & 3

Oakland, California

SCALE 1/8"=1'-0"

UPTOWN OAKLAND

FORESTCITY



EXHIBIT C

Term Sheet for Purchase and Sales Agreement with Sears


Property: 1911 Telegraph Avenue

Purchase Consideration: Total purchase consideration for the acquisition of the Sears property is equal to an amount of \$12.5 million and includes the following components:

1. Cash. The Agency will pay to Sears \$9,700,000, subject to reduction pursuant to a \$350,000 environmental holdback escrow (see below).
2. Environmental Hold-back. Sears has agreed that \$350,000 of the purchase price the Agency pays will remain in an escrow account for at least 36 months and will be used to fund a portion of the environmental cleanup of the Property. The clean-up on the Property will be the responsibility of ChevronTexaco or a fixed-price contractor hired by FC Oakland. Any funds remaining in the Environmental Hold-back account after cleanup completion will be released to Sears. The Agency assumes the risk for any cost overruns for the cleanup on the Sears Property if it cannot reach an acceptable agreement with ChevronTexaco to make a sufficient lump sum payment toward a fixed-price remediation contract, or, if ChevronTexaco completes the remediation work, and there are costs overruns that cannot be covered by Sears' \$350,000 environmental hold-back amount and ChevronTexaco's 62 percent share of cleanup costs.
3. New Sears Auto Center Site. As noted above, the Agency has commenced eminent domain actions and deposited \$1.6 million with the State Condemnation Deposit Fund to acquire two properties owned by the Hahn family located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkley Way. The Hahn Properties are outside the Uptown Project area, but are across the street on Telegraph Avenue from Sears' downtown Oakland department store. The Agency will enter into a DDA and Ground lease with Sears for the Hahn Properties for the purpose of enabling Sears to build a new Sears Auto Center.
4. Leaseback of Existing Sears Auto Center to Sears. After the Agency buys Sears' Property, the Agency will lease back to Sears that portion of the Property currently occupied by the Sears Auto Center and related surface parking, which measures approximately 15,000 square feet. The leaseback will give Sears time to build its new Auto Center on the Hahn properties site. The current estimated leaseback period is approximately 20 months. The value of the leaseback arrangement is estimated to be approximately \$240,000, or 10 percent per year of the property value.
5. Sears' Employee Parking Spaces. The City will provide to Sears at no cost fifty (50) non-exclusive parking spaces in the garage located at 2101 Telegraph for the earlier of 25 years or until Sears no longer operates a department store in downtown Oakland, whichever occurs first. The value of the Parking License is estimated to be approximately \$960,000.

The Agency's obligation to close under the executed Sears purchase and sale agreement is conditioned on the Agency's subsequent approval of an acceptable agreement with ChevronTexaco.

APPROVED AS TO FORM AND LEGALITY:



City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AMENDMENTS TO A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASE, AND RELATED DOCUMENTS BETWEEN THE REDEVELOPMENT AGENCY, THE CITY OF OAKLAND, AND FC OAKLAND, INC. (SUCCESSOR TO UPTOWN PARTNERS, LLC), 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 INCREASING THE PROPERTY ACQUISITION CEILING FROM \$14,195,000 TO \$16,995,000, AND INCREASING THE AGENCY CONTRIBUTION TOWARDS HAZARDOUS MATERIALS ABATEMENT FROM \$2,585,600 TO \$4,085,600

WHEREAS, the City of Oakland ("City"), the Redevelopment Agency of the City of Oakland ("Agency") and FC Oakland, Inc. ("FC Oakland"), successor to Uptown Partners, LLC, are parties to a Lease Disposition and Development Agreement ("LDDA") whereby FC Oakland is the developer of the approximately two 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 in the Uptown Activity Area of the Central District Urban Renewal Area commonly referred to as the Uptown Project; and

WHEREAS, the LDDA sets forth the terms and conditions whereby FC Oakland may lease and develop the various parcels within the Uptown Project; and

WHEREAS, the parties to the LDDA desire to amend certain terms of the LDDA to:(1) increase the Agency's site assembly cost acquisition ceiling from \$14,195,000 to \$16,995,000 to allow for the Agency's acquisition of the Sears auto center and parking garage; and (2) increase the Agency's potential contribution to the hazardous materials cleanup costs of the Uptown Project site from \$2,585,600 to \$4,085,600; and

WHEREAS, the additional funds for site acquisition in the amount \$2,800,000 will be appropriated from the Central District Tax Allocation Bond Series 2005 (Fund 9533, Project P103460), and the additional \$1,500,000 for hazardous materials remediation will also be appropriated out of the Central District Tax Allocation Bond Series 2005 (Fund 9533, Project P103450), which funds will be available on July 1, 2005; 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 CEQA, 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 the California Environmental Quality Act of 1970 ("CEQA"), has independently reviewed the EIR and other information in the record; and

WHEREAS, notice of the public hearing regarding the LDDA amendment 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 LDDA amendment and a summary of the cost of the amendment to the Agency; and

WHEREAS, the Agency and the City have approved the execution of the LDDA amendment by resolution after the public hearing; now, therefore, be it

RESOLVED: That the City 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. 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 execute an amendment to the LDDA as set forth hereinabove; 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's Office prior to execution by the City Administrator or her designee; and be it further

RESOLVED: That the City finds and determines that this Resolution complies with CEQA and that staff is directed to cause to be filed a Notice of Determination with the appropriate agencies; 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 & 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 COUNCIL, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

APPROVED AS TO FORM AND LEGALITY:



Agency Counsel

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AMENDMENTS TO A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASE, AND RELATED DOCUMENTS BETWEEN THE REDEVELOPMENT AGENCY, THE CITY OF OAKLAND, AND FC OAKLAND, INC. (SUCCESSOR TO UPTOWN PARTNERS, LLC), 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 INCREASING THE PROPERTY ACQUISITION CEILING FROM \$14,195,000 TO \$16,995,000, AND INCREASING THE AGENCY CONTRIBUTION TOWARDS HAZARDOUS MATERIALS ABATEMENT FROM \$2,585,600 TO \$4,085,600

WHEREAS, the City of Oakland ("City"), the Redevelopment Agency of the City of Oakland ("Agency") and FC Oakland, Inc. ("FC Oakland"), successor to Uptown Partners, LLC, are parties to a Lease Disposition and Development Agreement ("LDDA") whereby FC Oakland is the developer of the approximately two 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 in the Uptown Activity Area of the Central District Urban Renewal Area commonly referred to as the Uptown Project; and

WHEREAS, the LDDA sets forth the terms and conditions whereby FC Oakland may lease and develop the various parcels within the Uptown Project; and

WHEREAS, the parties to the LDDA desire to amend certain terms of the LDDA to:(1) increase the Agency's site assembly cost acquisition ceiling from \$14,195,000 to \$16,995,000 to allow for the Agency's acquisition of the Sears auto center and parking garage; and (2) increase the Agency's potential contribution to the hazardous materials cleanup costs of the Uptown Project site from \$2,585,600 to \$4,085,600; and

WHEREAS, the additional funds for site acquisition in the amount \$2,800,000 will be appropriated from the Central District Tax Allocation Bond Series Fund 2005 (Fund 9533, Project P103460), and the additional \$1,500,000 for hazardous materials remediation will also be appropriated out of the Central District Tax Allocation Bond Series Fund 2005 (Fund 9533, Project P103450), which funds will be available on July 1, 2005; 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 CEQA, 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 the California Environmental Quality Act of 1970 ("CEQA"), has independently reviewed and considered the environmental effects of the project as shown in the EIR and other information in the record; and

WHEREAS, notice of the public hearing regarding the LDDA amendment 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 LDDA amendment and a summary of the cost of the amendment to the Agency; and

WHEREAS, the Agency and the City have approved the execution of the LDDA amendment by resolution after the public hearing; 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. 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 Administrator, or her designee, is hereby authorized to execute an amendment to the LDDA as set forth hereinabove; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee to allocate funding for the implementation of the LDDA amendment as follows: \$2,800,000 will be appropriated from the Central District Tax Allocation Bond Series Fund 2005 (Fund 9533, Project P103460), and the additional \$1,500,000 for hazardous materials remediation will be appropriated out of the Central District Tax Allocation Bond Series Fund 2005 (Fund 9533, Project P103450), which funds will be available on July 1, 2005; 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 further

RESOLVED: That the Agency finds and determines that this Resolution complies with CEQA and that staff is directed to cause to be filed a Notice of Determination with the appropriate agencies; 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, _____, 2005

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

APPROVED AS TO FORM AND LEGALITY:

H. Miller
City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF: (1) A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY, THE AGENCY AND SEARS, DEVELOPMENT COMPANY FOR THE AGENCY'S ACQUISITION OF PROPERTY LOCATED AT 1911 TELEGRAPH AVENUE FOR PURCHASE CONSIDERATION EQUAL TO AN AMOUNT NOT TO EXCEED \$12.5 MILLION; AND (2) A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASE AND RELATED DOCUMENTS BETWEEN THE AGENCY AND SEARS, DEVELOPMENT COMPANY FOR THE CONSTRUCTION OF A SEARS AUTO CENTER ON TWO PROPERTIES LOCATED AT 2000-2016 TELEGRAPH AVENUE AND 490 THOMAS L. BERKELEY WAY

WHEREAS, the City of Oakland ("City"), the Redevelopment Agency of the City of Oakland ("Agency") and FC Oakland, Inc. ("FC Oakland"), successor to Uptown Partners, LLC, are parties to a Lease Disposition and Development Agreement ("FC LDDA") whereby FC Oakland is the developer of the approximately two 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 in the Uptown Activity Area of the Central District Urban Renewal Area commonly referred to as the Uptown Project; and

WHEREAS, the FC LDDA requires the Agency to use commercially reasonable efforts to acquire the privately owned parcels comprising the Uptown Project site to transfer to FC Oakland for the Uptown Project; provided that the Agency has no obligation to acquire any property by eminent domain; and

WHEREAS, Sears Roebuck & Co. operates a retail store in downtown Oakland adjacent to the Uptown Project site; and

WHEREAS, Sears Development Company ("Sears") owns property at 1911 Telegraph Avenue (immediately across the street from the Sears retail store) on which is located an auto center and a parking garage for employees, the public and patrons of the Sears retail store, a legal description of which is attached hereto as Exhibit A (the "Sears Property"), and

WHEREAS, the Sears Property is one of the privately-owned parcels comprising the Uptown Project site; and

WHEREAS, pursuant to its obligations under the FC LDDA, the Agency desires to purchase from Sears the Sears Property; and

WHEREAS, the Agency also desires to retain the Sears retail store in downtown Oakland; and

WHEREAS, Sears wishes to sell the Sears Property to the Agency to assist the Agency in its development of the Uptown Project on the condition that the Agency provide Sears with a site on which it can relocate and build a new auto center and provide substitute parking for its employees and patrons in close proximity to the existing Sears retail store; and

WHEREAS, the Agency previously identified property in the Central District (as hereinafter defined) at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way, a legal description of which is attached hereto as Exhibit B (the "New Site") as a possible relocation site for the Sears auto center; and

WHEREAS, in order to induce Sears to sell the Sears Property to the Agency so that the Uptown Project could proceed, and in order to help retain the existing Sears retail store in downtown Oakland, the Agency sought to obtain possession of and title to the New Site by initiating eminent domain proceedings against the owners of the New Site; and

WHEREAS, in January 2005, the Agency commenced a condemnation proceeding against the owners of the New Site, Alex K. Hahn and Jae H. Hahn, Trustees of the April 10, 2002 Hahn Family Trust , and Sang E. Hahn and Haitan Hahn, Trustees of the February 8, 2002 Hahn Family Trust and other third party defendants (the "Condemnation Litigation"); and

WHEREAS, an Order for Possession was issued to the Agency by the Alameda County Superior Court on January 26, 2005, which Order became effective on April 26, 2005; the Order granted to the Agency the right of immediate possession and use of the New Site, including the right to remove all improvements and structures situated thereon; and

WHEREAS, the Agency, the City, and Sears have agreed to execute a Purchase and Sale Agreement whereby the Agency will acquire the Sears Property from Sears for the following consideration: (1) the Agency will pay to Sears \$9,700,000, subject to an escrow holdback of \$350,000 for Sears potential contribution to environmental cleanup on the Sears Property; (2) the Agency will convey to Sears under a Lease Disposition and Development Agreement ("Sears LDDA") and ground lease, with an option to purchase ("Ground Lease"), the New Site to allow Sears to relocate and build a new auto center (the "Sears Project"); (3) the Agency will lease back to Sears the existing auto center for a reasonable period of time estimated at 20 months to allow Sears to complete construction of its auto center ("Lease"); and (4) the City will allow Sears to use 50 parking spaces in a City-owned garage at Telegraph and 21st Street in Oakland for its employees, customers and invitees on the terms set forth in a license agreement ("License"); and

WHEREAS, the total value of the consideration that the Agency has agreed to pay to Sears for the Sears Property as described above is a maximum of \$12,500,000, and that such amount is equal to the fair market value of the Sears Property; and

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 or lease real property, Section 33432 requires that any sale or lease 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 or leased for private use as provided in the redevelopment plan; 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 or lease land in the Central District Redevelopment Project Area (the "Central District"); and

WHEREAS, the Redevelopment Plan authorizes the Agency to pursue redevelopment, including increased housing and retail opportunities to address the need for additional housing and retail in the Uptown Retail and Entertainment Area ("Uptown Activity Area"); and

WHEREAS, in order to encourage the construction of new housing and retail in the Central District, the Agency and FC Oakland executed the FC LDDA whereby FC Oakland will build the Uptown Project, a mixed-use residential housing and retail project; and

WHEREAS, to facilitate development of the Uptown Project, the Agency plans to acquire the Sears Property; and

WHEREAS, the Agency also wishes to retain the existing Sears retail store in accordance with the redevelopment goals for the Central District; and

WHEREAS, the Agency is able to facilitate development of the Uptown Project and help retain the Sears retail store by purchasing the Sears Property for the Uptown Project, and offering Sears substitute space for relocation of its auto center, and substitute parking for Sears employees and patrons in a nearby City-owned garage; and

WHEREAS, staff, on behalf of the Agency and the City, and Sears have negotiated the terms of a Purchase and Sale Agreement, the Sears LDDA, the Ground Lease, Lease, and License, which set forth the terms and conditions of the Agency's purchase of the Sears Property and Sears' development of the Sears Project; and

WHEREAS, the initial term of the Ground Lease shall commence on the date possession is delivered under the Sears LDDA, and continue for 30 years from the commencement date, with an option in favor of Sears to extend the lease for an additional period up to 69 years, all on the terms and conditions as described in the Ground Lease; and

WHEREAS, under the Ground Lease, Sears will pay the Agency \$1.00 annual rent, and will have the option to purchase the Agency's interests in the New Site for \$1.00 on the terms set forth in the Ground Lease; and

WHEREAS, the Agency will lease back the existing Sears auto center site and related parking to Sears for \$1.00 per year prorated for the term set forth in the Lease; and

WHEREAS, the City will provide 50 nonexclusive parking spaces at no cost to Sears for 25 years on the terms set forth in the License; and

WHEREAS, Pursuant to Agency Resolution 2004-38 C.M.S., the Agency appropriated \$14,100,000 from the Central District Tax Allocation Bond Series Fund 2003 (Fund 9532, Project T245610) and \$95,000 from the Central District Tax Allocation Bond Series Fund 1986 (Fund 9516, Project P221520) to cover all site acquisition costs for the Uptown Project, including the acquisition of the Sears Property; additional funds in the amount of \$2,800,000 will be appropriated from the Central District Tax Allocation Bond Series Fund 2005 (Fund 9533, Project P103460), which will be available on July 1, 2005; and

WHEREAS, a copy of the proposed Sears LDDA and its exhibits, including the Ground Lease are on file with the City Clerk; and

WHEREAS, the Sears LDDA and the Ground Lease condition the lease of the New Site on the redevelopment and use of the New Site in conformity with the Central District Redevelopment Plan, and such documents prohibit discrimination in any aspect of development or operation of the Sears Project as required under the Central District Redevelopment Plan and the California Community Redevelopment Law; and

WHEREAS, the Sears Project uses are in conformity with the Central District Redevelopment Plan, the Sears Project will assist in the elimination of blight in the Central District Redevelopment Area, and the Sears Project will help meet the objectives of the Central District Redevelopment Plan; and

WHEREAS, the California Community Redevelopment Law (Health & 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 or leased 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 contained a copy of the draft Sears LDDA and a summary of the cost of the agreement to the Agency, the estimated fair market value of the New Site at its highest and best use permitted under the Redevelopment Plan, and an explanation of why the lease of the New Site and development of the Sears 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 lease of the New Site for the Sears Project; and

WHEREAS, notice of the lease of the New Site 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 has approved the execution of the lease of the New Site by resolution after the public hearing; 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 CEQA, 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 the California Environmental Quality Act of 1970 ("CEQA"), has independently reviewed the EIR and other information in the record; now, therefore, be it

RESOLVED: That the City 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. 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 hereby finds and determines that the lease of the New Site by the Agency to Sears for the Sears 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 Sears Project will help retain desired retail in the Central District; (2) the Sears Project will provide necessary neighborhood-serving retail facilities lacking in the Central District; (3) the Sears Project, once developed, may create permanent jobs for low and moderate income people, including jobs for area residents; (4) the Sears Project will redevelop a underutilized site in the Central District; (6) the Sears Project will improve environmental design within the Central District; and (7) the Sears Project, once

developed, will enhance depreciated and stagnant residential and commercial property values in the surrounding 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 City hereby authorizes and directs the City Administrator to negotiate and execute: (1) a Purchase and Sale Agreement and related documents with Sears and the Agency allowing the Agency to purchase the Sears Property on the terms set forth in this Resolution; (2) such other additions, amendments or other modifications to the Purchase and Sale Agreement and related documents (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) that the City Administrator, in consultation with the City Attorney, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions which the Purchase and Sale Agreement or related documents contemplate to be conclusively evidenced by the execution and delivery by the City Administrator of the Purchase and Sale Agreement or related documents, and any such amendments thereto; and (3) such other documents as necessary or appropriate, in consultation with the City Attorney, to facilitate the purchase and sale of the Sears Property in order to consummate the transaction in accordance with this Resolution, or to otherwise effectuate the purpose and intent of this Resolution and its basic purpose; and be it further

RESOLVED: That the City hereby approves the Agency's lease of the New Property to Sears on the terms and conditions of the Sears LDDA, the Ground Lease and related documents as described in this Resolution and as negotiated by the Agency Administration under the terms of the Agency Resolution approving the Sears LDDA, Ground Lease and related documents; and be it further

RESOLVED: That because the Agency and the City are not providing subsidies to Sears in this transaction, the City's employment and contracting programs will not apply to the Sears Project; and be it further

RESOLVED: That the City finds that the value of the Sears Property acquisition and other consideration that the Agency will receive from Sears equals or exceeds the reuse value of the New Site taking into account the uses, covenants, conditions, and development costs required by the Sears LDDA, and be it further

RESOLVED: That, the City Administrator shall determine satisfaction of conditions precedent in favor of the City under the Purchase and Sale Agreement and related documents; and be it further

RESOLVED: That all documents related to this transaction shall be reviewed and approved by the City Attorney prior to execution; and be it further

RESOLVED: That the City finds and determines that this Resolution complies with CEQA and that staff is directed to cause to be filed a Notice of Determination with the appropriate agencies; 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 & 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 COUNCIL, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

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

Exhibit A

Property Address: 1911 Telegraph Avenue

APN: 008-0643-001-01

EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA, CITY OF OAKLAND, AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERN LINE OF TELEGRAPH AVENUE WITH THE NORTHEASTERN LINE OF 19TH STREET; THENCE ALONG THE LAST NAMED LINE NORTH 78 DEGREES 47 MINUTES 08 SECONDS WEST (THE BEARING OF THE SAID NORTHEASTERN LINE OF 19TH STREET BEING TAKEN AS NORTH 78 DEGREES 47 MINUTES 08 SECONDS WEST FOR THE PURPOSE OF MAKING THIS DESCRIPTION) 744.49 FEET TO THE NORTHEASTERN LINE OF SAN PABLO AVENUE; THENCE ALONG THE LAST NAMED LINE NORTH 14 DEGREES 24 MINUTES WEST 106.08 FEET TO THE NORTHWESTERN LINE OF LOT 4 IN BLOCK 2001, AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP OF THE HOGAN TRACT, OAKLAND, ALAMEDA COUNTY, CALIFORNIA, FILED JUNE 19, 1876, MAP BOOK 2, PAGE 2, ALAMEDA COUNTY RECORDS; THENCE ALONG THE LAST NAMED LINE NORTH 75 DEGREES 36 MINUTES EAST 77.75 FEET TO THE SOUTHWESTERN LINE OF LOT 8 IN BLOCK 2001, AS SHOWN ON SAID MAP; THENCE ALONG THE LAST NAMED LINE NORTH 14 DEGREES 24 MINUTES WEST 51.83 FEET TO THE SOUTHWESTERN LINE OF WILLIAM STREET; THENCE ALONG THE LAST NAMED LINE SOUTH 78 DEGREES 47 MINUTES 08 SECONDS EAST 742.65 FEET TO THE SAID NORTHWESTERN LINE OF TELEGRAPH AVENUE; THENCE ALONG THE LAST NAMED LINE SOUTH 11 DEGREES 12 MINUTES 52 SECONDS WEST 176 FEET TO THE POINT OF BEGINNING.

APN 008-0643-001-01

Exhibit B

Property Address: 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way

APN: 008-0649-009
008-0649-010

Exhibit B-1

Property Address: 490 Thomas L. Berkeley Way

APN: 008-0649-009

LEGAL DESCRIPTION

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

Beginning at a point on the Northeastern line of 20th Street, distant thereon South 63° 45' East 100 feet from the point of intersection thereof with the Eastern line of Telegraph Avenue, as said Telegraph Avenue existed June 28, 1907; running thence South 63° 45' East along said line of 20th Street, 86.58 feet to a point distant thereon North 63° 45' West, 165.50 feet from the point of intersection thereof with the Northwestern line of Broadway; thence North 26° 15' East 100 feet; thence North 63° 45' West 105.81 feet to a line drawn parallel with said Eastern line of Telegraph Avenue and distant 104 feet Easterly therefrom, measured along a line drawn parallel with the Southern line of Hobart Street; thence South 11° 13' West parallel with said line of Telegraph Avenue 74 feet; more or less, to the point of intersection with a line drawn North 26° 15' East from the point of beginning; thence South 26° 15' West 28 feet, more or less, to the point of beginning.

APN: 008-0649-009

Exhibit B-2

Property Address: 2000-2016 Telegraph Avenue and

APN: 008-0649-010

LEGAL DESCRIPTION

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

Beginning at the point of intersection of the Northeastern line of 20th Street, formerly Delger Street, with the Eastern line of Telegraph Avenue, as said Telegraph Avenue existed June 28, 1907, running thence North 11° 13' East along said line of Telegraph Avenue 90.91 feet; thence South 78° 27' 20" East 104 feet; thence South 11° 13' West 90 feet, more or less, to the point of intersection with a line drawn North 26° 15' East from a point on said Northern line of 20th Street, distant thereon 100 feet Easterly from the intersection thereof with said Eastern line of Telegraph Avenue; thence South 26° 15' West 28 feet, more or less, to said Northeastern line of 20th Street; and thence North 63° 45' West 100 feet to the point of beginning.

APN: 008-0649-010

APPROVED AS TO FORM AND LEGALITY:



Agency Counsel

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF: (1) A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY, THE AGENCY AND SEARS, DEVELOPMENT COMPANY FOR THE AGENCY'S ACQUISITION OF PROPERTY LOCATED AT 1911 TELEGRAPH AVENUE FOR PURCHASE CONSIDERATION EQUAL TO AN AMOUNT NOT TO EXCEED \$12.5 MILLION; AND (2) A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASE AND RELATED DOCUMENTS BETWEEN THE AGENCY AND SEARS, DEVELOPMENT COMPANY FOR THE CONSTRUCTION OF A SEARS AUTO CENTER ON TWO PROPERTIES LOCATED AT 2000-2016 TELEGRAPH AVENUE AND 490 THOMAS L. BERKELEY WAY

WHEREAS, the City of Oakland ("City"), the Redevelopment Agency of the City of Oakland ("Agency") and FC Oakland, Inc. ("FC Oakland"), successor to Uptown Partners, LLC, are parties to a Lease Disposition and Development Agreement ("FC LDDA") whereby FC Oakland is the developer of the approximately two 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 in the Uptown Activity Area of the Central District Urban Renewal Area commonly referred to as the Uptown Project; and

WHEREAS, the FC LDDA requires the Agency to use commercially reasonable efforts to acquire the privately owned parcels comprising the Uptown Project site to transfer to FC Oakland for the Uptown Project; provided that the Agency has no obligation to acquire any property by eminent domain; and

WHEREAS, Sears Roebuck & Co. operates a retail store in downtown Oakland adjacent to the Uptown Project site; and

WHEREAS, Sears Development company ("Sears") owns property at 1911 Telegraph Avenue (immediately across the street from the Sears retail store) on which is located an auto center and a parking garage for employees, the public and patrons of the Sears retail store, a legal description of which is attached hereto as Exhibit A (the "Sears Property"), and

WHEREAS, the Sears Property is one of the privately-owned parcels comprising the Uptown Project site; and

WHEREAS, pursuant to its obligations under the FC LDDA, the Agency desires to purchase from Sears the Sears Property; and

WHEREAS, the Agency also desires to retain the Sears retail store in downtown Oakland; and

WHEREAS, Sears wishes to sell the Sears Property to the Agency to assist the Agency in its development of the Uptown Project on the condition that the Agency provide Sears with a site on which it can relocate and build a new auto center and provide substitute parking for its employees and patrons in close proximity to the existing Sears retail store; and

WHEREAS, the Agency previously identified property in the Central District (as hereinafter defined) at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way, a legal description of which is attached hereto as Exhibit B (the "New Site") as a possible relocation site for the Sears auto center; and

WHEREAS, in order to induce Sears to sell the Sears Property to the Agency so that the Uptown Project could proceed, and in order to help retain the existing Sears retail store in downtown Oakland, the Agency sought to obtain possession of and title to the New Site by initiating eminent domain proceedings against the owners of the New Site; and

WHEREAS, in January 2005, the Agency commenced a condemnation proceeding against the owners of the New Site, Alex K. Hahn and Jae H. Hahn, Trustees of the April 10, 2002 Hahn Family Trust , and Sang E. Hahn and Haitan Hahn, Trustees of the February 8, 2002 Hahn Family Trust and other third party defendants (the "Condemnation Litigation"); and

WHEREAS, an Order for Possession was issued to the Agency by the Alameda County Superior Court on January 26, 2005, which Order became effective on April 26, 2005; the Order granted to the Agency the right of immediate possession and use of the New Site, including the right to remove all improvements and structures situated thereon; and

WHEREAS, the Agency, the City, and Sears have agreed to execute a Purchase and Sale Agreement whereby the Agency will acquire the Sears Property from Sears for the following consideration: (1) the Agency will pay to Sears \$9,700,000, subject to an escrow holdback of \$350,000 for Sears potential contribution to environmental cleanup on the Sears Property; (2) the Agency will convey to Sears under a Lease Disposition and Development Agreement ("Sears LDDA") and ground lease, with an option to purchase ("Ground Lease"), the New Site to allow Sears to relocate and build a new auto center (the "Sears Project"); (3) the Agency will lease back to Sears the existing auto center for a reasonable period of time estimated at 20 months to allow Sears to complete construction of its auto center ("Lease"); and (4) the City will allow Sears to use 50 parking spaces in a City-owned garage at Telegraph and 21st Street in Oakland for its employees, customers and invitees on the terms set forth in a license agreement ("License"); and

WHEREAS, the total value of the consideration that the Agency has agreed to pay to Sears for the Sears Property as described above is a maximum of \$12,500,000, and that such amount does not exceed the fair market value of the Sears Property; and

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 or lease real property, Section 33432 requires that any sale or lease 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 or leased for private use as provided in the redevelopment plan; 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 or lease land in the Central District Redevelopment Project Area (the "Central District"); and

WHEREAS, the Redevelopment Plan authorizes the Agency to pursue redevelopment, including increased housing and retail opportunities to address the need for additional housing and retail in the Uptown Retail and Entertainment Area ("Uptown Activity Area"); and

WHEREAS, in order to encourage the construction of new housing and retail in the Central District, the Agency and FC Oakland executed the FC LDDA whereby FC Oakland will build the Uptown Project, a mixed-use residential housing and retail project; and

WHEREAS, to facilitate development of the Uptown Project, the Agency plans to acquire the Sears Property; and

WHEREAS, the Agency also wishes to retain the existing Sears retail store in accordance with the redevelopment goals for the Central District; and

WHEREAS, the Agency is able to facilitate development of the Uptown Project and help retain the Sears retail store by purchasing the Sears Property for the Uptown Project, and offering Sears substitute space for relocation of its auto center, and substitute parking for Sears employees and patrons in a nearby City-owned garage; and

WHEREAS, staff, on behalf of the Agency and the City, and Sears have negotiated the terms of a Purchase and Sale Agreement, the Sears LDDA, the Ground Lease, Lease, and License, which set forth the terms and conditions of the Agency's purchase of the Sears Property and Sears' development of the Sears Project; and

WHEREAS, the initial term of the Ground Lease shall commence on the date possession is delivered under the Sears LDDA, and continue for 30 years from the commencement date, with an option in favor of Sears to extend the lease for an additional period up to 69 years, all on the terms and conditions as described in the Ground Lease; and

WHEREAS, under the Ground Lease, Sears will pay the Agency \$1.00 annual rent, and will have the option to purchase the Agency's interests in the New Site for \$1.00 on the terms set forth in the Ground Lease; and

WHEREAS, the Agency will lease back the existing Sears auto center site and related parking to Sears for \$1.00 per year prorated for the term set forth in the Lease; and

WHEREAS, the City will provide 50 nonexclusive parking spaces at no cost to Sears for 25 years on the terms set forth in the License; and

WHEREAS, Pursuant to Agency Resolution 2004-38 C.M.S., the Agency appropriated \$14,100,000 from the Central District Tax Allocation Bond Series Fund 2003 (Fund 9532, Project T245610) and \$95,000 from the Central District Tax Allocation Bond Series 1986 (Fund 9516, Project P221520) to cover all site acquisition costs for the Uptown Project, including the acquisition of the Sears Property; additional funds in the amount of \$2,800,000 will be appropriated from the Central District Tax Allocation Bond Series 2005 (Fund 9533, Project P103460), which will be available on July 1, 2005; and

WHEREAS, a copy of the proposed Sears LDDA and its exhibits, including the Ground Lease are on file with the City Clerk; and

WHEREAS, the Sears LDDA and the Ground Lease condition the lease of the New Site on the redevelopment and use of the New Site in conformity with the Central District Redevelopment Plan, and such documents prohibit discrimination in any aspect of development or operation of the Sears Project as required under the Central District Redevelopment Plan and the California Community Redevelopment Law; and

WHEREAS, the Sears Project uses are in conformity with the Central District Redevelopment Plan, the Sears Project will assist in the elimination of blight in the Central District Redevelopment Area, and the Sears Project will help meet the objectives of the Central District Redevelopment Plan; and

WHEREAS, the California Community Redevelopment Law (Health & 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 or leased 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 contained a copy of the draft Sears LDDA and a summary of the cost of the agreement to the Agency, the estimated fair market value of the New Site at its highest and best use permitted under the Redevelopment Plan, and an explanation of why the lease of the New Site and development of the Sears 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 lease of the New Site for the Sears Project; and

WHEREAS, notice of the lease of the New Site 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 has approved the execution of the lease of the New Site by resolution after the public hearing; 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 CEQA, 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 the California Environmental Quality Act of 1970 ("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. 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 hereby finds and determines that the lease of the New Site by the Agency to Sears for the Sears 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 Sears Project will help retain desired retail in the Central District; (2) the Sears Project will provide necessary neighborhood-serving retail facilities lacking in the Central District; (3) the Sears Project, once developed, may create permanent jobs for low and moderate income people, including jobs for area residents; (4) the Sears Project will redevelop a underutilized site in the Central District; (6) the Sears

Project will improve environmental design within the Central District; and (7) the Sears Project, once developed, will enhance depreciated and stagnant residential and commercial property values in the surrounding 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 her designee to lease the New Site to Sears, subject to and on the terms and conditions of the Sears LDDA and related documents, as negotiated by the Agency Administration under the terms of this Resolution; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee to allocate and appropriate additional funding for the purchase of the Sears Property and the implementation of the Sears Project as described in this Resolution in the amount of \$2,800,000 from the Central District Tax Allocation Bond Series Fund 2005 (Fund 9533, Project P103460), which will be available on July 1, 2005 to augment those funds previously appropriated to acquisition costs for properties for the Uptown Project, including the Sears Property, pursuant to Agency Resolution 2004-38 C.M.S., in the amount of \$14,100,000 from the Central District Tax Allocation Bond Series Fund 2003 (Fund 9532, Project T245610) and \$95,000 from the Central District Tax Allocation Bond Series Fund 1986 (Fund 9516, Project P221520); and be it further

RESOLVED: That because the Agency and the City are not providing subsidies to Sears in this transaction, the City's employment and contracting programs will not apply to the Sears Project; and be it further

RESOLVED: That the Agency finds that the value of the Sears Property acquisition and other consideration that the Agency will receive from Sears equals or exceeds the reuse value of the New Site taking into account the uses, covenants, conditions, and development costs required by the Sears LDDA, and be it further

RESOLVED: That the Agency Administrator or her designee is hereby authorized to negotiate and execute: (1) a Purchase and Sale Agreement, Lease, License, and related documents with Sears and the City allowing the Agency to purchase the Sears Property on the terms set forth in this Resolution; (2) the Sears LDDA and related documents; (3) the Ground Lease and related documents, upon satisfaction or waiver of the conditions precedent in the Sears LDDA; (4) such other additions, amendments or other modifications to the Purchase and Sale Agreement, Lease, License, the Sears LDDA, the Ground Lease, or related documents (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) that the Agency Administrator, in consultation with Agency Counsel, determines are in the best interests of the Agency, do not materially increase the obligations or liabilities of the Agency, and are necessary or advisable to complete the transactions which the Purchase and Sale Agreement, Lease, License, the Sears LDDA, Ground Lease, or related documents contemplate to be conclusively evidenced by the execution and delivery by the Agency Administrator of the aforementioned documents, and any such amendments thereto; and (5) such other documents as necessary or appropriate, in consultation with the Agency Counsel, to facilitate the purchase of the Sears Property by the Agency or the lease of

the New Site and development of the Sears Project in order to consummate the transactions generally described in this Resolution, or to otherwise effectuate the purpose and intent of this Resolution and its basic purpose; and be it further

RESOLVED: That, the Agency Administrator shall determine satisfaction of conditions precedent in favor of the Agency under the Purchase and Sale Agreement, the Sears LDDA, the Ground Lease, or related documents; and be it further

RESOLVED: That all documents related to this transaction shall be reviewed and approved by the Agency's Counsel prior to execution; and be it further

RESOLVED: That the Agency finds and determines that this Resolution complies with CEQA and that staff is directed to cause to be filed a Notice of Determination with the appropriate agencies; 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 & 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, _____, 2005

PASSED BY THE FOLLOWING VOTE:

- AYES- BROOKS , BRUNNER, CHANG, NADEL, QUAN, REID, AND CHAIRPERSON DE LA FUENTE,
- NOES-
- ABSENT-
- ABSTENTION-

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

Exhibit A

Property Address: 1911 Telegraph Avenue

APN: 008-0643-001-01

EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA, CITY OF OAKLAND, AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERN LINE OF TELEGRAPH AVENUE WITH THE NORTHEASTERN LINE OF 19TH STREET; THENCE ALONG THE LAST NAMED LINE NORTH 78 DEGREES 47 MINUTES 08 SECONDS WEST (THE BEARING OF THE SAID NORTHEASTERN LINE OF 19TH STREET BEING TAKEN AS NORTH 78 DEGREES 47 MINUTES 08 SECONDS WEST FOR THE PURPOSE OF MAKING THIS DESCRIPTION) 744.49 FEET TO THE NORTHEASTERN LINE OF SAN PABLO AVENUE; THENCE ALONG THE LAST NAMED LINE NORTH 14 DEGREES 24 MINUTES WEST 106.08 FEET TO THE NORTHWESTERN LINE OF LOT 4 IN BLOCK 2001, AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP OF THE HOGAN TRACT, OAKLAND, ALAMEDA COUNTY, CALIFORNIA, FILED JUNE 19, 1876, MAP BOOK 2, PAGE 2, ALAMEDA COUNTY RECORDS; THENCE ALONG THE LAST NAMED LINE NORTH 75 DEGREES 36 MINUTES EAST 77.75 FEET TO THE SOUTHWESTERN LINE OF LOT 8 IN BLOCK 2001, AS SHOWN ON SAID MAP; THENCE ALONG THE LAST NAMED LINE NORTH 14 DEGREES 24 MINUTES WEST 51.83 FEET TO THE SOUTHWESTERN LINE OF WILLIAM STREET; THENCE ALONG THE LAST NAMED LINE SOUTH 78 DEGREES 47 MINUTES 08 SECONDS EAST 742.65 FEET TO THE SAID NORTHWESTERN LINE OF TELEGRAPH AVENUE; THENCE ALONG THE LAST NAMED LINE SOUTH 11 DEGREES 12 MINUTES 52 SECONDS WEST 176 FEET TO THE POINT OF BEGINNING.

APN 008-0643-001-01

Exhibit B

Property Address: 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way

APN: 008-0649-009
008-0649-010

Exhibit B-1

Property Address: 490 Thomas L. Berkeley Way

APN: 008-0649-009

LEGAL DESCRIPTION

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

Beginning at a point on the Northeastern line of 20th Street, distant thereon South 63° 45' East 100 feet from the point of intersection thereof with the Eastern line of Telegraph Avenue, as said Telegraph Avenue existed June 28, 1907; running thence South 63° 45' East along said line of 20th Street, 86.58 feet to a point distant thereon North 63° 45' West, 165.50 feet from the point of intersection thereof with the Northwestern line of Broadway; thence North 26° 15' East 100 feet; thence North 63° 45' West 105.81 feet to a line drawn parallel with said Eastern line of Telegraph Avenue and distant 104 feet Easterly therefrom, measured along a line drawn parallel with the Southern line of Hobart Street; thence South 11° 13' West parallel with said line of Telegraph Avenue 74 feet; more or less, to the point of intersection with a line drawn North 26° 15' East from the point of beginning; thence South 26° 15' West 28 feet, more or less, to the point of beginning.

APN: 008-0649-009

Exhibit B-2

Property Address: 2000-2016 Telegraph Avenue and

APN: 008-0649-010

LEGAL DESCRIPTION

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

Beginning at the point of intersection of the Northeastern line of 20th Street, formerly Delger Street, with the Eastern line of Telegraph Avenue, as said Telegraph Avenue existed June 28, 1907, running thence North $11^{\circ} 13'$ East along said line of Telegraph Avenue 90.91 feet; thence South $78^{\circ} 27' 20''$ East 104 feet; thence South $11^{\circ} 13'$ West 90 feet, more or less, to the point of intersection with a line drawn North $26^{\circ} 15'$ East from a point on said Northern line of 20th Street, distant thereon 100 feet Easterly from the intersection thereof with said Eastern line of Telegraph Avenue; thence South $26^{\circ} 15'$ West 28 feet, more or less, to said Northeastern line of 20th Street; and thence North $63^{\circ} 45'$ West 100 feet to the point of beginning.

APN: 008-0649-010