

REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
2005 SEP 14 PM 1:04

TO: Office of the City Administrator/Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: September 27, 2005

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

SUMMARY

The Community and Economic Development Agency (CEDA) is recommending approval of one Agency and one City resolution 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:

- Authorize execution of certain amendments to the existing lease disposition and development agreement (the "LDDA"), the form of the ground lease (the "Ground Lease"), and related documents between the Agency, the City and FC Oakland, Inc., ("Forest City"), successor to Uptown Partners, LLC, or related entities and affiliates of Forest City, for the development of a mixed-use rental housing and retail development project (the "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 "Project Area").

The proposed amendments to the LDDA will (1) modify Forest City's public park maintenance obligation; (2) change the date for Forest City's receipt of net available tax increment for the Project; and (3) modify Forest City proposed noise reduction plan for the Oakland School for the Arts ("OSA").

Item: _____
Community and Economic Development Committee
September 27, 2005

- Approve, by resolution, a revised site plan for the Project.
- Change, by resolution, the Agency's and City's use of financial assistance to the Project.

The LDDA Amendments

The LDDA amendments are as follows:

- Forest City will pay to the City an annual fee (to be adjusted yearly for inflation) for the maintenance of a public park to be located within the Project Area. Originally, Forest City was going to assume the responsibility for the maintenance of the public park.
- Under the existing LDDA, the Agency will pay to Forest City the available net tax increment (including the housing set-aside). The original agreement called for these reimbursements to commence during the first fiscal year after a certificate of occupancy is to be issued for any building in the Project, and to end on June 12, 2020. Under the amendments, the Agency will make these reimbursements starting on the first day of fiscal year 2007-08. These reimbursements have an estimated total net present value of approximately \$12,115,000, which is equivalent to the maximum ceiling for this funding assistance as established in the LDDA. Hence, the proposed amendment to establish a certain date on which the reimbursement period of net available tax increment will commence does not change the total original amount of net available tax increment to be provided to Forest City as stipulated in the existing LDDA.
- The Agency will modify the noise reduction plan for the Oakland School for the Arts to allow for demolition of the public parking structure currently located at 1911 Telegraph Avenue during any time of the year, provided the noise reduction plan receives the written consent of the Director for the OSA.

Site Plan

The site plan for the Project has changed and now shows a new location for the public park. The original Project site plan placed the park on a parcel bounded by Thomas L. Berkley Way (formerly 20th Street) on the north, Parcel 3 on the east, William Street on the south and a new street on the west. In the revised Project site plan, the public park has been moved to a new parcel bounded by William Street on the north, Parcel 4 on the east, William Street on the north and 19th Street on the south. The attached diagram (Exhibit A) illustrates the change of location of the public park. In addition, the developer will now build 665 units instead of 590 units during the first phase of the Project. The park location change is designed to place this amenity closer to the OSA and the proposed affordable housing. The relocation is also necessary to allow sufficient time to remediate environmental contamination impacting the new public park site, since the park is not scheduled to be completed until the end of Phase I construction.

Use of City and Agency funds

The City's funding contribution to the Project in the amount of \$5.3 million, which was previously intended to provide gap financing, will now cover the cost of constructing public

improvements serving the Project Area. Agency funding, previously designated for public improvements, will now be allocated toward gap financing.

FISCAL IMPACT

Approval of these resolutions will authorize the City to accept and appropriate an annual park maintenance fee from Forest City, starting with an amount of \$35,432 in 2005 dollars (during the initial plant establishment period the City will receive a smaller fee, as City staff will only be responsible for maintaining the non-landscape elements of the park). Forest City's contribution can only be used to maintain the public park, and will be primarily utilized by the Public Works Agency's park maintenance staff.

It is anticipated that this fee will first be received in fiscal year 2007-08. The full park maintenance fee (once the plant establishment period is over) will first be received in fiscal year 2009-10. This fee will be adjusted annually for Cost of Living and Consumer Price Index ("CPI") increases related to the City's labor and material expenses. Any Cost of Living adjustments for the City's labor expenses will be based on salary increases as reflected in the Agreement between the City of Oakland and SEIU Local 790, whereas any increases in the costs for materials will be based on the CPI for the Metropolitan Statistical Area of San Francisco-Oakland-San Jose, California, as published by the U.S. Department of Labor's Bureau of Labor Statistics. The park maintenance payment from Forest City will be appropriated as part of the City's bi-annual budget. Forest City will be required to make these payments until the end of the lease term, which runs for 66 years.

In order to track revenues and expenditures, a new project number will be established in the City's Landscape and Lighting Assessment District Fund (2310).

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 Project. The LDDA was executed on October 14, 2004.

On June 21, 2005, the Agency approved Resolution No. 2005-33 C.M.S., and the City approved Resolution No. 79313 C.M.S., authorizing the Agency Administrator and the City Administrator to execute certain amendments to the LDDA, ground lease and related documents, 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.

The current LDDA and the ground lease include the following business terms:

- The Agency will assemble and lease certain Agency-owned properties in the Project Area to Forest City.

- The Agency will seek to acquire, at its sole and absolute discretion, and at its sole expense (up to \$16,995,000), additional parcels in the Project Area, and lease these to Forest City under a 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.
- The Agency and the City will provide the following financial assistance to Forest City to ensure the financial feasibility of the 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 Forest City's actual payment of Business Taxes to the City. The Agency will make this payment to Forest City until 2020. The Agency's payments shall not exceed a maximum combined present value of approximately \$12.1 million over the reimbursement term.
 - (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.
- The City will provide funding in an amount not to exceed \$1.0 million to Forest City for the design and construction of a public park located in the Project Area to be owned by the City.
- The Agency and City will reimburse Forest City in an amount not to exceed \$5.7 million for the costs of any off-site improvements required by the Project and the affordable housing project behind the Fox Theater.
- The Agency will reimburse Forest City for the costs associated with any hazardous materials cleanup in the Project Area in an amount not to exceed \$4,085,600.

PROJECT DESCRIPTION

The Project is a transit-oriented, mixed-income development with at least 700 rental apartments to be developed on a 5.76 acre site (excluding the 25,000-square-foot public park). The Project will be developed in 2 phases. Project density is approximately 120 units per acre. Key transit facilities in the vicinity of the Project include two BART stations and AC Transit bus stops. In addition to the residential component, Forest City proposes to build at least 14,500 square feet of neighborhood-serving commercial space along Telegraph Avenue and a 25,000 square-foot public park to be owned by the City of Oakland.

Forest City's site plan (Exhibit A) illustrates the proposed reconfiguration of the two super blocks currently comprising the Project Area. Forest City intends to create 5 new parcels (Parcels 1, 2, 3, 4 and the public park) bisected by a new street running from Thomas L. Berkley Way in the north to 19th Street in the south. Forest City plans to develop the Project in two phases. The first phase consists of the redevelopment of Parcels 1, 2, 3 and the public park parcel, while the second phase will cover Parcel 4.

The Agency's and City's total funding contribution for Phase I of the Project, including the public park, is approximately \$53.7 million, or \$80,750 per unit.

PROPOSED ACTIONS

Park Maintenance

The existing LDDA requires Forest City to maintain the public park for the term of the ground lease (including any options to extend). During the Agency's negotiations of a park maintenance agreement with Forest City, a couple of issues arose that could only be resolved if Forest City paid to the City an annual fee for maintaining the public park instead of implementing the original arrangement. On the one hand, City representatives were concerned that if the public park was not maintained by City staff but rather by outside contractors hired by a third party, they could face a dispute with labor unions representing City workers. On the other hand, Forest City was not prepared to accept certain insurance and indemnification requirements that would have been obligatory if Forest City had assumed direct responsibility for maintaining the park. As a result, both parties determined it to be more practical if Forest City paid the City for park maintenance.

The proposed amendment calls for Forest City to make an annual park maintenance fee to the City, starting with an amount of \$35,400 in 2005 dollars. During the first couple of years, this amount will be lower as the City will only be responsible for maintaining the non-landscape elements of the park because Forest City's contractor will service all landscape elements during a plant establishment period. The maintenance fee will be adjusted annually on the basis of Cost of Living and Consumer Price Index increases for the City's costs of labor and material.

Net Available Tax Increment Reimbursements

Pursuant to the current terms of the LDDA, the Agency is responsible for annual reimbursements of (1) the net available tax increment (including the housing set-aside, but after deducting other mandated pass-throughs and, if applicable, any ERAF diversion) to be collected from the Project, and, if necessary, (2) up to an amount measured by Forest City's actual payment of Business Taxes to the City (also known as gross receipts tax). These payments are to start in the first fiscal year after a certificate of occupancy is issued for any building in the Project. These reimbursements will generate extra net operating income which Forest City will use to obtain additional financing via the issuance of tax-exempt multifamily housing revenue bonds.

Forest City has requested that the commencement date for the reimbursement of net available tax increment start on the first day of the fiscal year 2007-08, which generally coincides with the currently projected date of Forest City's receipt of a certificate of occupancy for the first building. Forest City has asked for this modification because the buyer of the bonds, Merrill Lynch Portfolio Management, Inc., has asked for a firm date for commencement of the reimbursement for underwriting purposes. Changing the commencement date for reimbursement of the net available tax increment to the first day of fiscal year 2007-08 will not change the total

repayment to Forest City, which is based on a net present value of approximately \$12,115,000. This amount is equivalent to the maximum ceiling for this funding assistance as established in the existing LDDA.

Noise Reduction for the Oakland School for the Arts

The OSA is currently temporarily located on a site immediately behind the Fox Theater and adjacent to Parcel 3, 4 and the public park. In anticipation of the demolition and construction activity that will take place next to OSA once Forest City starts the Project, the LDDA includes certain provisions that are designed to minimize to the greatest extent possible any noise affecting the operation of the school. One of the elements of the noise reduction plan for the OSA is a requirement to limit demolition of the Sears parking garage (presently located on Parcel 3) to the OSA's summer vacation period, unless the Agency agrees in a resolution to allow demolition during non-school hours. A second noise control measure consists of the erection of a noise reduction barrier along the 19th Street OSA frontage. Forest City has asked that the time restriction for the demolition of the Sears garage be lifted, and that its contractors be allowed to demolish the Sears garage at any time during the year. Forest City has stated that the current provision would create unreasonable delays in abating hazardous materials on the site, and ultimately adversely affect the Project construction schedule. Forest City has agreed that *this provision only be changed if it can obtain the written consent of the Director of OSA prior to the commencement of demolition.* Finalization of the noise reduction plan will become a post-closing requirement.

The Site Plan

Agency Resolution No. 2004-38 included a provision that provided for Agency approval of the original design concept for the Project. The site plan embodied in the original design concept laid out a reconfiguration of the two super blocks currently comprising the Project Area by creating 5 new parcels (Parcels 1, 2, 3, 4 and the public park) bisected by a new street running from Thomas L. Berkley Way in the north to 19th Street in the south. The original site plan also placed the neighborhood park on a parcel bounded by Thomas L. Berkley Way (formerly 20th Street) on the north, Parcel 3 on the east, William Street on the south and a New Street on the west. After reevaluating the design for the Project, Forest City's design team changed the site plan (Exhibit A), which now shows a new location for the public park on a parcel bounded by William Street on the north, Parcel 4 on the east, William Street on the north and 19th Street on the south. Because of this and other design modification, Forest City will now build 665 units instead of 590 units during the first phase of the Project. Generally the relocation of the neighborhood park was driven by a desire to make it a central feature of the Project Area. The new location of the park makes it more accessible to the residents of the proposed affordable housing project behind the Fox Theater, as well as to the users of the Fox Theater itself once this historic building has been rehabilitated and occupied. The park relocation is also necessary to allow sufficient time to remediate petroleum-related contamination impacting the new public park site, since the park is not scheduled to be completed until the end of Phase I construction. The original location of the park is not affected by the same type of contamination and can be

cleaned up more expeditiously, thereby allowing for the timely construction of housing in accordance with the development schedule.

Staff intends to return to Council later this year with a proposal to eliminate any subsidies for Phase II of the Project (which is to be built on Parcel 4) by allowing the development of a market rate for-sale or rental project on the site. Accordingly, staff will recommend entering into an Exclusive Negotiation Agreement with Forest City for the development of Phase II.

Use of City and Agency funds

Pursuant to City Resolution No. 78728 C.M.S, the City has allocated \$5.3 million from the City Capital Reserves Fund toward gap financing for the Project. At this time, staff of the City's Finance and Management Agency has indicated that it desires to amend the resolution and change the stated use of the City funds from providing gap financing to partially paying for the Project's public improvements (for which the combined City and Agency funding assistance will total \$5.7 million), as this is the appropriate application of proceeds from the City's Capital Reserves Fund. Consequently, the Agency will now pay for all direct Project gap financing assistance in the amount of \$13.6 million by reallocating \$5.3 million of those Agency funds designated for Project infrastructure improvements to gap financing assistance. The balance of the off-site improvement costs in the amount of \$400,000 that will not be covered by the City's \$5.3 million Capital Reserves Funds contribution will still be paid for by the Agency.

SUSTAINABLE OPPORTUNITIES

Economic

The 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. Forest City and City staff established a list of sustainability measures that are either goals or requirements

for the developer, and are working toward incorporation of the following measures into the Project:

- 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.

Equity

The 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. Forest City 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. Forest City will also be subject to the Living Wage Ordinance.

DISABILITY AND SENIOR CITIZEN ACCESS

The 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 proposed amendments to the LDDA, ground lease and related documents as they modify key provisions to enhance the financing, construction and maintenance of the Project. The successful redevelopment of the Project Area 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 Central District. The 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.

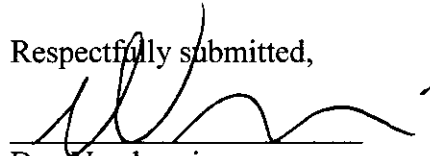
2. Improved physical design within the Activity Area, including creation of a definite sense of place, clear gateways, emphatic focal points and physical design which expresses and respects the special nature of each sub-area within the Activity Area.
3. Elimination of existing blighted structures and conditions with the Activity Area.
4. Increased residential opportunities in and/or near the Activity Area both to address the need for 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 approval of one Agency and one City resolution approving amendments to the LDDA, Ground Lease and related documents between the Agency, City and Forest City for development in the Uptown Activity Area.

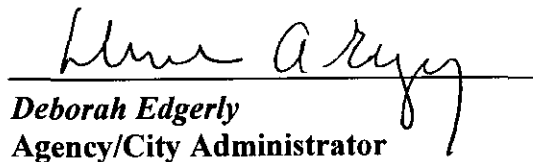
Respectfully submitted,



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

Prepared by:
Jens Hillmer
Urban Economic Coordinator
Redevelopment Division

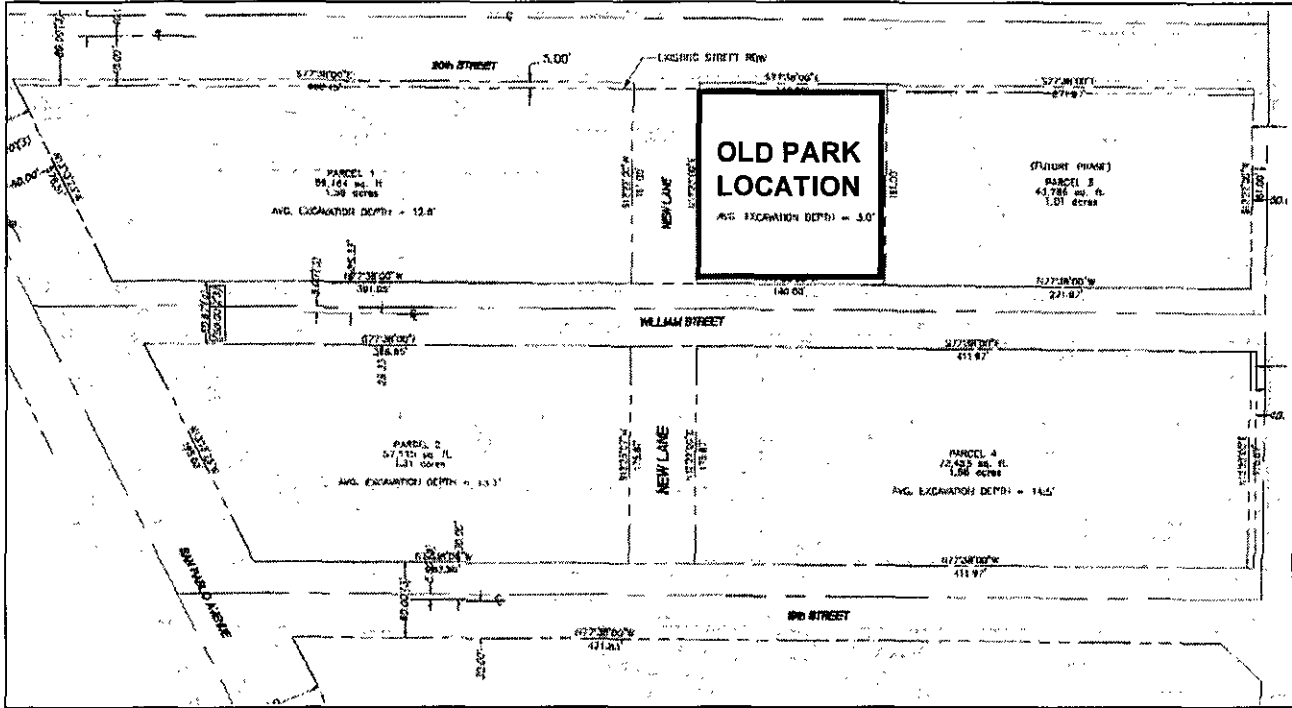
**APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE**



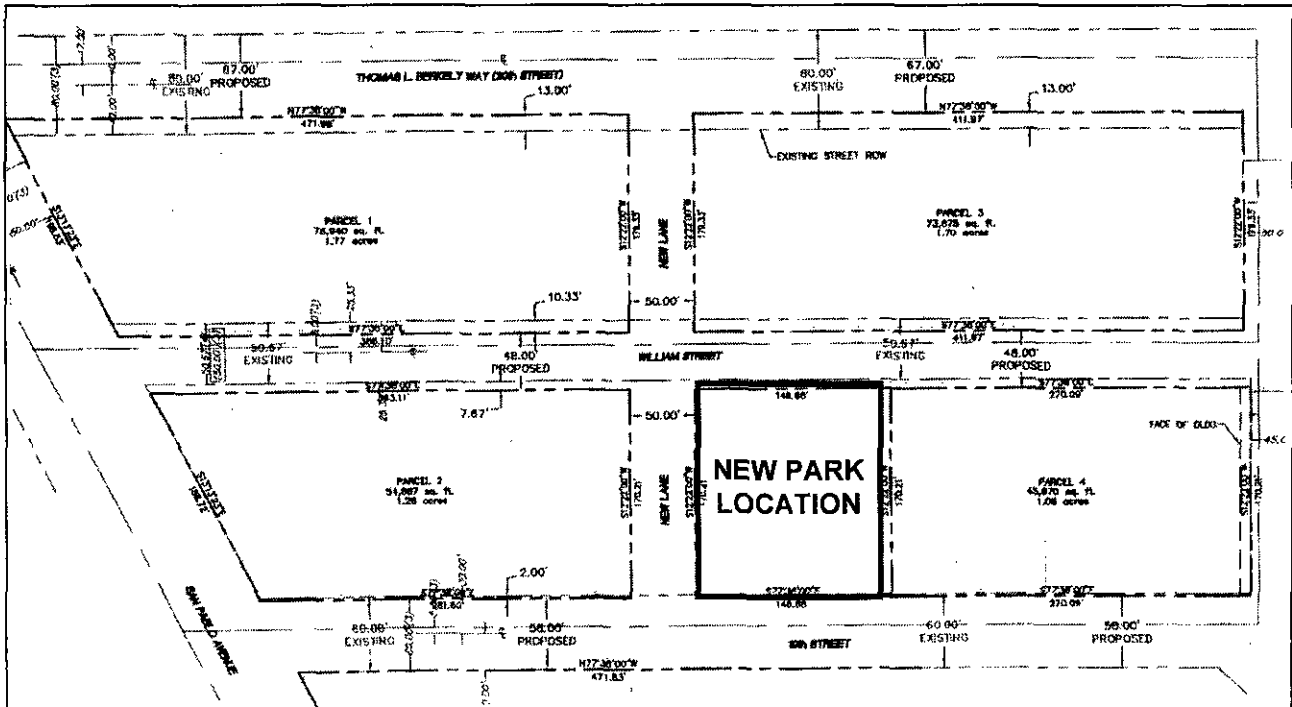
Deborah Edgerly
Agency/City Administrator

Exhibit A

Old Site Plan



New Site Plan



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2005 SEP 14 PM 1:04

APPROVED AS TO FORM AND LEGALITY:



Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

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

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

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

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

WHEREAS, the parties to the LDDA desire to amend certain terms of the LDDA, the Ground Lease, and related documents to, among other things: (A) modify public park maintenance obligations; (B) change the date for receipt of net available tax increment; and (C) change the noise reduction plan for the Oakland School for the Arts ("OSA"), as well as related amendments; and

WHEREAS, pursuant to Resolution No. 2004-38 C.M.S., the Agency approved the conceptual schematic design and site plans for the Project; and

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

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

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

WHEREAS, the Agency and City desire to modify the use of its respective contributions toward direct gap funding assistance and the construction of off-site improvements; and

WHEREAS, the City of Oakland, as the Lead Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"), has prepared a focused Environmental Impact Report analyzing the significant environmental effects and mitigation measures in accordance with the California Environmental Quality Act, Public Resources Code § 21000, et seq.; and

WHEREAS, on February 18, 2004, the City Council in accordance with CEQA Guidelines § 15090 certified that the Final Environmental Impact Report ("EIR") on the Project has been completed in compliance with CEQA, and the Guidelines for Implementation of the California Environmental Quality Act (14 CCR sections 15000, et seq.); and

WHEREAS, the Agency, as a "Responsible Agency" under CEQA, has independently reviewed and considered the environmental effects of the Project as shown in the EIR and other information in the record; and

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

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

WHEREAS, the City Council has approved the execution of the amendments 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, and that none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the Project or the circumstances under which the Project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no “new information of substantial importance” as described in CEQA Guidelines Section 15162(a)(3); and be it further

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

- Payment to FC of the net tax increment generated by the Project, as well as annual business taxes generated by the Project and by FC to the City, but only to fill a gap, if any, in payment of net tax increments, shall start on the first day of fiscal year 2007-08.
- The noise reduction plan for the OSA shall allow for demolition of the public parking structure currently located on Parcel 3 during any time of the year, subject to the written consent by the Director for the OSA.
- FC shall make annual payments to the City for park maintenance costs instead of providing park maintenance services itself.
- Other modifications as determined necessary or appropriate by the Agency Administrator consistent with this Agency action and previous Agency actions.

and be it further

RESOLVED: That the Agency hereby approves the revised site plan for the Project attached to this Resolution as Attachment A; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator to change the use of Agency funds in the amount of \$5,300,000 from the Agency’s Central District Tax Allocation

Bond Series 2003 Fund (Fund 9532, Project T245610) from providing funding for the construction of off-site improvements, to providing direct gap financing assistance to FC; 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; and be it further

RESOLVED: That the Agency Administrator or her designee is hereby authorized to take action with respect to the proposed amendments and the Project consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

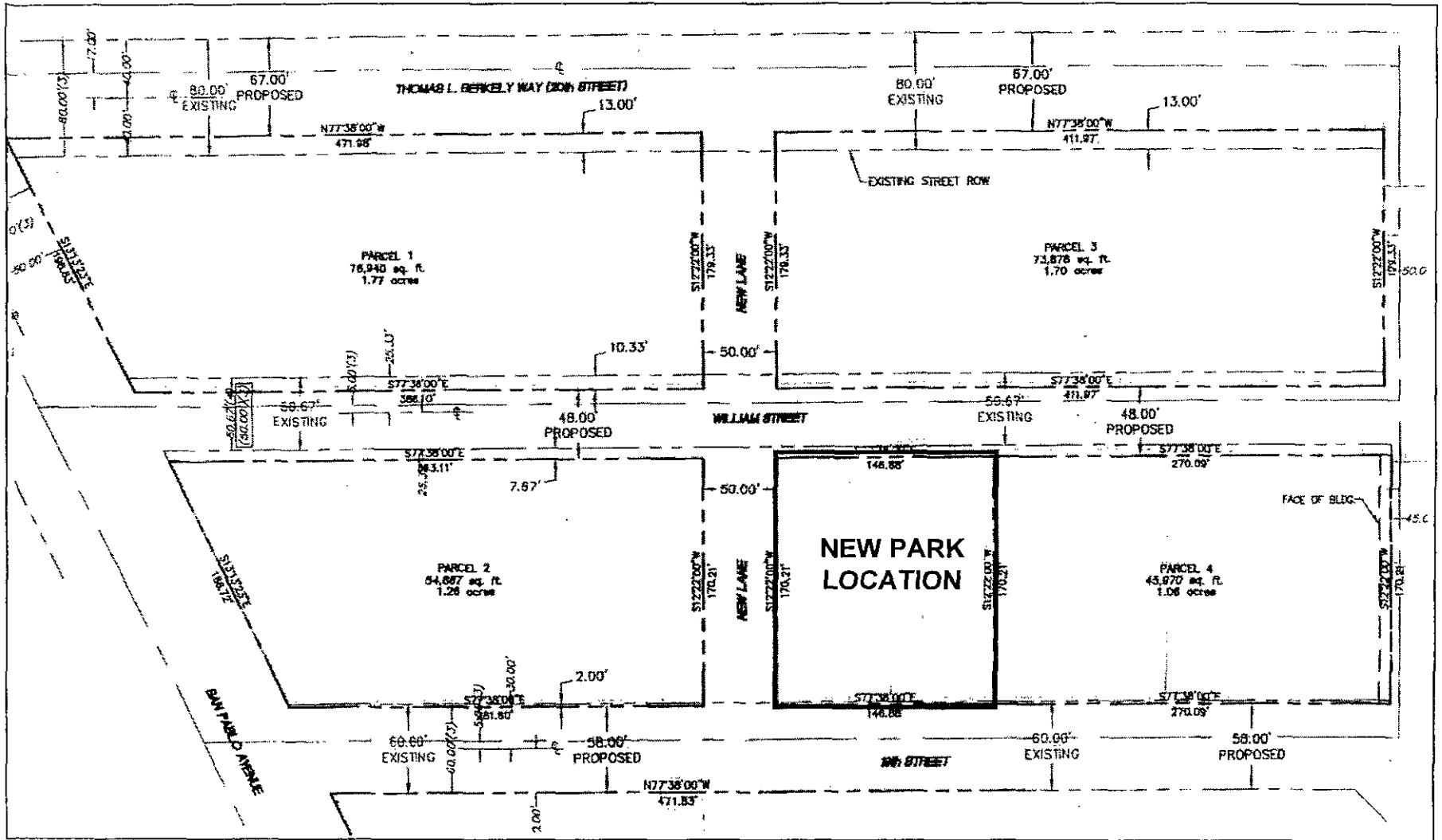
ABSTENTION-

ATTEST: _____

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

Attachment A

Revised Site Plan



OFFICE OF THE CITY CLERK
OAKLAND

2005 SEP 14 PM 1:04

APPROVED AS TO FORM AND LEGALITY:



Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

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

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

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

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

WHEREAS, the parties to the LDDA desire to amend certain terms of the LDDA, the Ground Lease, and related documents to, among other things: (A) modify public park maintenance obligations; (B) change the date for receipt of net available tax increment; and (C) change the noise reduction plan for the Oakland School for the Arts ("OSA"), as well as related amendments; and

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

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

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

WHEREAS, the Agency and City desire to modify the use of its respective contributions toward direct gap funding assistance and the construction of off-site improvements; and

WHEREAS, the City of Oakland, as the Lead Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"), has prepared a focused Environmental Impact Report analyzing the significant environmental effects and mitigation measures in accordance with the California Environmental Quality Act, Public Resources Code § 21000, et seq.; and

WHEREAS, on February 18, 2004, the City Council in accordance with CEQA Guidelines § 15090 certified that the Final Environmental Impact Report ("EIR") on the Project has been completed in compliance with the California Environmental Quality Act of 1970 ("CEQA"), and the Guidelines for Implementation of the California Environmental Quality Act (14 CCR sections 15000, et seq.); and

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

WHEREAS, as required by Section 33433 of the California Community Redevelopment Law, the Agency has made available to the public for inspection, no later than the first date of publication of the notice for the hearing, a supplemental report that contained a copy of the draft amendments; and

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

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

RESOLVED: That the City Council hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the Project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA, and that none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the Project or the circumstances under which the Project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); and be it further

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

- Payment to FC of the net tax increment generated by the Project, as well as annual business taxes generated by the Project and by FC to the City, but only to fill a gap, if any, in payment of net tax increments, shall start on the first day of fiscal year 2007-08.
- The noise reduction plan for the OSA shall allow for demolition of the public parking structure currently located on Parcel 3 during any time of the year, subject to the written consent by the Director for the OSA.
- FC shall make annual payments to the City for park maintenance costs instead of providing park maintenance services itself.
- Other modifications as determined necessary or appropriate by the City Administrator consistent with this Council action and previous Council actions.

and be it further

RESOLVED: That park maintenance payments from FC pursuant to the LDDA and related documents be deposited in the City's Landscape and Lighting Assessment District Fund (Fund 2310), in which a new Project number will be created once the payments from FC to the City commence during fiscal year 2007-08; and be it further

RESOLVED: That the City Council hereby approves the revised site plan for the Project attached to this Resolution as Attachment A; and be it further

RESOLVED: That the City Council hereby authorizes the City Administrator to change the use of City funds in the amount of \$5,300,000 from the City's Capital Improvement Reserves Fund

(Fund 5510) for the implementation of the Project from providing direct gap financing assistance to FC to providing funding for the construction of off-site improvements; 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 Council 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; and be it further

RESOLVED: That the City Administrator or her designee is hereby authorized to take action with respect to the proposed amendments and the Project consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

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

Attachment A

Revised Site Plan

