

CITY OF OAKLAND
REDEVELOPMENT AGENCY

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

SUPPLEMENTAL AGENDA REPORT 2005 SEP 29 PM 6:19

TO: Office of the City Manager / Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: October 4, 2005

RE: A SUPPLEMENTAL REPORT ON:

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, (C) CHANGE THE NOISE REDUCTION PLAN FOR THE OAKLAND SCHOOL FOR THE ARTS, (D) MODIFY THE REPAYMENT SCHEDULE; AND (E) ADD VARIOUS OTHER AMENDMENTS; (2) APPROVING THE REVISED SITE PLAN FOR THE PROJECT; AND (3) CHANGING THE USE OF AGENCY FUNDS FOR THE IMPLEMENTATION OF THE PROJECT

On September 27, 2005, the Community and Economic Development Committee (CEDC) considered certain amendments to a Lease Disposition and Development Agreement (LDDA) between the Agency, the City of Oakland and FC Oakland, Inc. (Forest City), or related entities, to develop the Uptown Project. In addition to requesting certain changes to the legislation authorizing the LDDA amendments, the Committee asked staff to respond to the following questions:

1. Describe the proposed change related to the participation rent payments to be received by the Agency from Forest City

Pursuant to the terms of the LDDA, the Agency will provide direct gap financing assistance in the amount of \$12.9 million. In addition, the Agency will reimburse (a) annual net available tax increment to be collected from the Uptown Project, and, if necessary, (b) up to an amount measured by Forest City's actual payment of Business Taxes to the City. The Agency will make these two reimbursements to Forest City until 2020. The Agency's reimbursements will not exceed a maximum combined present value of approximately \$11.5 million.

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Pursuant to the terms of the current LDDA, the Agency will ground lease its land to Forest City with ground lease payments to the Agency in the form of a 25 percent participation in the project's operating cash flow after Forest City receives a 12 percent preferred, accruing return on equity. The Agency's participation payments will cease once the Agency's funding assistance in the combined amount of \$24.4 million has been fully repaid in *nominal* dollars.

Instead of this arrangement, Forest City has proposed to establish a fixed payment schedule to repay the Agency's funding assistance. Specifically, Forest City proposes to repay the Agency over a term of 19 years beginning in 2016 and ending in 2034. The Agency's payments will only be subordinate to debt-service payments on the multi-family housing revenue bonds or other mortgage financing. Each year, the Agency will receive the lesser of the scheduled annual payment due on such date as shown on the repayment schedule or seventy-five percent (75%) of the net operating income from the immediately preceding lease year. If project net cash flow in any given year is insufficient to make the scheduled payment to the Agency, then any deferred portion of the repayment amount will be added to the payment scheduled for the following year. In the event of a sale of the Uptown Project, Forest City's repayment obligation will be assigned to any successor in interest based on the same terms until the Agency is repaid in full. The proposed repayment terms will allow Forest City to enter into a multi-family housing revenue bond purchase agreement with Fannie Mae (FNMA) in the future after termination of the interest rate swap agreement for the bonds with Merrill Lynch Capital Services. FNMA's regulations require that only 75 percent of cash flow be used to repay secondary debt, such as the Agency's funding assistance.

Forest City's last proposal contrasts with the current repayment deal structure in a number of ways, which make it more favorable to the Agency. First, the repayment risk to the Agency that is inherent in the current agreement relates to the Agency's junior position to Forest City's preferred return. Since any annual shortfalls of the 12 percent return due to Forest City will be added to the developer's outstanding equity balance, which, in turn, is entitled to the 12 percent return, the developer's total equity and return thereon will increase significantly during the initial years of project operation. Project cash flow projections always indicated that project income was sufficient to make debt service payments but not enough to meet fully Forest City's senior return requirements during those early years. As a result, the Agency did not anticipate receiving any participation payments until 2019 and ending in 2034, unless there was a sale of the property during that time. In addition to the uncertainty about the actual timing of repayments, there was also no certainty about the annual repayment amounts, which could vary greatly depending on the financial performance of the project. Considering on-going increases in construction costs, which will likely continue after hurricanes Katrina and Rita, and the relatively flat rents in Oakland, Forest City's project may not reach the 12 percent return-on-equity target for a number of years, adding additional risk to the current arrangement with Forest City.

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Eliminating the Agency's junior position to Forest City preferred, accruing return, and turning it into fixed payment schedule junior only to debt service payments gives the Agency a lot more certainty about the timing and amount of any participation payments.

Second, in the event of Forest City's sale of the Project to a third party after 2027, sales proceeds would have been distributed as follows after retiring any bond or mortgage financing:

(a) Repay Forest City's outstanding equity; (b) Repay Forest City's return on equity; (c) pay seventy-five percent (75%) of the remaining sales proceeds to Forest City and (d) pay the remaining twenty-five percent (25%) of sales proceeds (1) first to the Agency up to the unpaid balance of the financial assistance amount and (2) second, any remaining sales proceeds going to Forest City. According to this distribution formula, the Agency would have only been paid off in full if sales proceeds were adequate to cover items (a) through (d) above. If sales proceeds were only sufficient to cover outstanding mortgage debt, repayment of Forest City's equity and preferred return, and only a portion of the amount due to the Agency, then the Agency would not be entitled to receive the outstanding nominal balance of its financing assistance to the project. As a result, under the current terms, there is no certainty of full repayment of the Agency's financing assistance in the event of a sale. Moreover, under the current deal structure, the obligation to repay the Agency fully for its funding assistance would not be assignable to a new buyer. Therefore, if sales proceeds were insufficient to distribute payments as outlined above, the Agency may not ever have been fully repaid.

Forest City's new proposal eliminates this uncertainty by assigning the repayment schedule to any successor in interest until the Agency's funding assistance is repaid in full from net operating income after debt service, if available. Moreover, based on the opinion of the Agency's financial adviser, it is often the case that third party buyers prefer to pay off any and all debt obligations to public or private entities upon taking ownership. As a result, there is a possibility that the Agency could get fully repaid at a sale of the Project.

Third, the complexity of the original participation formula, which positioned the Agency as junior to a preferred return to the developer, would have required annual monitoring and review of acceptable annual operating costs, confirming the annual amount of equity entitled to a preferred return, and verifying the calculation of profits. This monitoring would be made exceedingly more difficult under Forest City's current bond swap arrangement with Merrill Lynch and could lead to potentially controversial budget and profit/loss reconciliation negotiations between the developer and the Agency on an annual basis.

The current proposal does not eliminate annual monitoring of project operating budgets and debt service payments, but it eliminates annual verification and confirmation of Forest City's equity amounts entitled to a preferred return since the Agency is now senior to Forest City repayments of equity and return thereon. The Agency will simply receive an annual payment without having to engage Forest City about its equity and profit calculation. This will also result in savings of staff costs due to the elimination of any complicated annual analysis and negotiation.

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In conclusion, the proposed payment schedule gives the Agency significantly more certainty about the timing and amounts of the repayment of its funding assistance, while also ensuring a significantly increased chance that the Agency will actually be fully repaid over time. A copy of the proposed payment schedule is attached.

2) Evaluation of options for the management of the Public Park

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 and Forest City's negotiations of a park maintenance agreement, Forest City was not prepared to accept certain insurance and indemnification requirements that the City considered necessary if Forest City assumed direct responsibility for maintaining the park. As a result, both parties determined it to be more practical if Forest City paid the City a specified annual fee for park maintenance. This is the first option under consideration.

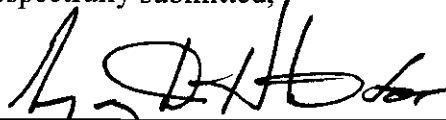
Option II would consist of Forest City maintaining the park at its sole cost, and indemnifying the City, as owner of the public park, from any damages and claims arising from Forest City's maintenance of the park. This option is favorable to the City because Forest City's indemnity would significantly reduce potential liability for the City relating to park maintenance. Forest City is not prepared to assume this liability.

Option III would consist of Forest City maintaining the park, while the City, as owner of the public park, would indemnify Forest City from any damages and claims arising from Forest City's maintenance of the park. This option is not favorable to the City because the City would be liable for Forest City's actions even though the City would have no direct role in maintaining the park or control over Forest City's maintenance.

Staff is still evaluating these options and is seeking Council direction on this matter.

Pursuant to the Committee's direction, staff will make the final Amended and Restated LDDA, incorporating these amendments and other changes, available to the Council prior to the Community and Economic Development Committee meeting of October 11, 2005.

Respectfully submitted,



Daniel Vanderprien,
Director of Redevelopment, Economic
Development, and Housing and
Community Development

Prepared by:

Jens Hillmer, Urban Economic Coordinator
Downtown Redevelopment Unit

APPROVED AND FORWARDED TO
THE CITY COUNCIL/REDEVELOPMENT
AGENCY

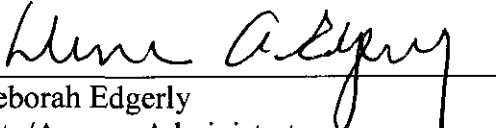

Deborah Edgerly
City/Agency Administrator

Exhibit A

<u>Year</u>	<u>Current Year Payment</u>	<u>Cumulative Payment</u>
2016	485,320	485,320
2017	577,798	1,063,118
2018	673,147	1,736,265
2019	771,454	2,507,719
2020	872,811	3,380,530
2021	977,311	4,357,842
2022	1,085,051	5,442,892
2023	1,196,129	6,639,021
2024	1,310,648	7,949,669
2025	1,376,180	9,325,849
2026	1,444,989	10,770,837
2027	1,517,238	12,288,076
2028	1,593,100	13,881,176
2029	1,672,755	15,553,932
2030	1,756,393	17,310,325
2031	1,844,213	19,154,537
2032	1,936,423	21,090,961
2033	2,033,245	23,124,205
2034	1,275,795	24,400,000

14.1
ORACOUNCIL
OCT 04 2005

OFFICE OF THE CITY CLERK
OAKLAND

2005 SEP 29 PM 3: 54

REVISED

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, (C) CHANGE THE NOISE REDUCTION PLAN FOR THE OAKLAND SCHOOL FOR THE ARTS, (D) MODIFY THE REPAYMENT SCHEDULE; AND (E) ADD VARIOUS OTHER AMENDMENTS; (2) APPROVING THE REVISED SITE PLAN FOR THE PROJECT; AND (3) CHANGING THE USE OF 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

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

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

WHEREAS, 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, 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 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.
- Modify FC's obligation to repay the City and Agency to a fixed schedule.

- Include various other amendments, along with the above amendments, to be embodied in an Amended and Restated LDDA, an Amended and Restated Ground Lease, and related documents.
- Other administrative 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-

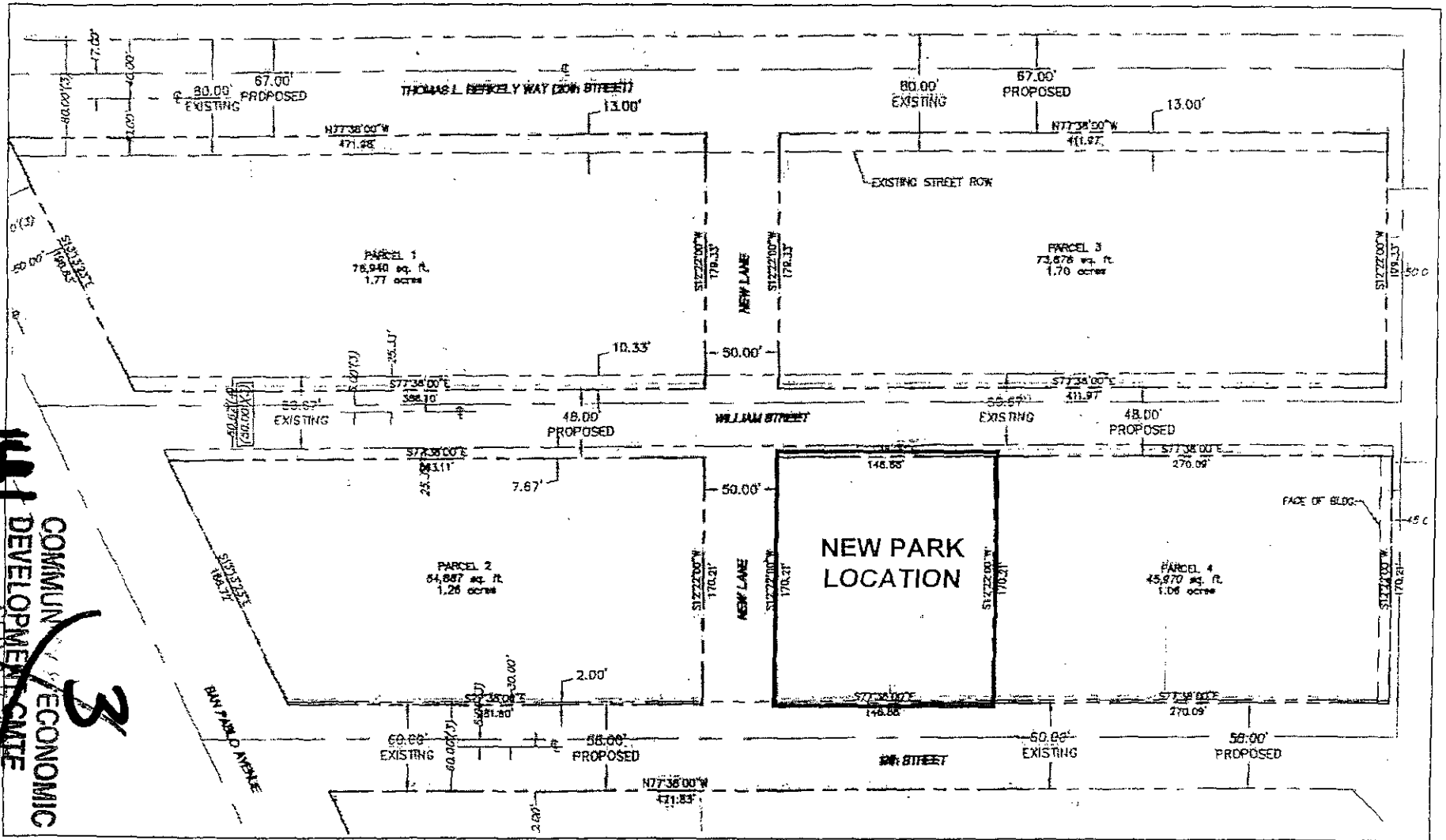
ABSTENTION-

14.1
ORA/COUNCIL
OCT 04 2005

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

Attachment A

Revised Site Plan



ORACOUNCIL
OCT 04 2005

COMMUNITY ECONOMIC
DEVELOPMENT COMTE
SEP 27 2005

3

OFFICE OF THE CITY CLERK
OAKLAND

2005 SEP 29 PM 3:54

REVISED

APPROVED AS TO FORM AND LEGALITY:

W. Lellen

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, (D) MODIFY THE REPAYMENT SCHEDULE; AND (E) ADD VARIOUS OTHER AMENDMENTS; (2) APPROVING THE REVISED SITE PLAN FOR THE PROJECT; AND (3) CHANGING THE USE OF CITY FUNDS FOR THE IMPLEMENTATION OF THE PROJECT

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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

14.1
ORACOUNCIL
OCT 04 2005

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

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

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

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

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

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

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

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

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

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

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

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

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

- Payment to FC of the net tax increment generated by the Project, as well as annual business taxes generated by the Project and by FC to the City, but only to fill a gap, if any, in payment of net tax increments, shall start on the first day of fiscal year 2007-08.
- The noise reduction plan for the OSA shall allow for demolition of the public parking structure currently located on Parcel 3 during any time of the year, subject to the written consent by the Director for the OSA.
- FC shall make annual payments to the City for park maintenance costs instead of providing park maintenance services itself.
- Modify FC's obligation to repay the City and Agency to a fixed schedule.
- Include various other amendments, along with the above amendments, to be embodied in an Amended and Restated LDDA, an Amended and Restated Ground Lease, and related documents.
- Other administrative modifications as determined necessary or appropriate by the City Administrator consistent with this Council action and previous Council actions.

and be it further

RESOLVED: That 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-

14.1
ORA/COUNCIL
OCT 04 2005

ATTEST: _____

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

Attachment A

1411
ORACOUNCIL
OCT 04 2005

371
COMMUNITY ECONOMIC
DEVELOPMENT CODE
SEP 27 2005

Revised Site Plan

