

**CITY OF OAKLAND
CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA REPORT**

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2004 JUN 10 PM 10:02

TO: Office of the City/Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: June 22, 2004
RE: **A TOTAL OF FIVE CITY AND AGENCY RESOLUTIONS REGARDING
REDEVELOPMENT ACTIVITIES IN THE UPTOWN ACTIVITY AREA OF
THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA:**

**AGENCY RESOLUTIONS: (1) AUTHORIZING EXECUTION OF A LEASE
DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASES, AND
RELATED DOCUMENTS BETWEEN THE REDEVELOPMENT AGENCY, THE
CITY OF OAKLAND, AND UPTOWN PARTNERS, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY, 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; (2) ADOPTING A REPLACEMENT
HOUSING PLAN FOR HOUSING UNITS THAT MAY BE DEMOLISHED AT
THE WESTERNER HOTEL, 1918 - 1954 SAN PABLO AVENUE, FOR THE
UPTOWN PROJECT; AND (3) AUTHORIZING THE AGENCY
ADMINISTRATOR TO EXECUTE A COOPERATION AGREEMENT WITH
THE CITY AND THE COALITION FOR WORKFORCE HOUSING RELATING
TO THE DEVELOPMENT OF A ONE HUNDRED PERCENT (100%)
AFFORDABLE HOUSING PROJECT ON A PARCEL LOCATED
IMMEDIATELY BEHIND THE FOX THEATER BETWEEN 18TH AND 19TH
STREET IN THE UPTOWN ACTIVITY AREA OF THE CENTRAL DISTRICT
REDEVELOPMENT PROJECT AREA**

**CITY RESOLUTIONS: (1) AUTHORIZING APPROVAL AND EXECUTION OF
A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND
LEASES, AND RELATED DOCUMENTS BETWEEN THE REDEVELOPMENT
AGENCY, THE CITY OF OAKLAND AND UPTOWN PARTNERS, LLC, A
CALIFORNIA LIMITED LIABILITY COMPANY, 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; AND (2) AUTHORIZING THE CITY
ADMINISTRATOR TO EXECUTE A COOPERATION AGREEMENT WITH
THE REDEVELOPMENT AGENCY AND THE COALITION FOR
WORKFORCE HOUSING RELATING TO THE DEVELOPMENT OF A ONE
HUNDRED PERCENT (100%) AFFORDABLE HOUSING PROJECT ON A
PARCEL LOCATED IMMEDIATELY BEHIND THE FOX THEATER
BETWEEN 18TH AND 19TH STREET IN THE UPTOWN ACTIVITY AREA OF
THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA**

SUMMARY

The Community and Economic Development Agency (CEDA) is recommending approval of three 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:

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- Authorize execution of 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 Uptown Partners, LLC, a California Limited Liability Company ("Uptown Partners"), 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 (collectively referred to as the "Project Area", as identified on Exhibits A-1 and A-2). Uptown Partners is a single purpose corporate entity established by Forest City Residential West, Inc. ("Forest City") specifically for the development of the Uptown Project.
- Adopt a replacement housing plan for residential units that may be demolished at the Westerner Hotel, 1918 - 1954 San Pablo Avenue, to provide a clear site for the development of the Uptown Project.
- Authorize the Agency Administrator to execute a Cooperation Agreement with the Coalition for Workforce Housing (the "Coalition") relating to the development of a one hundred percent (100%) affordable housing project (the "Affordable Housing Project") on a parcel (Parcel 6) located immediately behind the Fox Theater between 18th and 19th Street.

The LDDA and Ground Lease

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

- The Agency will lease certain Agency-owned properties in the Project Area to Uptown Partners.
- The Agency will seek to acquire, at its sole and absolute discretion, and at its sole expense, additional parcels in the Project Area and lease these to Uptown Partners 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.
- Uptown Partners will develop at least 700 residential units, including 20 percent of the units affordable to households with incomes no greater than 50 percent of the Area Median Income (AMI) and 5 percent of the units affordable to households with incomes no greater than 120 percent of AMI.
- Uptown Partners will also develop at least 14,500 square feet of neighborhood-serving commercial space and parking facilities in the Project Area.
- The Agency and the City will provide the following financial assistance to Uptown Partners 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 Uptown Partners' actual

- payment of Business Taxes to the City. The Agency will make these two payments to Uptown Partners until the Central District's ability to repay any debt is terminated in 2020. The Agency's payments shall not exceed a maximum combined net present value of approximately \$12.1 million.
- (2) Direct Agency financial assistance in an amount not to exceed \$8.3 million dollars ("Agency Gap Financing").
 - (3) Direct City financial assistance in an amount not to exceed \$5.3 million dollars ("City Gap Financing").
- Uptown Partners, in consideration of the financial assistance provided by the Agency and City, will pay to the Agency:
 - (1) Participation rent based on Uptown Partners' cash flow from the Uptown Project, after receipt of a specified preferred return on equity (12% per year), until the Agency's and the City's financing assistance to the project has been fully repaid.
 - (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 sale or refinancing) the first mortgage for the Uptown Project to repay the City's and Agency's financial assistance amount.

The Agency will assign all participation rent payments and any share of net proceeds from a sale or refinance to the City.

- The City will provide funding of \$1.0 million to Uptown Partners for the design and construction of a public park on a 25,000 square-foot parcel of land located in the Project Area (the "Park Site") to be owned by the City or the Agency.
- The Agency will reimburse Uptown Partners for the costs of any off-site improvements (the "Off-Site Improvements") required by the Uptown Project and the Affordable Housing Project in an amount not to exceed \$5.7 million.
- The Agency will reimburse Uptown Partners for the costs associated with any hazardous materials clean-up in the Project Area in an amount not to exceed \$2,585,600.
- Uptown Partners, in concert with the Agency, will use its best efforts to recruit a qualified developer to construct a market-rate residential condominium tower with approximately 269 units (the "Condo Project") on Parcel 5.

The Replacement Housing Plan

The development of the Uptown Project may require the targeted acquisition and demolition of 33 very-low income housing units located in the Westerner Hotel at 1918 - 1954 San Pablo. State law requires that such lost units be replaced within four years of

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their removal, and that these units be available for rental at affordable housing costs to persons in the same or a lower income category as the persons displaced from those removed units. The units have to be replaced within the territorial jurisdiction of the Agency. Accordingly, State law obligates the Agency to adopt a housing replacement plan at least 30 days prior to the execution of the LDDA for the Uptown Project that will result in the elimination of dwelling units for very low income households. According to the replacement plan, 100 percent of the units that will be lost at the Westerner Hotel, if the Agency exercises its discretion to acquire the property, will be replaced as part of the Uptown Project.

The Cooperation Agreement

At the direction of the City Council, Agency staff, in consultation with Forest City, has worked with the Coalition for Workforce Housing (the "Coalition") to reach agreement on the development of a 100 percent affordable housing project (the "Affordable Housing Project") on Parcel 6 behind the Fox Theater. The Agency, the City and the Coalition have prepared a Cooperation Agreement, pursuant to which the Agency will set aside a portion of land (approximately .85 acres), issue a Request for Proposals (RFP), provide gap financing in an amount of \$2,050,000, and \$414,400 for hazardous materials remediation for the development of the Affordable Housing Project with approximately 70 units, of which 50% will be 3 or 4 bedroom units, if the Coalition and its members agree not to commence any litigation to impede development of the Uptown Project. The Council should be aware that execution of the Cooperation Agreement may not prevent organizations unrelated to the Coalition, or any individual, including individual members of Coalition organizations acting without the Coalition's support, from initiating legal action against the Uptown Project.

FISCAL IMPACT

Over the years, the Agency has expended approximately \$6.5 million on the acquisition of properties located within the Project Area that will be leased to Uptown Partners pursuant to the Ground Lease. The Agency has also spent an additional \$2.7 million on those properties located behind the Fox Theater that will be made available for the Condominium Project on Parcel 5 (\$2.1 million) (and the Affordable Housing Project on Parcel 6 (\$600,000)). In addition, the Agency will commit a total allocation of \$51.7 million to (1) acquire all remaining privately-owned properties in the Project Area; (2) ensure the financial feasibility of the Uptown Project; (3) contribute to the remediation of hazardous materials and to the construction of public open space and off-site improvements; and (4) provide gap financing assistance to the Affordable Housing Project. These funds will be spent on the specific categories identified in Table 1. In total, the Agency will spend approximately \$55.7 million on the Uptown Project, approximately \$3.1 million on the Affordable Housing Project and \$2.1 million for the Condominium Project on Parcel 5 for a combined total amount of \$60.9 million. The total

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Agency costs are higher than the \$59.5 million reported to the City Council in April 2003 due to an additional \$650,000 needed for the Affordable Housing Project subsidy and \$750,000 additional Uptown Project costs (consisting of an increase in land assembly costs). However, the Condominium Project Parcel will be sold at fair market value, once a developer for this project component has been identified.

By authorizing the execution of the Cooperation Agreement, the Agency will approve allocation of gap financing assistance in the amount of \$2,050,000 and hazardous materials remediation of \$414,400 for the Affordable Housing Project. However, a recommendation to award this funding to a specific project will be presented to the City Council and the Agency once a developer has been selected via the RFP process.

Table 1

Use of Funding	Amount	CITY	ORA	Project Generated
Prior Land Acquisition	\$9,200,000		\$9,200,000	
Agency Gap Financing	\$8,335,749		\$8,335,749	
City Gap Financing	\$5,300,000	\$5,300,000		
Net Available Increment + Net Business Tax Reimbursement 2007- 2020	\$12,114,708			\$12,114,708
Hazardous Materials Abatement (Reimbursement to Uptown Partners)	\$2,585,600		\$2,585,600	
Off-site Improvements	\$5,700,000		\$5,700,000	
Public Park	\$1,000,000	\$1,000,000		
Affordable Housing Project (AHP) Gap Financing Assistance	\$2,050,000		\$2,050,000	
Hazardous Materials Reimbursement to AHP	\$414,400		414,400	
Site Acquisition	\$14,195,000		\$14,195,000	
TOTAL	\$60,895,457	\$6,300,000	\$42,480,749	\$12,114,708

Funds are or will be available from the sources identified in Table 2:

Table 2

Source	Amount	Use	Availability
Central District Capital Fund	\$9,200,000	Prior Land Acquisition	Expended
Central District Capital Fund	\$18,930,749	Site Acquisition (\$14.2m), ORA Gap Financing (\$4.7m)	FY 2003-05
EPA Brownfields Program Grant Award to ORA	\$200,000	Hazmat Abatement	FY 2004-05
Preservation Park Land Sale Proceeds	\$6,500,000	ORA Gap Financing \$(3.6m), Hazmat Abatement (\$2.8m), AHP Gap Financing Assistance (\$100,000)	FY 2004-05
T-10 Land Sale Proceeds	\$7,000,000	Off-sites (\$5.7m), AHP Gap Financing Assistance (\$1.3)	FY 2004-05
City of Oakland Capital Reserves	\$5,300,000	City Gap Financing	FY 2003-05
UDAG Repayment Funds	\$1,000,000	Public Park	FY 2003-05
Project Generated Net Available Increment + Net Business Tax Reimbursement	\$12,114,708	On-going subsidy to finance private debt	FY 2007-20
Redevelopment Agency Low and Moderate Income Housing Fund FY 2005-07	\$650,000	AHP Gap Financing Assistance	FY 2004-05
TOTAL	\$60,895,457		

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Central District Capital Funds Fiscal Year 2003-05

A total of \$18.9 million to be used for site assembly (\$14.2 million) and partial Agency Gap Financing assistance (\$4.7 million) is currently available in the following Funds and Projects:

The Central District Tax Allocation Bond Series 1986 Fund (Fund 9516, Project P221520) includes \$1.0 million for the Forest City Project.

The Central District Tax Allocation Bond Series 2003 Fund (Fund 9532, Project T245610) includes \$9.1 million for Fiscal Year 2003-04, with an additional allocation of \$5.0 million in Fiscal Year 2004-05.

The Unrestricted Land Sale Proceeds Fund (Fund 9553, Project P125910) includes approximately \$3.8 million that will be reallocated from the 17th & San Pablo Parking Garage project to the Uptown Retail/Entertainment District Catalyst Development (Fund 9553, Project P132740).

EPA Brownfields Grant Program

During June of 2003, the Agency received a clean-up grant in the amount of \$200,000 from the United States Environmental Protection Agency's (EPA) Brownfields Grant Program. Grant proceeds will be used for hazardous materials clean-up. EPA monies will be placed in a project to be set up in Central District Grant Funds (Fund 9215).

Preservation Park Land Sale Proceeds

On February 17, 2004, pursuant to Resolution No. 2004-04 C.M.S., the Agency authorized the sale of Preservation Park to the East Bay Asian Local Development Corporation (EBALDC). EBALDC and the Agency are completing negotiations and it is anticipated that the sale to EBALDC will close escrow in the summer of 2004, generating land sale proceeds of approximately \$7.0 million, of which \$6.5 million will be allocated to the Uptown Project. These funds will be used for Agency Gap Financing assistance (\$3.6 million), hazardous materials remediation (\$2,385,600 for the Uptown Project and \$414,400 for the Affordable Housing Project) and \$100,000 of gap financing assistance for the Affordable Housing Project.

T-10 Land Sale Proceeds

On June 3, 2003, the Agency, pursuant to Resolution 2003-27 C.M.S., authorized the purchase of the site known as "T-10", which is bound by Jefferson Street, Martin Luther King, Jr. Way, 14th Street and the 13th Street Pedestrian Walk, from the City of Oakland for \$7.0 million. The source of this money was the Central District Tax Allocation Bond

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Series 2003 Fund (Fund 9532, Project T245610), which was designated to the Uptown Project. In July, the Agency will recommend to its governing board approval of a resolution authorizing the sale of T-10 to the Olson Company, a private housing developer. A portion of the sale proceeds will be used to reimburse the Central District Tax Allocation Bond Series 2003 Fund for the \$7.0 million advance that was used to buy the property from the City of Oakland. These funds will be allocated to cover the Agency contribution to the construction of all off-site improvements (\$5.7 million) and gap financing assistance for the Affordable Housing Project (\$1.3 million).

City Capital Reserves

The City Capital Reserves Fund (Fund 5510) includes \$5.3 million in City funds that will be available if the City approves its use for City Gap Financing assistance to the Uptown Project. The Agency will repay the City for these funds over time by assigning any payments under the Ground Lease to the City. According to a preliminary payment schedule, the City will not receive any payments until 2018.

Urban Development Action Grant (UDAG) Repayment Fund

The Miscellaneous Grants Fund (Fund 2999, Project G84040) holds UDAG repayment funds that have been allocated to the Uptown Project as part of Fiscal Year 2003-05. These funds include \$1.0 million that the City will provide for the construction of a new public park in the Project Area.

Low and Moderate Income Housing Fund

The Low and Moderate Income Housing Fund will provide approximately \$650,000 in gap financing assistance during Fiscal Years 2005-07 to the Affordable Housing Project. These funds will be allocated to the Affordable Housing Project outside of the annual NOFA process upon approval of the Cooperation Agreement, and are subject to Council approval once a developer for the Affordable Housing Project has been selected by staff.

Project-Generated Net Available Tax Increment and Net Business Tax Reimbursement

The Uptown Project, once completed, will generate property tax increment for the Agency until 2020, as well as business taxes for the City. The Agency will reimburse on a "pay-as-you-go" basis to Uptown Partners the annual tax increment, including the 25% housing set-aside, and, if necessary, up to an amount measured by the annual business taxes paid by Uptown Partners to the City. These payments will allow the developer to borrow approximately \$12.1 million in additional debt for the Uptown Project. The Agency's obligation to make these payments will expire in 2020. The Agency will request that the City, on a yearly basis, reimburse the Agency for up to an amount measured by the annual gross receipts tax payable by Uptown Partners to the City (as

explained in more detail in the "Key Issues and Impact" section of this report), if the Agency has to make any business tax reimbursement in any given year. This arrangement will be included in the annual Cooperative Repayment Agreement between the City and the Agency. The Agency will allocate, as part of its two-year Central District capital budget, funds that are equivalent to the projected business taxes generated by the project. Two schedules showing projected annual receipts of net available tax increment and business taxes from 2007 to 2020 by project phase are attached to this report as Exhibits B-1 and B-2. These schedules are based on the conservative assumption that the Educational Revenue Augmentation Fund (ERAF) shift (a transfer of tax increment funds from redevelopment agencies to help balance the State budget) that is part of the 2003 California State Budget will stay in place for the remaining term of the Central District Redevelopment Project Area, which would necessitate the full reimbursement of up to an amount measured by the annual business taxes by the Agency to Uptown Partners. However, it appears that the Governor's current budget proposal calls for a complete elimination of the ERAF diversion beginning in 2006. If this is the case, the Agency would only have to reimburse a portion of the business tax payments to Uptown Partners.

By approving the LDDA and related documents, the City Council and the Agency are authorizing the execution of a binding agreement between the City, Agency and Uptown Partners, which includes the provision of financing assistance as described in this section. In the event that the Agency is unable to secure any of those funds that are not yet available as they are contingent on the sale of Preservation Park and the sale of T-10, the Agency will have to identify alternative sources of funding to meet its obligation to Uptown Partners, or it will be in default under the terms of the LDDA.

City/Agency Financial Benefits

Over time, Uptown Partners, in consideration of the financial assistance provided by the Agency and City, will pay to the Agency:

- (1) Participation rent based on Uptown Partners' cash flow from the Uptown Project, after receipt of a specified preferred return on equity (12% per year).
- (2) A share of net proceeds from sale of the Uptown Project, and of net proceeds from refinancing the Uptown Project.

These rent payments will continue until the Agency and the City have been fully repaid their financing assistance to the project. Similarly, the Agency and City will receive repayment of the financial assistance amount if Uptown Partners refinances or sells the project (subject to the availability of sufficient proceeds from such a refinancing or sale). The Agency will assign its share of ground rent payments to the City to accelerate payback of the City's share of gap financing assistance to the project.

Pursuant to the terms of the Ground Lease, Uptown Partners has an option to acquire the Agency-owned properties during the lease term. During the initial 66-year lease term, the purchase price will equal the lesser of: (1) the fair market value (FMV) of the Agency's interest in the land or (2) the Agency's cost of buying the land, including Agency's acquisition costs, relocation costs, legal fees, settlement costs and demolition costs, subject to an annual Consumer Price Index (CPI) increase to the date of purchase by the developer with a minimum and maximum annual increase of 2% and 5%, respectively. If Uptown Partners exercises the purchase option after extending the initial term by another 33 years, the purchase price will be the FMV of the Agency's interest in the land.

In addition, the City will receive the following financial benefits:

- The City will collect business taxes for the project beginning with an amount of approximately \$175,000 in 2009, and increasing thereafter. However, the Agency will ask the City to rebate annually some or all of an amount of funds measured by the collected business taxes as described above.
- After expiration of the period during which tax increment is payable from the Central District Redevelopment Area, the City will receive property taxes from the project beginning with the amount of approximately \$1.8 million in 2021, and increasing thereafter. Prior to 2021, the City will receive approximately 34.8 percent of tax-sharing payments from the Project Area as mandated by AB 1290.
- There will also be business and sales taxes associated with the retail component of the project.
- The Uptown Project, if successful, will act as a catalyst for other commercial and residential projects in the area, leading to an increase in property taxes, sales taxes and business taxes.
- The Agency will assign its share of ground rent to the City so it may collect both the Agency and City financial assistance contribution amounts.

On top of these direct benefits, the development of over 1,000 housing units in the Uptown Area should attract approximately 2,000 new residents with corresponding disposable income to downtown Oakland to help revitalize underutilized retail sites and stimulate job creation in the Central District through increased demand for local services and shopping opportunities. A local real estate and urban economics consultant estimated that these new residents will generate up to \$19 million annually in potential direct spending, which will support up to 48,000 square feet of new commercial and retail space and create more than 110 new jobs, if Oakland captures all of this spending. Even if Oakland only captures 50 percent of the estimated direct spending or \$9.5 million per year, it would still result in 24,000 square feet of new retail space and 55 new jobs. The demand for retail space is expected to help fill long-vacant storefronts in the area.

BACKGROUND

On July 23, 2002, the Agency approved Resolution No. 02-57 C.M.S., authorizing the Agency Administrator to enter into an ENA with Forest City, which was executed on August 7, 2002. During the initial ENA period, which carried a term of one year, the Agency and Forest City evaluated the design and financial feasibility of the Uptown Project and negotiated the preliminary business terms for the proposed transaction. At the same time Forest City and the Agency completed many of the steps necessary under the project approvals process required under the California Environmental Quality Act. On December 17, 2002, the Agency's governing board authorized the use of the preliminary design plan for the Uptown Project for the purpose of public outreach as mandated by CEQA. A Notice of Preparation of Environmental Impact Report (EIR) for the Uptown Project was issued on February 26, 2003. Forest City conducted a community workshop to present the preliminary project design and the proposed scope of the EIR for public review, and the Oakland Planning Commission held a scoping session public hearing about the content of the EIR in March of 2003. On May 6, 2003, the Council reviewed and accepted a non-binding informational report on the Agency's preliminary financing plan for the project and the proposed business terms between the Agency and Uptown Partners.

On June 30, 2003, the Agency and Forest City, pursuant to Section 1.5 (a)(i) of the ENA, executed a first amendment to the ENA providing a 90-day extension of the ENA term because of unavoidable delays in completing all of the necessary studies and other documentation to obtain EIR certification as required by CEQA. On September 30, 2003, the Agency, pursuant to Resolution No. 2003-71 C.M.S., authorized the Agency Administrator to enter into a second amendment to the ENA extending the negotiation period by an additional 180 days. On December 10, 2003, the Planning Commission's Design Review Committee reviewed and commented on the existing project design. On April 6, 2004, pursuant to Resolution No. 2004-17 C.M.S., the Agency's governing board authorized the Agency Administrator to execute a third extension to the ENA, which will now expire on July 2, 2004, unless extended by its terms for another 90 days because of unavoidable delays. The Oakland Planning Commission, in compliance with CEQA, certified the EIR for the Uptown Project on February 18, 2004. Forest City has satisfied all requirements of the ENA.

PROJECT DESCRIPTION

Exhibit C provides a project description, a project financing summary and an overview of the project design.

KEY IMPACTS

The LDDA

Site Assembly

Under the LDDA, the Agency is responsible for the assembly and transfer of the properties comprising the Project Area to Uptown Partners. The Project Area consists of 41 individual parcels. To date, the Agency has acquired 30 parcels at a total cost of approximately \$6.5 million, including demolition and relocation expenses. Forest City owns 3 parcels in the Project Area. The Agency has set aside a total of \$14.2 million to acquire the remaining 8 properties, which include the 3-acre property owned by Sears, Roebuck & Co. ("Sears"), and relocate any residential tenants, businesses and billboards occupying these parcels. There may have to be future adjustments to this amount as the Agency completes purchase negotiations with affected property owners. Any such adjustments would be subject to approval by the Agency's governing board as staff seeks approval for individual property acquisitions. If the Agency declines, in its sole and absolute discretion, or is unable to assemble the sites, Uptown Partners has the option to either proceed with a revised project or to terminate the LDDA. The Agency and Uptown Partners will have 12 months from the date of executing the LDDA to satisfy all pre-closing requirements and execute the Ground Lease for the first phase of the Project.

Hazardous Materials Abatement

The principal environmental contaminants of concern in the Uptown Project area are lead (in both surface soils and lead-based paint in existing structures), asbestos (in existing structures), chlorinated solvents (in groundwater) and benzene (in soil and groundwater). Uptown Partners will be responsible for all hazardous materials remediation in the Project Area. Previous preliminary estimates indicated that total hazardous materials remediation would cost approximately \$3.0 million, including abatement at the Affordable Housing Project site. Recent groundwater monitoring sampling revealed the presence of significant, previously unidentified benzene contamination underneath certain portions of the Project Area.

After receiving a right of entry to the Sears-owned property, Agency staff has initiated a comprehensive soils and groundwater assessment program to further identify and characterize the contaminants present on and beneath the Project Area, and to prepare a more reliable remediation cost estimate. The results of this assessment should be available by the middle of July.

The Agency will provide \$3.0 million toward any clean-up costs in the Project Area (\$2,585,600) and on the Affordable Housing Project parcel (\$414,400), and Forest City has agreed to cover \$1.0 million over that initial amount for the Project Area only. If the

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cost of the remediation exceeds \$4.0 million, staff may return to the Agency Board at a later date to request that the Agency share in any such additional remediation costs. Some of the costs of remediation of benzene and other environmental contaminants may be recovered from responsible parties through cooperation with Sears and use of the Polanco Act, or the sales and purchase agreement with Sears might be negotiated to require Sears to pay for any extra remediation costs.

Pursuant to the terms of the LDDA, the Agency and Forest City have agreed to the following steps and measures designed to address liability and cost concerns regarding the presence of hazardous materials at the site:

- The Agency will pursue any identifiable responsible third parties for site contamination under the Polanco Act, which may reduce the parties' potential financial exposure under the site remediation costs sharing plan.
- Under the Ground Lease, the Agency will only convey the Project Area down to a depth of 12 feet to Uptown Partners. This horizontal subdivision effectively retains the contaminated groundwater, which occurs at depths ranging from 15 to 25 feet beneath the Project Site, under Agency ownership. Uptown Partners will construct any subterranean parking at depths of approximately 12 feet below ground surface. The required excavation to 12 feet will likely not encounter contaminated groundwater, and therefore reduce the remediation costs that would have been incurred if the garage was built below the 12 foot depth limit. This approach is also designed to limit Uptown Partners' liability for the contaminated groundwater.
- Prior to the transfer of the Project Area to Uptown Partners, the developer and the Agency will seek to enter into a Prospective Purchaser Agreement (PPA) with the State of California's Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"). The PPA will establish the scope of the required clean-up and provide protections under State Law, but not from third parties, to Forest City and the Agency once the clean-up is completed in accordance with a remedial action plan (RAP) for the Project Area. The PPA approval process will involve (1) completion of the additional site characterization and preparation of the RAP and a Risk Management Plan (RMP) for the Project Area, (2) obtaining a "Guaranteed, Fixed Price Remediation Contract" (see below), and (3) conferring with the Regional Board to determine if it is prepared to approve the RAP and a PPA.
- After preparation of the RAP and the RMP, the developer will seek proposals for a "Guaranteed, Fixed Price Remediation Contract", consisting of (1) a fixed priced contract with a qualified contractor to complete all site investigation and remediation work identified in the proposed RAP; (2) a guarantee, in the form of

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a remediation cost cap insurance policy that includes a coverage limit that is the higher of \$3.0 million, or the estimated remediation cost in the fixed price; and (3) a pollution legal liability insurance policy that has a coverage limit of no less than ten million dollars (\$10,000,000) per occurrence and twenty million dollars (\$20,000,000) in aggregate, and that has a minimum term of ten years in the event that previously unidentified environmental contaminants are discovered during construction.

- The Agency and Forest City have agreed to the following remediation cost sharing plan for the Project Area, including the Affordable Housing Project site: (1) The Agency will be responsible for the first \$2,585,600 million in remediation costs for the Uptown Project and \$414,400 for the Affordable Housing Project; (2) Uptown Partners will cover the next \$1.0 million of remediation costs for the Uptown Project only, if necessary. Any cost recoveries from third parties (i.e. responsible third-party polluters, current property owners or insurance proceeds) will be shared by Uptown Partners and the Agency in proportion to the total remediation costs expended by each party. If the Agency's current comprehensive site assessment indicates that abatement costs may substantially exceed \$4.0 million, the parties can meet and confer, and Uptown Partners will have the option to terminate the LDDA.

Off-site Improvements

The Agency will pay an amount not to exceed \$5.7 million to Uptown Partners for the design and construction of all off-site improvements related to the Uptown Project and the Affordable Housing Project. The off-site improvements include all sidewalks, paving, and landscaping improvements, as well as all required off-site infrastructure such as sanitary sewers, storm drains, water mains and other utilities. The Agency is also implementing the Telegraph Avenue Streetscape Improvement Program and will coordinate with the developer's improvements to create a unified urban district.

Public Park

The City will pay an amount not to exceed \$1.0 million for the construction of a 25,000 square-foot public park located on the block between William Street and Thomas L. Berkeley Way. A finger park along William Street will extend from Telegraph Avenue and connect to the public park. The park will be open to the public and will not be gated. Design features to be incorporated into the park include paths, benches, a shade arbor, public art, low fences and pilasters, a gazebo and rolling lawns for passive seating and picnics. Plantings in the park will include mature trees and ground cover. The park will be owned by the City of Oakland or the Redevelopment Agency, but will be managed

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and maintained by the developer, at their sole cost¹, pursuant to a Park Management and Maintenance Agreement that will be executed concurrently with the Ground Lease.

Agency Issuance of Multi-family Tax-exempt Housing Bonds

The Agency will assist Uptown Partners in the planned multi-family tax-exempt housing bond financing for the Uptown Project. Accordingly, staff will, at the appropriate time, recommend to the Agency approval of an inducement resolution for the issuance of multi-family tax-exempt housing bonds. Thereafter, Uptown Partners will apply to the California Debt Limit Allocation Committee (CDLAC) for an allocation of authority for the Agency to issue multi-family tax-exempt housing bond financing for the Uptown Project. Depending on whether CDLAC approves an allocation sufficient for the entire project, or only enough to cover the first phase of the project, the Agency will issue the bonds and loan the net proceeds from these bond issuance(s) to Uptown Partners. The Agency is entitled to a bond issuance fee and an annual bond administrative fee of one-eighth of one percent of the total bond amount, approximately \$192,500 annually.

The Condominium Tower

Uptown Partners, in concert with the Agency, will use its best efforts to recruit a qualified developer to construct a market-rate residential condominium tower with approximately 269 units (the "Condo Project") on Parcel 5. Either party may recruit a developer for the Condo Project. Ownership of Parcel 5 will not be transferred to Uptown Partners as part of the LDDA. However, Uptown Partners or the associate developer will be given an option for a term of 3 years from the date of execution of the LDDA to buy Parcel 5 from the Agency at its fair market value, and start construction on the Condo Project. If construction does not begin within this term, the option will be terminated, or, if mutually agreed to by the Agency and Uptown Partners, the term of the option may be extended for an additional 3 years by paying to the Agency an amount equal to the annual tax increment anticipated from the completed project, until such time as the Condo Project is placed on the tax roll.

The Ground Lease

The Agency will enter into a Ground Lease with Uptown Partners for a term of 66 years, with one 33-year extension option. As discussed in the Project Description section (Exhibit C) of this report, the Agency's land may be leased in phases, unless the developer is able to secure bond financing authority for the entire Uptown Project from CDLAC. If the project is phased, the Agency will transfer the first phase upon Uptown

¹ Uptown Partners will deduct the park maintenance costs from the Project's gross income, thus proportionately decreasing net income available to pay back the City and Agency from rent participation payments.

Partner's receipt of tax-exempt multi-family housing revenue bond financing and meeting all other conditions of closing. The developer will acquire the land for Phase II upon 50% occupancy of the previous phase, or three years from executing the lease for the previous phase, whichever occurs first, and other conditions that are included in the LDDA. If the developer is unable to obtain financing for the entire Project at one time, it will be necessary for the parties to execute two separate LDDAs and two Ground Leases for Phase 1 and Phase 2, respectively, of the Project. Under this scenario, there is the possibility that the second phase may never be developed by Forest City in the event that they are not successful in securing project financing for that phase.

Financial Assistance

For the purpose of helping to make the development of the Uptown Project financially feasible and producing the public benefits that will result from the Uptown Project, the Agency and the City will provide financial assistance to Uptown Partners consisting of the following components:

- (1) Annual Agency reimbursements of the net available tax increment generated by and collected from the Uptown Project, and, if necessary, Agency reimbursement of up to an amount measured by Uptown Partners' actual payment of business taxes to the City. The Agency will make these two payments to Uptown Partners until the Central District's ability to repay any debt is terminated in 2020. The Agency's payments shall not exceed a maximum combined net present value of approximately \$12.1 million, (calculated at a discount rate of 6 percent over a 14 year period ending in 2020).
- (2) Direct Agency financial assistance in an amount not to exceed \$8.3 million dollars ("Agency Gap Financing").
- (3) Direct City financial assistance in an amount not to exceed \$5.3 million dollars ("City Gap Financing").

The sources and uses of this funding are discussed in the Fiscal Impact Section of this report.

The Agency retained Conley Consulting Group (CCG) to test Forest City's economic projections and project pro forma. CCG found that Forest City's financial assumptions and revenue projections were generally within the industry standards for comparable projects. CCG concluded that the financial assistance provided by the Agency and the City is necessary to ensure project feasibility.

Ground Lease Payments

Pursuant to the Ground Lease, Uptown Partners, in consideration of the financial assistance provided by the Agency and City, will make participation rent payments to the

Agency. The Agency will receive a 25 percent participation in the excess cash flow generated by the property. Excess cash flow is defined as any cash flow generated by the Uptown Project that is greater than that required to provide a 12 percent cumulative annual return on developer's equity including any outstanding balance of cumulative preferred return. The Agency's ground rent payments will continue until the Agency has been repaid the net present value of the rebated tax increment and, if required, business tax reimbursement provided by the Agency, as well as the Agency's and City's Gap Financing contribution to the project.

If Uptown Partners refinances the first mortgage, net proceeds will be allocated first to pay to Uptown Partners any outstanding equity and return thereon and second to repay the City/Agency for any outstanding balance on the total Financial Assistance Amount. The total Financial Assistance Amount is defined as the net present value of rebated Tax Increment (and any amount provided to the developer measured by paid business taxes to fill a projected tax increment gap), and the nominal value of the Agency's and City's Gap Financing contribution to the project. The net proceeds from a refinancing will likely not be sufficient to fully repay the Agency and City for the Financial Assistance Amount. Hence, Uptown Partners obligation to make ground lease payment to the Agency would continue.

In the event of a sale of the project by Uptown Partners, sale proceeds will be used first to retire debt and second to repay outstanding equity and return to the developer. Any remaining sales proceeds will be divided between Uptown Partners and the City on a 75 percent/25 percent basis to repay the City/Agency for any outstanding balance on the total Financial Assistance Amount. These sales proceeds may or may not be sufficient to repay the Agency and City for the full Financial Assistance Amount and any subsequent buyer will not be bound by the repayment provisions of the LDDA. No sale will occur prior to 2027 without the consent of the Agency, and shall be based on an arms-length transaction to a bona fide third-party purchaser.

The Agency has assigned all ground rent payments to the City. While the Agency could receive a portion of the payments, the lease has been structured to assure that the City is paid back its contribution. Although Uptown Partner's financial projections (which have been reviewed by the Agency's consultant (CCG)) indicate that the City and Agency will be repaid over time from excess cash flow, there is no guarantee of repayment because amounts payable to the City and Agency are **net** after payment of project financing debt, operating expenses, and the preferred return to Uptown Partners. Postponing the sale to 2027 increases the probability that the City will be repaid through its share of excess cash flow. If the project does well, the City stands to be repaid substantially more than it invested, i.e. the total Financial Assistance Amount.

The Agency is also entitled to a "windfall" profit participation upon the first sale of the Uptown project if the sales price allows for such participation. In this case, the Agency

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would be entitled to 50 percent of excess sales proceeds up to an amount equal to the outstanding Total Financial Assistance Amount.

The Option to Purchase

Uptown Partners will have an option to acquire the Agency-owned properties during the lease term. If the developer exercises the option during the initial 66-year lease term, the purchase price will equal the lesser of: (1) FMV of the Agency's interest in the land or (2) the Agency's cost of acquiring the land, including Agency's relocation costs, legal fees, settlement costs and demolition costs, subject to an annual CPI increase to the date of purchase by the developer with a minimum and maximum annual increase of 2% and 5%, respectively. If Uptown Partners exercises the purchase option after it extended the initial term by another 33 years, the purchase price will be the FMV of the Agency's interest in the land.

The Replacement Housing Plan

The development of the Uptown Project may require the demolition of 33 existing very-low income units located in the Westerner Hotel at 1918 - 1954 San Pablo. § 33413(a) of the California Health and Safety Code requires that such lost units be replaced within four years of their removal, and that these units be available for rental at affordable housing costs to persons in the same or a lower income category (very low, low, or moderate) as the persons displaced from those removed units, within the territorial jurisdiction of the Agency. Accordingly, State law obligates the Agency to adopt a housing replacement plan at least 30 days prior to the execution of the LDDA for the Uptown Project. If the owner of the Westerner Hotel voluntarily sells the property to the Agency, or the Agency, in its sole and absolute discretion, decides to acquire the hotel by eminent domain, 100 percent of the units that will be lost at the Westerner Hotel will be replaced as part of the first phase of the Uptown Project. The 33 replacement units will consist of 5 studios and 28 one-bedroom units that will be affordable to persons or households earning no more than 50 percent of AMI. Completion of the replacement units is projected to occur in the fall of 2007. The removal of the 33 units in the Westerner Hotel is exempt from the provisions of Agency Resolution No. 2003-54 C.M.S. This exemption is specifically noted in the resolution.

The Cooperation Agreement with the Coalition for Workforce Housing

In response to direction from the City Council, the City, Agency, Forest City and the Coalition have reached agreement on the terms of a Cooperation Agreement between the City, Agency and the Coalition for the development of the Affordable Housing Project on Parcel 6. The residential rental project would include at least 70 units, of which all would be affordable for a period of 55 years to persons and families earning a range of incomes, but no greater than 60% of AMI, with at least twelve studio apartments being affordable

to households with incomes up to 35 percent of AMI.

According to the agreement, the Agency, in consultation with Forest City, will issue a Request for Proposals (RFP) for the development of the site within 45 days after execution of the LDDA. Selection of the developer of the Affordable Housing Project will be subject to reasonable approval by Forest City that is based on project evaluation criteria established in the RFP. Forest City will also provide guidelines to ensure that the Affordable Housing Project design is compatible with, and of the same finish quality as their adjacent multi-family housing development.

The Agency will transfer Parcel 6 to the selected developer at no cost and provide long-term gap financing for the Affordable Housing Project in an amount not to exceed \$2,050,000. The selected developer may also apply for additional Agency funds under CEDA's Notice of Funding Availability in 2005. The financial assistance of \$2,050,000 and the \$414,400 for hazardous materials abatement will be subject to separate Council approval as part of authorization to enter into a sale or long-term ground lease with the developer of the Affordable Housing Project. The Cooperation Agreement limits the potential total Agency funding contribution to \$3,050,000.

The Council should be aware that execution of the Cooperation Agreement may not prevent organizations unrelated to the Coalition, or any individual, including individual members of Coalition organizations acting without the Coalition's support, from initiating legal action against the Uptown Project. In addition, by approving the Cooperation Agreement, the City Council and the Agency are authorizing the execution of a binding agreement between the City, Agency and the Coalition, which includes the provision of financing assistance as described in this section. In the event that the Agency is unable to secure any of those funds that are not yet available as they are contingent on the sale of Preservation Park and the sale of T-10, the Agency will have to identify alternative sources of funding to meet its obligation to the Coalition, or it may be in default under the terms of the Cooperation Agreement. Agreement terms are summarized in the Cooperation Agreement Term Sheet attached as Exhibit "D".

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.

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, Uptown Partners and City staff have established the following list of sustainability measures that are either goals or requirements for the developer:

1. Limit or eliminate the use of potable water for landscape irrigation.
2. Use low-emitting building materials.
3. Exceed Title 24 Energy Standards by 15 percent.
4. Divert 75% of construction waste from landfills and redirect recyclable material back to the manufacturing process.
5. Use recycled content materials for construction.
6. Provide views and natural day lighting in 75% of indoor spaces.
7. Maximize the production of electricity from renewable/solar energy.
8. 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 Uptown Partners 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. Uptown Partners must submit such documentation prior to the close of escrow.

Equity

The Uptown Project will expand the supply of affordable housing in Oakland by including 140 rental units that will be affordable to households earning 50 percent or less of the area's median income. The proposed Affordable Housing Project on Parcel 6 will provide at least 70 additional affordable units including large family-sized units, as well as small studio apartments with a wider range of affordability. Uptown Partners 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. Uptown Partners will also be subject to the Living Wage Ordinance.

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DISABILITY AND SENIOR CITIZEN ACCESS

Uptown Partners' project design must comply with the requirements of the Americans with Disabilities Act.

RECOMMENDATIONS AND RATIONALE

The successful redevelopment of the Project Area by Uptown Partners 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 Uptown. 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 and service which in turn will decrease commercial vacancy rates. Forest City is also in serious discussions with the University of California to develop a 1,000 bed student housing tower with ground floor retail that will transform the area between 20th and 21st Street along Telegraph Avenue.

Moreover, the Uptown Project will 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 for additional housing and to allow the area to benefit from more "eyes on the street."

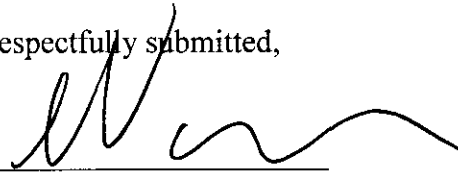
The Central District Urban Renewal Plan also calls for the elimination of urban blight within the Project Area through utilization of key transit nodes to support transit oriented development.

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

ACTION REQUESTED OF THE AGENCY

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


Respectfully submitted,



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APPROVED AND FORWARDED TO
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