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Councilmember

2005 SEP -7 PM 6:12

City Attorney

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION APPROVING THE FINAL MAP FOR TRACT 7616 FOR THE UPTOWN OAKLAND MIXED USE REDEVELOPMENT PROJECT AND ACCEPTING OFFERS OF DEDICATION FOR A PUBLIC PARK AND FOR PUBLIC RIGHT-OF-WAY FOR A PORTION OF WILLIAM STREET AND FOR A NEW STREET CONNECTING WILLIAM STREET WITH 19TH STREET AND THOMAS L. BERKLEY WAY

Whereas, the Redevelopment Agency of the City of Oakland and the developer of the Uptown Oakland mixed use redevelopment project, FC Oakland, Inc., a California Corporation (no. C2207573), are the Subdividers of previously divided parcels identified as Tract 7616 and bounded on two adjacent City blocks by Telegraph Avenue, San Pablo Avenue, Thomas L. Berkley Way, William Street, and 19th Street; and

Whereas, the Planning Commission of the City of Oakland approved the vesting tentative map and a Planned Unit Development for Tract 7616 on June 1, 2005, which proposed a merger of the forty-one original parcels and their re-subdivision into four developable lots and a fifth lot for a public park; and

Whereas, the Redevelopment Agency has acquired by purchase for valuable consideration and by order of possession through eminent domain proceedings and by vacation of public right-of-way by the City of Oakland (Ordinance 12687 C.M.S.), all real property comprising Tract 7616, excepting three parcels of the original forty-one that are owned in fee simple by FC Oakland; and

Whereas, the Redevelopment Agency and FC Oakland have mutually consented by and between themselves to the merger of each and all forty-one original parcels and their re-subdivision into the five lots of Tract 7616; and

Whereas, the Subdividers have complied with the terms and conditions attached to the vesting Tentative Map for Tract 7616, and the City Engineer has determined that the Final Map for Tract 7616 is substantially the same as the vesting tentative map approved by the Planning Commission and that the Final Map is technically correct and accurately delineates the metes and bounds of the five proposed lots, the limits of which have been established by field survey and can be re-established from the monuments, property corners, radii, bearings, and distances shown on the Final Map; and

Whereas, the City Engineer has further determined that the Final Map for Tract 7616 complies in all manners with the provisions of the California Government Code (Section 66400, et seq. - Subdivision Map Act), and the City of Oakland's local ordinance (Municipal Code Title 16 - Subdivisions); and

Whereas, the City Engineer has approved plans and specifications prepared by FC Oakland for a permit (no. PX0400051) to construct required publicly and privately maintained surface and subsurface improvements within the public right-of-way; and

Whereas, at the time of approval of the Final Map for Tract 7616, FC Oakland has not competed and the City has not yet accepted the necessary public infrastructure improvements required by the project; and

Whereas, pursuant to Government Code section 66462 and Municipal Code section 16.20.100, the Subdividers may record a Final Map before completing the public infrastructure improvements by giving assurance to the City that the required improvements will be completed by entering into a Subdivision Improvement Agreement; and

Whereas, pursuant to Government Code section 66462 and Municipal Code section 16.20.100 as a condition precedent to approval by the Council of the City of Oakland of the Final Map for Tract 7616, FC Oakland, as the Subdivider, will execute a Subdivision Improvement Agreement assuring the timely construction, unconditional warrantee, and prescribed maintenance of all required publicly and privately maintained infrastructure improvements within the public right-of-way; and

Whereas, pursuant to Government Code section 66499 et seq. and Municipal Code section 16.20.100, FC Oakland will post sufficient securities in the form of surety bonds, acceptable to the City Attorney, and for sufficient amounts as estimated by the City Engineer and memorialized in the Subdivision Improvement Agreement and attached hereto as Exhibit A; and

Whereas, said surety bonds are intended to secure FC Oakland's performance under the attached Subdivision Improvement Agreement, guaranteeing the construction of the public infrastructure improvements and the payment of laborers and material and equipment suppliers and warranting the performance and maintenance of the completed work for the period of time prescribe in the Subdivision Improvement Agreement; and

Whereas, the Redevelopment Agency and FC Oakland have offered the dedication of the underlying fee, without valuable consideration, of lot no. 5, as identified on the Final Map for Tract 7616, to the City as a public park; and

Whereas, the Redevelopment Agency and FC Oakland have offered the dedication of the underlying fee, without valuable consideration, of public right-of-way, as identified on the Final Map for Tract 7616, to increase the width of the traveled way of William Street between Telegraph Avenue and San Pablo Avenue; and

Whereas, the Redevelopment Agency and FC Oakland have offered the dedication of the underlying fee, without valuable consideration, of public right-of-way, as identified on the Final Map for Tract 7616, for a new street, as yet unnamed, connecting William Street with 19th Street and Thomas L. Berkley Way; and

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

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

Whereas, the Agency, as a "Responsible Agency" under the California Environmental Quality Act of 1970 ("CEQA"), has independently reviewed and considered the environmental effects of the project as shown in the EIR and other information in the record; now, therefore, be it

Resolved: That the Agency hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA.

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

Resolved, that the Final Map for Tract 7616 is hereby conditionally approved; and be it further

Resolved, that the City Engineer is hereby authorized to endorse the Final Map; and be further

Resolved, that the City Clerk is authorized to endorse the Final Map and directed to file the endorsed Map for recordation with the Alameda County Recorder once the Subdivision Improvement Agreement (attached as Exhibit A) and sufficient bonds to secure the performance of the Subdivision Improvement Agreement have been reviewed and approved by the City Attorney ; and be it further

Resolved, that upon recordation of the Final Map, the offer of dedication, without valuable consideration, by the Subdividers of the public park and its underlying fee is hereby accepted; and be it further

Resolved, that upon issuance of the Certificate of Completion by the City Engineer for the public improvements, the offer of dedication by the Subdividers, without valuable consideration, for public right-of-way and its underlying fee for a new street and for a portion of William Street are hereby accepted; and be further

Resolved, that upon expiration of the warrantee and maintenance period following the issuance of a Certificate of Completion, as identified in the Subdivision Improvement Agreement, the maintenance of new public infrastructure is hereby accepted by the City; and be it further

Resolved, that this Resolution shall become effective upon the recordation of the Subdivision Improvement Agreement (attached as Exhibit A) by the Office of the Alameda County Recorder, and the Final Map for Tract 7616 cannot be recorded until such time; and be it further

Resolved, that no building permits can be issued for Tract 7616 until the recordation of the Subdivision Improvement Agreement and the Final Map for Tract 7616.

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

recording requested by:
CITY OF OAKLAND
when recorded mail to:
City of Oakland
CEDA - Building Services
Dalziel Administration Building
250 Ogawa Plaza - 2nd Floor
Oakland, CA 94612

----- space above for Recorder's use only -----

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

Tract No. 7616

This Agreement is between FC Oakland ("Developer"), a California corporation (number C2207573), and the City of Oakland ("City"), a California municipal corporation.

RECITALS

The Developer and the Redevelopment Agency of the City of Oakland are the owners and subdividers of forty-one contiguous parcels located within the corporate limits of the City of Oakland and identified by Alameda County Assessor's Parcel Numbers in Exhibit A, attached hereto, who together have presented a Final Map to the Council of the City of Oakland that proposes a merger of the original forty-one lots of this platted land and its re-subdivision into five lots, which is identified as subdivision Tract 7616.

As a condition precedent to the approval of the proposed Final Map for Tract 7616, the City requires the irrevocable dedication of public streets, paths, and other rights-of-way and of public easements shown on the map. In addition, the City requires construction of public infrastructure improvements within these rights-of-way and easements and off-site on other City rights-of-way that customarily include grading, paving, striping and lettering, curbs, gutters and sidewalks, trees, landscaping and irrigation, retaining walls, storm drains and sanitary sewers, street name and public transportation signs, survey monuments, electricity, communication, water, and natural gas utility mains and branch piping and wiring, fire hydrants, street light electroliers, traffic control and curb parking signs, signals and meters, and all appurtenances thereto.

The subdividers have asked the City to accept the dedication of the public rights-of-way and public easements shown on the map and the permanent maintenance of the public infrastructure improvements shown on the plans accompanying permit number PX0400051 and included in Exhibit B, attached hereto. Construction of the public infrastructure improvements, however, has not been completed nor accepted by the City. Consequently, the parties desire to establish an Agreement binding the Developer to complete the improvements within two years of the date that this Agreement is fully executed and filed for recordation with the Alameda County Recorder in consideration of the approval of the subdivision Final Map and acceptance of the irrevocable offers of dedication of public rights-of-way and public easements and acceptance of the permanent maintenance of the improvements.

THEREFORE, it is agreed as follows:

I. Approval of Final Map

Approval of the Final Map for the subdivision of Tract No. 7616 by Resolution of the Council of the City of Oakland shall be conditioned upon recordation of this Agreement with the Alameda County Recorder,

2. Construction of Improvements

The Developer shall construct all on-site and off-site public infrastructure improvements in strict accordance with all permits, specifications, plans and applicable City standards and performance criteria as specified in *Exhibit B* and set forth below in paragraph 3, Special Conditions.

3. Special Conditions

The Subdivider shall comply with the special conditions as follows:

A. Public infrastructure shall conform with the performance criteria specified in Oakland Municipal Code Chapter 16.16 - Design Standards and in Standard Details for Public Works Construction 2002 Edition and Standard Specifications for Public Works Construction 2002 Edition.

B. The time duration for the completion of public infrastructure improvements, as set forth in paragraph 4 below, shall include allowance for construction workday delays attributable to consecutive and intermittent inclement weather, as has been recorded by the United States Weather Bureau for the City of Oakland and surrounding area and seasonally averaged for the previous ten years.

C. Hours, days, and months of operation and control of public nuisance conditions for the construction of public infrastructure improvements shall conform with the requirements of Planning Conditions of Approval for the Uptown Oakland project and the Oakland Municipal Code, including section 15.04.780 and subsections 3304.6 and 3304.11. No work shall be performed on Saturdays or Sundays or holidays or before 8:00 am or after 5:00 pm local time without the written authorization of the City Engineer.

D. Performance standards for the construction of public infrastructure improvements shall comply with the requirements of Oakland Municipal Code chapter 17.120 and with regional, state, and federal regulations for "Best Management Practices" for erosion and sedimentation control.

E. In order to safeguard life, public and private property, and to ensure that the work will be carried out in an orderly manner in conformance with all regulations and without creating a public nuisance, the City Engineer may add to, remove, or change these Special Conditions from time to time during the duration of the permit as he or she deems reasonably necessary as a result of changed conditions.

4. Completion of Improvements

All construction of public infrastructure improvements shall be completed by the Developer within three years of the date of recordation of this Agreement, except those improvements for which another completion date is stated in *Exhibit B* or set forth above in paragraph 3, Special Conditions. Construction shall not be deemed complete until the Public Infrastructure permit has been finalized by the City Engineer.

The City Administrator may extend the time for completion of said improvements. Upon consultation with the City Engineer and the Redevelopment Agency, the City Administrator shall be the sole and final judge as to whether or not good cause has been shown to entitle the Developer to an extension. An extension may be granted without notice to the Developer's surety, and extensions so granted shall not relieve the surety's liability on any of the bonds required by this Agreement.

5. Acceptance of Dedications and Ownership of Improvements

Upon final approval by the City Engineer of the public infrastructure improvement permit, all irrevocable offers of dedication of public rights-of-way and public easements will be accepted by the City, and all improvements required by this Agreement shall become the sole property of the City. The City will subsequently accept the permanent maintenance of these improvements as set forth below in paragraphs 7, Maintenance, and 8, Guarantee and Warranty.

6. Responsibility for Dedications and Improvements

Until final approval by the City Engineer of the public infrastructure improvement permit, the Developer shall give good and adequate warning to the public of each and every defective or dangerous condition existing or arising within all public rights-of-way and public easements irrevocably offered for dedication and shall adequately protect the public from said unsafe conditions. Warning to and protection of the public shall remain the sole responsibility and expense of the Developer until such time as said permit is unconditionally approved by the City.

7. Maintenance of Improvements

Until one year has elapsed following final approval by the City Engineer of the public infrastructure improvement permit, the Developer shall maintain the construction of the improvements and shall immediately perform or cause to be performed at its sole expense all necessary repairs, replacements, additions, or other corrective actions.

8. Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise

Until one year has elapsed following final approval by the City Engineer of the public infrastructure improvement permit, the Developer warrants that the equipment and materials provided for the improvements are and will be free from defects and guarantees that the construction of the improvements is and will be free from deficiencies and that the improvements will perform satisfactorily in accordance with the specifications, plans and applicable City standards and performance criteria as specified in *Exhibit B* and set forth above in paragraph 3, Special Conditions. Developer further warrants that its design professionals are competent, that their analyses are adequate, and that their designs will meet or exceed the applicable City standards and performance criteria as specified in *Exhibit B* and set forth above in paragraph 3, Special Conditions.

If at any time before the expiration of the guarantee and warrantee period specified herein said designs prove to be inadequate in any respect, the Developer shall make changes at its sole expense necessary to assure conformance with said standards and criteria.

9. Inspection of Construction

Inspection of the construction and/or equipment and materials provide, or approval of the construction and/or equipment and materials inspected, or statement by any officer, agent, or employee of the City indicating the construction and/or equipment and materials , or any part thereof, comply with the *requirements and conditions of this Agreement, or acceptance of the whole or any part of the construction and/or materials, or payments thereof, or any combinations, or any combination, or all of these acts* shall not relieve the Developer of its obligation to fulfill this Agreement as prescribed herein; nor shall the City be thereby stopped from bringing any action for damages arising from the failure of the Developer to comply with any of the requirements and conditions of this Agreement.

10. Payment of Fees and Penalties and Accrued Interest

Prior to final approval by the City Engineer of the public infrastructure improvement permit and prior to acceptance by the City of the *on-site and off-site improvements for permanent maintenance*, the Developer shall pay all fees and penalties and accrued interest to the City and other Public Agencies that remain unpaid. Interest on amounts owed to the City shall accrue at the rates set forth in its Master Fee Schedule and from date that the fees and penalties are assessed and shall continue until full payment is received, whether or not any conditions of this Agreement are extended or modified.

11. Reversion to Acreage

If the Developer fails to perform its obligations under this Agreement, Developer, as the subdivider, consents to the reversion to acreage of the land which is the subject to this Agreement pursuant to Government Code section 66499.16 and to bear all applicable costs.

12. Property Acquisition

If the Developer is unable to acquire property required for the construction of required improvements, the Developer agrees to execute the standard City Contract for Real Property Acquisition to provide for acquisition through eminent domain.

13. Security

The Developer shall present to the City surety bonds, in a form satisfactory to the City Attorney, issued by a corporate surety authorized to issue said security in the State of California as follows:

A. Before execution of this Agreement, the following securities shall be presented:

1. Faithful Performance Bond in a face amount not less than the City Engineer's total (one-hundred percent) estimated cost of the on-site and off-site public infrastructure improvements to secure faithful performance of this Agreement by the Developer, and

2. Labor and Materials Bond in a face amount not less than one-half (fifty percent) of the City Engineer's total estimated cost of the on-site and off-site public infrastructure improvements to secure payment by the Developer to its contractor, subcontractors, laborers and materialmen furnishing supervision, labor, materials and equipment engaged in the construction pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act.

B. Before final approval of the Public Infrastructure Improvement permit, the following security shall be presented:

1. Maintenance Bond in a face amount not less than one-quarter (twenty-five percent) of the City Engineer's total estimated cost of the on-site and off-site public infrastructure improvements to secure faithful performance of paragraphs 7, Maintenance, and 8, Guarantee and Warrantee, above.

C. Pursuant to Government Code section 66499.4, the obligation guaranteed by each bond shall include costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing said obligations and shall be in addition to the face amount of each bond.

14. Alternative Security

In lieu of the bonds required above in paragraph 13, Security, alternative securities may be substituted in a form provided by Government Code Section 66499.3 by the Developer of the site, Forest City, and approved by the City Attorney.

15. Hold Harmless

The Developer shall indemnify, defend and hold the City, its officers, officials, employees, agents and volunteers harmless against any and all claims, injuries, damages, losses and suits, including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Developer further agrees to defend and protect the City and its officers, officials, employees, agents and volunteers from all liability or claim because of, or arising out of the use of any patent or patented articles in the construction of said improvements.

Developer waives all claims and recourse against the City, including the right of contribution for loss or damage to persons or property, arising from, growing out of, or in any way connected with or incident to the work performed or failed to be performed under this agreement, except claims and recourse arising from the concurrent or sole negligence of the City, its officers, officials, employees, agents and volunteers.

16. Insurance

The Developer shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Developer, his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as follows:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto."
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance

1. General Liability including, but not be limited to: blanket contractual; products and operations completed; broad form property damage; explosion, collapse and underground (XCU), if applicable:

a. **\$2,000,000** combined single limit per occurrence for bodily damage, personal injury and property damage. The limits of insurance shall apply separately to this project or location.

b. Automobile Liability: **\$2,000,000** combined single limit per accident for bodily injury and property damage.

c. Workers' Compensation and Employers Liability: Statutory limits as required by the Labor Code of the State of California and Employers Liability limits of **\$2,000,000** per accident.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The general and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, agents and volunteers shall be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Developer, products and completed operations of the Developer; premises owned, occupied or used by the Developer, or automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents and volunteers.

2. The Developer's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents and volunteers shall be excess of the Developer's insurance and shall not contribute with it.

3. Any failure to comply with reporting provisions of the policies required by this clause, including breaches of warranties, shall not affect protection provided to the shall not affect coverage provided to the City, its officers, officials, employees, agents, and volunteers.

4. The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees, agents and volunteers for losses arising from work performed by the Developer for the City.

6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except for non-payment of premium, by either party, except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the City. In the event the policy is canceled for non-payment of premium, ten (10) days prior written notice, as stated above, will be given.

E. Acceptability of Insurers

If the insurance company providing coverage is licensed to do business in the State of California, the company shall have an A.M. Best rating of not less than A:VII. However, if the insurance company is not licensed to do business in California, the A.M. Best rating shall not be less than A+:X. The maximum A.M. Best rating is A++:XV.

F. Verification of Coverage

The Developer shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Commercial General Liability endorsement shall be a form CG 20 10 11 85, and shall have the wording as identified as Attachment A, attached to this form. The Commercial Automobile Liability endorsement shall be a form CL/CA 99 09 08 95, and shall have the wording as identified as Attachment B, attached to this document. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

G. Subcontractors

The Developer shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

17. Participation in Benefit Districts

The Developer shall participate in all Benefit Districts formed by the City prior to the execution of this Agreement and shall pay the prorated fee due the City under the terms of Benefit District or Districts as applied to the real property covered by this Agreement.

18. Actions to Enforce

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to costs and reasonable

expenses and fees, including reasonable attorneys' fees, in addition to any other relief to which they may be entitled.

19. Beneficiaries, Heirs, Assigns, and Successors In Interest

This Agreement pertains to and runs with the real property included within Tract 7616, which land is expressly agreed to benefit from the privileges granted to Developer under this Agreement, and binds the beneficiaries, heirs, assigns, and successors in interest of the Developer. Notwithstanding the terms and provisions herein under, this Agreement shall immediately terminate with respect to any residential lot within Tract 7616 that has been improved with a residence and transferred to a third party homebuyer.

20. Attachments

The following documents are incorporated into this Agreement by reference and are attached as Exhibit B:

City permits: Public Infrastructure PZX0400051 Planning _____
Creek Protection n.a. Building _____

Other permits: _____

Resolutions: _____ C.M.S.

Subdivision: Recorded Final Map _____ Surety _____

City Engineer's Estimate of the Cost of Improvements _____

Insurer _____

21. Constructive Notice

This Agreement shall be recorded by the Alameda County Recorder.

21. Effective Date

IN WITNESS WHEREOF, the Developer has caused its name to be subscribed hereto, and the City has caused its name to be affixed hereto, and this Agreement shall be effective on and following the

_____ day of _____, 2005.

FC OAKLAND, Inc.

CITY OF OAKLAND

signature

signature

name

DEBORAH EDGERLY
City Administrator

title

APPROVED FOR FORM AND LEGALITY

(attach corporate seal)

Deputy City Attorney