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2016 NOV 17 PM 4:19

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Darin Ranelletti,
Interim Director, PBD

SUBJECT: MacArthur BART Parcels A and C1
Revision to FDP

DATE: November 17, 2016

City Administrator Approval

Date:

11/17/16

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt A Resolution, as Recommended by the Planning Commission, Revising the MacArthur BART Parcels A and C1 Final Development Permit (Case File PUDF08/ER01), Relying on the 2008 MacArthur Station Project Environmental Impact Report and Addenda, Finding that No Additional Environmental Review is Needed Pursuant to CEQA Guidelines Sections 15162-15164 and Adopting Related CEQA Findings

REASON FOR SUPPLEMENTAL REPORT

On November 15, 2016, the Community and Economic Development Committee of the City Council (CEDC) considered a proposed revision to the Final Development Permit (FDP) for Parcels A and C-1 at MacArthur Transit Village to substitute live/work units and community space for ground-floor retail space, reduce parking and add a driveway on Telegraph Avenue. The Planning Commission recommended approval of the proposed revisions to the FDP and the inclusion of the following additional FDP conditions of approval that the applicant proposed and has voluntarily agreed with:

- Increase retail leasing period by six months, from 33 to 39 months, prior to any conversion of space from retail to live/work. The leasing period would include the 24-month construction period and an additional 15 months following issuance of Temporary Certificate of Occupancy, for a total of 39 months; and
- Contribute \$75,000 to Temescal Telegraph Business Improvement District, specifically for the purpose of providing pedestrian street lighting on Telegraph Avenue between West MacArthur Boulevard and 40th Street.

The CEDC moved to forward the item to the City Council with the inclusion of the following additional conditions of approval (based on the motion, as interpreted by Planning staff for clarity):

- Comply with any leasing requirements included in the Owner Participation Agreement, and provide a permanent retail leasing program to ensure that every time a commercial or live/work space is available to lease, the space is actively marketed to retail tenants for retail uses, subject to Planning staff approval; and

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City Council
November 29, 2016

- For ground-floor space that can be converted to live-work, designate not less than 50 percent of the affected square footage to be occupied by active business. Factors to be considered in this determination may include, but are not limited to, amount of ground-floor transparency, hours of operation, and type of business to be located in the affected space.

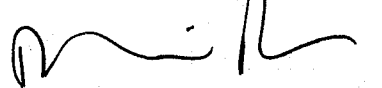
Accordingly, the supplemental staff report includes a new attachment that consists of the adopted Parcels A and C1 FDP conditions of approval with the inclusion of the conditions of approval recommended by the Planning Commission at their regularly scheduled hearing on November 2, 2016 and by the CEDC at their regularly scheduled hearing on November 15, 2016 (see Attachment A).

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council Conduct A Public Hearing And Upon Conclusion Adopt A Resolution, as recommended by the Planning Commission, revising the MacArthur BART Parcels A and C1 Final Development Permit (Case File PUDF08/ER01), relying on the 2008 MacArthur Station Project Environmental Impact Report and Addenda, finding that no additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164 and adopting Related CEQA findings.

For questions regarding this report, please contact Catherine Payne, Planner IV, at (510) 238-6168 or cpayne@oaklandnet.com.

Respectfully submitted,



Darin Ranelletti, Interim Director
Planning and Building Department

Reviewed by:
Robert Merkamp, Development Manager

Prepared by:
Catherine Payne, Planner IV

Attachments (1):

- A. Parcels A and C1 FDP Conditions of Approval, as Recommended by the Planning Commission on November 2, 2016 and CEDC on November 15, 2016

**MacArthur Transit Village
Parcels A and C1 Final Development
PUDF08-R01**

CONDITIONS OF APPROVAL

(As adopted on July 1, 2008, Affirmed on May 19, 2015 by the Oakland City Council, and Additional Conditions of Approval Recommended by the Oakland Planning Commission on November 2, 2016 and the Community and Economic Development Committee of the City Council on November 15, 2016, as shown in underscored text (#s 41-44))

Part 1: General Conditions of Approval

**1. Approved Use
Ongoing**

- a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, staff report, and the plans submitted on **May 28, 2008**, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall require prior written approval from the Director of City Planning or designee. The project may however increase the number of permitted residential dwelling units up to a maximum of 675 dwelling units, as analyzed in the MacArthur Transit Village Project EIR provided that a) the ratio of affordable units (20% of market rate units) is maintained; and the resulting project design with the additional units shall conform in all major respects with the approved Preliminary Development Plan.
- b) This action by the **City Planning Commission** ("this Approval") includes the approvals set forth below. This Approval includes:
 - i. **Planned Unit Development (PUD)**, under Oakland Planning Code Chapters 17.122 and 17.140;
 - ii. **Major Conditional Use Permit (CUP)**, under Oakland Planning Code Chapter 17.134; and
 - iii. **Design Review**, under Oakland Planning Code Chapter 17.136
- c) This Approval shall not become effective unless the proposed legislative actions (rezoning and text amendment) occur as stated in Condition of Approval 20.

**2. Effective Date, Expiration, Extensions and Extinguishment
Ongoing**

Unless a different termination date is prescribed, this Approval shall expire **two years** from the approval date, unless within such period all necessary permits for construction of Stage 1

(the BART Parking Garage) have been issued. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant two one-year extensions of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired. These time periods are "tolled" due to litigation challenging this approval and thus such time shall not be counted toward expiration of this approval. The Preliminary Development Plan Approval for the Planned Unit Development Permit shall expire June 4, 2018 and all Final Development Plan phases shall be reviewed and approved by that date (see below for details on FDP Staging).

FDP Staging

Submittal of Final Development Plans (FDPs) shall be permitted in five (5) stages over a 10 year time period from the date of this approval, as detailed below.

(a) Each stage of FDP is described below:

- i. Stage 1. Stage 1 FDP for the project will include the construction of Building E, the replacement BART parking garage, site remediation, Internal Drive, the Frontage Road improvements, and the portion of Village Drive that extends from the Frontage Road to the Internal Drive. Stage 1 FDP shall be submitted to the Planning Department for review and processing and the project applicant shall make regular and consistent progress toward approval of Stage 1 FDP within 1 year from the date of this approval. If approved, construction associated with Stage 1 FDP shall commence in earnest by not later than 2 years from the date of Stage 1 FDP approval.
- ii. Stage 2. Stage 2 FDP for the project will include construction of Building D, consisting of a minimum of 90 below market rate rental units. Stage 2 FDP shall be submitted to the Planning Department for review and processing and the project applicant shall make regular and consistent progress toward approval of Stage 2 FDP within 3 years from the date of this approval. If approved, construction associated with Stage 2 FDP shall commence in earnest by not later than 2 years from the date of Stage 2 FDP approval.
- iii. Stage 3. Stage 3 FDP for the project will include construction of Building A, consisting of up to 240 ownership residential units and 26,000 square feet of commercial space. All street improvements, including the completion of Village Drive and any new traffic signals required by the project, will be completed in this phase. This phase will also include the completion of a public plaza directly across Frontage Road from the existing BART Plaza. Stage 3 FDP shall be submitted to the Planning Department for review and processing and the project applicant shall make regular and consistent progress toward approval of Stage 3 FDP within 4 years from the date of this approval. If approved, construction associated with Stage 3 FDP shall commence in earnest not later than 2 years from the date of Stage 3 FDP approval.
- iv. Stage 4. Stage 4 FDP for the project will include the construction of Building B, consisting of up to 150 ownership residential units and 5,500

square feet of commercial space. Stage 4 FDP shall be submitted to the Planning Department for review and processing and the project applicant shall make regular and consistent progress toward approval of Stage 4 FDP within 8 years from the date of this approval. If approved, construction associated with Stage 4 FDP shall commence in earnest not later than 2 years from the date of Stage 4 FDP approval.

- v. Stage 5. Stage 5 FDP for the will include the construction of Building C, consisting of up to 195 ownership residential units and 12,500 square feet of commercial space. This phase will also include the construction of a community center use on the ground floor of Building C. Stage 5 FDP shall be submitted to the Planning Department for review and processing 10 years from the date of this approval. If approved, construction associated with Stage 5 FDP shall commence in earnest not later than 2 years from the date of Stage 5 FDP approval.

- (b) For purposes of this conditions, the term "commence in earnest" shall mean to initiate activities based on a City-issued building permit and other necessary permit (s) and diligently prosecute such permit(s) in substantial reliance thereon and make regular and consistent progress toward the completion of construction and the issuance of final certificate of occupancy, including successful completion of building inspections to keep the building permit and other permits active without the benefit of extension.
- (c) Provided that Stage 1 and 2 FDPs are approved in accordance with the above time frames, the Developer shall have the discretion to change which buildings (A, B, or C) are constructed in which Stages (3, 4 or 5) provided that the FDP submittal dates for these stages remain the same. All other modifications to FDP staging shall be subject to review and approval by the Planning Commission.
- (d) FDP Stages may be combined and reviewed prior to the outlined time frames. If each stage of FDP is not submitted/completed within the time frames outlined above, the PDP shall be considered null and void.
- (e) If, subsequent to this approval, a Development Agreement for this project is adopted by the City, the phasing and construction timeframes prescribed within the Development Agreement shall supersede this condition of approval and govern construction phasing for the project.

3. Scope of This Approval; Major and Minor Changes

Ongoing

The project is approved pursuant to the Planning Code only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. Conformance to Approved Plans; Modification of Conditions or Revocation***Ongoing***

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of the project sponsor obtaining site control, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c) Violation of any term, Conditions, Mitigation Measures or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions and Mitigation Measures if it is found that there is violation of any of the Conditions, Mitigation Measures or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it limit in any manner whatsoever the ability of the City to take appropriate enforcement actions.

5. Signed Copy of the Conditions and Mitigation Measures***With submittal of a demolition, grading, and building permit***

A copy of the approval letter and Conditions and Mitigation Measures shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

6. Indemnification***Ongoing***

- a) The project applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees (hereafter collectively called the City) from any claim, action, or proceeding (including legal costs and attorney's fees) against the City to attack, set aside, void or annul this Approval, or any related approval by the City. The City shall promptly notify the project applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding. The project applicant shall reimburse the City for its reasonable legal costs and attorney's fees.
- b) Within ten (10) calendar days of the filing of a claim, action or proceeding to attack, set aside, void, or annul this Approval, or any related approval by the City, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations and this condition of approval. This condition/obligation shall survive termination, extinguishment, or invalidation of this, or any related approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations contained in 7(a) above, or other conditions of approval.

7. Conditions of Approval/Mitigation Monitoring Program***Ongoing***

- a) All mitigation measures identified in the MacArthur Transit Village Project EIR are included in the Mitigation Monitoring and Reporting Program (MMRP) which is included in these conditions of approval and are incorporated herein by reference, as *Exhibit 1: Standard Conditions of Approval and Mitigation Monitoring and Reporting Program*, as conditions of approval of the project. The Standard Conditions of Approval identified in the MacArthur Transit Village EIR are also included in the MMRP, and are therefore, not repeated in these conditions of approval. To the extent that there is any inconsistency between the MMRP and these conditions, the more restrictive conditions shall govern. The project sponsor (also referred to as the Developer, Applicant or MTCP) shall be responsible for compliance with the recommendation in any submitted and approved technical reports, all applicable mitigation measures adopted and with all conditions of approval set forth herein at its sole cost and expense, unless otherwise expressly provided in a specific mitigation measure or condition of approval, and subject to the review and approval of the City of Oakland. The MMRP identifies the time frame and responsible party for implementation and monitoring for each mitigation measure. Overall monitoring and compliance with the mitigation measures will be the responsibility of the Planning and Zoning Division.
- b) For purposes of these conditions of approval, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

8. Severability***Ongoing***

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions and mitigations, and if any one or more of such conditions and/or mitigations is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions and/or mitigations consistent with achieving the same purpose and intent of such Approval.

9. Job Site Plans***Ongoing throughout demolition, grading, and/or construction***

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval and mitigations, shall be available for review at the job site at all times.

10. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management***Prior to issuance of a demolition, grading, and/or construction permit***

The project applicant may be required to pay for on-call special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review, or construction. The project applicant may also be required to cover the full costs of independent technical and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees, including inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

11. Required Landscape Plan for New Construction and Certain Additions to Residential Facilities***Prior to issuance of a building permit***

Submittal and approval of a landscape plan for each stage of the project is required. The landscape plan and the plant materials installed pursuant to the approved plan shall conform with all provisions of Chapter 17.124 of the Oakland Planning Code, including the following:

- a) Landscape plans shall include a detailed planning schedule showing the proposed location, size, quantities, and specific common botanical names of plant species.
- b) Landscape plans for projects involving grading, rear walls on downslope lots requiring conformity with the screening requirements in Section 17.124.040, or vegetation management prescriptions in the S-11 zone, shall show proposed landscape treatments for all graded areas, rear wall treatments, and vegetation management prescriptions.
- c) All landscape plans shall show proposed methods of irrigation. The methods shall ensure adequate irrigation of all plant materials for at least one growing season.

12. Landscape Requirements for Street Frontages.***Prior to issuance of a final inspection of the building permit***

- a) All areas between a primary Residential Facility and abutting street lines shall be fully landscaped, plus any unpaved areas of abutting rights-of-way of improved streets or alleys, provided, however, on streets without sidewalks, an unplanted strip of land five (5) feet in width shall be provided within the right-of-way along the edge of the pavement or face of curb, whichever is applicable. Existing plant materials may be incorporated into the proposed landscaping if approved by the Director of City Planning.
- b) In addition to the general landscaping requirements set forth in Chapter 17.124, a minimum of one (1) fifteen-gallon tree, or substantially equivalent landscaping consistent with city policy and as approved by the Director of City Planning, shall be provided for every twenty-five (25) feet of street frontage. On streets with sidewalks where the distance from the face of the curb to the outer edge of the sidewalk is at least six and one-half (6 ½) feet, the trees to be provided shall include street trees to the satisfaction of the Director of Parks and Recreation.

13. Assurance of Landscaping Completion.***Prior to Issuance of a Certificate of Occupancy***

The trees, shrubs and landscape materials required by the conditions of approval attached to this project shall be planted before the certificate of occupancy will be issued; or a bond, cash, deposit, or letter of credit, acceptable to the City, shall be provided for the planting of the required landscaping. The amount of such or a bond, cash, deposit, or letter of credit shall equal the greater of two thousand five hundred dollars (\$2,500.00) or the estimated cost of the required landscaping, based on a licensed contractor's bid.

14. Landscape Maintenance.***Ongoing***

All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. All required fences, walls and irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

15. Bicycle Parking***Prior to the issuance of first certificate of occupancy***

The applicant shall submit for review and approval of the Planning and Zoning Division and Transportation Services Division, a bicycle parking plan that shows bicycle storage and parking facilities to accommodate a minimum of 40 short-term bicycle parking spaces (31 for residential uses and 9 for commercial uses) onsite or on public sidewalk, and a minimum of 160 long-term bicycle parking spaces (156 for residential uses and 4 for commercial uses). The plans shall show the design and location of bicycle racks within the secure bicycle storage areas. The applicant shall pay for the cost and installation of any bicycle racks in the public right of way.

Prior to approval of Final Development Plan for Stage 1

Additionally, the project applicant shall work with the City's Transportation Services Division and BART to implement the City's goals for bicycle parking at Railroad and Bus Terminals (provide a combination of short-term and long-term bike parking equal to 5% of the maximum projected ridership for the BART station). The project applicant shall study the feasibility of providing a long-term bike parking facility within the BART plaza, commercial area of the development (i.e., café with bicycle storage or bicycle sales and repair shop and storage) or within the proposed parking garage. Said study shall consider economic and physical feasibility and shall be reviewed by the City's Transportation Services Division, Planning and Zoning Division and BART. If the study finds that such a facility is feasible in the commercial area or parking garage: the project applicant shall use its best efforts during the initial marketing of the commercial space to market a portion of the commercial space to potential bike parking facility operators for a market-rate commercial operation, or include a market-rate, long-term bike facility within the parking garage. If the study finds that options for bike parking within the commercial area or parking garage are not feasible, then the project sponsor shall have no further commitment with respect to the long-term bicycle parking for BART.

PART 2: Additional Conditions of Approval for Major Projects**16. Underground Utilities*****Prior to issuance of a building permit***

The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all electric, telephone, water service, fire water service, cable, and fire alarm facilities installed in accordance with standard specifications of the serving utilities.

17. Improvements in the Public Right-of-Way (General)***Approved prior to the issuance of a P-job or building permit***

- a) The project applicant shall submit Public Improvement Plans to Building Services Division for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with the conditions and/or mitigations and City requirements including but not limited to proposed project traffic signals (MacArthur Boulevard/Frontage Road and Telegraph Avenue/40th Street), curbs, gutters, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design specifications and locations of facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements compliant with applicable standards and any other improvements or

requirements for the project as provided for in this Approval. Encroachment permits shall be obtained as necessary for any applicable improvements- located within the public ROW.

- b) Review and confirmation of the street trees by the City's Tree Services Division is required as part of this condition and/or mitigations.
- c) The Planning and Zoning Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of the final building permit.
- d) The Fire Services Division will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.

18. Payment for Public Improvements

Prior to issuance of a final inspection of the final building permit.

The project applicant shall pay for and install public improvements made necessary by the project including damage caused by construction activity.

19. Compliance Plan

Prior to issuance of a demolition, grading, or building permit

The project applicant shall submit to the Planning and Zoning Division and the Building Services Division a Conditions/ Mitigation Measures compliance plan that lists each condition of approval and/or mitigation measure, the City agency or division responsible for review, and how/when the project applicant has met or intends to meet the conditions and/or mitigations. The applicant will sign the Conditions of Approval attached to the approval letter and submit that with the compliance plan for review and approval. The compliance plan shall be organized per step in the plancheck/construction process unless another format is acceptable to the Planning and Zoning Division and the Building Services Division. The project applicant shall update the compliance plan and provide it with each item submittal.

PART 3: Project-Specific Conditions of Approval

20. Rezoning and Zoning Text Amendment

Required prior to this approval becoming effective

This Approval shall not become effective unless the Zoning Map Amendment and S-15 Text Amendment related to open space standards are adopted by the City Council. The City Council has the authority to consider and revise as appropriate (accept, reject, or modify) the adjudicatory land use decisions of the Planning Commission (including planned unit development permit, design review, and the conditional use permit), regardless of whether an appeal to the City Council is filed challenging such adjudicatory land use decisions.

21. Residential Parking Permits.

Required prior to the demolition of the BART surface parking lot; or prior to elimination of half of the existing BART parking spaces

The project sponsor shall work with the City of Oakland to implement a Residential Parking Permit (RPP), in accordance with all legal requirements, within one quarter mile radius around the station in the residential neighborhoods west of Highway 24 and the BART station, north of 40th Street, east of Telegraph Avenue and south of West MacArthur Boulevard. The street segments to be included in the RPP program are generally shown in Exhibit C-4. The RPP would restrict on-street parking by non-residents to less than two

hours during the weekdays. The project sponsor shall fund this effort up to a maximum of \$150,000. If approved, the RPP program should be implemented prior to elimination of more than 50% of the existing BART parking spaces. To the extent possible, the City will explore using any surplus/excess revenues from enforcement of the RPP program to reimburse the project applicant for costs incurred by project sponsor in connection with the RPP program pursuant to this Section 21. If the City does not approve this RPP program within two years from the date of the completion of the new BART parking garage, the project sponsor shall have no further obligation to pursue or fund any RPP program and the City shall reimburse the project sponsor for any unused funds provided by the project sponsor to the City pursuant to this condition.

22. Traffic Demand Management (TDM) and Parking Program

Prior to and ongoing throughout demolition, grading, construction activities and operation of the project

The project is conditioned on the implementation of a TDM program by MTCP and effectively monitored by the City, as required in MMRP Mitigation Measures Trans-4 and Trans-9. A draft TDM Plan prepared by Nelson Nygaard dated May 27, 2008, and is included herein as Exhibit C-2. The final TDM Plan, as stipulated in the MMRP, is subject to review by BART, AC Transit and the review and approval by the City of Oakland.

Funding for monitoring, reporting and review of the TDM program shall be provided by the project sponsor.

In addition to the CEQA requirements for a TDM program, the TDM program described in MMRP Mitigation Measures Trans-4 and Trans-9 is also designed to promote the City's Transit First Policy of the general plan, reduce parking demand and lessen parking impacts on adjacent neighborhoods and to promote good urban design by reducing the number and size of parking facilities. Therefore MMRP Mitigation Measures Trans-4 and Trans-9 are also imposed as a separate non-CEQA conditions of approval and the TDM program shall be incorporated into the project, for the duration of the project, to maximize parking capacity and help ensure that these goals are met.

23. Minimum Right-of-Way for Fire Emergency Vehicle Access.

Prior to approval of Each Stage of Final Development Plan or Vesting Tentative Map and Ongoing

The project shall accommodate the intent of the 2008 fire code provisions for increased right-of-way access as follows:

- (a) Village Drive will be maintain an unobstructed right-of-way distance of 26 feet.
- (b) Internal Street will include two (2) 26-foot wide staging areas and the remaining right-of-way will remain 20 feet wide.
 - i. The staging areas will be a minimum of 30 feet in length.
 - ii. No parking or landscaping will be permitted in the staging areas.
 - iii. The location of the staging areas will be based on a ladder study to be completed by MTCP in consultation with the Fire Department.
 - iv. Fire hydrants will be staggered outside of the staging areas.
- (c) Frontage Road will include one (1) 26-foot wide staging area and the remaining right-of-way will remain the same.
 - i. The staging area for the frontage road will be located approximately 30 feet north of the crosswalk on the north side of the parking garage.

- ii. The staging area will be a minimum of 30 feet in length.
- iii. No parking or landscaping will be permitted in the staging areas.

(d) In addition to incorporating staging areas and setting a minimum unobstructed street width of 26 feet for Village Drive and 20 feet for Internal Street, as described above, the project sponsor will include Alternate Materials and Methods Requests (AMMRs) into the project to the satisfaction of the Fire Chief. The appropriate AMMRs will be determined by the Fire Chief's review of Final Development Plans or Vesting Tentative Maps, and may include the following measures:

- i. Increased sprinkler density (provide sprinklers in bathrooms and closets)
- ii. Install 8-head instead of 4-head sprinklers
- iii. Design fire hydrants with a minimum 200 foot separation
- iv. Provide dual water connections and water sources per building
- v. Provide Fire Department Connections (FDCs) on each street (minimum of 2 per building)

24. Air Filtration/Ventilation System.

Prior to issuance of a building permit

Although the studies conducted for the EIR demonstrate that the project site was found to be below the significance criteria for health risk based on the assessment prepared in accordance with the California Air Resources Board and the Office of Environmental Health and Hazard Assessment for exposure to vehicular exhaust from roadways, the project sponsor has agreed to incorporate into the project a mechanical ventilation system that meets the efficiency standard of the MERV 13 for those units with windows fronting the freeway or Frontage Road. The ventilations shall be subject to review and approval by the City's Building Services Division. Appropriate maintenance, operation and repair materials will be furnished to project residents.

25. Components of Final Development Plans.

Prior to approval of Any Final Development Plans

In accordance with the Planning Code Chapter 17.140, each stage of FDP shall:

(a) Conform to all major respects with the approved Preliminary Development Plan received by the Planning Division on May 28, 2008, and included as Exhibit F;

(b) Comply with development standards of the S-15 Zone, except and modified for building height as bonus for the Planned Unit Development and shown in the Preliminary Development Plan;

(c) Be consistent with the MacArthur Transit Village Design Guidelines included in these conditions as Exhibit C-3;

(d) Include all information included in the preliminary development plan plus the following:

- i. the location of water, sewerage, and drainage facilities;
- ii. detailed building floor plans, elevations and landscaping plans;
- iii. the character and location of signs;
- iv. plans for street improvements; and
- v. grading or earth-moving plans.

(e) Be sufficiently detailed to indicate fully the ultimate operation and appearance of the development stage; and

(f) Include copies of legal documents required for dedication or reservation of group or common spaces, for the creation of nonprofit homes' association, or for performance bonds, shall be submitted with each Final Development Plan.

26. Subdivision Maps

Prior to final approval of Each Final Development Plan

Final Development Plans shall be accompanied by subdivision maps as required to subdivide the property. The subdivision maps shall be reviewed and processed in accordance with Title 17, Subdivisions, of the City of Oakland Municipal Code and the Subdivision Map Act.

27. Final Development Review and Approval by City Council.

Prior to final approval of Any Final Development Plan

All Final Development Plan(s) shall be subject to review and recommendation by the Planning Commission's Design Review Committee and Planning Commission, with final approval by the City Council.

28. Minimum Setback to Buildings Adjacent to Project Site.

Prior to issuance of a building permit

All buildings within the project shall maintain a minimum 5 foot setback, except at the ground level, to existing buildings adjacent to the project site. The applicant shall show all proposed building setbacks on the plans submitted for a building permit.

29. Safety Plan.

Prior to issuance of a building permit

The project sponsor shall work with the Oakland Police Department and the Planning and Zoning Division to prepare a safety plan for the portion of the project area along Frontage Road between the BART Garage and the BART Plaza. Without limiting the foregoing, the safety plan shall assess the efficacy and feasibility of installing video security cameras along Frontage Road. The project sponsor shall implement the approved recommendations/conclusions of the safety study including, if determined necessary and feasible by the City, the implementation of video cameras.

30. Special Project Driveway Design Improvements.

Prior to approval of Each Final Development Plan Stage or Vesting Tentative Map and Ongoing

To limit conflicts between pedestrians, bicycles and vehicles entering and exiting the BART parking garage and residential parking garages within the project, the project driveways shall incorporate the following design measures, subject to review and approval of the City's Transportation Services Division (TSD):

- (a) Install a high-visibility crosswalk across Frontage Road connecting the BART garage to the western sidewalk. Note that currently, the City of Oakland does not install high visibility crosswalks at signalized intersections unless there are problems with sight distance.
- (b) For driveways along Internal Street, provide adequate sight distance at all residential garage exits. End the ramp before the sidewalk so that the sidewalk remains level and vehicles do not encroach on the sidewalk. Landscaping should be maintained so that adequate sight distance is provided. Consider installing pedestrian warning lights to alert pedestrians to exiting vehicles at driveways with high pedestrian volumes and limited sight distance. Installation of loud audible warning devices is not recommended.

- (c) For the driveway along Village Drive, provide adequate sight distance the garage exit. End the ramp before the sidewalk so that the sidewalk remains level and vehicles do not encroach on the sidewalk. Landscaping should be maintained so that adequate sight distance is provided. Consider installing pedestrian warning lights to alert pedestrians to exiting vehicles at driveways with high pedestrian volumes and limited sight distance. Installation of loud audible warning devices is not recommended.

31. Pedestrian Access Paths.

Prior to approval of the Final Development Plan for Stages 1 and 5 or Vesting Tentative Map and Ongoing

Design the paths between Internal Street and West MacArthur Boulevard, and Internal Street and Telegraph Avenue for pedestrian use only.

The two 10-foot wide paths shown on the Preliminary Development Plan between the southern end of Internal Street and West MacArthur Boulevard, and between Internal Street and Telegraph Avenue, along the southern edge of Block C shall be restricted to pedestrian use and signage shall be provided to mark the paths for pedestrian use only.

32. Internal Street.

Prior to approval of the Final Development Plan for Stages 1 or Vesting Tentative Map and Ongoing

The developer shall reserve "Internal Street" on the owner's statement of the Final Map for private street purposes and clearly indicate who will benefit and maintain the private street. The private street maintenance language shall be included in the subdivision CC&R and reviewed and approved by Planning Director and City attorney. The developer shall provide proof on how the private street shall be maintained. Unless otherwise approved by the Engineering Division, the private street shall be constructed to the City's standard details for public street construction.

33. Specific Project Intersection Improvements.

Prior to approval of Final Development Plan for Stage 3 or Vesting Tentative Map and Ongoing

In order to enhance pedestrian activity and safety to and from the project site, the following measures shall be implemented, subject to review and approval by the City's Transportation Services Division (TSD):

- (a) For the intersection of 40th Street and the Frontage Road:
 - i. Prohibit right turns on red and provide a leading pedestrian interval.
 - ii. Increase the initial walk interval (this allows more time for clusters of pedestrians to leave the sidewalk when crossing)
 - iii. Install high visibility cross walks (i.e., ladder striping or colored pavement)
 - iv. Install audible pedestrian countdown signals
 - v. Provide separate curb ramps for each cross walk
- (b) For the intersection of Telegraph Avenue and Village Drive
 - i. Increase the initial walk interval (this allows more time for clusters of pedestrians to leave the sidewalk when crossing)
 - ii. Install high visibility cross walks (i.e., ladder striping or colored pavement)
 - iii. Install audible pedestrian countdown signals
 - iv. Provide separate curb ramps for each cross walk
- (c) For the intersection of Frontage Road and Village Drive

- i. Install high visibility cross walks (i.e., ladder striping or colored pavement)
 - ii. Provide a raised intersection with high visibility striping to connect pedestrians from the BART plaza to Village Drive
 - iii. Install signage (i.e., "Left Turn Only, Except Shuttles and Bicycles") and striping at this intersection to prohibit south bound traffic except shuttles and bicycles from continuing south to West MacArthur Boulevard.
- (d) For the intersection of West MacArthur Boulevard and Frontage Road
 - i. Increase the initial walk interval (this allows more time for clusters of pedestrians to leave the sidewalk when crossing)
 - ii. Install high visibility cross walks (i.e., ladder striping or colored pavement)
 - iii. Install audible pedestrian countdown signals
 - iv. Provide separate curb ramps for each cross walk
 - v. Install bulb-outs at corners
- (e) For the intersection of the BART Garage and Frontage Road
 - i. Construct curbs and provide striping to prohibit vehicles exiting the BART garage from turning right; and to prohibit northbound vehicle from traveling further north beyond the driveway into the BART garage.
 - ii. Provisions should be made to allow through access for emergency vehicles, such as City and BART Police, Fire and Ambulance vehicles.

34. Coordination of BART Parking and Plaza Improvements

Prior to approval of Final Development Plan for Stage 1

- (a) The BART parking structure shall include a minimum of 300 parking spaces.
- (b) The project applicant shall coordinate with BART to facilitate construction of the BART parking structure and BART Plaza improvements as shown in the Preliminary Development Plan.

35. Bicycle Access and Bicycle Paths

Prior to approval of Final Development Plan for Stage 1 or Vesting Tentative Map and Ongoing

In order to enhance bicycle safety to and from the project site, the following measures shall be implemented, subject to review and approval by the City's Transportation Services Division:

- (c) Provide two-way bike lanes on Frontage Road. Locate the northbound bike lane west of the northbound (right-turn only) vehicle lane. Southbound bicyclists could use the southbound shuttle lane.
- (d) Install STOP signs for vehicles exiting the BART garage and for southbound shuttles approaching the BART garage.
- (e) Provide adequate sight distance at the garage exit. Landscaping should be maintained so that adequate sight distance is provided.
- (f) Provide signage at the West MacArthur Boulevard/Frontage Road intersection directing bicyclists to the bicycle path or lanes on Frontage Road.

- (g) Install bicycle detection for all actuated through movements or left turns at the new signal at 40th Street and Frontage Road; the new signal at Telegraph Avenue and Village Drive; and West MacArthur Boulevard and Frontage Road.
- (h) Install signage (i.e., "Left Turn Only, Except Shuttles and Bicycles" and "Left Turn Only, Except Shuttles and Bicycles") and striping at the Frontage Road/Village Drive intersection to prohibit southbound and westbound vehicles, except shuttle buses and bicycles, from continuing southbound to West MacArthur Boulevard. (Also see Condition 34 (c) iii).
- (i) Study the feasibility of providing a "bicycle box" at the southbound approach to the West MacArthur Boulevard/Frontage Road/37th Street intersection and at the northbound approach to the Frontage Road/40th Street intersection. Project applicant shall submit said feasibility to the City's Transportation Services Department for review and approval. If said improvement is determined to be feasible, the project applicant shall implement this measure.
- (j) Study the feasibility of using colored pavement or other visual treatments on the bike path or lanes to increase their visibility and use by bicyclists. Project applicant shall submit said feasibility to the City's Transportation Services Department for review and approval. If said improvement is determined to be feasible, the project applicant shall implement this measure.

36. Area Right of Way Improvements.

Prior to approval of Final Development Plan for Stage 3 or Vesting Tentative Map and Ongoing

Project applicant shall perform feasibility and other studies of the following measures for review and approval by the City Planning Division and Transportation Services Division (TSD). The Project applicant shall implement items determined feasible by the City.

- (a) Removal of the slip right-turns on northbound and southbound Telegraph Avenue at West MacArthur Boulevard.
- (b) Providing street furniture and widening sidewalks where feasible for street frontages immediately adjacent to the project site.

37. Traffic Monitoring.

Prior to project construction, and after completion of project

Project sponsor shall pay to monitor traffic volumes and speeds on the following roadways in accordance with the schedule below. In consultation with local residents, and in accordance with all legal requirements, appropriate traffic calming measures, such as speed humps, or roadway closures, should be considered if and when excessive traffic volumes or speeding are observed. These potential improvements should be funded by the project applicant, if approved by the City's Transportation Services Division (TSD):

- (a) 37th Street between West MacArthur Boulevard and Telegraph Avenue; Monitoring shall be undertaken before construction, and one year after a certificate of occupancy issued for the BART garage.
- (b) 38th Street between Telegraph Avenue and Webster Street; Monitoring should be undertaken before construction, and about one year after a certificate of occupancy issued

for FDP Stage 3, or when eighty (80) percent occupancy is achieved, whichever occurs earlier.

(c) Clarke Street and Ruby Street between 38th Street and 40th Street; Monitoring should be undertaken before construction, and about one year after a certificate of occupancy issued for FDP Stage 3, or when eighty (80) percent occupancy is achieved, whichever occurs earlier.

38. Outdoor Active Areas.

Prior to approval of Final Development Plan for each stage

To the maximum extent practicable, exterior active use areas, including playgrounds, patios, and decks, shall either be shielded by buildings or otherwise buffered to further reduce exterior noise for project residents.

39. BART Garage Elevations

Prior to approval of Final Development Plan for Stage 1 and Ongoing

Final Development Plans for the BART Garage shall include detailed architectural plans demonstrating how the design and building details break up the massing of the parking garage. Signage and advertising on the BART garage shall be subject to the guidelines and standards in the City of Oakland Uniform Sign Code, including Code Section 17.104.060 that prohibits advertising signs, except as permitted via a Franchise Agreement or Relocation Agreement is authorized by the City Council.

40. Green Roofs/Roof Top Gardens.

Prior to approval of Final Development Plan for Stages 2 through 5

As part of the submittal for each FDP application for each phase of FDP, except Stage 1 (BART parking garage), the project sponsor shall study the feasibility of methods to further reduce heat island effect and/or provide additional open space for resident use. Potential methods include but are not limited to green roofs, roof gardens, roof decks, open or partially enclosed private or common balconies. For purposes of this condition of approval, feasibility as defined above includes the consideration of proximity to the highway or streets, location above livable space, construction type, insurability, long term maintenance, HOA costs, and the use of space for other purposes. The feasibility study for implementing additional methods to further reduce heat island effect and/or provide additional open space for resident use shall be provided to Planning Staff as part of each FDP application. The intent of this condition is to further the sustainable elements of the project design and potentially provide more open space area for the project residents.

Conditions 41 and 43 were added by the Planning Commission on November 2, 2016; Conditions 42 and 44 were added by the Community and Economic Development Committee on November 15, 2016;

41. Groundfloor Retail Leasing.

Prior to any conversion of groundfloor space from retail to live/work for Parcels A and C1
Provide active retail leasing period during 24-month construction period and for 15 months following issuance of Temporary Certificate of Occupancy for Parcels A and C1, for a total of 39 months. Work with Temescal Telegraph Business Improvement District (TTBID) during this period to identify and attract retail tenants.

42. Groundfloor Retail Leasing.

Prior to Certificate of Occupancy for Parcel A or C1 (and annual reporting)

Comply with any leasing requirements included in the Owner Participation Agreement, and provide a permanent retail leasing program to ensure that every time a commercial or live/work space is available to lease, the space is actively marketed to retail tenants for retail uses, subject to Planning staff approval. Annual retail leasing program compliance reporting to accompany required Development Agreement compliance annual report.

43. Groundfloor Active Uses.

Prior to issuance of Certificate of Occupancy for Parcel A or C1

For ground-floor space that can be converted to live-work, designate not less than 50 percent of the affected square footage to be occupied by active business, subject to approval by the Director of Planning and Building or his/her designee. Factors to be considered in this determination may include, but are not limited to, amount of ground-floor transparency, hours of operation, and type of business to be located in the affected space.

44. Pedestrian Street Lighting.

Prior to issuance of first construction-related permit for Parcel A or C1

The applicant has voluntarily agreed to contribute \$75,000 to Temescal Telegraph Business Improvement District, specifically for the purpose of providing pedestrian street-lighting on Telegraph Avenue between West MacArthur Boulevard and 40th Street.

APPROVED BY:

City Planning Commission: _____ (date) _____ (vote)

City Council: _____ (date) _____ (vote)

Applicant and/or Contractor Statement

I have read and accept responsibility for the Conditions of Approval, as approved by Planning Commission action on **June 4, 2008, and revised by the City Council on November 29, 2016, as applied to Parcels A and C1.** I agree to abide by and conform to these conditions, as well as to all provisions of the Oakland Zoning Code and Municipal Code pertaining to the project.

Signature of Owner/Applicant: _____ (date)

Signature of Contractor _____ (date)

Introduced by Councilmember _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 NOV 17 PM 4:19

Revised @ CEDC 11/15/16
Approved as to Form and Legality
Mark P. Wall
Office of the City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION, AS RECOMMENDED BY THE PLANNING COMMISSION, REVISING THE MACARTHUR BART PARCELS A AND C1 FINAL DEVELOPMENT PERMIT (CASE FILE PUDF08/ER01), RELYING ON THE 2008 MACARTHUR STATION PROJECT ENVIRONMENTAL IMPACT REPORT AND ADDENDA, FINDING THAT NO ADDITIONAL ENVIRONMENTAL REVIEW IS NEEDED PURSUANT TO CEQA GUIDELINES SECTIONS 15162-15164 AND ADOPTING RELATED CEQA FINDINGS

WHEREAS, on June 4, 2008, the City of Oakland Planning Commission certified the MacArthur Transit Village Environmental Impact Report (EIR), adopted CEQA findings and recommended approval of the MacArthur Transit Village Planned Unit Development (PUD) to the City Council; and

WHEREAS, the Oakland City Council affirmed and adopted the Planning Commission's certification of the EIR, the CEQA-related findings, and approval of the MacArthur Transit Village PUD on July 1, 2008; and

WHEREAS, the Oakland City Council also approved a "Development Agreement by and between the City of Oakland and MacArthur Transit Community Partners, LLC Regarding the Property and Project Known as 'MacArthur Transit Village'" (DA) on July 21, 2009; and

WHEREAS, on May 17, 2015, the City Council approved the MacArthur Transit Village Parcels A and C1 Final Development Permit (FDP) to allow two phases of development and in total includes 383 apartment residential units; 23,489 square feet of ground-floor retail space; 35,320 square feet of open space; and 323 on-site parking spaces; and

WHEREAS, on September 28, 2016, the Applicant submitted an application to revise the FDP to substitute live/work units for ground floor retail uses; decrease on-site parking; and provide project driveway on Telegraph Avenue; and

WHEREAS, the City of Oakland Bureau of Planning prepared a 2016 Addendum to the EIR and determined that not additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164; and

WHEREAS, the FDP revision application was subject to a duly noticed public

hearing before the Planning Commission on November 2, 2016; and

WHEREAS, on November 2, 2016, the City Planning Commission, after conducting and closing the public hearing, recommended that the City Council revise the FDP, subject to revised conditions of approval, rely on the 2008 EIR and addenda finding that no additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164 and adopt related CEQA findings; and

WHEREAS, the Project was considered at a regular, duly noticed meeting of the City Council's Community and Economic Development Committee on November 15, 2016, which recommended approval of the Project, with further, revised conditions of approval;

WHEREAS, the Project was considered at a regular, duly noticed public hearing of the City Council on November 29, 2016; now, therefore, be it

RESOLVED: that the City Council, as the final decision-making body for the Lead Agency, has independently reviewed, considered, and analyzed the Project and the CEQA findings of the City Planning Commission contained in the Planning Commission report, the November 15, 2016 City Council's Community and Economic Development Committee's Agenda Report and Supplemental Report and attachments, and the November 29, 2016 City Council Supplemental Report and Attachment (collectively "City Council Agenda Reports"); and be it

FURTHER RESOLVED: that the City Council hereby (a) relies on the 2008 EIR and addenda, finding that no additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164 and adopts all related CEQA findings; and (b) adopts all of the Project's planning-related permits and approvals, findings and revised conditions of approval, based on the City Planning Commission Report and the City Council Agenda Reports, hereby incorporated by reference, as if fully set forth herein; and be it

FURTHER RESOLVED: that nothing in this Resolution shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law; and be it

FURTHER RESOLVED: that the Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Determination with the appropriate agencies; and be it

FURTHER RESOLVED: That the record before this Council relating to this Project and Appeal includes, without limitation, the following:

1. the Application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and its representatives;
3. all final staff reports, final decision letters, and other final documentation and information produced by or on behalf of the City, including without limitation all related/supporting final materials, and all final notices relating to the Application and attendant hearings;

4. all oral and written evidence received by the Planning Commission and City Council before and during the public hearings on the Application and Appeal; and all written evidence received by relevant City Staff before and during the public hearings on the Application and Appeal; and
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) the Oakland Municipal Code; (c) the Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable State and federal laws, rules and regulations; 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 Council's decision is based are located at (a) the Planning and Building Department, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, First Floor, Oakland, California; and be it

FURTHER RESOLVED: That per standard City practice, if litigation is filed challenging this decision, or any subsequent implementing actions, then the time period for obtaining necessary permits for construction or alteration and/or commencement of authorized construction-related activities stated in any applicable conditions of approval or regulations is automatically extended for the duration of the litigation; and be it

FURTHER RESOLVED: That the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND
PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council of the
City of Oakland, California

LEGAL NOTICE:

PURSUANT TO OAKLAND MUNICIPAL CODE SECTION 17.136.090, THIS DECISION OF THE CITY COUNCIL IS FINAL IMMEDIATELY AND IS NOT ADMINISTRATIVELY APPEALABLE. ANY PARTY SEEKING TO CHALLENGE SUCH DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THIS DECISION, UNLESS A DIFFERENT DATE APPLIES.

2016 NOV 17 PM 4:19

~~DRAFT~~
Office of the City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION, AS RECOMMENDED BY THE PLANNING COMMISSION, REVISING THE MACARTHUR BART PARCELS A AND C1 FINAL DEVELOPMENT PERMIT (CASE FILE PUDF08/ER01), RELYING ON THE 2008 MACARTHUR STATION PROJECT ENVIRONMENTAL IMPACT REPORT AND ADDENDA, FINDING THAT NO ADDITIONAL ENVIRONMENTAL REVIEW IS NEEDED PURSUANT TO CEQA GUIDELINES SECTIONS 15162-15164 AND ADOPTING RELATED CEQA FINDINGS

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WHEREAS, the FDP revision application was subject to a duly noticed public

hearing before the Planning Commission on ~~October 19~~November 2, 2016; and

WHEREAS, on ~~October 19~~November 2, 2016, the City Planning Commission, after conducting and closing the public hearing, recommended that the City Council revise the FDP, subject to revised conditions of approval, rely on the 2008 EIR and addenda finding that no additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164 and adopt related CEQA findings; and

WHEREAS, the Project was considered at a regular, duly noticed meeting of the City Council's Community and Economic Development Committee on ~~October 25~~November 15, 2016, which recommended approval of the Project, with further, revised conditions of approval;

WHEREAS, the Project was considered at a regular, duly noticed public hearing of the City Council on ~~November 4~~November 29, 2016; now, therefore, be it

RESOLVED: that the City Council, as the final decision-making body for the Lead Agency, has independently reviewed, considered, and analyzed the Project and the CEQA findings of the City Planning Commission contained in the Planning Commission report, and the October 25November 15, 2016 City Council's Community and Economic Development Committee's Agenda Report and Supplemental Report and attachments"), and the November 29, 2016 City Council Supplemental Report and Attachment (collectively "City Council Agenda Reports"; and be it

FURTHER RESOLVED: that the City Council hereby (a) relies on the 2008 EIR and addenda, finding that no additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164 and adopts all related CEQA findings; and (b) adopts all of the Project's planning-related permits and approvals, findings and revised conditions of approval, based on the City Planning Commission Report and the City Council Agenda Reports, hereby incorporated by reference, as if fully set forth herein; and be it

FURTHER RESOLVED: that nothing in this Resolution shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law; and be it

FURTHER RESOLVED: that the Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Determination with the appropriate agencies; and be it

FURTHER RESOLVED: That the record before this Council relating to this Project and Appeal includes, without limitation, the following:

1. the Application, including all accompanying maps and papers;
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3. all final staff reports, final decision letters, and other final documentation and information produced by or on behalf of the City, including without limitation all related/supporting final materials, and all final notices relating to the Application and attendant hearings;

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FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are located at (a) the Planning and Building Department, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, First Floor, Oakland, California; and be it

FURTHER RESOLVED: That per standard City practice, if litigation is filed challenging this decision, or any subsequent implementing actions, then the time period for obtaining necessary permits for construction or alteration and/or commencement of authorized construction-related activities stated in any applicable conditions of approval or regulations is automatically extended for the duration of the litigation; and be it

FURTHER RESOLVED: That the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND
PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION –

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council of the
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