

**DATE:** December 15, 2009

**TO:** City Council and Redevelopment Agency Board Members

**FROM:** Redevelopment Director

**SUBJECT:** Approval of the Terms for Amended Inclusionary Housing Agreements with Citation Homes Central and Integral Communities for Fulfillment of the Inclusionary Housing Ordinance Obligations for the Cannery Place Development

### **RECOMMENDATION**

That the City Council adopts the attached resolution authorizing the City Manager to negotiate and execute two Inclusionary Housing Agreement Amendments with (1) Citation Homes Central (Citation) and (2) Integral Communities, Inc. (Integral) in fulfillment of the Inclusionary Housing Ordinance (the Ordinance) obligations in connection with the Cannery Place Development, as well as an Agreement with Citation, Integral, and Libitzky Holdings, containing covenants affecting real property; and

That the Redevelopment Agency Board adopts the attached resolution authorizing the Executive Director of the Redevelopment Agency to negotiate and execute a Purchase and Sale Agreement with Citation for the conveyance of property located at 581, 585, and 597 B Street (B & Grand Streets), in fulfillment of the Amended Inclusionary Housing Agreement with Citation

### **SUMMARY**

The recommended actions will result in Inclusionary Housing Agreements in which the 94-unit affordable housing obligation for the Cannery Place development is fulfilled as follows:

- 1) Credits for all fifty-nine units of completed affordable housing at C & Grand Senior Housing Development are distributed, with 32 units total credited to the Citation-owned property, seventeen units credited to the tract owned by Integral, and ten units credited to the Libitzky property at C and Filbert;
- 2) Sixteen units of moderate-income affordable for-sale units will be built and sold within the Cannery Place development, including five units by Integral and eleven units by Citation;
- 3) Affordable Housing In-lieu fees for seven units of affordable housing will be paid by Integral ; and

- 4) Twenty-two units of affordable housing obligation will be satisfied with the conveyance of the property located at B & Grand to the Redevelopment Agency for one dollar (\$1.00).

## **BACKGROUND**

In December 2005, the City Council approved applications submitted by the Felson Companies and Citation for the development of 628 units located on the former Hunt/Wesson Cannery facility, North of Winton Avenue and west of Myrtle Street (Cannery Place Development). The following year, Citation purchased the Felson property and became responsible for the implementation of the entire project.

As part of the approval process, the project was required to satisfy the City's inclusionary housing requirement to set aside at least 15% of the units as affordable. Because of the Cannery's location within the Redevelopment Agency Project Area, the conditions of approval required Citation to set aside 6% (38) off-site units to very low-income households and 9% (57) on-site for-sale units to moderate-income households. At the end of May of 2007, the City and Citation entered into an Inclusionary Housing Agreement (IHA) in order to memorialize Citation's obligation to produce the very low and moderate-income units.

In 2007, Citation transferred a portion of the Cannery Place project, Tract 7613, to Meritage Homes. Subsequently, the national housing crisis developed, and as a result, Meritage abandoned the project, and the land reverted to its lender, Weyerhaeuser Realty Investors (WRI). In the meantime, Citation satisfied its obligation to produce very-low income units by providing a cash subsidy and land for the development of fifty-nine units of affordable rental housing for seniors (plus one manager's unit) at the C & Grand apartment complex developed by Eden Housing, Inc. (Eden). This development was completed in the summer of 2008.

In September 2008, the City Council approved an amendment to the Cannery Place Inclusionary Housing Agreement. The amendment was intended to address some of the challenges facing the project, particularly the provision of on-site, "re-sale restricted" units that could be successfully sold to moderate-income buyers in a falling housing market. Due to the economic and market conditions, Citation felt that it would be more cost-effective to pay Affordable Housing in-lieu fees, and to donate additional land to the City/Redevelopment Agency that Citation had purchased at the corner of B & Grand Streets in order to provide for an additional phase of the Senior Housing at C & Grand. The Inclusionary Housing Agreement amendment provided for cash payments from Citation as well as from WRI, in the total amount of \$2,035,200, plus the land at B & Grand Streets. This amendment was never implemented. Citation came back shortly after its approval to re-negotiate agreement terms due to the worsening housing and credit markets.

## **DISCUSSION**

Since September 2008, the Cannery Place project has evolved as follows: WRI has sold Tract 7613 to a new investor, Integral Communities, Inc. (Integral). Integral has received City approval for a new site plan that increases the unit count in its tract, from 171 to 191 housing units. Integral

wishes to enter into its own separate Inclusionary Housing Agreement with the City in order to facilitate the development of its tract. Citation previously reconsidered its development plans and obtained approvals to reduce its unit count from 457 units under the original site plan to 404. Citation recently submitted an application to modify its site plan again, which would result in 432 units total for its tracts. The plans are currently with staff for an administrative review. It should also be noted that Citation has completed and is leasing sixteen duet units, and is under construction on twenty-eight townhomes at the north end of its site. These units are included within Citation's 432-unit total.

If these plans are approved, the total unit count for Cannery Place would be reduced from 628 to 623 units, and the overall 15% Inclusionary Housing requirement would therefore be reduced from ninety-five units to ninety-four units. Integral's portion of the affordable housing requirement is twenty-nine units, and Citation's new requirement will be reduced from sixty-nine to sixty-five units.

In its discussions with staff, Citation has requested consideration for the entire fifty-nine units of affordable housing that were actually produced at the C & Grand senior housing development, rather than the thirty-eight units of low-income housing that were considered as part of the original Inclusionary Agreement. At Citation's request, the "credit" for the entire group of affordable units is proposed to be distributed as follows: Thirty-two units credited to the Citation property, seventeen units credited to the Integral property, and ten units credited to the property owned by Libitzky Holdings at the north end of the Cannery site. This distribution of affordable housing credits for the C & Grand housing development is proposed to be memorialized in an agreement between the City, Citation, Libitzky, and Integral, in which covenants for these credits will run with the land.

For the remainder of its obligation, Citation now proposes to build eleven moderate-income affordable units on its property, and to donate the B & Grand property. Previously, the B & Grand site was given credit for twenty-five units of affordable housing. Given that the value of residential land has declined, that the site has not been entitled for residential use, and that Citation has a remaining requirement of twenty-two units if their new site plan is approved, staff is now proposing that a twenty-two-unit affordable housing credit be assigned to that property.

Citation is currently seeking final environmental clearance from the Regional Water Quality Control Board for the B & Grand property. The property has been previously characterized, and some contaminated soil has been removed. Staff has reviewed the environmental documentation for the site, it appears reasonable to expect clearance by the Water Board in the near future. In the event that the Water Board does not clear this site for residential development within six months, Citation could be required to either provide twenty-two additional affordable units within the Cannery Place development, or pay the equivalent of twenty-two units of in-lieu fees. The City could also – at its option – choose to extend the time period to clear the property, or take title to the B & Grand property without such environmental clearance. In the event that the site is discovered to have significant environmental complications during this time, staff would return to the City Council to consider the options.

As noted above, Citation’s proposal hinges upon an administrative approval of a new site plan, which calls for 432 units. In the event that this site plan is not approved, staff is requesting the authority to negotiate minor adjustments to the number of on-site units or the optional payment of fees in accordance with the Inclusionary Housing Ordinance.

For the remainder of Integral’s remaining obligation, the property owner proposes to pay an “in lieu” affordable housing fee for seven units, and to provide five units of moderate-income affordable units on-site. Integral’s in-lieu fee obligation would be subject to modification as the Affordable Housing In-lieu fee may be modified (see below). Under the current fee of \$80,000 per affordable unit, the total amount collected from Integral would be \$560,000. The fees would be deposited into an Affordable Housing Trust fund, as contemplated under the Inclusionary Housing Ordinance.

The following chart compares the Inclusionary Housing obligation under the original Agreement with the current proposed for each development:

### CANNERY PLACE INCLUSIONARY HOUSING OBLIGATION

	Approved 2007 Cannery Place	Proposed 2009 Citation	Proposed 2009 Integral	Proposed 2009 Total
<b>Units in Development</b>	<b>628</b>	432	191	<b>623</b>
<b>15% IHO Obligation</b>	<b>95</b>	65	29	<b>94</b>
<b>C &amp; Grand IHO Credit</b>	<b>38</b>	32	17	<b>49*</b>
<b>On-site Affordable Units</b>	<b>57</b>	11	5	<b>16</b>
<b>B &amp; Grand Land IHO Credit</b>		22		<b>22</b>
<b>In-Lieu Fee Payment - Units</b>			7	<b>7</b>
<b>Total IHO Units</b>	<b>95</b>	65	29	<b>94</b>

\*There are actually 59 total affordable units at the C & Grand senior development. Ten units of additional affordable housing credit will be assigned to the Libitzky property

The affordable housing requirements outlined above will be contained in Inclusionary Housing Agreement Amendments, one each for Citation and Integral. Thus, the original Inclusionary Housing Agreement adopted in 2007 is effectively being “split” between the two parties.

With respect to the Affordable Housing In-lieu fees, the Inclusionary Housing Ordinance currently provides that they are allowed by request, and at the City Council’s discretion. To date, no fees have actually been collected under the Inclusionary Housing Ordinance. Last summer, the City Council expressed an interest in exploring ways to provide developer relief during this period of

economic downturn. As a result, on December 1, 2009 the City/Agency approved a professional services contract to undertake an Affordable Housing In-lieu Fee study, which will determine a current In Lieu fee amount that is justifiable. At the end of the study, staff will return to the City Council with proposed modifications to the In-lieu fee, as well as proposed modifications to the Inclusionary Housing Ordinance, including any temporary developer relief measures. In the event that reduced fee amounts are approved, they would apply to both the Integral and Citation Inclusionary Housing Agreement. The Integral Agreement would also allow the fees to be paid at the time certificates of occupancy are issued for the inclusionary units. In contrast, Citation's Agreement provides for fee payment as an optional contingency measure if the B & Grand property cannot be donated, but would require such fees to be paid after a certain number of building permits are issued.

## **ECONOMIC IMPACT**

The proposed modifications to the Inclusionary Housing Agreement(s) for Cannery Place are the result of declines in demand as well as pricing in the regional housing market over the past two years (see the "background" section of this report). The proposed modifications also result from a small reduction of the overall number of units proposed for development, as well as the higher actual number of affordable housing units that were produced off-site at the C & Grand Senior housing development, and the prospect of additional senior housing at B & Grand. In effect, the number of moderate-income affordable units produced on-site would be reduced by forty-one units, but the total number low-income affordable senior units off-site would increase by up to forty-three units.

The proposed modifications are expected to help the Cannery Place development to move forward in these difficult times. The fiscal benefits of the Cannery Place development as a whole are significant to the City of Hayward, and to the Redevelopment Agency, and are outlined below. In addition, the Cannery development will create construction jobs in the community, and will help to revitalize the former Cannery area, add to the downtown retail customer base, and benefit the Bay Area region generally by providing compact, transit-oriented housing.

## **FISCAL IMPACT**

The proposed amendments will result in fewer affordable units contained within the Cannery Place development. The City will gain In-Lieu housing fees currently estimated at \$80,000 per unit, or \$560,000 in total, and the Agency will acquire a property that may be used to build future affordable housing. The B & Grand property will need to be entitled, and the ultimate additional costs to develop affordable housing on that site are not known at this time.

The proposed Inclusionary Housing Agreement amendments will help facilitate development of Cannery Place. The build-out of this development is expected to take place over at least five years, and possibly longer depending on the economy. At build-out, the addition of 623 units of housing will add property tax increment to the Agency roughly estimated at \$1.5 million per year. The park and school fees that are generated from the development are also pledged to repay the Agency's cost of expanding and improving Cannery Park and the new Burbank School. Estimates on the total amount of fee payments at build out, are roughly \$4.9 million in park fees, and roughly \$4 million

in school fees. Finally, a Community Facilities District has already been formed for the Cannery Place development, and this district will generate approximately \$465 per unit, or approximately \$289,700 per year to help support police services in the area.

## **PUBLIC CONTACT**

The Cannery Place Inclusionary Housing Agreement was first approved on December 13, 2005, and was approved for amendment on September 23, 2008. The Cannery Place development has been the subject of extensive public review during the past several years. No public meetings have been held regarding the current proposed amendments.

## **NEXT STEPS**

If the proposed Inclusionary Housing Agreement amendments are approved, staff will prepare final documents for execution by the City Manager, Citation Homes, Integral Communities, and Libitzky Holdings. The City will set up an Affordable Housing Trust fund to receive the Affordable Housing In-lieu fees, and the Agency will take title to the property at B & Grand as soon as environmental clearance in the form of a "No Further Action" letter is received from the Regional Water Board.

*Prepared by:* Maret Bartlett, Redevelopment Director

*Recommended by:* Fran David, Assistant City Manager

Approved by:



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Gregory T. Jones, City Manager

### **Attachments:**

**Attachment I** – Resolution – Authorizing Inclusionary Housing Agreement Amendments with Citation Homes Central (Citation) and Integral Communities, Inc. (Integral), and a Covenant Agreement with Citation, Integral and Libitzky Holdings - Cannery Place

**Attachment II** – Redevelopment Resolution – Authorizing Purchase and Sale Agreement with Citation Homes Central (Citation) for property located at 581,585 and 597 B Street (B & Grand Streets), in fulfillment of the Amended Inclusionary Housing Agreement with Citation Homes – Cannery Place.

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION AUTHORIZING THE CITY MANAGER  
TO NEGOTIATE AND EXECUTE AGREEMENTS TO AMEND  
THE INCLUSIONARY HOUSING AGREEMENT  
CURRENTLY RECORDED AGAINST TITLE TO THE  
CANNERY DEVELOPMENT IN THE CITY OF HAYWARD  
(TRACT NOS. 7613, 7625, 7748, AND 7749) (THE  
“PROPERTY”)

WHEREAS, the City of Hayward previously entered into that certain Inclusionary Housing Agreement dated May 31, 2007 (the “Original Agreement”), with SCS Development Company, a California Corporation (dba Citation Homes Central), relating to the Cannery Development, Tract Nos. 7613, 7625, 7748 and 7749 (the “Property”); and

WHEREAS, the City Council of the City of Hayward authorized the City Manager to execute an agreement to amend the Original Agreement on September 23, 2008, which agreement to amend was not executed due to changing economic conditions, changing ownership of the Property, and a desire among the owners to change their development plans; and

WHEREAS, Citation Homes Central and Integral Communities (Integral), currently own the Property and wish to amend the Original Agreement and to create two Inclusionary Housing Agreements for the Property, one for each Property owner; and

WHEREAS, Citation Homes Central, Integral, and Libitzky Holdings, L.P., a California limited partnership, Contra Costa Industrial Park II, L.P., a California limited partnership, and Filbert/Orton Properties, LLC, a Delaware limited liability company (collectively “Libitzky”) further wish to execute an Agreement with the City, containing covenants affecting real property and assigning affordable housing production credit associated with 59 units of affordable housing at the C & Grand Senior Housing development in Hayward in partial fulfillment of current and future obligations under the City’s Inclusionary Housing Ordinance; and

WHEREAS, Citation Homes Central further wishes to meet its obligations under the Inclusionary Housing Ordinance in part by conveying certain land located at 581, 585

and 597 B Street (B & Grand Street) for the purpose of providing an affordable housing development site in Hayward; and

WHEREAS, the City and Redevelopment Agency are not making any commitment in the agreements to develop B & Grand Street with affordable housing; therefore, the acquisition of the property is exempt from CEQA review; and

WHEREAS, Integral further wishes to meet its obligations under the Inclusionary Housing Ordinance in part by paying Affordable Housing In-Lieu fees, due to current difficult economic conditions; and

WHEREAS, Section 10-17.600 of the City's Inclusionary Housing Ordinance permits developers to meet their inclusionary obligations through a combination of on-site construction, off-site construction, in-lieu fees and land dedication that at least equal the cost of providing the affordable units on-site as would otherwise be required by the ordinance; and

WHEREAS, the Cannery Development complies with the California Environmental Quality Act ("CEQA") pursuant to the Mitigated Negative Declaration that was filed in the Alameda County Clerk's Office on December 14, 2005, for the original 628-unit development, in that no substantial changes are proposed in the original project that may result in additional significant impacts, nor is there evidence of substantial changes in circumstances or new information that may result in additional significant impacts. The agreements further meet CEQA requirements at Section 15004(b)(2)(A) of the CEQA Guidelines, which authorizes land acquisition when an agency has conditioned its future use of the property upon CEQA compliance.

NOW THEREFORE BE IT RESOLVED THAT by the City Council that for the reasons set forth in this resolution and in the Staff Report accompanying this resolution, the City Manager is authorized to negotiate and execute all documents necessary to amend the Original Agreement, in a form to be approved by the City Attorney, and any such documents shall incorporate the terms and staff recommendations outlined in the Staff Report.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2009

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. RA- \_\_\_\_\_

Introduced by Agency Member \_\_\_\_\_

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH CITATION HOMES CENTRAL FOR PURCHASE OF REAL PROPERTY LOCATED AT 581, 585 AND 597 B STREET IN PARTIAL FULFILLMENT OF THE AMENDED INCLUSIONARY HOUSING AGREEMENT FOR THE CANNERY DEVELOPMENT IN THE CITY OF HAYWARD (TRACT NOS. 7625, 7748, AND 7749), AND APPROPRIATING THE AMOUNT OF ONE DOLLAR (\$1.00) FROM THE AGENCY'S LOW/MODERATE-INCOME HOUSING FUND FOR THIS PURPOSE

WHEREAS, the City of Hayward previously entered into that certain Inclusionary Housing Agreement dated May 31, 2007 (the "Original Agreement"), with SCS Development Company, a California Corporation (dba Citation Homes Central), relating to the Cannery Development, Tract Nos. 7613, 7625, 7748 and 7749 (the "Property"); and

WHEREAS, Citation Homes Central wishes to amend the Original Agreement in various ways, and specifically to fulfill a twenty-two (22) unit portion of their Inclusionary Housing Obligation through the conveyance of property located at 581,585 and 597 B Street (APN No.'s 431-0040-010, 011 and 012-02) (the "B & Grand Property") to the Hayward Redevelopment Agency for the amount of One Dollar (\$1.00); and

WHEREAS, the purpose for the conveyance of the B & Grand Property is to further the production of affordable housing in Hayward in fulfillment of the City's Inclusionary Housing Ordinance, General Plan Housing Element, Downtown Hayward Redevelopment Plan, and other policy documents; and

WHEREAS, the City and Redevelopment Agency are not making any commitment in the agreements to develop the B & Grand Property with affordable housing; therefore, the acquisition of the property is exempt from CEQA review; and

WHEREAS, Section 10-17.600 of the City's Inclusionary Housing Ordinance permits the Developer to meet its inclusionary obligations through a combination of on-site construction, off-site construction, in-lieu fees and land dedication that at least equal the cost of providing the affordable units on-site as would otherwise be required by the ordinance; and



ATTEST: \_\_\_\_\_  
Secretary of the Redevelopment Agency  
of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
General Counsel