

HARBOR DIVISION

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DATE: JULY 28, 2011

FROM: OFFICE OF THE CITY ATTORNEY – HARBOR DIVISION

**SUBJECT: RESOLUTION NO. _____ APPROVING AGREEMENTS TO
CONVERT LIBAW-HOROWITZ' PLEDGE TO DEDICATE A PORTION
OF THE LANCER PROPERTY INTO A PLEDGE TO DONATE CASH**

SUMMARY:

Council District 9 has asked that the City of Los Angeles Harbor Department (Harbor Department) amend its 2003 litigation settlement with Libaw-Horowitz Investment Company. In the settlement, Libaw-Horowitz promised to dedicate a portion of its Lancer property to the City Department of Recreation and Parks or alternatively, to a tax exempt non-profit community organization selected by the Councilperson for the 9th District that would use and maintain the property for recreation and park purposes. The City would now prefer cash in lieu of the property, which cash will be used to improve existing recreational facilities and add programming at parks in the vicinity of the Lancer property. The Harbor Department has no interest in the pledged property, but since the pledge arose out of a Harbor Department settlement, the proposed amendment will begin here and be forwarded to City Council for approval, following the path of the original settlement which required Council approval pursuant to Charter section 273.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the Termination and Release of Pledge Agreement and associated Cash Pledge Agreement attached hereto as Transmittal 2;
2. Adopt Resolution No. _____;
3. Direct the Board Secretary to certify the adoption of this Resolution and to transmit same to City Council for approval and passage of the proposed ordinance governing use of the pledged funds which is attached as Transmittal 4; and

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4. Authorize and direct the Executive Director to execute and the Board Secretary to attest to the Agreement upon approval by the City Council.

DISCUSSION:

The Original Pledge Agreement - In 2003, Libaw Horowitz Investment Company executed a Pledge Agreement with the Harbor Department, promising to dedicate a 2.6-acre portion of its 12.6 acre Lancer Property to the City's Department of Recreation and Parks or alternatively, to a non-profit community organization selected by the Councilperson for the 9th District that would use and maintain the property for recreation and park purposes. The pledge, which anticipated the creation of an active use park, was one element of the settlement of *Libaw-Horowitz Investment Company v. City of Los Angeles et al.*, Superior Court Case No. BC272571. (The 2003 Pledge is attached as Exhibit A to Transmittal 2.)

Dedication of the 2.6 acre park property has yet to occur, primarily because of the legal challenges to the City's settlement with Libaw-Horowitz. A suit filed by South Central Farmers Feeding Families resulted in the issuance of a preliminary injunction in March 2004,¹ reversal of the preliminary injunction by the Court of Appeal in June 2005,² a December 2006 judgment in favor of the City and Libaw-Horowitz following trial on the Farmers' claim that the settlement was a waste of public funds, and affirmation of that judgment by the Court of Appeal in September 2008.³ The legal challenges concluded in 2009 when the California Supreme Court declined to review the case.⁴

After the litigation ended, Libaw-Horowitz attempted to obtain a new parcel map that would have identified the boundary of a 2.6 acre property for dedication, however, that attempt was met by objections from the South Central Farmers Feeding Families and the Natural Resources Defense Council. Today, the property sits vacant but a sale is pending. The buyer, who proposes to build a garment design and manufacturing center, requires the entire Lancer property including the pledged park acreage.

As set forth in Councilwoman Perry's July 12th letter, a copy of which is attached as Transmittal 1, the creation of jobs and tax base associated with the proposed development, coupled with the need to improve existing recreational facilities in the immediate neighborhood weighs against the creation of an active use park on the

¹ *South Central Farmers Feeding Families et al. v. City of Los Angeles et al.*, Superior Court Case BC311110

² Second District Court of Appeal Case No. B175065.

³ Second District Court of Appeal Case No. B195906.

⁴ California Supreme Court Case No. S168301.

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Lancer site. Council District 9 has thus requested that the Harbor Department, as the original party to the settlement and Pledge Agreement, execute an amendment to convert the pledge of property to a pledge of cash.

Proposed Agreement Converts the Pledge to Cash - The proposed agreement releases Libaw-Horowitz from its pledge to dedicate property in exchange for a pledge to dedicate \$3,573,365 in cash, which is made by the Horowitz Family Trust, The Libaw Family L.P., Timothy M. Ison and Shaghan Securities, LLC as successors of Libaw-Horowitz Investment Co. This sum represents a pro-rata share, based on acreage, of the pending sale price for the entire Lancer property. It will be paid in two installments. The first installment of \$2,680,024 will be paid on or before January 15, 2012. The second installment of \$893,341 will be paid by May 10, 2012. Neither execution of the proposed agreement nor the payments are in any way tied to, or contingent upon, closing the pending sale.

The Harbor Department engaged the appraisal firm of Curtis-Rosenthal Inc. which assigned a value, as of December 2010, of \$2,600,000 to the 2.6 acre portion of the Lancer Property. (A summary of the appraisal is attached as Transmittal 3.) The City is thus receiving more than fair value for releasing Libaw-Horowitz from its pledge to dedicate property.

Proposed Ordinance Governs Use of Pledged Funds - The pledged funds will be used to improve recreational facilities and to provide recreational programs in the vicinity of the Lancer site. A proposed Ordinance, attached as Transmittal 4, establishes a trust fund to assure that the funds are used to improve facilities at Pueblo Del Rio and to support programming at Fred Roberts Park and/or Ross Synder Park, among others.

History of the Lancer Property - The 12.6-acre parcel bounded by 41st Street, Alameda Boulevard, Long Beach Boulevard and Martin Luther King Boulevard was acquired by the City through condemnation in 1986 for the purpose of constructing a trash incinerator known as the Los Angeles City Energy Recovery or "LANCER" project. Alameda-Barbara Investment Company, the predecessor to Libaw-Horowitz Investment Company, owned 11 of the 12.6 acres, a parcel known as "2Z". Negotiations over the fair price to be paid for the 11 acre parcel continued into 1990, by which time the LANCER project had been abandoned.

In 1991, Alameda-Barbara Investment Co. and the City entered into a stipulated judgment in the condemnation proceeding which set the fair market value of parcel 2Z at \$4,786,372 and which provided that "should the City determine within ten(10) years from the date of this judgment that parcel 2Z is no longer needed for public use including housing and the City determines that parcel 2Z is surplus . . . the City will

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enter into negotiations with [Alameda-Barbara] to purchase Parcel 2Z for a period not to exceed one (1) year or the City may at its sole discretion allow [Alameda-Barbara] the right to make an offer to purchase which is equal to or greater than any other offer received by the City within said one (1) year period." By this time, much of the property was being used as a community garden.

In 1994, the City transferred the property to the Harbor Department, which reimbursed the City \$13.3 million, reflecting the City's costs to condemn and clear the property, plus pay relocation benefits and attorneys fees and costs. The Harbor Department then granted a Revocable Permit to the Los Angeles Regional Food Bank to operate the property as a community garden. The Food Bank, in turn, made license agreements with the four hundred or so gardeners who would later become the association known as South Central Farmers Feeding Families.

In late 1994, the Harbor Department informed Alameda-Barbara that the property was no longer needed for public use and that the Harbor Department was prepared to negotiate the sale of at least part of the property, pursuant to the terms of the 1991 condemnation judgment. In the course of negotiations, Alameda-Barbara expressed its desire to purchase the entire property, albeit in the name of the new entity, Libaw-Horowitz Investment Company. By October 1996, a purchase and sale agreement had been drafted and signed by Mr. Libaw and Mr. Horowitz with reassurances from staff that the agreement would be presented to the Board of Harbor Commissioners and the City Council for consideration. The Harbor Department staff did not process the agreement however, pending resolution of lawsuit brought by the State of California regarding use of Harbor Department trust funds. In 2001, the Harbor Department informed Mr. Horowitz that it had decided not to sell the property but would instead offer it publicly for development under a long term lease, and that Mr. Horowitz was free to submit a proposal.

In 2002, Libaw-Horowitz Investment Company filed suit against the City alleging breach of oral agreement, breach of the covenant of good faith and fair dealing, prevention of condition precedent, and declaratory relief. The trial court sustained three successive demurrers by the City but each time granted Libaw-Horowitz leave to amend its complaint. In July 2003, a settlement was reached that provided for: i) sale of the Lancer property to Libaw-Horowitz for the sum of \$5,050,000; ii) the dedication by Libaw-Horowitz of roughly 2.6 acres of the property for recreation and parks purposes; iii) a sanitary sewer easement in favor of the City; and iv) dismissal of the claims. The settlement was approved by the Board of Harbor Commissioners on June 23, 2003 and by the City Council on August 13, 2003 (Council File 03-1642).

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After the sale closed in December 2003, Libaw-Horowitz gave notice to the Regional Food Bank that its month-to-month lease for gardening would be terminated. In February 2004, the South Central Farmers Feeding Families, along with numerous individual plaintiffs, filed suit against Libaw-Horowitz and the City asserting causes of action for Waste, Violation of Due Process, Prescriptive Easement, Quiet Title and Violation of the Charter and Administrative Code's procedures for the disposition of real property. As noted above, these legal challenges were resolved in favor of the City and Libaw-Horowitz.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an agreement for pledge funds which will be used to improve existing recreational facilities and add programming at parks in the vicinity of the Lancer property. Any physical changes associated with the use of such funds at recreational sites would be subject to separate environmental review by the appropriate Lead Agency under the California Environmental Quality Act (CEQA). The Director of Environmental Management has determined that the establishment of a trust fund is considered an administrative activity and is exempt from CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will facilitate development of the Lancer property which is expected to create as many as 600 jobs.

FINANCIAL IMPACT:

This Board action will have no financial impact on the Harbor Department. In lieu of the 2.6-acre property, the City will receive \$3,573,365 to be placed in a trust fund pursuant to the proposed ordinance.

CITY ATTORNEY:

The proposed Agreement has been approved as to form and legality by the City Attorney.

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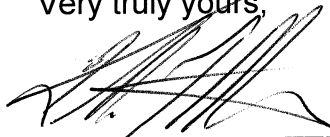
TRANSMITTALS:

1. Council District 9 Letter to Board of Harbor Commissioners dated July 12, 2011
2. Pledge Termination and Release
3. Appraisal Summary
4. Proposed Ordinance

FIS Approval: WR (initials)

CA Approval: SR (initials)

Very truly yours,



KENNETH F. MATTFELD
Deputy City Attorney

KFM/aw

CONCURRED:

By Thomas A. Russell
THOMAS A. RUSSELL
General Counsel