

Proposed Amendment to  
the Development  
Agreement with Forest  
City for the Mercantile  
Block

Economic Development and  
Housing Committee  
August 7, 2006



## Purpose

- Summarize the provisions of the development agreement with Forest City (“FC Merc”) for the Mercantile project as it pertains to the ground lease parcel under the Dallas Building.
- Describe how the actual acquisition of the ground lease parcel occurred.
- Detail staff’s revised recommendation on amending the development agreement.

## The Development Agreement (“DA”)

- The main focus of the DA was the acquisition and development of the entire Mercantile Block into 375 multifamily units, 30,000 sq. ft. of ground floor retail and 375 parking spaces.
- The Mercantile Block was subject to a 99-year ground lease covering a 10,000 square ft parcel located at the southeast corner (the “Ground Lease Parcel” or “GLP”) of the Mercantile Block.
- It was neither permissible nor financially feasible for FC Merc to develop the Mercantile Block with the ground lease in place.

## The Development Agreement ("DA")

- Pursuant to the DA, FC Merc acquired the entire Mercantile Block and purchased the lessee's interest under the GLP.
- The DA provided that costs to acquire the GLP by condemnation or deed in lieu of condemnation (the "Condemnation Costs") would be shared by FC Merc and the City as follows:
  - FC Merc would advance the first \$3,500,000
  - City would pay the next \$2,500,000
  - FC Merc and City would share on a 50%-50% basis if the costs to acquire the GLP exceeded \$6,000,000

## DA Provisions Concerning Acquisition of the GLP

- The DA further provided that following acquisition of the GLP, the City would take fee title interest to the GLP but grant FC Merc an easement for an underground parking facility extending beneath the GLP.
- In March, 2006, the City sold bonds as contemplated by the DA.
- Such Bonds allocated \$2,500,000 to the possible future payment by City of Condemnation Costs in excess of the first \$3,500,000 to be paid by FC Merc.

## Settlement in lieu of Condemnation

- On November 2, 2005, the City Council authorized acquisition, including the use of eminent domain if necessary, of the GLP as provided for in the DA.
- In lieu of condemnation, FC Merc negotiated a settlement with the GLP owners and entered into a purchase agreement dated March 7, 2006 directly with them to acquire the fee simple interest in the GLP for \$4,000,000 in cash.
- FC Merc closed on the purchase of the ground lease parcel in May 2006.

## Purchase was preferable to condemnation

- The time required to conclude condemnation proceedings was unknown.
- Legal challenges were a possibility if the leasehold owners claimed the taking was illegal under state law.
  - State law is only one-year old
  - No case law exists
- Development of the entire block could have been delayed because of these uncertainties.

## Proposed Amendment to the DA

- The Economic Development and Housing Committee was briefed on the staff's recommended amendment to the DA on June 27, 2006.
- The Committee rejected the terms of the proposed amendment.
- Subsequently, Forest City proposed alternative terms for the DA amendment.

## Terms of Proposed Amendment to the DA

- The City consents to FC Merc's acquisition of the fee simple interest in the GLP.
- In connection with its acquisition of the GLP, FC Merc will not grant and the sellers will not retain any easement rights on, over, under or through the GLP.
- FC Merc has delivered to City satisfactory evidence of FC Merc's acquisition of the fee simple interest in the GLP for \$4 million.

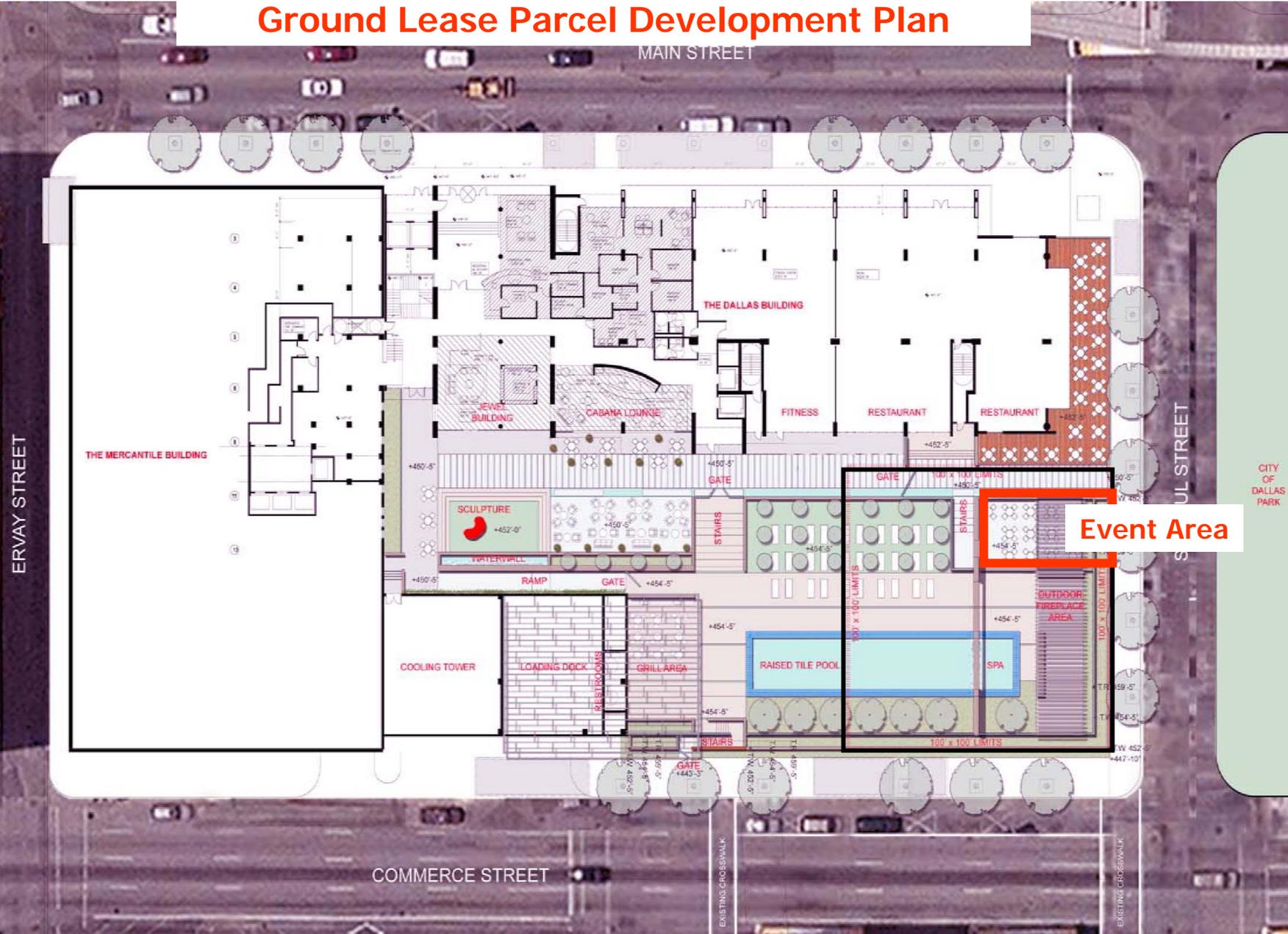
## Terms of Proposed Amendment to the DA

- FC Merc has paid all condemnation costs incurred to date out of funds deposited by FC Merc with City, and FC Merc acknowledges that City has returned all excess amounts deposited by FC Merc to FC Merc.
- The City will have no obligation to FC Merc to pay any portion of the GLP purchase price or to reimburse any portion of the condemnation costs.
- No additional consideration will be payable by City to FC Merc in connection with FC Merc's acquisition of the GLP.

## Terms of Proposed Amendment to the DA

- The City will direct the Downtown Dallas Development Authority (DDDA) to reprogram \$2,500,000 of proceeds of the Initial Bonds no longer needed for the acquisition of the GLP for the enhancement of Main Street Corridor in such manner as DDDA deems appropriate.
- FC Merc will demolish the existing improvements on the surface of the GLP and will improve the surface pursuant to the following site and landscaping plan (the "Ground Lease Parcel Development Plan") as a part of the new construction.

# Ground Lease Parcel Development Plan



## Terms of Proposed Amendment to the DA

- Any material change in the use of the GLP from the use depicted on the Ground Lease Parcel Development Plan will require the approval of the City Council.
- All net cash flow (income less customary and reasonable operating expenses excluding debt service, depreciation and management or other fees payable to FC Merc or its affiliates) generated from events held within the “Event Area” depicted by FC Merc on the Ground Lease Parcel Development Plan will be delivered to DDDA for the improvement and maintenance of Main Street Gardens.

## Terms of Proposed Amendment to the DA

- In consideration of the City entering into this Amendment, City will have a 20% participation in cash flow, financing and sales proceeds from the Ground Lease Parcel determined in accordance with the provisions of Section 1.07 of the Development Agreement after deduction of amounts payable by FC Merc to DDDA in accordance with the provisions of Section 1.02(g) of this Amendment;

## Terms of Proposed Amendment to the DA

- Forest City will undertake a Dallas Southern Sector marketing analysis at a value of approximately \$260,000 that will:
  - Identify significant mixed-use development opportunities
  - Identify potential development impediments and
  - Suggest prioritized strategies to realize the identified opportunities.
- Forest City has a business division devoted to retail development.

## Terms of Proposed Amendment to the DA

- The analysis will include the proposed rail/vehicular transportation corridors as well as other significant anticipated Southern Sector factors including inland port distribution facilities.
- Forest City will complete the marketing analysis within 6-8 months from the effective date of the DA amendment.
- The completed analysis will be presented to the Economic Development and Housing Committee.

## Recommendation

- Staff requests that the Economic Development and Housing Committee recommend to the full Council that it approve an amendment to the Mercantile development agreement to allow Forest City to acquire fee simple interest in the ground lease parcel in return for the additional considerations detailed above.

## Next Step

- The proposed amendment to the DA is on the City Council's agenda for consideration on August 9, 2006.