

2016 NOV -8 PM 3: 16

APPROVED AS TO FORM AND LEGALITY:



Deputy City Attorney

## OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

Resolution No. 2016- 010

---

A RESOLUTION AUTHORIZING THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY ADMINISTRATOR OR DESIGNEE TO (A) EXECUTE A CONSENT TO THE CONVEYANCE OF PARCELS A AND C-1 OF MACARTHUR STATION BY MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC ("MTCP") TO HINES, OR ONE OF ITS AFFILIATES, FOR DEVELOPMENT OF TWO RENTAL RESIDENTIAL/RETAIL BUILDINGS, PURSUANT TO THE TERMS OF AN OWNER PARTICIPATION AGREEMENT ("OPA") BETWEEN THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY AND MTCP; AND (B) AMEND THE OPA TO (1) REDUCE THE SIZE OF THE RETAIL COMPONENT, CHANGE THE SIZE OF THE RETAIL COMPONENT FOR EACH PARCEL AND ESTABLISH RETAIL LEASING REQUIREMENTS FOR PARCEL A, AND (2) EXTEND CERTAIN DEVELOPMENT DEADLINES; RELYING ON THE PREVIOUSLY CERTIFIED 2008 ENVIRONMENTAL IMPACT REPORT AND 2015 CEQA ADDENDUM PER CEQA GUIDELINES SECTIONS 15162-15164, 15183, 15183.3, 15168 AND 15180, AND SEPARATELY AND INDEPENDENTLY FINDING CERTAIN OF THE ABOVE ACTIONS ARE NOT A "PROJECT" UNDER CEQA

**WHEREAS**, on February 24, 2010, the Redevelopment Agency of the City of Oakland ("Agency"), entered into an Owner Participation Agreement ("OPA") with MacArthur Transit Community Partners, LLC, ("MTCP") for the development of MacArthur Station (the "Project"), pursuant to Agency Resolution No. 2009-0073 C.M.S.; and

**WHEREAS**, pursuant to State of California law, the Agency dissolved on February 1, 2012; and

**WHEREAS**, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Agency pursuant to California Health and Safety Code Sections 34171(j) and 34173; and

**WHEREAS**, on July 29, 2010, MTCP and San Francisco Bay Area Rapid Transit ("BART") District entered into a Purchase and Lease Option Agreement for the sale or lease of BART-owned Property, including a portion of Parcel A located on the former MacArthur BART parking lot, and Parcel C-1; and

**WHEREAS**, MTCP separately acquired other properties along Telegraph Avenue between 39<sup>th</sup> and 40<sup>th</sup> Street that constitute the remaining portion of Parcel A; and

**WHEREAS**, the Project site was originally divided into six new development parcels and associated streets and driveways: Parcel A, Parcel B-1 and B-2, Parcel C, Parcel D and Parcel E, subject to MTCP's ability to acquire all properties constituting the Project site; and

**WHEREAS**, the OPA requires development of approximately 42,500 total square feet of commercial and live/work space on the Project site, with 23,500 square feet of retail space to be located at Parcel A, 5,000 square feet on Parcel B and 14,000 square feet of retail space to be located at Parcel C; and

**WHEREAS**, in July 26, 2011, the BART Parking Structure/Phase 1 Final Development Plan (the "Phase 1 FDP") was approved by the City Council, pursuant to Resolution No. 83516 C.M.S., including a change to the Project site plan that consisted of a division of Parcel C into Parcel C-1 and Parcel C-2 ("Parcel C-1" and "Parcel C-2"); and

**WHEREAS**, MTCP was unable to purchase Parcel C-2 located at 3875 Telegraph Avenue; and

**WHEREAS**, the loss of Parcel C-2 resulted in a reduction of the retail component of the Project by up to 11,300 square feet from 42,500 square feet to 31,200 square feet, and requires an adjustment to the size of the retail component to be provided at each respective Parcel; and

**WHEREAS**, in March 2015, MTCP submitted a request to the City to convey its (i) option to purchase BART's portion of Parcel A and Parcel C-1, and (ii) portion of Parcel A to Hines, or one of its affiliates; and

**WHEREAS**, the OPA requires ORSA's consent, as successor agency to the Agency, to the transfer of any property interest to non-affiliates of MTCP, subject to certain criteria defined in the OPA, which include, among other things, development experience and adequate financial capacity; and

**WHEREAS**, staff has determined that Hines has the requisite development experience and adequate financial capacity for delivery of the planned Project on Parcels A and C-1, respectively; and

**WHEREAS**, MTCP and Hines have agreed to establish certain leasing requirements for the retail to be developed on Parcel A; and

**WHEREAS**, Hines will market certain retail spaces during Project construction for up to 24 months and after Project completion for up to 15 months; and

**WHEREAS**, if such marketing efforts by Hines are unsuccessful within the required time, then such retail space shall be converted to live/work space, subject to approval by the Agency Administrator; and

**WHEREAS**, MTCP and Hines have requested that the construction commencement dates for Parcel A and Parcel C-1 be extended by 12 months from May 2016 to May 2017 and the construction completion date be extended by 18 months from May 2018 to November of 2019; and

**WHEREAS**, the requirements of the California Environmental Quality Act ("CEQA"), the CEQA guidelines as prescribed by the California Secretary of Resources and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now therefore be it

**RESOLVED:** That, pursuant to the OPA, ORSA consents to the (i) partial assignment to and assumption of the OPA to Hines, or one of its affiliates, as it relates to Parcel A and Parcel C-1, (ii) conveyance of MTCP's option to purchase BART's portion of Parcel A and Parcel C-1 to Hines or one of its affiliates, and (iii) conveyance of MTCP's portion of Parcel A to Hines or one of its affiliates; and be it further

**RESOLVED:** That the ORSA Administrator or designee is hereby authorized to execute a written consent to the partial assignment to and assumption of the OPA and the conveyance of MTCP's option to purchase BART's portion of Parcel A and Parcel C-1, and MTCP's portion of Parcel A to Hines, or one of its affiliates; and be it further

**RESOLVED:** That the ORSA Administrator or designee is hereby authorized to reduce the commercial component by up to 11,300 square feet from 42,500 square feet to 31,200 square feet, and adjust the size of the retail component and the location of the community and retail space for each parcel; and be it further

**RESOLVED:** That the ORSA Administrator or designee is hereby authorized to establish leasing requirements for the retail to be developed on Parcel A and stipulate that certain retail spaces be marketed during Project construction for up to 24 months and after Project completion for up to 15 months, and that if such retail marketing efforts by Hines, or one of its affiliate, are unsuccessful, then, without returning to City Council and at the ORSA Administrator's sole and absolute written discretion, Hines, or one of its affiliates, may convert such retail space to live/work space; and be it further

**RESOLVED:** That the ORSA Administrator or designee is hereby authorized to extend construction commencement dates for Parcel A and Parcel C-1 by 12 months from May 2016 to May 2017 and the construction completion date be moved by 18 months from May 2018 to November of 2019; and be it further

**RESOLVED:** That the ORSA Board finds and determines, after its independent review and consideration, that this action complies with CEQA because the conveyance, extension of deadlines and lease clarifications are not a project under CEQA, and separately and independently ORSA is relying on the previously Certified 2008 EIR and

the 2015 CEQA Addendum per CEQA Guidelines Sections 15162-15164, 15180, 15183, 15183.3 and 15168, and that none of the circumstances that require a supplemental or subsequent EIR have occurred; and be it further

**RESOLVED:** That the ORSA Administrator or designee is further authorized to take whatever action is necessary with respect to (A) the consent to the partial assignment to and assumption of the OPA and the consent to the conveyance of MTCP's option to purchase BART's portion of Parcel A and Parcel C-1, and MTCP's portion of Parcel A to Hines, or one of its affiliates, and (B) the amendment of the OPA to (1) reduce the retail component for the Project and adjust the size of the retail component and the location of the community and retail space for each parcel, and establish retail leasing requirements for Parcel A, and (2) to extend performance deadlines; and be it further

**RESOLVED:** That the ORSA Administrator or designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it further

**RESOLVED:** That all documents necessary to effect (A) the partial assignment to and assumption of the OPA and the consent to the conveyance of MTCP's option to purchase BART's portion of Parcel A and Parcel C-1, and MTCP's portion of Parcel A to Hines, or one of its affiliates, and (B) the amendment of the OPA to (1) reduce the retail component, adjust the size of the retail component and the location of the community and retail space on each parcel and establish retail leasing requirements for Parcel A, and (2) to extend performance deadlines, pursuant to this Resolution shall be reviewed and approved by the City Attorney, and copies shall be placed on file with the City Clerk.

**NOV 29 2016**

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2016

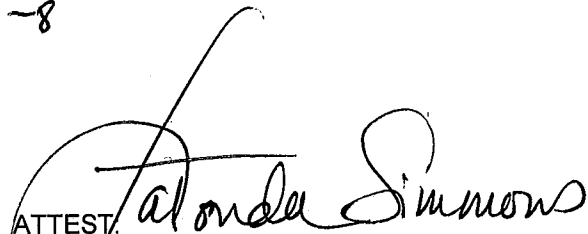
**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON McELHANEY ~8

NOES-  $\phi$

ABSENT-  $\phi$

ABSTENTION-  $\phi$

ATTEST   
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California