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Deputy City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE No. 13566 C.M.S.

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**AN ORDINANCE TO AUTHORIZE A SECOND AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND, LAKEHOUSE COMMONS, LLC AND LAKEHOUSE COMMONS AFFORDABLE HOUSING, LP, TO (1) EXTEND THE OUTSIDE DATE (RETROACTIVELY, IF NECESSARY) AND RELATED PERFORMANCE DEADLINES IN EXCHANGE FOR MONTHLY PAYMENT OF AN ADDITIONAL DEPOSIT AND AN EXTENSION FEE, (2) REQUIRE REAPPRAISAL OF THE PROPERTY AND RENEGOTIATION OF THE PURCHASE PRICE, (3) REPLACE THE PROJECT LABOR AGREEMENT REQUIREMENT WITH AN ALTERNATIVE REQUIREMENT, AND (4) REMOVE THE OPTION FOR CITY FINANCING OF 50 PERCENT OF THE PURCHASE PRICE ATTRIBUTABLE TO THE MARKET RATE PROJECT**

**WHEREAS**, the City of Oakland ("City") owns approximately 0.92 acres of vacant property (Assessor Parcel Number 19-27-14), commonly known as the 12th Street Remainder Parcel, bounded by East 12th Street on the east, Second Avenue and property owned by the Oakland Unified School District on the south, newly created open space to the west, and Lake Merritt Boulevard to the north (the "Property"); and

**WHEREAS**, the City Council adopted Ordinance No. 13382 C.M.S. approving the terms of a Disposition and Development Agreement (the "DDA") with UrbanCore Development, LLC ("UrbanCore") and Lakehouse Commons Affordable Housing LP (the "Affordable Housing Developer"), an affiliate of East Bay Asian Local Development Corporation ("EBALDC"), for sale of the Property and the construction thereon of a mixed-use residential project (the "Project"); and

**WHEREAS**, the City Administrator executed the DDA with UrbanCore and the Affordable Housing Developer as of February 15, 2017; and

**WHEREAS**, the Project described in the DDA is commonly known as "LakeHouse Commons" and will consist of 360 residential units in two buildings (i.e., "LakeHouse North" and "LakeHouse South") sharing a common entrance and garage, with 30% (or 108) of the total units affordable to very low and moderate income households; and

**WHEREAS**, on July 18, 2017, the City Council adopted Resolution No. 86849 C.M.S. authorizing the assignment of UrbanCore's rights and obligations under the DDA to LakeHouse Commons, LLC, which is comprised of UrbanCore and its capital partner, National Real Estate Advisors, LLC ("Market Rate Developer"); and

**WHEREAS**, on December 11, 2018, the City Council adopted Ordinance No. 13514 C.M.S. to authorize a first amendment to the DDA (the "First Amendment") to (1) extend the Outside Date and related outstanding performance deadlines, and (2) provide the option for City financing of 50% of the purchase price attributable to the Market Rate Project through a secured loan; and

**WHEREAS**, Market Rate Developer and the Affordable Housing Developer are now seeking amendments to the DDA as hereinafter set forth (collectively, the "Second Amendment"); and

**WHEREAS**, staff's review of the Project's current design development status and the financial proforma models of Market Rate Developer and the Affordable Housing Developer indicate that the Second Amendment is justified and necessary to keep the Project moving forward to produce 361 residential units, including 108 units at below market rents, 729 construction jobs at union wage rates, over \$600,000 in ongoing annual tax revenue to the City, and \$4,700,000 in land sale proceeds; and

**WHEREAS**, Section 12.22 of the DDA provides that an amendment to the DDA must be in writing, approved as to form and legality by the City Attorney of Oakland, and must be executed by the parties thereto; and

**WHEREAS**, the City Council desires to authorize the Second Amendment to the DDA by adoption of this Ordinance; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council hereby authorizes the City Administrator to execute the Second Amendment to the DDA to: (1) extend the Outside Date (retroactively, if necessary), from November 15, 2019 to August 15, 2020, and all related outstanding performance deadlines in exchange for monthly payment of an additional deposit and a nonrefundable, non-applicable extension fee each in the amount of \$15,000 until close of escrow of the sale of the Property, (2) require reappraisal of the Property and renegotiation of the purchase price on the basis of the reappraisal, if building permit applications are not submitted and paid for by February 28, 2020, (3) replace the project labor agreement requirement with the requirement that the construction contracts between the development team and the selected General Contractors include language requiring all subcontractors working on the Project be 100% union, and (4) remove the option authorized by the First Amendment for City financing for 50% of the Property purchase price attributable to the Market Rate Project.

**SECTION 2:** The City Council authorizes the City Administrator to deposit land sales proceeds in the amount of \$4.7 million into the General Purpose Fund (1010), Real Estate Services Organization (85231), Sale of Land (48111), Project To-Be-Determined, Real Estate Program (PS32).

**SECTION 3:** The City Council authorizes the City Administrator to appropriate \$300,000 of the land sale proceeds for purposes of funding a Community Benefits Program consistent with the terms defined in Ordinance 13382 C.M.S. and Resolution No. 87455 C.M.S. into the General Purpose Fund (1010); Project Implementation Organization (85221) to be transferred to other City organizations/departments as appropriate to administer Community Benefits Program components; Contract Contingencies Account (54011); Project(s) to-be-determined.

**SECTION 4:** The City Council authorizes the City Administrator to accept, deposit and appropriate Extension Fees in the amount of \$15,000 per month beginning November 15, 2019 until the close of escrow for purposes of reimbursing the City for its project-related staff costs and third-party expenses into the Miscellaneous Capital Project Fund (5999), Central District Redevelopment Organization (85245), 12th St Parcel Project (1003826), Downtown Redevelopment Program (SC13).

**SECTION 5:** The City Council authorizes the City Administrator to accept, deposit and appropriate Additional Deposit Payments in the amount of \$15,000 each month beginning November 15, 2019 until the close of escrow (to be applied towards the purchase price or retained by City as liquidated damages in accordance with Section 3.1.4 of the DDA) into the Miscellaneous Capital Project Fund (5999), Central District Redevelopment Organization (85245), 12th St Parcel Project (1003826), Downtown Redevelopment Program (SC13).

**SECTION 6:** The City Council hereby finds and determines, on a separate and independent basis, that the anticipated environmental effects of the Project have been adequately evaluated by the Lake Merritt Station Area Plan Final Environmental Impact Report (Final EIR) (certified November 2014); the Project is consistent with a Community Plan, General Plan or Zoning under Section 15183 of the State CEQA Guidelines (Projects consistent with a Community Plan, General Plan or Zoning); and the Project complies with Section 15183.3 of the State CEQA Guidelines (Streamlining for Infill Projects); further, the Project is Categorically Exempt under Section 15332 of the State CEQA Guidelines (In-Fill Development Projects).

**SECTION 7:** The City Administrator or his or her designee is further authorized to negotiate and enter into other agreements and take whatever action is necessary consistent with this Ordinance and its basic purposes.

**SECTION 8:** This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, NOV 14, 2019

**PASSED BY THE FOLLOWING VOTE:**

AYES - ~~XXXXXX~~ GALLO, GIBSON McELHANEY, KALB, REID, TAYLOR, ~~XXXXXX~~ and PRESIDENT

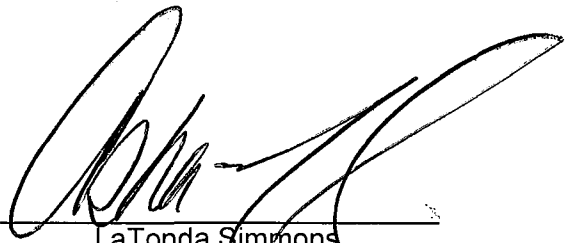
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NOES - 1 Bas

ABSENT - 0

ABSTENTION - 1 Thao

Excused - 1 Kaplan

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

Introduction Date

**NOV 05 2019**

**AN ORDINANCE TO AUTHORIZE A SECOND AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND LAKEHOUSE COMMONS, LLC AND LAKEHOUSE COMMONS AFFORDABLE HOUSING, LP, TO (1) EXTEND THE OUTSIDE DATE (RETROACTIVELY, IF NECESSARY), AND RELATED PERFORMANCE DEADLINES IN EXCHANGE FOR MONTHLY PAYMENT OF AN ADDITIONAL DEPOSIT AND AN EXTENSION FEE, (2) REQUIRE REAPPRAISAL OF THE PROPERTY AND RENEGOTIATION OF THE PURCHASE PRICE, (3) REPLACE THE PROJECT LABOR AGREEMENT REQUIREMENT WITH AN ALTERNATIVE REQUIREMENT, AND (4) REMOVE THE OPTION FOR CITY FINANCING OF 50 PERCENT OF THE PROPERTY PURCHASE PRICE ATTRIBUTABLE TO THE MARKET RATE PROJECT**

### **NOTICE AND DIGEST**

An Ordinance to authorize a Second Amendment to the Disposition and Development Agreement between The City Of Oakland and LakeHouse Commons, LLC and LakeHouse Commons Affordable Housing, LP to (1) extend the Outside Date (retroactively, if necessary), from November 15, 2019 to August 15, 2020, and all related outstanding performance deadlines in exchange for monthly payment of an additional deposit in the amount of \$15,000 and an extension fee in the amount of \$15,000 until close of escrow of the sale of the Property, (2) require reappraisal of the Property and renegotiation of the purchase price if building permit applications are not submitted and paid for by February 28, 2020, (3) replace the current Project Labor Agreement requirement with the requirement that the General Contractor require all subcontractors working on the Project be 100% union, and (4) remove the option for City financing of 50% of the Property purchase price attributable to the Market Rate Project.