

  
CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

**ORDINANCE NO. \_\_\_\_\_ C.M.S.**

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**AN ORDINANCE AUTHORIZING A SIXTH 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 PAYMENTS OF AN ADDITIONAL DEPOSIT OF \$15,000 AND AN EXTENSION FEE OF \$15,000, (2) REQUIRE REAPPRAISAL OF THE PROPERTY AND UPDATE OF THE PURCHASE PRICE, AND (3) ADOPT CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS**

**WHEREAS**, the City and LakeHouse Commons, LLC (“Market Rate Developer”), successor in interest to UrbanCore Development, LLC, and Lakehouse Commons Affordable Housing LP (“Affordable Housing Developer”), an affiliate of East Bay Asian Local Development Corporation, are parties to a Disposition and Development Agreement dated as of February 15, 2017 (as assigned and amended, “DDA”); and

**WHEREAS**, the Project described in the DDA is commonly known as “LakeHouse Commons” and will consist of affordable and market-rate residential units in two buildings sharing a common entrance and garage; and

**WHEREAS**, on December 11, 2018, the City Council adopted Ordinance No. 13514 C.M.S. to authorize a first amendment to the DDA to (1) extend the outside closing date (as defined in the DDA, 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**, on November 14, 2019, the City Council adopted Ordinance No. 13566 C.M.S. to authorizing a second amendment to the DDA to, among other things, further extend the Outside Date and related outstanding performance deadlines; and

**WHEREAS**, on December 10, 2019, the City Council adopted Ordinance No. 13572 C.M.S. authorizing a third amendment to the DDA to expand construction mitigation and add additional community benefits, redirect the land sales proceeds to the Affordable Housing Trust

Fund, and authorize the City Administrator to extend the Outside Date and related performance deadlines up to an additional six months; and

**WHEREAS**, on August 15, 2020, pursuant to an administrative amendment authorized by Ordinance No. 13572 C.M.S., the Outside Date and related performance deadlines were extended by three months from August 15, 2020 to November 15, 2020; and

**WHEREAS**, on November 16, 2020, pursuant to a second administrative amendment authorized by Ordinance No. 13572 C.M.S., the Outside Date and related performance deadlines were extended by an additional three months from November 15, 2020, to February 15, 2021; and

**WHEREAS**, on August 15, 2020, pursuant to an administrative amendment authorized by Ordinance No. 13572 C.M.S., the Outside Date and related performance deadlines were extended by three months from August 15, 2020 to November 15, 2020; and

**WHEREAS**, on November 16, 2020, pursuant to a second administrative amendment authorized by Ordinance No. 13572 C.M.S., the Outside Date and related performance deadlines were extended by an additional three months from November 15, 2020, to February 15, 2021; and

**WHEREAS**, by letter dated February 11, 2021 executed by the City Administrator and initialed by Developers, pursuant to Section 12.8 of the DDA (Enforced Delay), the dates of performance under the DDA were extended by six months to August 21, 2021; and

**WHEREAS**, by letter dated August 15, 2021 executed by the City Administrator and initialed by Developers, pursuant to Section 12.8 of the DDA (Enforced Delay), the dates of performance under the DDA were extended by six months to February 15, 2022; and

**WHEREAS**, the Market Rate Developer and the Affordable Housing Developer are now seeking amendments to the DDA as hereinafter set forth in a sixth amendment to the DDA (“Sixth Amendment”); 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 Sixth 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 Sixth Amendment to the DDA to: (1) extend the Outside Date (retroactively, if necessary), from February 15, 2022 to November 15, 2022, and all related outstanding performance deadlines, in exchange for monthly payments of an Additional Deposit (as defined in the DDA) and a nonrefundable, non-applicable Extension Fee (as defined in the DDA) each in the amount of

\$15,000 until close of escrow of the sale of the Property, and (2) require reappraisal of the Property and update of the purchase price on the basis of the reappraisal.

**SECTION 2.** The City Council authorizes the City Administrator to accept from the Market Rate Developer and the Affordable Housing Developer direct monthly payments of the Additional Deposit each in the amount of \$15,000 into an escrow account specifically established for the Project, which Additional Deposit, plus accrued interest, shall (1) be credited back to the Market Rate Developer and the Affordable Housing Developer against the purchase price of the property and be deposited from escrow into the Affordable Housing Trust Fund (1870), Housing Development Organization (89929), for a project(s) to be determined for housing development activities, or (2) if the property is not conveyed to the Market Rate Developer and the Affordable Housing Developer by the Outside Date of the extended DDA term, the City will retain the Additional Deposit and deposit the funds from escrow into Miscellaneous Capital Project Fund (5999), Central District Redevelopment Organization (85245), 12th St Parcel Project (1003826), Downtown Redevelopment Program (SC13), and appropriate in expenditure accounts to be determined.

**SECTION 3.** The City Council authorizes the City Administrator to accept, deposit and appropriate Extension Fees in the amount of \$15,000 per month during the extended DDA term, into the Miscellaneous Capital Project Fund (5999), Central District Redevelopment Organization (85245), 12th St Parcel Project (1003826), Downtown Redevelopment Program (SC13) for purposes of reimbursing the City for its project-related staff costs and third-party expenses.

**SECTION 4.** The City Council authorizes the City Administrator to accept, deposit and appropriate any proceeds from the sale of the reappraised property into the Affordable Housing Trust Fund (1870), Housing Development Organization (89929), for a project(s) to be determined for housing development activities.

**SECTION 5.** 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 California Environmental Quality Act (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 6.** The City Administrator 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 7. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each

section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

**SECTION 8. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND  
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

**AN ORDINANCE AUTHORIZING A SIXTH 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 PAYMENTS OF AN ADDITIONAL DEPOSIT OF \$15,000 AND AN EXTENSION FEE OF \$15,000, (2) REQUIRE REAPPRAISAL OF THE PROPERTY AND UPDATE OF THE PURCHASE PRICE, AND (3) ADOPT CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS**

An Ordinance authorizing a Sixth Amendment to the Disposition and Development Agreement between the City of Oakland and LakeHouse Commons, LLC, an affiliate of UrbanCore Development, LLC, and LakeHouse Commons Affordable Housing, LP, an affiliate of the East Bay Asian Local Development Corporation, to (1) extend the outside date (retroactively, if necessary), from February 15, 2022 to November 15, 2022, and all related outstanding performance deadlines in exchange for monthly payments of an additional deposit in the amount of \$15,000 and an extension fee in the amount of \$15,000, (2) require reappraisal of the Property and update of the purchase price, and (3) adopt California Environmental Quality Act findings.