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DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

### ORDINANCE NO. ~~13447~~ 13447 C.M.S.

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**AN ORDINANCE AMENDING ORDINANCES NO. 13313 C.M.S., No. 13346 C.M.S., and No. 13387 C.M.S. (COLLECTIVELY "THE AUTHORIZING ORDINANCE") TO EXTEND THE TERM OF THE GROUND LEASE BETWEEN THE CITY, THE SPANISH SPEAKING UNITY COUNCIL AND THE EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION AND/OR RELATED ENTITIES FOR THE DEVELOPMENT OF MIXED INCOME HOUSING FOR THE FRUITVALE TRANSIT VILLAGE PHASE IIA FROM A TERM OF SIXTY-SIX (66) YEARS TO NINETY-NINE (99) YEARS**

**WHEREAS**, pursuant to the authority granted in Resolution No. 2010-1000 C.M.S. adopted July 13, 2010, the former City of Oakland Redevelopment Agency (the "Agency") purchased a 3.4 acre surface parking lot consisting of two parcels, APN 033-2177-021 ("Phase IIA Property") and APN 033-2197-019 ("Phase IIB Property") bounded by 35<sup>th</sup> and 37<sup>th</sup> Avenues, East 12<sup>th</sup> Street and the Bay Area Rapid Transit District (BART) (Phase IIA Property and Phase IIB Property, collectively, the "Property"), to promote economic development in the community and to assist with the development of Phase II of the Fruitvale Transit Village; and

**WHEREAS**, in January 2012, all redevelopment agencies in the State of California were dissolved, the Oakland Redevelopment Successor Agency ("ORSA") became the successor agency to the Agency and pursuant to the long-range property management plan approved by the California Department of Finance in May 2014, the Property was transferred to the City of Oakland (the "City"); and

**WHEREAS**, pursuant to Ordinances No. 13313 C.M.S., No. 13346 C.M.S., and No. 13387 C.M.S. (collectively the "Authorizing Ordinance"), the City authorized execution of a Lease Disposition and Development Agreement ("LDDA") and a related 66-year ground lease ("Ground Lease") with the Spanish Speaking Unity Council and the East Bay Asian Local Development Corporation (or their affiliated entities as determined by the City Administrator) (collectively "Developer") for the development of a mixed-income housing project on the Phase IIA parcel ("Project"); and

**WHEREAS**, to enhance the ability of the Developer to obtain financing to make the Project feasible, it is necessary to authorize extension of the Ground Lease term from 66 years to 99 years; and

**WHEREAS**, June 2, 2015, a public hearing of the City Council was held to hear public comments on the Ground Lease of the Phase IIA Property to the Developer for the Project; and

**WHEREAS**, notice of the time and place of the public hearing was given by publication in a newspaper of general circulation in Alameda County at least once a week for at least two successive weeks prior to the public hearing; and

**WHEREAS**, as required by State Law, on June 2, 2015 the City made a report available to the public for inspection, no later than the first date of publication of the notice for the hearing, that contains: (i) a copy of the proposed Ground Lease of the Phase IIA Property and (ii) a summary of (a) the cost of the agreement to the City, (b) the estimated highest and best use value permitted under the City general plan or zoning, (c) the estimated value determined at the use required by the Ground Lease, with an explanation of the reasons for the difference between the two values, and (d) an explanation, with supporting facts and materials, of why the Ground Lease of the Phase IIA Property and development of the Project will assist in the creation of economic opportunity; and

**WHEREAS**, the City Council previously certified in May 2010 the Environmental Impact Report (EIR) for the Project and the Oakland City Planning Commission approved the Project for entitlements on May 6, 2015; now, therefore

The Council of the City of Oakland does ordain as follows:

**SECTION 1.** The City Council hereby amends the Authorizing Ordinance to allow for extension of the Ground Lease from a term of sixty-six (66) years to ninety-nine (99) years.

**SECTION 2.** The City Council hereby authorizes the City Administrator or his or her designee to negotiate and execute an amendment to the LDDA, the Ground Lease, or any related documents in order to effectuate the purpose and intent of this Ordinance and its basic purpose.

**SECTION 3.** The City Council hereby finds and determines that the Ground Lease for the Project will assist in the creation of economic opportunity in the City by creating and expanding new jobs, including approximately 261 construction jobs and 3 permanent jobs, which is at least one full-time equivalent permanent job for every \$35,000 in City investment; and

**SECTION 4.** The City Council hereby further finds and determines that the consideration for the Ground Lease is not less than the fair reuse value of the Phase IIA Property at the use and with the covenants and conditions and development costs authorized by the Ground Lease, and that it is in the best interest of the City to lease the Phase IIA Property to the Developer at its fair reuse value given the need to redevelop the Phase IIA Property for the benefit of the community.

**SECTION 5.** All agreements associated with the lease or conveyance of the Phase IIA Property for the Project shall be reviewed and approved as to form and legality by the Office of the City Attorney prior to execution by the City, and shall be placed on file with the City Clerk.

**SECTION 6.** The City Council hereby finds and determines that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 are present in that (1) there are no substantial changes proposed in the Project or the circumstances under which the Project is undertaken that would involve new significant environmental effects or a substantial increase in the severity of

previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3).

**SECTION 7.** The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

**SECTION 8.** The City Council hereby authorizes the City Administrator or his or her designees to (1) determine satisfaction of conditions precedent under the LDDA to the conveyance of the leasehold estate in the Project, such determination to be conclusively evidenced by the execution and delivery by the City Administrator of the Ground Lease; and (2) take whatever action is necessary with respect to the lease of the Phase IIA Property for the Project consistent with the Authorizing Ordinance, as amended by this Ordinance, and their basic purposes.

**SECTION 9.** This Ordinance shall be in full force and effect immediately upon final adoption, 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, JUL 27 2017

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, and PRESIDENT REID, 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

Introduction Date  
**JUN 20 2017**

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

Date of Attestation July 5, 2017

**AN ORDINANCE AMENDING ORDINANCE NO. 13313 C.M.S., NO. 13346 C.M.S., and NO. 13387 C.M.S. (COLLECTIVELY "THE AUTHORIZING ORDINANCE") TO EXTEND THE TERM OF THE GROUND LEASE BETWEEN THE CITY, THE SPANISH SPEAKING UNITY COUNCIL AND THE EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION AND/OR RELATED ENTITIES FOR THE DEVELOPMENT OF MIXED INCOME HOUSING FOR THE FRUITVALE TRANSIT VILLAGE PHASE IIA FROM A TERM OF SIXTY-SIX (66) YEARS TO NINETY-NINE (99) YEARS**

**NOTICE AND DIGEST**

The Authorizing Ordinance authorized the City Administrator to negotiate and enter into a Lease Disposition and Development Agreement and a related Ground Lease with the Spanish Speaking Unity Council of Alameda County and East Bay Asian Local Development Corporation and/or Related Entities (collectively "the Developer") for the development of a portion of City-owned property at 35<sup>th</sup> Avenue and East 12<sup>th</sup> Street known as assessor's parcel number 033-2177-021 ("Phase IIA Property"), to consist of 94 mixed income residential units and 47 parking spaces, and made associated findings with respect to the California Environmental Quality Act (CEQA) and other matters.

This Ordinance amends the Authorizing Ordinance to authorize extension of the term of the Ground Lease of the Phase IIA Property from sixty-six (66) years to ninety-nine (99) years.