

2015 MAR 19 PM 3:02

APPROVED AS TO FORM AND  
LEGALITY:

  
CITY ATTORNEY

**ORDINANCE NO. 13304 C.M.S.**

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**AN ORDINANCE AUTHORIZING THE INTERIM CITY ADMINISTRATOR, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE OAKLAND MARRIOTT HOTEL CITY CENTER GROUND LEASE BETWEEN THE CITY OF OAKLAND AND EITHER THE CURRENT TENANT, THE CIM GROUP, INC. (OR A RELATED ENTITY), OR THE PROSPECTIVE TENANT, AGRE DCP OAKLAND CITY CENTER LLC (OR A RELATED ENTITY), CLARIFYING OR MODIFYING VARIOUS LEASE PROVISIONS, INCLUDING THE TERMS OF THE GROUND TENANT'S OPTION TO PURCHASE**

**WHEREAS**, on August 12, 1981, pursuant to Ordinance No. 10117 C.M.S., the City of Oakland ("City") entered into a Ground Lease (the "Ground Lease") for certain City-owned property (the "Property") with Oakland Hotel Associates, Ltd. ("OHAL") to develop a Hyatt Regency Oakland Hotel, which is now the Oakland Marriott City Center (the "Marriott"); and

**WHEREAS**, on December 29, 1986, the Ground Lease was amended and assigned from OHAL to Oakland Renaissance Associates ("ORA"), a limited partnership; and

**WHEREAS**, on December 29, 1986, the Ground Lease was amended to address (1) deferrals of rent and other fees, (2) damage assessments and repair cost estimates in the event that the hotel is damaged or destroyed by casualty, and (3) the terms and conditions for refinancing existing debt obligations; and

**WHEREAS**, on August 28, 1997, the Ground Lease was further amended to address (1) the term of the Ground Lease, (2) rent payments, and (3) certain default provisions; and

**WHEREAS**, on March 6, 2007, pursuant to Resolution No. 80446 C.M.S., the City Council approved an assignment of the Ground Lease from ORA to the CIM Group, Inc. (or a related entity) ("CIM"), as part of the sale of the Marriott from ORA to CIM; and

**WHEREAS**, CIM is selling the Marriott, which is located on the City-owned Property, to AGRE DCP Oakland City Center Owner LLC, ("AGRE DCP"), a company consisting of Apollo Global Management ("Apollo") and DiNapoli Capital Partners, LLC ("DiNapoli"), or a related entity (collectively referred to herein as "AGRE DCP"); and

**WHEREAS**, the Ground Lease includes an option to purchase the Property at fair market value; and

**WHEREAS**, CIM and AGRE DCP have requested that the Ground Lease be amended for the third time (the "Third Amendment") to clarify or modify various lease provisions, including the terms of the option to purchase the Property; and

**WHEREAS**, the City desires to amend the Ground Lease to facilitate the sale of the Marriott from CIM to AGRE DCP; and

**WHEREAS**, the City is the Lead Agency for the proposed amendment to the Ground Lease for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"); and

**WHEREAS**, the requirements of the CEQA guidelines as prescribed by the Secretary of Resources and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now therefore

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

**SECTION 1.** The City Council hereby authorizes the Interim City Administrator or his/her designee, without returning to the City Council, to negotiate and execute a Third Amendment to the Ground Lease to clarify or modify various lease provisions, including the terms of the option to purchase the Property, and such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the Third Amendment to the Ground Lease in order to consummate the transaction in accordance with this Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

**SECTION 2.** All agreements associated with the Third Amendment to the Ground Lease shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution by the City, and shall be placed on file with the City Clerk.

**SECTION 3.** That the City finds and determines, after independent review and consideration, that this action complies with the California Environmental Quality Act ("CEQA") because it is exempt from CEQA pursuant to Section 15301 (existing facilities) of the CEQA Guidelines.

**SECTION 4.** The Interim City Administrator or his/her designee is hereby authorized to file a notice of determination with the Office of the Alameda County Recorder and the State Office of Planning and Research, and to take any other action necessary in furtherance of the Project, consistent with this Ordinance and its basic purposes.

**SECTION 5.** The record before this Council relating to this Ordinance includes, without limitation, the following:

- A. All staff reports, decision letters and other documentation and information produced by or on behalf of the City, and all notices relating to this Ordinance and the Ground Lease, as amended; and
- B. All matters of common knowledge and all official enactments and acts of the City, such as (1) the General Plan; (2) the Oakland Municipal Code, without limitation, the Oakland real estate regulations; (3) the Oakland Planning Code; (4) other applicable City policies and regulations; and (5) all applicable state and federal laws, rules and regulations.

**SECTION 6.** The custodians and locations of the documents or other materials which constitute the record of proceedings upon with the City Council's decision is based are respectively (a) the Project Implementation Division, 250 Frank Ogawa Plaza, 5th Floor, Oakland, CA; (b) Planning and Building Department, 250 Frank Ogawa Plaza, 3rd, Floor, Oakland, CA; and (c) the Office of the City Clerk, 1 Frank Ogawa Plaza, 1st Floor, Oakland, CA.

**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 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.

**APR 21 2015**

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_ 2015

**PASSED BY THE FOLLOWING VOTE:**

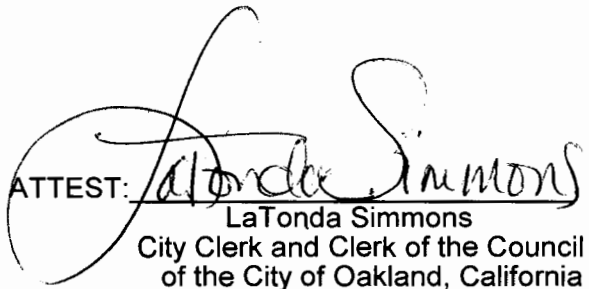
AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, ~~REID~~, and PRESIDENT GIBSON McELHANEY - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid - 1

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

Introduction Date  
 MAR 31 2015

**An Ordinance Authorizing The Interim City Administrator, Without Returning to the City Council, to Negotiate and Execute an Amendment to the Oakland Marriott City Center Ground Lease Between the City of Oakland and either the Current Tenant, the CIM Group, Inc. (or a Related Entity), or the Prospective Tenant, AGRE DCP Oakland City Center LLC (or a Related Entity), Clarifying or Modifying Various Lease Provisions, Including the Terms of the Tenant's Option to Purchase**

**Notice and Digest**

The City of Oakland ("City") has a Ground Lease with CIM for a term of 66 years for City-owned property (the "Site") on which a Hyatt Regency Oakland Hotel, now the Marriott, was constructed in 1981.

Adoption of the proposed Ordinance will clarify or modify certain provisions included in the Ground Lease for the Oakland Marriott City Center and facilitate the sale of the Marriott from its current owner, CIM Group, Inc., or a related entity, to AGRE DCP Oakland City Center LLC, a company consisting of Apollo Global Management and DiNapoli Capital Partners, LLC. Specifically, the proposed amendment will clarify or modify the terms of the tenant's option to purchase, including processing and closing terms for the option sale, to replace terms that may have been on a now-missing page of the Ground Lease and delete references to a Financing Agreement, a Restructuring Agreement and a Payment Agreement between the City and a previous owner, Oakland Renaissance Associates, that are no longer applicable since all amounts due to the City under these agreements were fully repaid in 2007.

**NOTICE AND DIGEST**

**AN ORDINANCE AUTHORIZING THE INTERIM CITY ADMINISTRATOR, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE OAKLAND MARRIOTT CITY CENTER GROUND LEASE BETWEEN THE CITY OF OAKLAND AND EITHER THE CURRENT TENANT, THE CIM GROUP, INC. (OR A RELATED ENTITY), OR THE PROSPECTIVE TENANT, AGRE DCP OAKLAND CITY CENTER LLC (OR A RELATED ENTITY), CLARIFYING OR MODIFYING VARIOUS LEASE PROVISIONS, INCLUDING THE TERMS OF THE TENANT'S OPTION TO PURCHASE**

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**Notice of Publication**

This Ordinance was introduced at the City Council meeting, Tuesday evening **March 31, 2015**, and passed to print **7 Ayes, 1 Absent - Gallo**. Final adoption has been scheduled for the City Council meeting Tuesday evening **April 21, 2015, 5:30 p.m.**, at One Frank H. Ogawa Plaza, Council Chambers, 3rd floor, Oakland, California.

Three full copies are available for use and examination by the public in the Office of the City Clerk at One Frank H. Ogawa Plaza, 1st floor, Oakland, California.

LATONDA SIMMONS, City Clerk  
OT #5460399; Apr. 18, 2015

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
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