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OFFICE OF THE CITY CLERK
OAKLAND

2017 MAR -2 PM 4:22

APPROVED AS TO FORM AND LEGALITY

Mark R. Wall

Deputy City Attorney

OAKLAND CITY COUNCIL

ORDINANCE ~~NO~~ 13427 G.M.S.

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, (A) AMENDING THE DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF OAKLAND AND MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC REGARDING THE PROPERTY AND PROJECT KNOWN AS "MACARTHUR TRANSIT VILLAGE" TO ALLOW FOR INCREASED HEIGHT ON PARCEL B, AND (B) RELYING ON THE 2008 MACARTHUR STATION PROJECT ENVIRONMENTAL IMPACT REPORT AND ADDENDA, FINDING THAT NO ADDITIONAL ENVIRONMENTAL REVIEW IS NEEDED PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTIONS 15162-15164, 15168 and 15180, 15183, and 15183.3 AND ADOPTING RELATED CEQA FINDINGS, FOR PARCEL B, LOCATED AT 532-39TH STREET, OAKLAND, CA (ASSESSOR PARCEL NUMBERS 012 102501100 AND 012 102501200)

WHEREAS, on June 4, 2008, the City of Oakland Planning Commission certified the MacArthur Transit Village Environmental Impact Report (EIR), adopted California Environmental Quality Act (CEQA) findings and recommended approval of the MacArthur Transit Village Planned Unit Development (PUD) to the City Council; and

WHEREAS, the Oakland City Council affirmed and adopted the Planning Commission's certification of the EIR, the CEQA-related findings, and approval of the MacArthur Transit Village PUD on July 1, 2008; and

WHEREAS, the Oakland City Council approved the Development Agreement by and between City of Oakland and MacArthur Transit Community Partners, LLC Regarding the Property and Project Known as "MacArthur Transit Village" (DA) on July 21, 2009; and

WHEREAS, Boston Properties in July 2016, submitted development applications relating to Parcel B/Phase 5 for: a Final Development Plan (FDP), a revision to the preliminary PUD, Vesting Tentative Tract Map (VTTM 10561), and Design Review; and

WHEREAS, Boston Properties in December 2016, submitted a related application to amend the Development Agreement to allow for increased height on Parcel B up to 260 feet and providing for community benefits. The development application submittal and Development Agreement application submittal, as revised, constitute the Project; and

WHEREAS, the Project includes a total of 402 residential units (45 affordable

units); up to 13,000 square feet of ground-floor commercial space; and 262 on-site parking spaces, in a single, 24-story, 260-foot tall building; and

WHEREAS, on August 10, 2016 and October 19, 2016, the City of Oakland Planning Commission's Design Review Committee held duly noticed meetings and recommended forwarding of the Project to the Planning Commission; and

WHEREAS, on February 1, 2017, the Planning Commission, after conducting and closing a duly noticed public hearing, recommended that the City Council: (a) affirm the Environmental Determination that no additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164, 15168 and 15180, 15183, and 15183.3; and (2) approve the Project based, in part, upon the Project Findings and Conditions of Approval contained in the February 1, 2017 City Planning Commission Report and attachments; and

WHEREAS, the Project was considered at a regular, duly noticed meeting of the City Council's Community and Economic Development Committee on February 28, 2017, which recommended approval of the Project, with further and revised conditions of approval and Development Agreement community benefits; and

WHEREAS, the Project was considered at regular, duly noticed, public hearing of the City Council on March 7, 2017, wherein the public hearing was closed, a related Resolution approving the development applications was adopted, and this ordinance was introduced for first reading; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present for the reasons stated in the February 1, 2017 Planning Commission Report and Attachments (Planning Commission Report), the February 28, 2017 Community and Economic Development Committee Agenda Report and Attachments, and the March 7, 2017 Supplemental City Council Agenda Report and Attachments (City Council Reports), hereby incorporated by reference as if fully set forth herein. The City Council also adopts the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program contained in the Planning Commission Report and City Council Reports, hereby incorporated by reference as if fully set forth herein,

Section 2: The City Council finds and determines that this action complies with CEQA, adopts the CEQA findings contained in the Planning Commission Report and City Council Reports (hereby incorporated by reference as if fully set forth herein), and directs the Environmental Review Officer to cause to be filed a Notice of Determination and Notice of Exemption with the appropriate agencies.

Section 3: The City Administrator or her designee is hereby authorized to execute, in form and content substantially in conformance with the Development Agreement Amendment and its Exhibits/Attachments, as set forth in March 7, 2017 Supplemental

City Council Agenda Report, as may be further revised by the City Council; and such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate implementation of the Project in order to consummate the transaction authorized under the Development Agreement Amendment in accordance with this Ordinance and City Council direction, and to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

Section 4. The recitals set forth above are true and correct and are an integral part of this Ordinance.

Section 5. The City Council finds and determines the following:

a) The Development Agreement as amended contains all information required by State Law and by the Oakland Municipal Code, including all information referenced in Chapter 17.138;

b) The Project is consistent with the General Plan and all applicable planning and zoning enactments;

c) The Development Agreement as amended is desirable in order to facilitate the successful Project implementation;

d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs, provision of rental housing (including affordable housing), provision of commercial development and the catalytic effect the project will have on revitalizing the surrounding neighborhood, which will result in increased property values in the surrounding area and an increase in the viability of existing businesses and use of public transit;

e) The public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Development Agreement as amended.

Section 6. Except as specifically set forth herein, this Ordinance suspends and supersedes all resolutions, ordinances, plans, codes, laws and regulations conflicting with this Ordinance and/or implementation of the Development Agreement as approved or as amended.

Section 7. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of this Ordinance or its application to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Ordinance or the application of this Ordinance to other situations shall remain in full force and effect.

Section 8. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of the Development Agreement Amendment that this Ordinance approves or application of the Development Agreement Amendment to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or

provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of the Development Agreement Amendment or the application of the Development Agreement Amendment to other situations shall remain in full force and effect. Notwithstanding the foregoing, if any material term or provision of the Development Agreement Amendment or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties to the Development Agreement Amendment shall work in good faith and fully cooperate with each other to amend the Development Agreement Amendment to carry out its intent.

Section 9. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all relevant plans and maps;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City, including all CEQA-related materials;
4. all oral and written evidence received by the City staff, Planning Commission, and City Council before and during the public hearings on the application; and
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) the Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations.

Section 10. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the Planning and Building Department, Planning Bureau, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland.

Section 11. This Ordinance shall not be codified in the Oakland Municipal Code.

Section 12. Pursuant to section 216 of the City Charter, this Ordinance is effective as of the date it is adopted if passed by an affirmative vote of at least six council members; otherwise, it is effective seven days after final adoption.

Section 13. All documents related to this transaction shall be reviewed and approved by the City Attorney's Office prior to execution, and copies will be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, MAR 21 2017

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY,
GUILLEN, KALB, KAPLAN, AND PRESIDENT REID — 8

NOES - 0

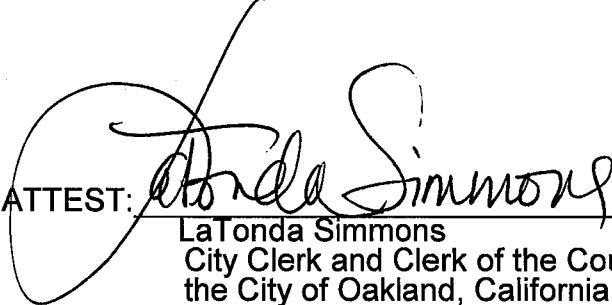
ABSENT - 0

ABSTENTION - 0

Introduction Date

MAR 07 2017

ATTEST:


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

DATE OF ATTESTATION: _____

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NOTICE AND DIGEST

This Ordinance amends the Development Agreement by and between City of Oakland and MacArthur Transit Community Partners, LLC Regarding the Property and Project Known as "MacArthur Transit Village" (DA) to allow increased building height on Parcel B and to memorialize community benefits to be provided by the site developer at the time of issuance of the first construction-related permit for the Parcel B project. This ordinance adopts various findings, including findings under the California Environmental Quality Act.