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OFFICE OF THE CITY CLERK
OAKLAND

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Approved as to Form and Legality


Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION (1) AUTHORIZING AN ADDITIONAL UNSECURED PREDEVELOPMENT LOAN IN THE AMOUNT OF \$3,532,000 TO MIDPEN HOUSING CORPORATION, OR AFFILIATED ENTITIES, TO SUPPORT THE DEVELOPMENT OF AFFORDABLE HOUSING ON PARCEL A AT BROOKLYN BASIN, AND AMEND EXISTING PREDEVELOPMENT LOANS TO 0% INTEREST, (2) AUTHORIZING A SECURED AFFORDABLE HOUSING DEVELOPMENT LOAN IN AN AMOUNT NOT TO EXCEED \$29,775,000, TO MIDPEN HOUSING CORPORATION, OR AFFILIATED ENTITIES, TO SUPPORT THE DEVELOPMENT OF 254 UNITS OF AFFORDABLE HOUSING ON PARCEL A AT BROOKLYN BASIN, (3) APPROPRIATE \$2,003,436.22 IN MASTER DEVELOPER FEE CONTRIBUTIONS AND INTEREST EARNINGS AND \$9,984,957.25 IN NET SALES PROCEEDS FROM THE OHA PURCHASE OF AN OWNERSHIP INTEREST IN THE AFFORDABLE HOUSING PARCELS INTO DEVELOPMENT FINANCING OF THE AFFORDABLE HOUSING UNITS FOR DEVELOPMENT OF BOTH PARCEL A AND PARCEL F, AND (4) MAKING CEQA FINDINGS FOR THIS ACTION

WHEREAS, in 2014 and 2017, the City acquired Project Parcels A and F (the "affordable housing parcels") at the Brooklyn Basin development project (formerly known the Oak to 9th project) for the development of 465 units of affordable housing; and

WHEREAS, the obligation to purchase the affordable housing parcels for development of affordable housing and to ensure development of at least 465 units of affordable housing on the site arises pursuant to a Development Agreement between the City and Zarsion-OHP I, LLC ("ZOHP"), originally entered into in 2006 and subsequently amended (the "Development Agreement") and a Cooperation Agreement between the City and the Oak to Ninth Community Benefits Coalition originally entered into in 2006 and subsequently amended (the "Cooperation Agreement"); and

WHEREAS, the Development Agreement provides that the City and ZOHP will work together to identify, recruit and select an affordable housing developer to acquire the affordable housing parcels and develop affordable housing, and sets forth a process

for ZOHP to propose an affordable housing developer and for the City to accept or reject the proposed developer; and

WHEREAS, the Housing Authority of the City of Oakland, California (“OHA”) has purchased an undivided fifty percent (50%) tenant-in-common interest in the affordable housing parcels from the City for \$10 Million, with these sale proceeds to the City earmarked to the development of affordable housing on the affordable housing parcels; and

WHEREAS, the City and OHA have approved the selection MidPen Housing Corporation (“MidPen”), a California nonprofit public benefit corporation, pursuant to the developer selection process in the Development Agreement, to be the developer of affordable housing at the affordable housing parcels; and

WHEREAS, MidPen is an experienced and capable affordable housing developer; and

WHEREAS, MidPen has proposed to develop the required 465 affordable housing units in five phases in order to maximize project viability and ability to leverage outside funding sources; and

WHEREAS, the City and OHA have been working closely with MidPen and the Community Benefits Coalition to develop and refine the affordable housing development scenarios and financing plan; and

WHEREAS, on January 5, 2016, Council passed Resolution No. 85939 C.M.S. approving a financing plan for developing affordable housing at the affordable housing parcels; and

WHEREAS, on July 19, 2016, the City Council approved City Council Resolution No. 86301 C.M.S. authorizing a \$360,000 unsecured predevelopment loan for Parcel F; and

WHEREAS, on October 17, 2017, the City Council approved City Council Resolution No. 86937 C.M.S. authorizing an additional \$2,067,000 in unsecured predevelopment loan funds for Parcels A and F, of which \$766,000 was allocated to Parcel A (\$388,000 for Project 3 and \$378,000 on Project 4) and \$1,301,000 amount on Parcel F, as well as an additional \$15,243,000 in development loan funds for the projects on Parcel F; and

WHEREAS, in December, 2018, MidPen affiliates and the City entered into loan agreements for Parcel F projects that consolidated \$2,427,000 in unsecured predevelopment loans, along with the additional development loan funds of \$15,243,000 into development loans totaling \$17,670,000 and secured these loans against the improvements on the property; and

WHEREAS, City Council Resolution allowed predevelopment loan funds to be expended on Parcel A projects, but did not identify additional funding sources for these loans; and

WHEREAS, it will be beneficial to the affordable housing development at Brooklyn Basin for the Parcel A projects to receive additional predevelopment loan funds in the amount of \$3,532,000, for a total predevelopment loan amount not to exceed \$4,298,000, so that MidPen will have working capital to undertake predevelopment activities for the final project phases through the receipt of building permits; and

WHEREAS, sufficient funding is available to the City from the Oakland Redevelopment Successor Agency from the 2011 Affordable Housing Set-Aside Bond Fund to provide the additional requested predevelopment loan; and

WHEREAS, MidPen does not currently hold an interest in the affordable housing parcels, and it is therefore not possible to secure the predevelopment loans at this time; and

WHEREAS, it is anticipated that the predevelopment loans will be consolidated with the loans for development of the projects on the affordable housing parcels when the development loans are closed; and

WHEREAS, the City anticipates receiving roughly \$40 Million in additional housing bond proceeds for affordable housing at Brooklyn Basin, of which \$35,000,000 will be available for development loans to the projects after paying City staff and administrative costs; and

WHEREAS, pursuant to the terms of the Development Agreement, ZOHP must provide a \$2 million affordable housing contribution to affordable housing development costs (\$1 million per affordable housing parcel), to be paid to the City once building permits for the affordable housing are drawn on each parcel, and the City has already received \$1 million for construction of Parcel F, and an additional \$3,436.22 in escrow account interest from the affordable housing escrow with ZOHP that terminated on December 31, 2018; and

WHEREAS, clarification of the funding allocations in City Council Resolutions No. 85939 and No. 86937 is needed; and

WHEREAS, MidPen is currently developing the first two project phases on Parcel F, with 101 units of family housing as part of Project 1 and 110 units of senior housing as part of Project 2, for a total of 211 affordable units developed on Parcel F; and

WHEREAS, MidPen has proposed developing the final two affordable housing project phases on Parcel A, with 130 units of family housing as part of Project 3 and 124 units of affordable family housing as part of Project 4, for a total of 254 affordable units developed on Parcel A; and

WHEREAS, lease disposition and development agreements among the City, OHA and MidPen will set forth the terms and conditions under which the City and OHA will dispose of Parcel A to MidPen and/or affiliated entities by means of long-term ground leases, and by which MidPen will construct Project 3 and Project 4 on Parcel A; and

WHEREAS, all units (other than manager units) will be rented at rents affordable to households earning no more than 60% of area median income; and

WHEREAS, the project is consistent with the City's Project Development Guidelines, and MidPen meets the City's Threshold Developer Criteria; and

WHEREAS, the project will increase and improve the supply of low and very low income housing available in the City of Oakland; and

WHEREAS, the Environmental Impact Report for the Oak to Ninth Mixed Use Development Project prepared under the California Environmental Quality Act ("CEQA") and certified by the City Council in 2006 and recertified in 2009 (the "EIR") provides a project-level analysis of the environmental impacts of the Brooklyn Basin development project and supports all levels of approval necessary to implement the Brooklyn Basin project, including affordable housing development on the affordable housing parcels; and

WHEREAS, That the proposed transactions, including development of Project 3 and Project 4 on Parcel A, would not result in any significant effect that has not already been analyzed in the EIR, and there will be no significant environmental effects caused by the transactions that have not already been analyzed in the EIR; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City Administrator or her designee to provide an additional unsecured predevelopment loan in the amount of \$3,532,000 to MidPen Housing Corporation, or to an affiliated entity or entities approved by the City Administrator or her designee, to support predevelopment work associated with the development of 254 units of affordable housing for Parcel A, for a total unsecured predevelopment loan in an amount not to exceed \$4,298,000; and be it

FURTHER RESOLVED: That the funding for these predevelopment loans shall be allocated from the 2011 Affordable Housing Set-Aside Bond Fund (City Fund 1885, Org 89929, Project 10001237; ORSA Fund 9785, Org 89929, Projects 10000020, 1000390 and 1001237); 2011 Affordable Housing Set-Aside Bond Fund and be it

FURTHER RESOLVED: That the additional predevelopment loans shall be contingent on the availability of sufficient funds in the 2011 Affordable Housing Set-Aside Bond Fund; and be it

FURTHER RESOLVED: That the predevelopment loans shall be for a term of 36 months, with an interest rate of 0%, with the balance due at the end of the term, or on

such other repayment terms and schedule as the City Administrator or her designee determines are in the best interests of the City and the project; and be it

FURTHER RESOLVED: That the City Administrator is authorized to consolidate the predevelopment loans or any portion thereof with any development loans for the project; and be it

FURTHER RESOLVED: That the City Council hereby further authorizes the City Administrator or her designee to provide a development loan in an amount not to exceed \$25,477,000, for a total consolidated loan amount (predevelopment and development loans) of up to \$29,775,000, to MidPen Housing Corporation, or to an affiliated entity or entities approved by the City Administrator or her designee, to be used for development of 254 units of affordable housing as part of Project 3 and Project 4 on Parcel A; and be it

FURTHER RESOLVED: That the funding for the development loans shall be allocated from the following sources:

Parcel F

- \$9,243,000 from 2011 Affordable Housing Set-Aside Bond Fund (City Fund 1885, Org 89929, Project L439410; Org 89929, Projects 1000020, 1000390 and 1001237),
 - \$2,427,000 from previously unsecured predevelopment loans from 2011 Affordable Housing Set-Aside Bond Fund (City Fund 1885, Org 89929, Project Projects 1000020, 1000390 and 1001237
 - \$5,000,000 in funding from OHA sales proceeds deposited in the Brooklyn Basin Sales Proceeds (Fund 1885), Org 89929, Project 1003984, Account 48715
 - \$1,000,000 in ZOHP developer contributions deposited in the Low and Moderate Income Housing Asset Fund (2830); Housing Development Organization (88929), Housing Development Program Project (1004722)
- Total Parcel F loan sources: \$17,670,000

Parcel A

- \$1 million remaining contribution from ZOHP and \$3,436.22 in interest earnings from the affordable housing escrow account deposited in the Low and Moderate Income Housing Asset Fund (2830), Housing Development Organization (88929), Housing Development Program Project (1004722)
- \$4,984,957.25 from the other half of OHA's purchase of a joint interest in Parcel A.
- Approximately \$23,786,607 in 2011 bond funding from 2011 Affordable Housing Set-Aside Bond Fund (City Fund 1885, Org 89929, Projects 1000020, 1000390 and 1001237 (including \$4,298,000 in unsecured predevelopment loan funds to be later consolidated into the

development loans and secured against the improvements)
Total Parcel A loan sources: \$29,775,000

FURTHER RESOLVED: the OHA sales proceeds and ZOHP developer contributions should be appropriated for use by the Projects, as well as any interest earnings; and be it

FURTHER RESOLVED: That the development loan shall be contingent on the availability of sufficient funds in the Low and Moderate Income Housing Asset Fund and other funds; and be it

FURTHER RESOLVED: That the development loans and/or the consolidated loans shall be for a maximum term of 55 years from permanent loan conversion, with an interest rate to be determined by the City Administrator in her discretion, with repayment to the City from surplus cash flow from the project and other available funds during the term of the loans, with the balance due at the end of the term, or on such other repayment terms and schedule as the City Administrator or her designee determines are in the best interests of the City and the project; and be it

FURTHER RESOLVED: That as a condition of the development loans and/or consolidated loans, the City will require that appropriate restrictions on project occupancy, rents and operations be recorded against project improvements on Parcel A; and be it

FURTHER RESOLVED: That the development loans and/or consolidated loans shall be secured by deeds of trust on project improvements on Parcel A; and be it

FURTHER RESOLVED: That the development loan funds shall be reserved for a period of no more than 36 months from the date of this Resolution and shall be subject to reprogramming at the end of this period unless MidPen has secured commitments for full project funding or provided other assurances of adequate project funding that the City Administrator or her designee deems sufficient within her discretion, within the reservation period; and be it

FURTHER RESOLVED: That the making of the predevelopment loans and the development loans shall be contingent on and subject to such other appropriate terms and conditions as the City Administrator or her designee may establish; and be it

FURTHER RESOLVED: That the City hereby authorizes the City Administrator or her designee in her discretion to subordinate the priority of any of the City's recorded interests in Parcel A to a lien or encumbrance of another private or governmental entity providing financial assistance to the project, if the City Administrator or her designee determines that (1) an economically feasible alternative method of financing the project on substantially comparable terms and conditions but without subordination is not reasonably available, (2) the City's investment in the project in the event of default is

reasonably protected, and (3) subordination is in the best interests of the City; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to negotiate and execute loan documents for the predevelopment loans and the development loans, administer the loans, extend or modify the repayment terms, and take whatever other action is necessary with respect to the loans and the project consistent with this Resolution and its basic purposes; and be it

FURTHER RESOLVED: That the City Council finds and determines that the proposed funding transactions would not result in any significant effect that has not already been analyzed in the EIR, and there will be no significant environmental effects caused by the funding transactions that have not already been analyzed in the EIR.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO, AND PRESIDENT KAPLAN,

NOES -

ABSENT -

ABSTENTION -

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