


OFFICE OF THE CITY CLERK  
CITY OF OAKLAND

2019 DEC 27 PM 3:37

  
Deputy City Attorney

# OAKLAND CITY COUNCIL

ORDINANCE No. 13572 - C.M.S.

**AN ORDINANCE TO AUTHORIZE A THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND LAKEHOUSE COMMONS, LLC AND LAKEHOUSE COMMONS AFFORDABLE HOUSING, LP, TO EXPAND THE CONSTRUCTION MITIGATION, ADD ADDITIONAL COMMUNITY BENEFITS AND AMEND OTHER TERMS**

**WHEREAS**, the City of Oakland ("City") owns approximately 0.92 acres of vacant property (Assessor Parcel Number 19-27-14), commonly known as the 12th Street Remainder Parcel, bounded by East 12th Street on the east, Second Avenue and property owned by the Oakland Unified School District on the south, newly created open space to the west, and Lake Merritt Boulevard to the north (the "Property"); and

**WHEREAS**, the City and LakeHouse Commons, LLC ("Market Rate Developer"), successor in interest to UrbanCore Development, LLC, and Lakehouse Commons Affordable Housing LP (the "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, the "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 November 14, 2019, the City Council adopted Ordinance No. 13566 C.M.S. (the "Second Amendment Ordinance") to authorize a second amendment to the DDA (the "Second Amendment") to, among other things, further extend the Outside Date and related outstanding performance deadlines; and

**WHEREAS**, Market Rate Developer and the Affordable Housing Developer are now seeking amendments to the DDA as hereinafter set forth (collectively, the "Third 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 Third 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 Third Amendment to the DDA to: incorporate additional community benefits, environmental conditions, construction mitigation measures, redirect the land sales proceeds to the Affordable Housing Trust Fund, and amend other terms listed on Exhibit A attached hereto, together with Attachment 1 attached thereto (collectively, the "Term Sheet").

**SECTION 2.** The City Council authorizes the City Administrator or his/her designee to accept a \$300,000 payment from the Market Rate Developer to be appropriated for a community benefits program for the benefit of District 2 (to be established) as described in the Term Sheet (Item 1, Exhibit A).

**SECTION 3.** The City Council hereby authorizes the City Administrator to extend the Outside Date of the DDA up to 6 months ("Extension Option"), and all related outstanding performance deadlines in exchange for the continued payment of the Additional Deposit and the nonrefundable, non-applicable Extension Fee, each in the amount of \$15,000 per month, authorized by Second Amendment Ordinance during the period of such 6-month period (the "Outside Date Extension").

**SECTION 4:** The City Council authorizes the City Administrator to accept, deposit and appropriate Extension Fees paid during the Outside Date Extension in the amount of \$15,000 per month, into the Miscellaneous Capital Project Fund (5999), Central District Redevelopment Organization (85245), 12th St Parcel Project (1003826), Downtown Redevelopment Program (SC13).

**SECTION 5:** The City Council authorizes the City Administrator to accept, deposit and appropriate Additional Deposit made during the Outside Date Extension in the amount of \$15,000 per month (to be applied towards the purchase price or retained by City as liquidated damages in accordance with Section 3.1.4 of the DDA) into the Miscellaneous Capital Project Fund (5999), Central District Redevelopment Organization (85245), 12th St Parcel Project (1003826), Downtown Redevelopment Program (SC13).

**SECTION 6:** The City Council authorizes the City Administrator or his/her designee to deposit net land sales proceeds in the amount of \$4.4 million into the Affordable Housing Trust Fund (1870), Housing Development Organization (89929), for a project(s) to be determined for housing development activities.

**SECTION 7:** 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 State 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 8:** The City Administrator or his or her designee 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 9:** This 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.

DEC 10

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2019

**PASSED BY THE FOLLOWING VOTE:**

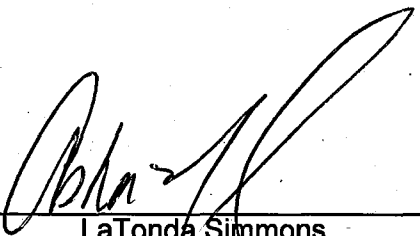
AYES – BAS, GALLO, GIBSON McELHANEY, KALB, REID, TAYLOR, THAO and PRESIDENT KAPLAN — 8

NOES - 0

ABSENT - 0

ABSTENTION 0

ATTEST:

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

**AN ORDINANCE TO AUTHORIZE A THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND LAKEHOUSE COMMONS, LLC AND LAKEHOUSE COMMONS AFFORDABLE HOUSING, LP, TO EXPAND THE CONSTRUCTION MITIGATION, ADD ADDITIONAL COMMUNITY BENEFITS AND AMEND OTHER TERMS**

**NOTICE AND DIGEST**

An Ordinance to authorize a Third Amendment to the Disposition and Development Agreement between the City Of Oakland and LakeHouse Commons, LLC and LakeHouse Commons Affordable Housing, LP to expand the construction mitigation, add additional community benefits and amend other terms, including (1) authorizing the City Administrator to extend the Outside Date up to six (6) months in exchange for the continued monthly payment of extension fees in the amount of \$15,000, (2) acceptance of a \$300,000 payment from the Market Rate Developer for a community benefits program for the benefit of District 2, and (3) redirecting net land sales proceeds of \$4.4 million to the Affordable Housing Trust Fund.

**EXHIBIT A**

**Supplemental Term Sheet – Third Amendment to DDA**

**12<sup>TH</sup> Street Remainder**

Dated: November 8, 2019

| <b>Terms to be added to or amended in the DDA</b> |  |   |
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| <b>1</b>  | <b>COMMUNITY BENEFITS PAYMENT</b>      | At the Close of Escrow, Market Rate Developer shall make a \$300,000 payment to the City of Oakland to fund a community benefits program for the benefit of District 2. The allocation and designation of these funds will be brought back to Council for approval at a later date  |
| <b>2</b>  | <b>ADMINISTRATIVE EXTENSION OPTION</b> | <p>One 6-month administrative extension option will be added to allow the City Administrator, in her sole and absolute discretion, to grant the Developers more time for development in case the City determines there are further delays beyond the Developer's control, as it relates to project funding and planning approvals.</p> <p>An extension fee of \$15,000 per month and an additional deposit of \$15,000 per month for each additional month will apply.</p>  |
| <b>3</b>  | <b>AFFORDABLE HOUSING</b>              | <ol style="list-style-type: none"><li>1. The Affordable Developer will make best efforts to target up to 20% of the Affordable Midrise Building to the homeless (making under 30% of Area Median Income).</li><li>2. The original levels of affordability in the Affordable Midrise Building shall be maintained or deepened but the unit mix may be amended administratively to be consistent with Planning Approvals.</li><li>3. 100% of the net land sales proceeds will be deposited into the Affordable Housing Trust Fund.</li><li>4. The definition of "Affordable Housing Development" (Section 1.1.3) may be amended administratively to be consistent with Planning Approvals.</li><li>5. The interest rate for the City's Purchase Note may be amended administratively to be at a higher interest</li></ol> |

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|   |  | rate (up to 3%), more favorable to the City, for tax purposes. (Section 3.1.3)   |
| 4 | <b>SHARED ACCESS TO BUILDING COMMON SPACES</b>   | <p><i>Attachment AA – LakeHouse Commons Allocation of NonResidential Spaces</i> to the DDA may be amended administratively to be consistent with Planning Approvals.</p> <p>Signage throughout both buildings will make clear that all common area amenities in the Market Rate Building are available to the residents of the Affordable Building.</p>  |
| 5 | <b>FIRST RIGHT OF REFUSAL ON ANY FUTURE SALE OF 18 MODERATE-INCOME INCOME UNITS IN MARKET RATE TOWER</b> | Upon any future condo sale of the Market Rate Building, the City or a qualified affordable housing provider (such as a nonprofit affordable housing developer or a Community Land Trust) shall have first right of refusal to purchase the 18 BMR units in the Market Rate Building.   |
| 6 | <b>ENVIRONMENTAL CONDITIONS</b>  | <p>The following environmental conditions from the “Public Lands Policy” shall apply to the Project.</p> <ol style="list-style-type: none"> <li>1. <b>Public Information:</b> The City of Oakland shall share information with the public regarding past soil testing and remediation and the existing requirements for truck routes surrounding public land parcels to those living in the surrounding area as a part of the community engagement process;</li> <li>2. <b>Trees:</b> Projects must incorporate and maintain trees on the site and adjacent street frontage (as specified by Oakland Municipal Code Chapter 17.124); there must be a net tree increase, so that trees that are cut must be replaced; there must be community engagement for the relocation or replanting of trees;</li> <li>3. <b>Renewable Energy:</b> Project selection must consider on-site renewable energy infrastructure such as solar, wind, geothermal, or biomass with production capacity of at least 5% of the project's annual electrical and thermal energy cost;</li> <li>4. <b>Solar:</b> Projects must maximize opportunities for solar panel installation, including, but not limited to, applying for AB 693 funds for solar panels on affordable housing or other grant or subsidy programs when available;</li> <li>5. <b>Low-VOC Paints:</b> Projects must use low-VOC paints</li> </ol> |

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|   |   | <p>6. <b>Indoor Air Quality:</b> Projects must install air filtration systems, as economically feasible specifically for affordable housing developments; Projects must incorporate measures to improve indoor air quality and reduce exposure to air pollution in new development projects, as required in Standard Conditions of Approval (SCA) 20 and 21</p>   |
| 7 | <p><b>SITE MITIGATION PLAN FOR CONSTRUCTION IMPACTS</b></p> | <p>1. Section 2.1.7.4 of the DDA shall be amended to be substantially be in conformity with the additional conditions as described in <i>ATTACHMENT 1</i></p> <p>2. Staff shall return with an informational report to City Council on the Site Mitigation Plan by August 31, 2020, that includes:</p> <ul style="list-style-type: none"> <li>a) Input after meeting with the school communities of Dewey Academy (located at 1111 2nd Avenue), Met West High School (located at 314 East 10th Street), La Escuelita TK-8 (located at 1050 2nd Avenue), and United Nation Childhood Development Center (located at 1025 4th Avenue), and</li> <li>b) A schedule of construction activities, air quality and diesel particulate matter impacts, dust control measures, sound mitigations, construction traffic and noise controls, and</li> <li>c) Reimbursement to the School District for reasonable costs associated with analyzing the impacts of construction on high needs schools, and other measures to safeguard school staff, students, and property.</li> </ul> |

## ***ATTACHMENT 1***

Section 2.1.7.4 of the DDA (Consultation with Oakland Unified School District on Site Mitigation Plan for construction impacts) shall be amended to substantially include following:

- a) Developers are required to hold at least four (4) community meetings regarding mitigation of the impact of Project construction on the neighboring four (4) school communities. Community meetings shall be scheduled and advertised in collaboration with District leadership and offer an opportunity for input from and communication with the four (4) impacted school communities.
- b) "Neighboring community" shall be defined, at a minimum, as the students, families, staff, and the school communities of Dewey Academy (located at 1111 2nd Avenue), Met West High School (located at 314 East 10th Street), La Escuelita TK-8 (located at 1050 2nd Avenue), and United Nation Childhood Development Center (located at 1025 4th Avenue).
- c) Developers are required to consult with the District to agree on a written plan ("Site Mitigation Plan") for the implementation of mitigation measures that will address construction impacts on the four (4) impacted District school sites. The Site Mitigation Plan will be an exhibit in the District Licensing Agreement, and shall be brought back to City Council upon execution by the Developer and the District no later than August 31, 2020.

As part of this process, the Developer has agreed to pay for third-party consultants, on behalf of the District, to evaluate the design and construction management processes and provide recommendations that will serve to inform the Site Mitigation Plan. The terms of the written Site Mitigation Plan shall serve as the overriding guide for consideration of, but not limited to, the following:

- i. Scheduling and timing of the most potentially intrusive or dangerous construction activities to correspond to school breaks and non-instructional days (e.g. when schools are not in session for winter break, spring break, winter break, etc.) as identified by the District calendar.
- ii. Limitations on high impact construction activities such as pile driving or tasks requiring significant usage of impact tools, to non-instructional hours.
- iii. Utilization of electric construction equipment, when operationally feasible, to minimize diesel particulate matter impacts on the four (4) impacted school sites.
- iv. Dust control measures for sensitive receptors within proximity of the Project.  
Placement of a sound barrier between the Project and Dewey Academy, if deemed necessary upon completion of the Noise Analysis to be conducted by a consultant approved by OUSD as included in the License Agreement between the Developers and OUSD.
- v. Construction traffic/noise controls, examples include but not limited to such, prohibiting construction traffic on 2nd Avenue and prohibiting construction



employee parking on 2nd Avenue. Meaningful consideration and analysis of whether closure to through traffic on 2nd Avenue is appropriate.

- vi. Reimbursement to the District for its reasonable costs and fees associated with analyzing the impact of the Project on District schools.
- vii. Such other measures and actions needed to safeguard District property, staff, and students.