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REVISED
APPROVED AS TO *form* AND LEGALITY

DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. 86921 C.M.S.

A RESOLUTION OF INTENTION OF THE CITY OF OAKLAND TO: ESTABLISH CITY OF OAKLAND COMMUNITY FACILITIES DISTRICT NO. 2017-1 (BROOKLYN BASIN PUBLIC SERVICES); SCHEDULE A PUBLIC HEARING; LEVY A SPECIAL TAX TO FINANCE THE MAINTENANCE OF CERTAIN PUBLIC IMPROVEMENTS; AND APPROVE A PROPOSED BOUNDARY MAP FOR COMMUNITY FACILITIES DISTRICT NO. 2017-1 PURSUANT TO THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982; AND FIND COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), EACH AS A SEPARATE AND INDEPENDENT BASIS, CEQA GUIDELINE SECTIONS 15162 SUBSEQUENT ENVIRONMENTAL IMPACT REPORTS (EIRS) AND NEGATIVE DECLARATIONS, 15183 PROJECTS CONSISTENT WITH A COMMUNITY PLAN, GENERAL PLAN, OR ZONING, 15301 EXISTING FACILITIES; AND SECTION 15308 ACTIONS BY REGULATORY AGENCIES FOR PROTECTION OF THE ENVIRONMENT

WHEREAS, on January 20, 2009, the City of Oakland City Council ("City Council") adopted Resolution No. 81769 C.M.S., resolving all appeals and approving Vesting Tentative Tract Maps 7621 ("VTTMs") within the D-OTN Oak to Ninth District; where the VTTMs showed the creation of three small parks and other public improvements and services as part of the development project; and whereby Conditions of Approval 38 and 39 require the project sponsor, as defined in Resolution No. 79981 C.M.S., to enter into an agreement with the City to secure the long-term maintenance of said parks and other public improvements if the latter is offered for dedication to and accepted by the City as set forth in Attachment A to this resolution; and

WHEREAS, the City of Oakland (the "City") desires to establish a community facilities district to provide funds to maintain certain necessary public improvements to be constructed to meet increased demands to be placed on the City as a result of development within the Brooklyn Basin District (as defined below); and

WHEREAS, in order to finance the cost of such maintenance (the "Services," as set forth on Exhibit 2), the City proposes to establish a community facilities district in accordance with the Mello-Roos Community Facilities Act of 1982, as amended (Government Code Section 53311 *et seq.*) (the "Act"); and

WHEREAS, the developer, Zarsion-OHP 1, LLC (the “Developer”) has entered into a Fiscal Agreement with the City (“Fiscal Agreement”) wherein the Developer agrees to pay any shortfall if the Special Tax revenues are insufficient to pay for the costs of the Services and also provides that Developer will be reimbursed for any overpayments subject to any amounts that are to be deposited into the Reserve Fund (as that term is defined under the Fiscal Agreement); and

WHEREAS, the Special Tax will be subject to annual audit; and

WHEREAS, pursuant to Section 53321 of the Act, the City Council wishes to declare its intention to form a community facilities district based on the Agenda Report submitted to and reviewed by the Rules & Legislation Committee of the City Council on May 4, 2017, and to establish a date, time and place for a public hearing on the formation of the Brooklyn Basin District; and

WHEREAS, on January 20, 2009, the City Council approved Resolution No. 81769 C.M.S. rescinding certification of the Oak to Ninth Project Environmental Impact Report, approving revisions to the analysis in the EIR, recertifying the EIR as revised, and readopting the CEQA findings and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program as revised; and

WHEREAS, in accordance with CEQA Guidelines sections 15162 and 15163, the City hereby finds that, based on substantial evidence in the record, the City finds that none of the circumstances necessitating preparation of a subsequent or supplemental EIR are present and each as a separate and independent basis, this action is otherwise exempt from CEQA review under CEQA Guidelines section 15183 (projects consistent with a community plan, general plan or zoning), 15301 (existing facilities), and 15308 (actions by regulatory agencies for the protection of the environment); now, therefore be it

RESOLVED: That the City Council hereby finds and determines that the foregoing recitals are true and correct; and be it

FURTHER RESOLVED: That the City Council hereby finds and determines that the proposed formation of CFD No. 2017-1 is in compliance with the Restated Goals and Policies; and be it

FURTHER RESOLVED: That the City Council hereby finds and determines that the proposed Services are in addition to those currently provided by the City and will be of benefit to the City; and be it

FURTHER RESOLVED: That the City Council hereby approves the Fiscal Agreement, attached hereto as Exhibit 6, and acknowledges receipt of the Estoppel Certificate, attached hereto as Exhibit 7; and be it

FURTHER RESOLVED: That the City Council hereby approves the Boundary Map attached hereto as Exhibit 4 and adopts the boundaries shown thereon as describing the extent of the territory to be included in the proposed community facilities district to be known as the “City of Oakland Community Facilities District No. 2017-1 (Brooklyn Basin Public Services),” and

WHEREAS, pursuant to the Act, on July 2, 2013, the City has heretofore adopted local goals establishing policies and appraisal standards for the formation and use of community facilities districts, which were subsequently amended and restated by the Amended and Restated Local Goals and Policies and Appraisal Standards for Community Facilities Districts, as adopted by the City Council (Resolution No. 85664 C.M.S.) on June 17, 2015 (the “Restated Goals and Policies”), with a copy of the Restated Goals and Policies attached hereto as Exhibit 1 and incorporated herein by reference; and

WHEREAS, the proposed community facilities district shall be known as the “City of Oakland Community Facilities District No. 2017-1 (Brooklyn Basin Public Services)” (“CFD No. 2017-1” or the “Brooklyn Basin District”); and

WHEREAS, the Services, including incidental expenses that are proposed to be financed by the Brooklyn Basin District are set forth on Exhibit 2 attached hereto and incorporated herein by reference; and

WHEREAS, except where funds are otherwise available, the City shall levy an annual special tax sufficient to pay for the Services, secured by recordation of a continuing lien against all nonexempt real property within CFD No. 2017-1 (“Special Tax”); and

WHEREAS, the proposed rate and method of apportionment of the Special Tax to be levied among parcels of non-exempt real property within the Brooklyn Basin District, in sufficient detail to allow each parcel owner within the proposed Brooklyn Basin District to estimate the maximum amount each such owner will have to pay, is set forth in Exhibit 3 attached hereto and incorporated herein by reference (the “Rate and Method of Apportionment”); and

WHEREAS, the City desires to proceed with the actions necessary to consider the establishment of the Brooklyn Basin District; and

WHEREAS, the proposed boundaries of the Brooklyn Basin District are shown on the boundary map entitled “Proposed Boundaries of Community Facilities District No. 2017-1 (Brooklyn Basin Public Services)” (the “Boundary Map”) attached hereto as Exhibit 4 and incorporated herein by this reference; and

WHEREAS, the Special Tax will be levied on the nonexempt properties within the boundaries of the Brooklyn Basin District and will be subject to the approval of the qualified electors in the Brooklyn Basin District at a mail ballot election; and

WHEREAS, the landowners within CFD No. 2017-1, representing 100% of the qualified electors within CFD No. 2017-1 subject to the Special Tax, have each filed with the City Clerk a Waiver and Consent with Respect to Conduct of Public Hearings and Mail Ballot Election for Landowner Election for a Community Facilities District (“Waiver and Consent”), in substantially the form attached hereto as Exhibit 5 and hereby incorporated by reference, by which, among other things, the time limits and related requirements with respect to the formation of CFD No. 2017-1 and the preparation and distribution of election materials are waived; and

finds that the Boundary Map is in the form and contains the matters prescribed by applicable law; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to certify the adoption of this resolution on the face of the Boundary map and to file a copy with the County Recorder in the book of maps of assessment and community facilities districts no later than fifteen (15) days after the adoption of this resolution; and be it

FURTHER RESOLVED: That the City Council hereby adopts the levy of the Special Tax and the Rate and Method of Apportionment set forth in Exhibit 3 and, upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the Streets and Highways Code, a continuing lien to secure each levy of the Special Tax shall attach to all nonexempt real property within CFD No. 2017-1; that pursuant to Section 53340 of the Act, the Special Tax will be collected in the same manner as ordinary *ad valorem* property taxes, or by any other method or time that the City determines to be in its best interests, including, but not limited to, direct billing of the parcel owners and supplemental billing; and be it

FURTHER RESOLVED: That the levy of the Special Tax shall be subject to the approval of the qualified electors of the CFD No. 2017-1 at a special election, that the proposed voting procedure shall be by mailed or hand-delivered ballot among the landowners in the proposed CFD No. 2017-1, with each owner having one vote for each gross acre or portion of an acre of land such owner owns in CFD No. 2017-1 not exempt from the Special Tax; and be it

FURTHER RESOLVED: That except as may otherwise be provided by law or the Rate and Method of Apportionment of the Special Tax for CFD No. 2017-1, all lands owned by any public entity, including the United States, the State of California, the City and/or any departments or political subdivisions of any thereof, shall be omitted from the levy of the Special Tax made to cover the costs and expenses of the Services and any expenses of CFD No. 2017-1; and be it

FURTHER RESOLVED: Except where funds are otherwise available, the City shall levy the Special Tax secured by recordation of a continuing lien against all nonexempt real property within CFD No. 2017-1; and be it

FURTHER RESOLVED: That no bonds are authorized to be issued by these proceedings, and be it

FURTHER RESOLVED: That the City Administrator or its designee, as the officer who is or will be responsible for providing one or more of the proposed types of Services to be financed by the Brooklyn Basin District, in conjunction with a qualified consultant, is hereby ordered to prepare the report required by Section 53321.5 of the Act, and it will be considered as part of the public hearing on the formation of CFD No. 2017-1; and be it

FURTHER RESOLVED: That the City Administrator or its designee will create a separate fund for the Brooklyn Basin District and is authorized to reimburse Developer for overpayments as described in the Fiscal Agreement from moneys other than amounts set aside in the Reserve Fund; and be it

FURTHER RESOLVED: That the City Council hereby approves the form of the Waiver and Consent and finds that the rights, procedures and time periods therein waived are solely for the protection of the voters, may be waived under Section 53326(a) of the Act, and that the Waiver and Consent constitutes a full and knowing waiver, by any voter who has executed the form, of those rights, procedures and time periods. Pursuant to the Waiver and Consent, the City Council hereby sets a public hearing to be held on November 7, 2017, at 7:00 p.m., or as soon thereafter so the item may be heard, in the Council Chambers, One Frank Ogawa Plaza, Oakland, California as the time and place for the public hearing on the formation of CFD No. 2017-1; and be it

FURTHER RESOLVED: That the City Council, as legislative body for CFD No. 2017-1 will conduct a public hearing on the establishment of CFD No. 2017-1 and shall consider and finally determine whether the public interest, convenience and necessity require the formation of CFD No. 2017-1 and the levy of the Special Tax; that at the hearing, testimony concerning CFD No. 2017-1, the extent of CFD No. 2017-1 and the furnishing of the particular types of public services will be heard and protests will be considered from registered voters residing within CFD No. 2017-1 and persons owning real property within CFD No. 2017-1; that written protests by a majority of the registered voters (if at least six such voters protest), or by the owners of a majority of the land which would be subject to the Special Tax within the proposed CFD No. 2017-1, received by the City Clerk will be made available by the City Clerk at or before the time fixed for the hearing, and that if such protests are directed against certain elements of the proposed Services or proposed Special Tax, and if such protests constitute a majority protest, only those elements shall be deleted from the proceedings; and be it

FURTHER RESOLVED: The City Council independently finds and determines that CFD 2017-1 is subject to the Oak to Ninth Avenue Project Environmental Impact Report and, because CFD 2017-1 is not a substantive change to the approved project, that no further environmental review is required. None of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Sections 15162 or 15163 have occurred, and the Environmental Review Officer is directed to file, or cause to be filed, a Notice of Determination/Exemption with the appropriate agencies; and be it


FURTHER RESOLVED: The City Council independently finds and determines each as a separate and independent basis that CFD No. 2017-1 is exempt from CEQA pursuant to CEQA Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning), Section 15301 (Existing Facilities), and Section 15308 (Actions by Regulatory Agencies for Protection of the Environment); and be it


FURTHER RESOLVED: The City Clerk is hereby directed to cause notice of the public hearing to be given by publication one time in a newspaper published in the area of the Brooklyn Basin District. The publication shall be completed at least 7 days before the date of the public hearing specified above. The notice of the public hearing shall be substantially in the form specified in Section 53322 of the Act, with the notice summarizing the provisions hereby specifically approved; and be it

FURTHER RESOLVED: That this Resolution shall take effect upon its adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, OCT 03 2017, 2017

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY,
GUILLÉN, KALB, KAPLAN AND PRESIDENT REID 

NOES - 

ABSENT - 

ABSTENTION 

ATTEST:



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

**WAIVER AND CONSENT WITH RESPECT TO CONDUCT OF PUBLIC
HEARINGS AND MAIL BALLOT ELECTION FOR LANDOWNER ELECTION FOR A
COMMUNITY FACILITIES DISTRICT**

The undersigned, Erik Hayden is an authorized representative of Zarsion BBC, LLC, a California limited liability company, the owner of privately owned land (Assessor's Parcel Number 018-0465-014-00, approximately a total of 1.44 acres) within Community Facilities District No. 2017-1 (Brooklyn Basin Public Services), City of Oakland, County of Alameda, State of California ("CFD No. 2017-1").

The undersigned expressly acknowledges having received copies of the Resolution of Intention and all its attachments, including the Boundary Map and the Rate and Method of Apportionment for CFD No. 2017-1, together with any other information the undersigned deemed relevant to make an informed decision with respect to CFD No. 2017-1, and as one of the proponents of CFD No. 2017-1 hereby waives any right to protest at the public hearing to be held on November 7, 2017 regarding CFD No. 2017-1.

The undersigned is legally entitled and authorized to execute this Waiver/Consent and to cast the ballot for Zarsion BBC, LLC, in the landowner mail ballot election to be conducted on November 7, 2017, within CFD No. 2017-1 to determine whether the City shall be authorized to levy a special tax pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code Sections 53311 et seq.) ("Act"), as provided by the Resolution of Formation for CFD No. 2017-1 ("Resolution of Formation"), proposed to be adopted by the City on November 7, 2017.

The undersigned, on behalf of Zarsion BBC, LLC, hereby waives each of the following:

1. any and all minimum time periods relative to the public hearing to be held pursuant to Section 53321 of the Act and the publication or mailing of the notice of hearing pursuant to Section 53322 of the Act;
2. if necessary, recordation of the boundary map for CFD No. 2017-1 with the County Assessor's office prior to the hearing on the adoption of a resolution of formation, as required by Section 53321 of the Act and Section 3111 of the Streets and Highways Code;
3. any and all minimum time periods relative to the landowner mail ballot election to be held pursuant to Section 53326(a) of the Act;
4. the preparation and distribution of an impartial analysis of the ballot measure, as well as arguments in favor and against, under the authority of Section 53327(b) of the Act;
5. the requirement to publish notice of the election under Section 53352 of the Act;


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6. the requirements regarding the time to mail ballots to the qualified electors under Elections Code Section 4101;
7. the requirements regarding identification envelopes for the return of mailed ballots contained in Section 53327.5 of the Act; and
8. any and all defects, whether known or unknown, in notice or procedure in the formation of CFD No. 2017-1, including but not limited to the public hearing and conduct of the election.

The undersigned expressly acknowledges, represents and states that the election is being expedited by the City, pursuant to this waiver and consent, at the request of the undersigned as an authorized representative of Zarsion BBC, LLC.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration is executed on September 13, 2017.

Zarsion BBC, LLC, a California limited liability company

By: 
Name: Erik Hayden
Title: Member

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**WAIVER AND CONSENT WITH RESPECT TO CONDUCT OF PUBLIC
HEARINGS AND MAIL BALLOT ELECTION FOR LANDOWNER ELECTION FOR A
COMMUNITY FACILITIES DISTRICT**

The undersigned, Michael Ghidella, is an authorized representative of Zarsion-OHP I, LLC, a California limited liability company, the owner of privately owned land (Assessor's Parcel Numbers 018-0465-012-00, 018-0465-002-06, 018-0465-002-10, 018-0465-002-12, 018-0465-002-15, 018-0465-002-27, 018-0465-002-29, 018-0460-004-06, 018-0460-004-08, 018-0460-004-10, 018-0460-004-11, 018-0430-001-14, approximately a total of 16.45 acres) within Community Facilities District No. 2017-1 (Brooklyn Basin Public Services), City of Oakland, County of Alameda, State of California ("CFD No. 2017-1").

The undersigned expressly acknowledges having received copies of the Resolution of Intention and all its attachments, including the Boundary Map and the Rate and Method of Apportionment for CFD No. 2017-1, together with any other information the undersigned deemed relevant to make an informed decision with respect to CFD No. 2017-1, and as one of the proponents of CFD No. 2017-1 hereby waives any right to protest at the public hearing to be held on November 7, 2017 regarding CFD No. 2017-1.

The undersigned is legally entitled and authorized to execute this Waiver/Consent and to cast the ballot for Zarsion-OHP I, LLC, in the landowner mail ballot election to be conducted on November 7, 2017, within CFD No. 2017-1 to determine whether the City shall be authorized to levy a special tax pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code Sections 53311 *et seq.*) ("Act"), as provided by the Resolution of Formation for CFD No. 2017-1 ("Resolution of Formation"), proposed to be adopted by the City on November 7, 2017.

The undersigned, on behalf of Zarsion-OHP I, LLC, hereby waives each of the following:

1. any and all minimum time periods relative to the public hearing to be held pursuant to Section 53321 of the Act and the publication or mailing of the notice of hearing pursuant to Section 53322 of the Act;
2. if necessary, recordation of the boundary map for CFD No. 2017-1 with the County Assessor's office prior to the hearing on the adoption of a resolution of formation, as required by Section 53321 of the Act and Section 3111 of the Streets and Highways Code;
3. any and all minimum time periods relative to the landowner mail ballot election to be held pursuant to Section 53326(a) of the Act;

4. the preparation and distribution of an impartial analysis of the ballot measure, as well as arguments in favor and against, under the authority of Section 53327(b) of the Act;
5. the requirement to publish notice of the election under Section 53352 of the Act;
6. the requirements regarding the time to mail ballots to the qualified electors under Elections Code Section 4101;
7. the requirements regarding identification envelopes for the return of mailed ballots contained in Section 53327.5 of the Act; and
8. any and all defects, whether known or unknown, in notice or procedure in the formation of CFD No. 2017-1, including but not limited to the public hearing and conduct of the election.

The undersigned expressly acknowledges, represents and states that the election is being expedited by the City, pursuant to this waiver and consent, at the request of the undersigned as an authorized representative of Zarsion-OHP I, LLC.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration is executed on September 13, 2017.

Zarsion-OHP I, LLC, a California limited liability company

By: _____

Name: Michael Ghiselmatti

Title: Authorized Individual

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**WAIVER AND CONSENT WITH RESPECT TO CONDUCT OF PUBLIC
HEARINGS AND MAIL BALLOT ELECTION FOR LANDOWNER ELECTION FOR A
COMMUNITY FACILITIES DISTRICT**

The undersigned, Michael Chudmoff, is an authorized representative of **250 Ninth Avenue Partners, LLC**, a California limited liability company, the owner of privately owned land (Assessor's Parcel Number 018-0465-013-00, approximately a total of 1.54 acres) within Community Facilities District No. 2017-1 (Brooklyn Basin Public Services), City of Oakland, County of Alameda, State of California ("CFD No. 2017-1").

The undersigned expressly acknowledges having received copies of the Resolution of Intention and all its attachments, including the Boundary Map and the Rate and Method of Apportionment for CFD No. 2017-1, together with any other information the undersigned deemed relevant to make an informed decision with respect to CFD No. 2017-1, and as one of the proponents of CFD No. 2017-1 hereby waives any right to protest at the public hearing to be held on November 7, 2017 regarding CFD No. 2017-1.

The undersigned is legally entitled and authorized to execute this Waiver/Consent and to cast the ballot for 250 Ninth Avenue Partners, LLC, in the landowner mail ballot election to be conducted on November 7, 2017, within CFD No. 2017-1 to determine whether the City shall be authorized to levy a special tax pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code Sections 53311 et seq.) ("Act"), as provided by the Resolution of Formation for CFD No. 2017-1 ("Resolution of Formation"), proposed to be adopted by the City on November 7, 2017.

The undersigned, on behalf of 250 Ninth Avenue Partners, LLC, hereby waives each of the following:

1. any and all minimum time periods relative to the public hearing to be held pursuant to Section 53321 of the Act and the publication or mailing of the notice of hearing pursuant to Section 53322 of the Act;
2. if necessary, recordation of the boundary map for CFD No. 2017-1 with the County Assessor's office prior to the hearing on the adoption of a resolution of formation, as required by Section 53321 of the Act and Section 3111 of the Streets and Highways Code;
3. any and all minimum time periods relative to the landowner mail ballot election to be held pursuant to Section 53326(a) of the Act;
4. the preparation and distribution of an impartial analysis of the ballot measure, as well as arguments in favor and against, under the authority of Section 53327(b) of the Act;

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5. the requirement to publish notice of the election under Section 53352 of the Act;
6. the requirements regarding the time to mail ballots to the qualified electors under Elections Code Section 4101;
7. the requirements regarding identification envelopes for the return of mailed ballots contained in Section 53327.5 of the Act; and
8. any and all defects, whether known or unknown, in notice or procedure in the formation of CFD No. 2017-1, including but not limited to the public hearing and conduct of the election.

The undersigned expressly acknowledges, represents and states that the election is being expedited by the City, pursuant to this waiver and consent, at the request of the undersigned as an authorized representative of 250 Ninth Avenue Partners, LLC.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration is executed on September 13, 2017.

250 Ninth Avenue Partners, LLC, a California limited liability company

By: _____

Name: Michael Ghiselmotti

Title: Authorized Individual

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