



FILED
THE CITY CLERK
OAKLAND

15 MAR 31 PM 12:46

CITY OF OAKLAND

AGENDA REPORT

TO: JOHN A. FLORES
INTERIM CITY ADMINISTRATOR

FROM: Mark Sawicki

SUBJECT: DDA for 12th St Remainder Parcel

DATE: February 27, 2015

City Administrator

Date

Approval

3/30/15

COUNCIL DISTRICT: # 2

RECOMMENDATION

Staff recommends that the City Council adopt the following legislation:

An Ordinance Authorizing: (1) The City Administrator, Without Returning To The City Council, To Negotiate And Execute A Disposition And Development Agreement and Related Documents Between The City of Oakland, And A Development Entity Comprised Of UrbanCore Development, LLC and UDR, Inc., (Or Its Related Entities Or Affiliates) For Sale Of The 12th Street Remainder Parcel Located At E12th Street And 2nd Avenue For No Less Than \$5.1 Million And Development As A Residential Mixed-Use Project, All Of The Foregoing Documents To Be In A Form And Content Substantially In Conformance With The Term Sheet Attached As Exhibit A; (2) Set-Aside Of No More Than \$500,000 From Land Sales Proceeds For Remediation of Property, And (3) Appropriation of \$200,000 From Land Sales Proceeds To Fund An Asset Portfolio Management Plan

OUTCOME

The City Administrator is authorized, without returning to the City Council, to negotiate and execute a Development and Disposition Agreement (DDA) that will allow: (a) the City to sell the 12th Street Remainder Parcel ("Property" or "Remainder Parcel") to an entity comprised of UrbanCore Development, LLC and UDR, Inc. (or its related entities or affiliates) (such entity referred to collectively herein as "Developer" or "UrbanCore") for \$5.1 million ; (b) the Developer to build a mixed-use residential high-rise tower on the Property as well as to provide the landscaping and ongoing maintenance of the 0.91 acre City-owned open space/water treatment basin adjacent to the Property; and, (c) a set aside of up to \$500,000 from the land sale proceeds from this transaction be placed in an escrow account to cover the possibility of qualified environmental remediation work.

Item: _____
CED Committee
April 14, 2015

In addition, the City Administrator will be authorized to appropriate \$200,000 from the land sale proceeds of this transaction to fund the development of an Asset Portfolio Management Plan for all City-owned real estate.

EXECUTIVE SUMMARY

UrbanCore's 18-month Exclusive Negotiating Agreement (ENA), with the City expired on January 2, 2015 and Project Implementation staff have substantially completed negotiations with UrbanCore on the terms for a DDA.

Developer satisfied the requirements of the ENA, including working with staff to refine the project proposal in response to community input and new zoning regulations that were adopted as part of the Lake Merritt Station Area Plan; completing California Environmental Quality Act (CEQA) review; completing market studies and determining project's financial feasibility; and, identifying a capital partner and a guarantor entity that would execute a Completion Guaranty. As of the writing of this report, Planning staff is working to schedule UrbanCore's project for Planning Commission approval for entitlements & CEQA review on April 1, 2015.

Pending Planning Commission's approval of UrbanCore's proposed project, staff is seeking City Council approval to execute a DDA with UrbanCore which includes: 1) the sale of the City-owned 12th Street Remainder Parcel at the appraised Fair Market Value of \$5.1 million; and 2) starting construction (within six months of receiving building permits) of a 24-story residential apartment tower with a three-level podium base, including 298 residential units, approximately 2,000 square feet of ground level commercial space, 209 parking spaces and associated amenities and improvements.

BACKGROUND/LEGISLATIVE HISTORY

The 12th Street Remainder Parcel is owned by the City of Oakland. This 0.925 acre of land was previously public right-of-way and was created in 2011 as a result of the reconfiguration of 12th Street that was a part of the City of Oakland's Lake Merritt Park Improvement/12th Street Reconstruction Project which was funded by Measure DD.

The Remainder Parcel is bounded by E. 12th Street on the east, by 2nd Avenue & Oakland Unified School District (OUSD) property on the south, by the newly created open space to the west and by Lake Merritt Blvd to the north. The site is located within the Central District Redevelopment Project Area and is immediately adjacent to the Central City East Redevelopment Project Area. *(See Attachment A: Parcel & Aerial Map)*

The Redevelopment Agency acquired the Remainder Parcel from the City on June 16, 2011 for \$2.5 million for the purpose of controlling development of this key site through a DDA. The price was based on a Fair Market Value Appraisal considering the highest and best use of the Property based on the zoning and estimated parcel size existing at the time. In February of 2012,

Item: _____
CED Committee
April 14, 2015

with the dissolution of the Redevelopment Agency, the Property was transferred to the Oakland Redevelopment Successor Agency by operation of law.

In December 2012, staff issued a Request for Proposals (RFP) to those developers who had shown interest in the Property. Staff received two proposals and established a selection committee to evaluate the proposals and interview the two respondents to the RFP.

Then in July 2013, the City Council (Reso No. 84492 C.M.S.) authorized the City Administrator to enter into an ENA with the selected respondent, UrbanCore-Integral Development, LLC for the development of a high-rise residential tower on the Remainder Parcel.

In August 2013 the Oakland Redevelopment Successor Agency and the City received a City of Oakland Redevelopment Agency Asset Transfer Review from the California State Controller, commonly referred to as the "Clawback Report". This report, among other things, disallowed the 2011 acquisition of the Property by the Agency and required the City to transfer the sales proceeds for the Remainder Parcel back to the Oakland Redevelopment Successor Agency. Therefore, on April 7, 2014 the Oakland Redevelopment Successor Agency transferred ownership of the 12th Street Remainder Parcel back to the City.

During the 18-month ENA period, UrbanCore worked diligently with staff to satisfy the requirements of the ENA, including refining the project proposal in response to community input, Planning staff input, new zoning regulations that were under development as part of the Lake Merritt Station Area Plan (and later adopted by City Council in December 2014), changing market conditions and what is needed to make the project financially feasible. Community stakeholders, including members of the Measure DD Coalition, Coalition of Advocates for Lake Merritt (CALM) and surrounding neighbors such as residents of 1200 Lakeshore (a residential high-rise located across the street from the Remainder Parcel), participated in public meetings to give input on the Developer's proposed development, including feedback on design and increasing its compatibility with the existing neighborhood.

Also, UrbanCore successfully identified UDR, Inc. as their equity partner and the guarantor entity who will execute a Completion Guaranty for the project. As of the writing of this report, Planning staff is scheduling this project for the Planning Commission meeting on April 1, 2015, to seek planning entitlements, including the project's CEQA approval.

Development Team

UrbanCore, who has been the lead developer to date¹, proposes to form a new Limited Liability Company in a partnership with UDR, Inc. to acquire and develop the Property. UDR or an affiliate intends to provide 97.5 percent of the equity needed during predevelopment and 100 percent of the equity to construct the project.

UDR, Inc. (NYSE:UDR), an S&P 400 Company, is a leading multifamily real estate investment trust with a demonstrated performance history of delivering superior and dependable returns by successfully managing, buying, selling, developing and redeveloping attractive real estate properties in targeted U.S. markets. As of December 31, 2014, UDR owned or had an ownership position in 51,293 apartment homes including 1,387 homes under development.

The persons authorized to bind the new entity will include Mr. Donald D. MacKenzie from UDR and Mr. Michael E. Johnson from UrbanCore. These two persons will be assisted by Ms. Kirsty Greer from UDR.

The proposed ownership of the project will include a 97.5 percent interest for UDR and a 2.5 percent interest for UrbanCore. UDR will serve as the Managing Member of the LLC and provide the required guarantees necessary to secure the project capital as needed. Both companies will work together jointly throughout the predevelopment and construction phases, and UDR will manage the marketing, leasing and property management of the Property.

The design team is a joint venture of AVR P Studios and Oakland-based Pyatok Architects. The joint venture development team has not made a final selection of a General Contractor, but has been working with three different contractors who have provided construction cost estimates, and will continue to do so during pre-construction. Once the development team makes a final selection of the General Contractor, they will advise the City and submit their experience and financial information for City review.

¹ The City's ENA was with UrbanCore-Integral, LLC which was a partnership between UrbanCore Development, LLC and The Integral Group, LLC. During the course of the ENA period, Integral dropped out of the project while UrbanCore continued to satisfy the ENA's schedule of performance.

The Project

UrbanCore's proposed development project, also known as "LakeHouse Residences", is a 24-story residential apartment tower with a 3-level podium base (one level below grade, two above grade) with 209 parking stalls, 298 residential units, approximately 2,000 square feet of ground level commercial space for a café with a terrace, and associated amenities and improvements:

- A lobby and lounge area, on ground level (3,000 sf);
- A recreation room and exercise room, on 3rd floor (approx. 2,000 sf);
- A garden and plaza, on the 3rd floor (approx. 15,400 sf, above the garage);
- A green roof, on the 6th floor (approx. 3,400 sf);
- A roof terrace, on the 8th floor (approx. 3,500 sf); and,
- Off-site improvements involving enhancement of the adjacent City-owned open space/water treatment basin (0.91 acres) with natural landscaping and providing ongoing maintenance.

The 298 units will consist of a mix of unit types, including seven lofts, eight penthouse units, 113 studios, 110 one-bedroom units, and 60 two-bedroom units, which would range in size from approximately 550 to 1,595 square feet.

(See Attachment B: Development Plans for UrbanCore's "LakeHouse Residences")

ANALYSIS

DDA Terms

The general terms of a DDA for the Property have been substantially negotiated and key terms include:

1. Appraised fair market price –An appraisal conducted by Yovino & Young determined the as-is Fair Market Value to be \$5.1 million and the highest and best use of the site to be a multi-unit residential project that conforms to the new zoning regulations under the Lake Merritt Station Area Plan. Developer will pay \$5.1 million.
2. Easements on adjacent open space for construction and no-build to allow openings on property line; maintenance of open space by Developer.
3. Environmental Remediation – City staff intends to sell Property in as-is condition and does not believe, based on environmental assessment studies that have been conducted to

date², that the Property contains hazardous materials. However, a Phase I report indicated some possible shallow soil contamination from automobile exhaust and a gasoline service station that occupied a portion of the site that may have affected soil or groundwater in such a way as to provide a concern for vapor intrusion into the new development. So further study will be conducted by Developer.

Should a pending Phase II report discover a need for environmental remediation, staff has proposed that an amount not to exceed \$500,000 from the land sale proceeds be set-aside in an escrow account for the project and released as the remediation work is completed.

4. Development schedule – Although a maximum of 48 months is allowed, including purchasing the site and starting construction within 18 months of DDA execution (but no later than six months of receiving building permits), construction is expected to begin as early as Spring 2016.
5. Other typical DDA terms such as, completion guaranty, \$50,000 good faith deposit, repurchase option, etc..

(See Attachment C: DDA Term Sheet for UrbanCore's "LakeHouse Residences")

Closing Date and Completion Gauranty

Throughout the nearly 2 year negotiation period with UrbanCore, staff had consistently requested UrbanCore commit to closing the transaction and purchasing the Property by June 30th 2015 because the revenues from this land sales transaction were already included in the City's Fiscal Year 2013-15 Budget. UrbanCore agreed early on to meet this deadline, submitted audited financial statements of UDR to show availability of capital, and had been preparing to purchase land by June 30th, 2015 once a DDA was executed.

However, because the City delayed the adoption of the Lake Merritt Station Area Plan and Final EIR, the Developer's project schedule (CEQA review in particular) was impacted, and it became more unlikely that UrbanCore could obtain building permits or enter into a construction contract by June 30th, even though they expect to receive planning entitlements and had identified the capital source to purchase the land by June 30th, 2015.

Additionally, the City Attorney's office advised that both the (former) Redevelopment Agency and the City historically require a developer to have received its City approvals (e.g., City-approved evidence of financing, construction drawings, building permits, execution of a

² Environmental studies include: Phase I Environmental Site Assessment (ESA), by Adanta, dated 9/1/14 and several soils & geotechnical reports and an ESA developed for the E12th Street Reconstruction Project, dating from 2006 to 2009

completion guaranty by a financially strong entity, etc.) before the City turns over its property to a developer. Otherwise, the City would be transferring valuable public property to a private party developer (which in all likelihood is a “shell” entity with little or no assets created solely to execute the DDA) with no financial assurances that the project the City envisions will be built.

Therefore, because the Developer would not be able to execute a completion guaranty at close of escrow if that occurred on or before June 30, 2015, staff negotiated a revision to the DDA’s schedule of performance so that the close of escrow occurred after issuance of building permits, which is the Developer’s condition for agreeing to execute a completion guarantee. The closing is now expected to happen as early as Spring 2016 or as late as Fall 2016.

Payment and Performance Bond Requirement

UrbanCore has made a strong request to staff to waive a typical DDA requirement related to payment and performance bonds, which states: “Developer to provide payment and performance bonds in an amount not less than 100% of the project construction costs, pursuant to the Developer-executed construction contract.” After consulting with the City Attorney’s office, staff does not recommend this waiver.

Analysis of Project Feasibility

Staff’s analysis of Developer’s proforma indicates that the project is feasible assuming a sale of the property and rents increasing. This is consistent with recent studies commissioned by the City that show high-rise developments are marginally feasible. The November 25, 2013 Downtown Oakland Development Feasibility Study prepared for the Planning & Building Department by AECOM and the March 12, 2014 update showed that high-rise housing was feasible in the Uptown Area, but not in the Lake Merritt Area, although it was becoming more feasible with increasing rents.

According to the Developer’s latest proforma, the project has a 5.77 percent rate of return on cost (ROC). According to Developer and appraiser, a ROC of 5.86 percent to 6.0 percent for the Oakland market is what’s needed for institutional investment funding for a project of this type and size. Because of UDR’s REIT structure, UrbanCore and UDR negotiated a slightly lower acceptable ROC to move this transaction forward.

Therefore, reducing rents on the project will render the project infeasible. This means that the City cannot attract affordable housing in high-rise developments without providing significant public subsidies, which the City does not have, especially with the dissolution of Redevelopment. Even if the City did have public subsidies to offer, such as in the form of a land write-down, a developer is likely to not prefer that option. This is because certain City contracting and employment requirements, such as prevailing wage and living wage, would be triggered and add to developer’s costs.

In the case of the Remainder Parcel, Developer is not receiving any public subsidy and will be paying the City the appraised Fair Market Value for the land.

(See Attachment E: Major Housing Projects in Oakland with Affordable Housing Since 2012)

Anticipated Economic Benefits to City

In addition to the initial \$5.1 million revenue from the sale of the land and permit fees associated with the development of this \$137 million project, staff's assessment of the project's employment and ongoing tax benefits to the City is as follows:

- Jobs – 252 construction jobs; 14 full time employee (FTE) jobs post construction
- Annual Property Tax – \$650,000
- Annual Sales Tax – \$6,000
- Annual Business License Tax – \$165,000

POLICY ALTERNATIVES

Lease vs. Sale

The City Council adopted a resolution in December 2014 to establish a general policy to lease rather than sell City property (Reso No. 85324 C.M.S.). Staff is recommending a sale of the Property as necessary to promote the City's economic development and housing goals. Attached to this report is a chart setting forth the pros and cons of making an exception to the Council's policy of preferring ground leases when disposing of City property.

Staff recommends an exception to the general policy be made for this Property based on the following:

1. Staff and Developer reliance on prior council direction

The City issued an RFP in 2012 which explicitly offered the Property for sale. Staff and UrbanCore conducted good faith negotiations for over 18 months assuming a land sale transaction based on the Property's highest and best use. The FY 2013-15 Budget, approved by the City Council in June 2013, included \$4 million in revenue from land sales proceeds of the Property.

2. Potential inability to finance development

Developer is not prepared to ground lease the Property from the City. The capital investor, UDR, that UrbanCore attracted to be its joint partner to finance and develop the project, operates under a Real Estate Investment Trust (REIT) ownership structure. UDR's underwriting and joint venture development agreement with UrbanCore is based

Item: _____
CED Committee
April 14, 2015

on the land value assumption provided in the City's December 2014 appraisal. A change in the project's financial model to accommodate an on-going ground lease payment could reduce the available cash flow return on equity. Even with reduced upfront cost of no fee for the land, the cash flow may be insufficient to provide the required return on investment. Also as a long term institutional investor, UDR prefers to avoid the risk of someday losing control of the building if it is unable to extend its ground lease. Therefore, a change to a ground lease would require UDR to re-evaluate this investment opportunity and could cause the project to be infeasible.

3. City investment in a ground lease would be at the cost of City's immediate financial needs

Table 1 below shows that the project after 66 years is worth \$482.3 million, which in terms of Net Present Value (NPV) is equivalent to \$10.3 million today. Therefore, in the structuring of any ground lease deal, the City would need to be prepared to make up this \$10.3 million loss to the Developer. For example, on a ground lease deal that terminates in year 66, the City would need to give the land away for free and pay the Developer at least \$5.2 million in order for it to be worth it to the Developer to develop the project. But under a land sale deal, the Developer would be willing to pay the City the appraised FMV of \$5.1 million to develop the project.

Table 1: Analysis of NPV of Project on Leased Land vs Owned Land

		Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 25	Year 50	Year 66
		2016	2017	2018	2019	2020	2025	2040	2065	2081
Net Operating Revenue *	\$1,066,175,484	\$0	\$7,120,488	\$7,913,282	\$8,151,128	\$8,396,120	\$9,546,871	\$12,848,831	\$21,079,869	\$28,938,143
Property Value with 6% Cap Rate **	\$482,302,380	\$0	\$118,674,800	\$131,888,033	\$135,852,133	\$139,935,333	\$159,114,510	\$214,147,182	\$351,331,150	\$482,302,380
NPV Lease Versus Sale ***	\$10,307,001	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$482,302,380
* Revenue growth at 3% from 2017 to 2023 per developer proforma and 2% from there on to 2081.										
** The value of the Property (i.e. land + improvements) is calculated by dividing the Net Operating Revenue by a 6% Cap Rate.										
*** The difference in value for sale of property versus lease of property is calculated as the discounted value of the property at the end of the 66 year lease. The discount rate used was the same as the Cap Rate - 6%.										

For additional staff analysis on the pros and cons of lease vs. sale, see "*Attachment D: Analysis of Ground Lease Vs. Sale of the 12th Street Remainder Parcel*"

Asset Portfolio Management Plan

Real Estate Services Division, under the direction of the City Administrator, and in coordination with the Finance Department and the Public Works Department, has investigated and determined the need for an Asset Portfolio Management Plan for all City-owned real estate. In October 2014, City Council authorized \$200,000 from the sale of 3455 and 3461 Champion Street be allocated to fund the Asset Portfolio Management Plan (Ordinance No. 13264 C.M.S.). However, in the event the Champion Street transaction does not close, staff is now requesting

Item: _____
 CED Committee
 April 14, 2015

\$200,000 of the sales proceeds of this transaction be used instead. The appropriation would fund the development of this Plan, which involves hiring a 3rd party portfolio management firm to assist in the drafting and implementing of an asset portfolio management plan for City-owned real estate.

PUBLIC OUTREACH/INTEREST

UrbanCore hosted a public meeting on October 28, 2013 to present their initial proposed development and seek input. The Developer incorporated the feedback they received from that meeting and followed up with a presentation at the November 18, 2013 meeting of the Measure DD Coalition, a regular and broadly publicized meeting that is open to the public. Most recently, Developer hosted a meeting on January 20, 2015 to present the latest version of their project's description and design.

At each of the three public meetings, there were about 30 to 50 participants; about two weeks prior to each meeting, announcement notices went out both by mail and by e-mail to key community stakeholders, including the City's Lake Merritt Station Area Plan contacts list, and both City Council District 2 and City Council District 3 contacts list. In addition, Developer made themselves available to meet with various interested community stakeholders, when requested. For example, a subcommittee of the Measure DD Coalition interested in the development of the Remainder Parcel was formed to follow the project closely and provide guidance and input on various topics including the project's design, community benefits and environmental impacts, especially wind and shadow. In fact, between September 2013 and March 2014, the Remainder Parcel was a topic of discussion at the Measure DD Coalition meetings for eight of those ten meetings.

Community Benefits

1. Developer to enhance and maintain City-owned open space adjacent to Property

Early on and throughout this public engagement process, community members have asked the Developer to be responsible for the landscaping and ongoing maintenance of the newly created City-owned open space adjacent to the Remainder Parcel. The Developer has been positively responsive to this request. The park design the Developer presented to the Parks and Recreation Advisory Committee on February 11, 2015 was informed largely by a subcommittee of the Measure DD Coalition, who wished to maintain Measure DD's intent for this park as passive open space.

In negotiating the DDA, Developer has agreed to: 1) design the adjacent open space/water basin treatment center; 2) pay for enhancements to this open space; and, 3) pay for ongoing maintenance of this open space in perpetuity. In exchange, the City would convey an easement to this City open space as part of the sale of Remainder Parcel. The open space's maintenance standards would be captured in the easement itself as well as the DDA and related documents.

Item: _____
CED Committee
April 14, 2015

2. Preservation of existing rental stock

In response to concerns of affordable housing and tenants' rights interests represented by community groups such as the Oakland Tenants Union, Developer agreed to restrict the project from generating the 298 condo conversion credits that the project would normally be entitled to under the current Condo Conversion Ordinance, in the event that Developer chooses to condo-map the project and restrict the project's 298 units for rental use for a minimum of seven years. In other words, if Developer had not agreed to this restriction in the DDA, Developer could become owner of 298 "condo conversion credits" that then could be sold on the open market to property owners/developers who need these credits to convert existing rental stock, including rent-controlled rental stock, into condos.

COORDINATION

Staff from the Project Implementation Division and the Bureau of Planning have worked closely with UrbanCore to develop the proposed project to be consistent with the vision of the Lake Merritt Station Area Plan and new zoning. The City's Measure DD staff has also been involved and acted as a liaison to the Measure DD Coalition, a community group that helped to inform the proposed landscaping of the City-owned open space adjacent to the Property, amongst other things. Planning staff prepared the report to the Parks and Recreation Advisory Committee on this proposed landscaping. Real Estate staff commissioned and reviewed the appraisal report. Project Implementation Division staff coordinated this report with the Budget Office, the City Attorney's Office and the Controller's Bureau.

OUSD owns a three acre development site adjacent to the Property, to the south. Project Implementation staff followed OUSD's 2014 Request for Qualifications (RFQ) process for development of that site; UrbanCore was one of four respondents to the OUSD RFQ. Even though the School Board decided to put the RFQ process on hold and not move forward on selecting a developer until OUSD staff conducted more community engagement on the site's development potential, both UrbanCore and Project Implementation staff continue to monitor this neighboring development site.

COST SUMMARY/IMPLICATIONS

The land sale proceeds totaling up to \$5.1 million will be deposited in the General Purpose Fund (1010), Real Estate Services Organization (85231), Sale of Land (48111), Non-Project (0000000), Real Estate Program (PS32).

An Environmental Remediation Allowance not to exceed \$500,000 of the land sale proceeds will be set aside in escrow. The exact amount will be negotiated based on findings of a Phase II report and released directly to Developer as the remediation work is completed. Any Allowance amount remaining after remediation work is complete will be deposited into the above named account.

Item: _____
CED Committee
April 14, 2015

\$200,000 of the land sale proceeds from this transaction will be appropriated to fund the development of an Asset Portfolio Management Plan for all City-owned real estate, to be managed by the Real Estate Services Division. The funds will be appropriated in the General Purpose Fund (1010), Real Estate Division (85231), Contract Contingency (54011), and Real Estate (PS32). The exact project number is to-be-established.

Developer has agreed to pay for all escrow fees and closing costs, including, without limitation, City and county transfer taxes.

Pursuant to the ENA, UrbanCore has been solely responsible for all costs associated with developing the project to date, including paying for market studies, architectural designs, legal counsel, CEQA consultant study, the environmental Phase I and Phase II reports, etc.. Also, the City used UrbanCore's Project Expense Payment for the ENA to pay for the City's third party expenses related to the project including appraisal report, economic consultant services, and creation of final parcel map.

FISCAL/POLICY ALIGNMENT

UrbanCore's proposed project is consistent with the zoning and vision of the Lake Merritt Station Area Plan adopted by City Council in December 2014. The Property is considered an ideal development site for an iconic, high density residential high rise with ground floor retail and has been identified as a Primary Gateway Opportunity Site in the Specific Plan.

Sale of the Remainder Parcel at FMV would be consistent with the FY 2013-15 Budget, approved by the City Council in June 2013, which included \$4 million in revenue from land sales proceeds.

SUSTAINABLE OPPORTUNITIES

Economic: The sale to UrbanCore would generate land sale proceeds of \$5.1 million and facilitate development of housing and a modest amount of neighborhood-serving retail. The development would put vacant underutilized land into productive use. The construction of the project could provide significant employment at the site. Staff assessment of project employment benefits includes approximately 252 construction jobs, five FTE retail/commercial jobs and nine FTE permanent jobs in the residential portion. The project is anticipated to generate significant tax benefits to the City, including \$650,000 in annual property taxes, \$6,000 in annual sales tax and \$165,000 in annual business license tax. Commencement of a new high rise construction in Oakland is likely to precipitate further developer interest and investment.

Environmental: As an infill project that develops in an already built-up area, this project reduces the pressure to construct on agricultural and other undeveloped land, and thereby contributes to the prevention of urban sprawl. The location of the project in proximity to major public transportation nodes will likely encourage project residents and retail customers to use BART

and AC Transit. The project proposes to incorporate green building and energy efficient components both during construction and occupancy, such as a green roof, a solar thermal system and a waste management system to facilitate recycling. The Bureau of Planning's Conditions of Approval for this project include requirements for pro-environmental plans be incorporated prior to issuance of a building permit, such as a Parking and Transportation Demand Management Plan, a Bird Collision Reduction Plan, and a Greenhouse Gas Reduction Plan.

Social Equity: During the 18-month ENA period, UrbanCore engaged in an active community participation process that involved a variety of stakeholders so that the project could be informed by a wide-range of voices. Specific community benefits from this project include the Developer agreeing to landscape and to maintain the City-owned open space adjacent to the Property and agreeing to restrict the project from generating condo conversion credits. The café to be added to the ground floor of the project will be an amenity for nearby Lake Merritt users as well as the public in general. Finally, the residents that will be attracted to live in this high density project will contribute to Oakland's economic diversity and the demand that is needed to support Oakland's growing economy.

Some affordable housing advocates have asked for some of the land sales proceeds to go toward a fund for affordable housing. Measure DD Coalition members have asked for some of the land sales proceeds to go toward a maintenance fund dedicated to the Measure DD-funded park improvements.

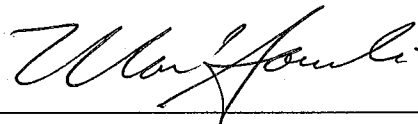
CEQA

The project is expected to be approved by the Planning Commission on April 1, 2015. The anticipated environmental effects of the project have been evaluated by the Lake Merritt Station Area Plan Final Environmental Impact Report certified November 2014. The project is also Categorically Exempt under Section 15332 of the State CEQA Guidelines: In-Fill Development Projects; Section 15183 of the State CEQA Guidelines: Projects consistent with a Community Plan, General Plan or Zoning; and Section 15183.3 (Streamlining for Infill Projects). These analyses and exemptions satisfy CEQA requirements on a separate and independent basis.

A detailed CEQA analysis of the project is contained as Attachment B to staff's report to the Planning Commission on March 18, 2015³

For questions regarding this report, please contact Hui-Chang Li, Urban Economic Analyst II at (510) 238-6239.

Respectfully submitted,



Mark Sawicki
Director, Economic & Workforce Development
Department

Reviewed by:
Patrick Lane, Acting Manager
Project Implementation Division

Prepared by:
Hui-Chang Li, Urban Economic Analyst II
Project Implementation Division

³ To view the "Final Lake Merritt Boulevard Apartments Project Environmental Review" report dated February 25, 2015, visit the City's Planning Commission website: <http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/o/Commissions/index.htm>; or visit the Bureau of Planning at 250 Frank Ogawa Plaza, 3rd Floor, Oakland, CA 94612 to request a hard copy of the report.

Item: _____
CED Committee
April 14, 2015

Attachments

Attachment A. Parcel & Aerial Maps for 12th Street Remainder Parcel

Attachment B. Development Plans for UrbanCore's "LakeHouse Residences"

Attachment C. DDA Term Sheet for UrbanCore's "LakeHouse Residences"

Attachment D. Analysis of Ground Lease Vs. Sale of the 12th Street Remainder Parcel

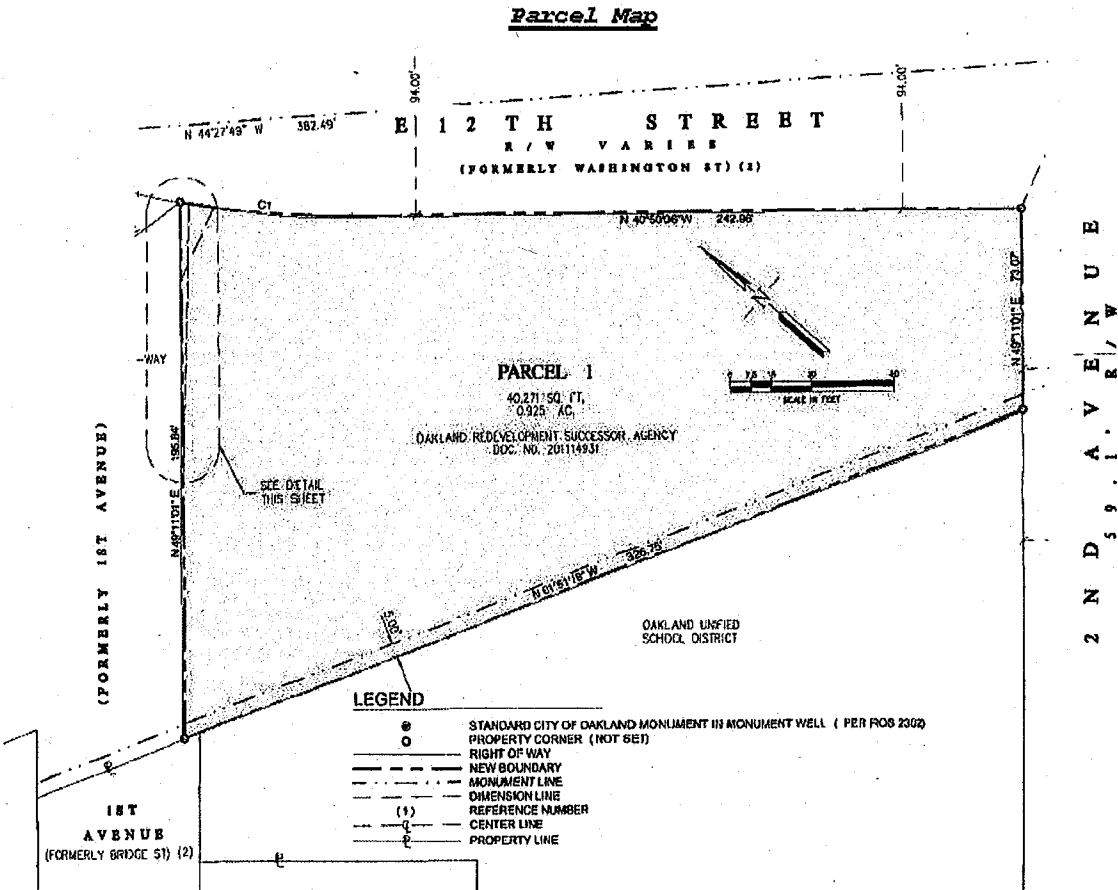
Attachment E. Major Housing Projects in Oakland with Affordable Housing Since 2012

Attachment A: Parcel & Aerial Maps, 12th Street Remainder Parcel

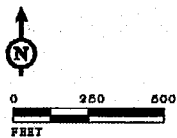
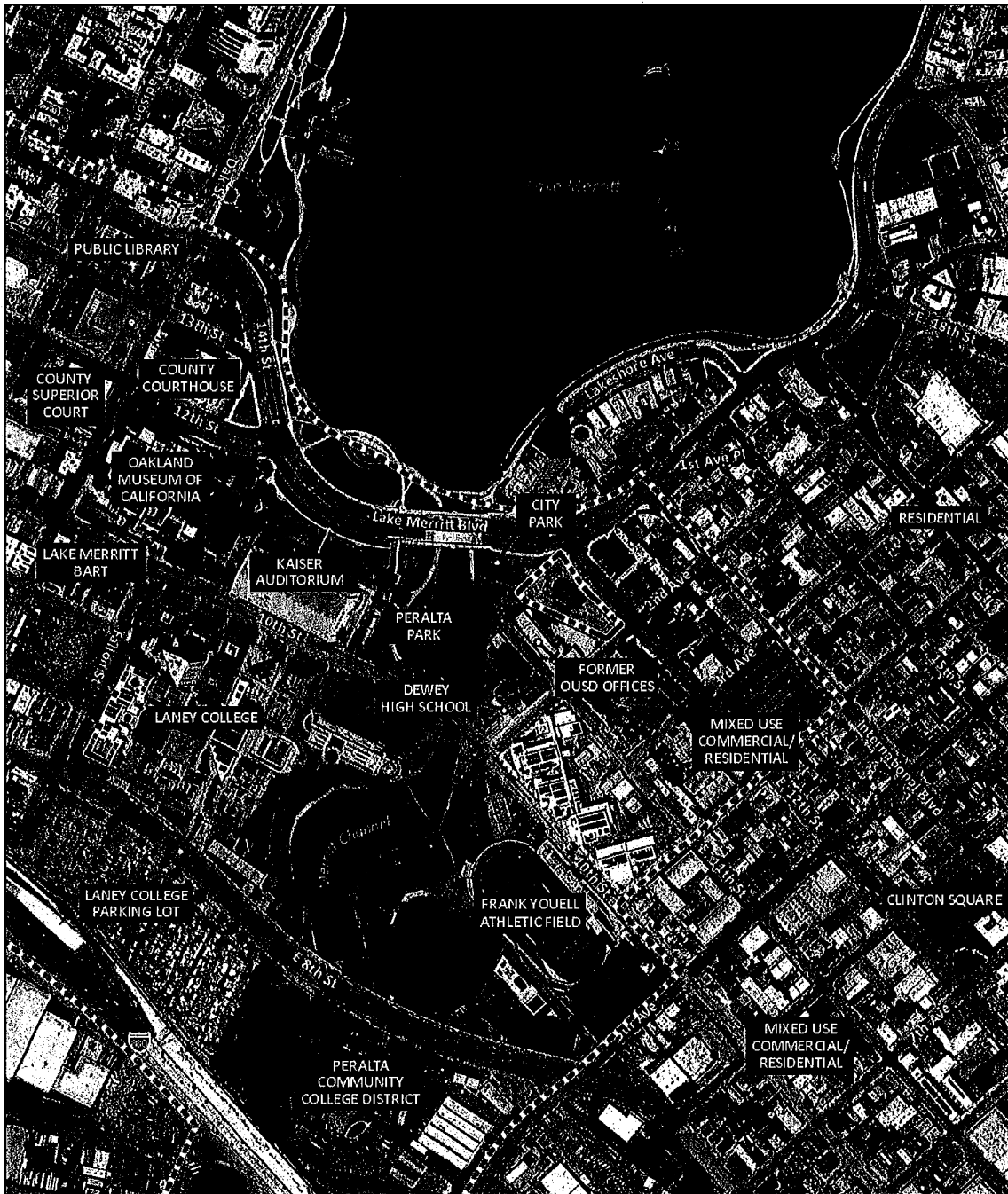
This illustration is an excerpt from the recorded parcel map. The property contains a total of ± 0.925 acres, or $\pm 40,271$ square feet.



The Property consists of a single parcel as illustrated below. Since the Property (and boundaries) have been defined relatively recently, there is no established street address to date.

The Property is gently downsloping from east to west, and at grade with the street frontages. It fronts on East 12th Street for ± 305 feet, and on 2nd Avenue for ± 73 feet. The westerly site boundary is formed by a new City park constructed as part of the recently completed East 12th Street Reconstruction Project. The southerly boundary is with the former Oakland Unified School District (OUSD) administration building, which fronts on East 10th Street and 2nd Avenue.

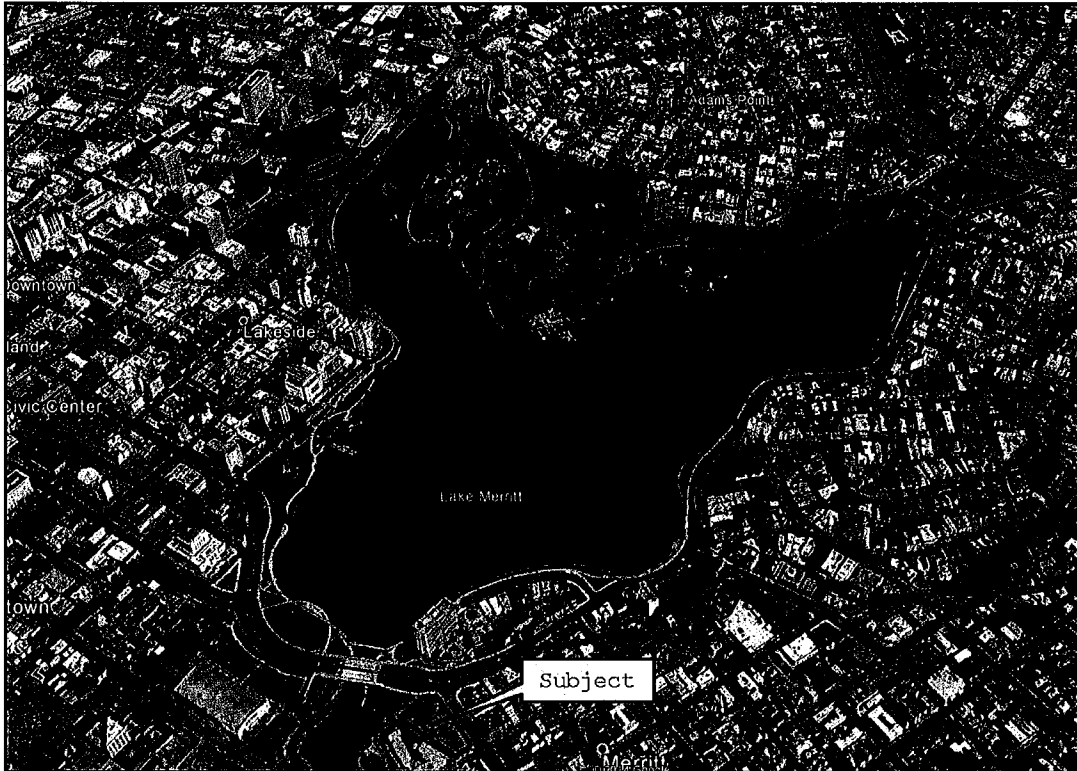


Attachment A: Parcel & Aerial Maps, 12th Street Remainder Parcel

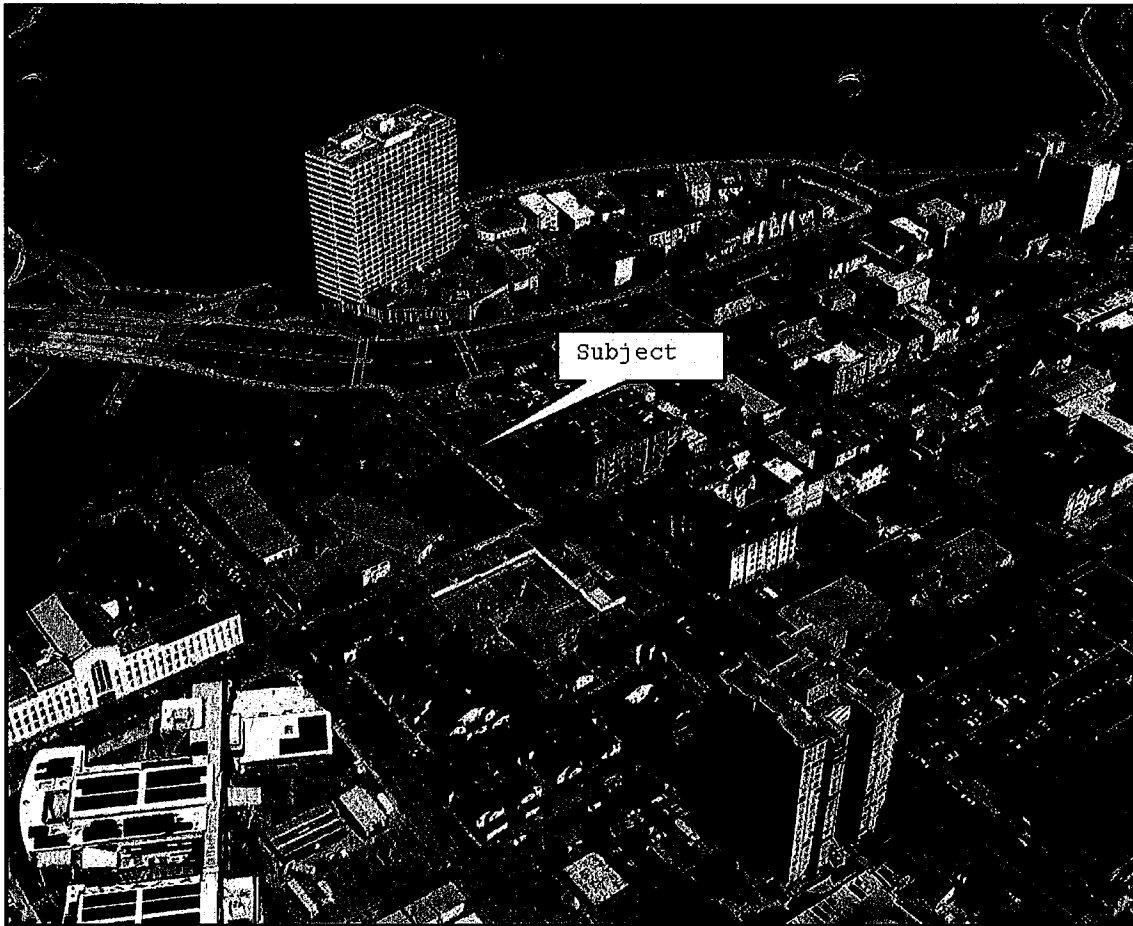


 Remainder Parcel Boundary
 Lake Merritt Station Area Plan Boundary

Attachment A: Parcel & Aerial Maps, 12th Street Remainder Parcel



Attachment A: Parcel & Aerial Maps, 12th Street Remainder Parcel



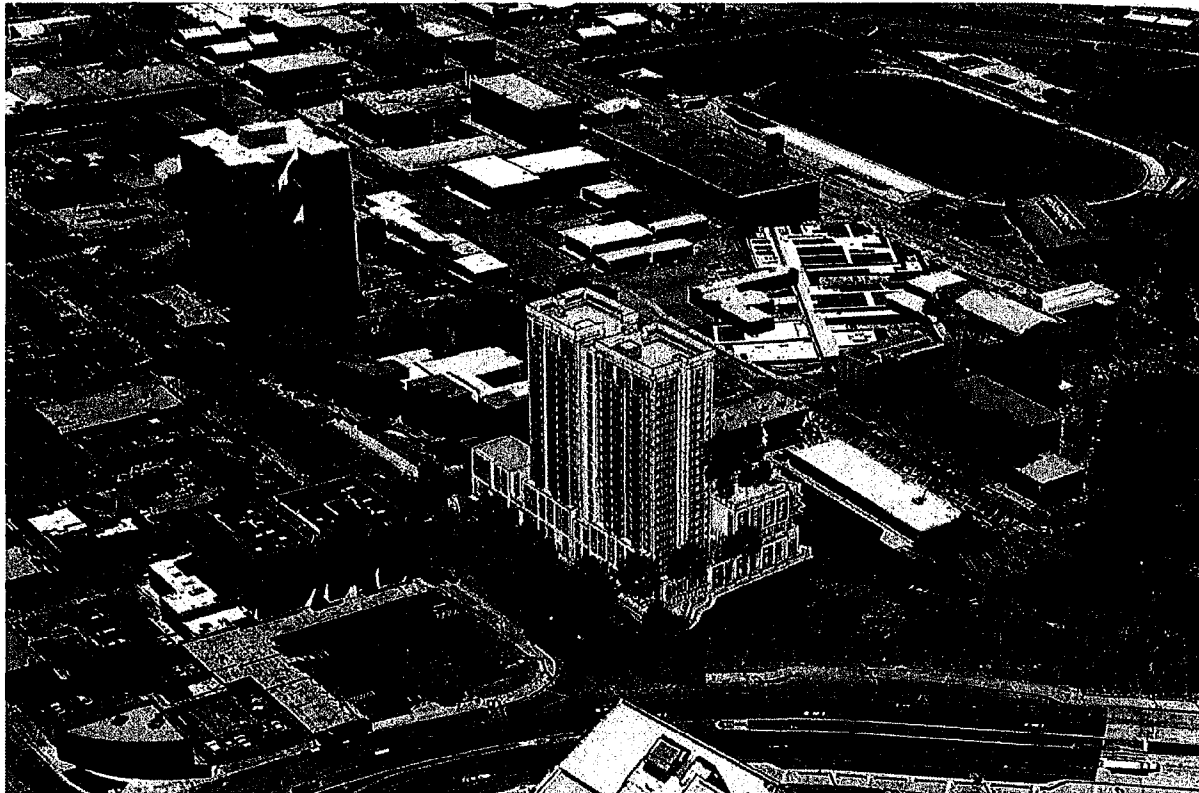
Attachment B: Development Plans for UrbanCore's "LakeHouse Residences"

UrbanCore's proposed LakeHouse Residence is a 24-story residential apartment tower with a 3-level podium base (one level below grade, two above grade) with 209 parking stalls, 298 residential units, approximately 1,500 square feet of ground level commercial space for a café with a terrace, and associated amenities and improvements:

- a lobby and lounge area, on ground level (3,000 sf)
- a recreation room and exercise room, on 3rd fl (approx. 2,000 sf)
- a garden and plaza, on the 3rd fl (approx. 15,400 sf, above the garage)
- a green roof, on the 6th fl (approx. 3,400 sf)
- a roof terrace, on the 8th fl (approx. 3,500 sf)
- off-site improvements that involve enhancement of the adjacent City-owned park (0.91 acre) with natural landscaping and its ongoing maintenance



Attachment B: Development Plans for UrbanCore's "LakeHouse Residences"



Attachment B: Development Plans for UrbanCore's "LakeHouse Residences"



Attachment B: Development Plans for UrbanCore's "LakeHouse Residences"



ATTACHMENT C

DDA TERM SHEET “LAKEHOUSE RESIDENCES” 12TH ST REMAINDER PARCEL

Note- This term sheet shall serve as the basis for the negotiations of a detailed final disposition agreement between City staff and the developer. The terms hereof are not binding on the City unless and until the Developer and the City Administrator, pursuant to City Council authorization, have executed a mutually acceptable disposition agreement for the proposed project.

1	OWNER	City of Oakland
2A	DEVELOPER	UrbanCore Development, LLC, a California limited liability company, or a to-be-formed limited liability company in which an entity directly or indirectly controlled by UDR, Inc., a Maryland corporation (“UDR”), and UrbanCore Development, LLC, a California limited liability company, are members (“Developer”).
2B	GUARANTY	<p>Developer to provide City a Guaranty as part of DDA. Developer must be financially strong entity, and identify a guarantor entity, with significant assets or capital commitments from its investors to complete the Project, as approved by City in its sole and absolute discretion.</p> <p>A “Form of Guaranty” will be included as an attachment to the disposition agreement and will need to be executed by the City-approved guarantor at close of escrow.</p>
3	PROPERTY	Approximately 0.92-acre of property located on the southeastern edge of the Lake Merritt district in the City of Oakland, Alameda County. The triangular parcel is generally bounded by Lake Merritt Boulevard to the north, East 12 th Street to the east, 2nd Avenue and a vacant building formerly occupied by the Oakland Unified School District (OUSD) to the south, and a recently re-vegetated 0.91-acre City park/water treatment basin installed as part of the East 12th Street Reconstruction Project and Lake Merritt Channel to the west. Lake Merritt is located immediately to the north of the site across Lake Merritt Boulevard.

4	PROJECT DESCRIPTION	A 21-story residential apartment tower over a 3-level podium base, including 298 market-rate residential units, 2,000 square feet of ground level market-rate commercial space, a minimum of 209 parking spaces, and associated amenities and improvements. The proposed building would not exceed an overall height of 275 feet, NOT including architectural and mechanical features that extend above the roofline.
5	PURCHASE PRICE	\$ 5,100,000, based on a Fair Market Value Final Appraisal Report dated December 2014 considering the highest and best use of the property
6	TERMS OF PAYMENT/CLOSING	Purchase Price to be due and payable in cash submitted into escrow 1 business day before close of escrow. Escrow to close in accordance with the schedule of performance contained herein.
7	DEPOSIT	Within 5 business days after executing the DDA, Developer will provide a \$50,000 good faith deposit. Subject to the next sentence, said good faith deposit shall be credited to the Purchase Price at closing. If the Developer fails to close the purchase under the DDA terms, unless extended in writing by the City, or for reasons beyond the Developer's control (excepting financial ability), or the Developer otherwise defaults on any obligation under the disposition agreement, the City may exercise its option to retain the Good Faith Deposit as liquidated damages.
8	REPURCHASE OPTION	<p>In addition to all other City remedies for Developer default, if construction on the Project does not start within 30 days after close of escrow or does not diligently continue construction thereafter, or the Developer does not complete construction within the time period required under the DDA (subject in each case to extension for force majeure), the City will have the option to repurchase the Property for the original sale price (the "Option").</p> <p>City's Option is assignable or transferable in its sole and absolute discretion.</p> <p>There will be a 30 day notice and cure process for any such default, and the cure period will be extended if the default cannot reasonably be cured within such 30-day period and the Developer has commenced and is proceeding diligently with efforts to cure the default; subject, however, to an maximum cure date deadline to be negotiated by the parties.</p> <p>The City will execute and record such instruments as Developer may reasonably request to terminate the Option, at such time as the Option is no longer exercisable in accordance with its terms.</p>

9

SCHEDULE OF PERFORMANCE

Schedule assumes (1) City Planning Commission approval of Planning Application, including CEQA determination, Conditional Use Permits, and other discretionary approvals on or about April 1, 2015, (2) no appeal of the Planning Commission's approval is filed with the City Council, and (3) DDA term sheet is approved by the City Council by May 5, 2015. If the Project is subject to any appeal or subsequent challenge, the time periods below shall be tolled during the pendency of the appeal/challenge, subject to a maximum tolling period to be negotiated between the parties.

DDA Schedule of Performance	# of months after City Council approval of DDA
1. Developer submits 2 years of audited financial statements for each principal and joint venture partner for City review and approval.	Resubmit updates prior to close of escrow
2. Developer submits updated and refined Project Proforma (Development Budget & Operating Cash Flow) for City review and approval.	Resubmit updates prior to close of escrow
3. Developer submits Financial Plan, especially evidence of funds/equity commitments for land acquisition for City review and approval..	Resubmit updates prior to close of escrow
4. Developer submits "Construction Pre-Application" and draft "Compliance Matrix" to Bureau of Building	6
5. Developer submits "Construction Permit Application" to Bureau of Building	12
6. Developer finalizes Project Financing: construction financing (if construction of the project will be financed with a construction loan), and other sources (which may include equity commitments from the investors in Developer) and submits for City review and approval.	15
7. Developer submits approved Construction Permits	17
8. Conveyance/Closing of Escrow, Execution of Completion Guarantee	18
9. Commence Construction (within 30 days after close of escrow)	19
10. Complete Construction (30 month max.)	48

10	OFF-SITE IMPROVEMENTS	<p>Developer to be responsible for the cost of off-site improvements proposed to the existing stormwater retention basin/open space, owned by the City (0.91 acres), located adjacent to the site.</p> <p>Per the recommendations of Measure DD Coalition, CALM and City staff (and pending approval by the Parks and Recreation Advisory Commission), these improvements will include the installation of natural landscaping and will function as a passive open green space consisting mostly of native plantings, groundcover, shrubs and trees.</p>
11	TITLE INSURANCE	<p>Developer to secure title insurance policy, if desired, at its own cost and expense. The issuance of a title insurance policy in favor of Developer insuring that Developer is the owner of the fee simple title to the Property, in form and substance acceptable to Developer, and subject only to exceptions that are acceptable to Developer, and containing such endorsements as Developer may require, shall be a condition precedent to Developer's obligations to close on the acquisition of the Property under the DDA. .</p>
12	CLOSING COSTS	<p>Developer to pay all escrow fees and closing costs including, without limitation, city and any other county taxes.</p>
13	LIMITATIONS ON PROPERTY RIGHTS	<p>Without limiting Developer's title review contingencies, Developer accepts and acknowledges the Property is subject to deed restrictions and a recorded covenant to: 1) restrict use of property to a residential mixed-use project with ground floor commercial and associated building amenities, and 2) restrict property from generating "condo conversion rights".</p> <p>Developer to comply with provisions of: 1) the Central District Redevelopment Plan and nondiscrimination provisions of redevelopment law and 2) the Lake Merritt Station Area Plan</p>
14	CONDITION OF PROPERTY AT DELIVERY	<p>Developer agrees to accept the Property "as is" in its current condition without warranty express or implied by the City, including without limitation, with respect to the presence of hazardous materials known or unknown on or near the Property.</p> <p>The soil stored on the site due to recent construction activities of the City's Public Works Dept will be removed prior to conveyance to Developer</p>

15	ENVIRONMENTAL REMEDICATION	<p>Environmental Notice. The City hereby gives notice to the Developer that, to the best of its knowledge and relying on analysis performed by its environmental consultants, there are no Hazardous Materials present on or beneath the Property other than those set forth in those environmental site assessments (ESA) and reports as follows:</p> <ul style="list-style-type: none"> • <i>Phase I ESA, by Adanta, dated 9/1/14</i> • <i>several soils & geotechnical reports by ESA developed for the E12th Street Reconstruction Project, dating from 2006 to 2009</i> <p>However, depending on the findings of a pending Phase II report, a not-to exceed-amount will be determined and set aside in escrow for the purposes of reimbursing Developer during the construction for qualified receipts related to environmental remediation costs. For example, if dirty soil needs to be removed, City will reimburse Developer for only the marginal difference between the cost to remove soil and the cost to remove dirty soil.</p>
16	INDEMNIFICATION	<p>Developer shall agree to provide standard commercial hold harmless and defend provisions to the City of Oakland and its employees, officers, directors, shareholders, partners and agents. City and Developer to negotiate the various levels of indemnification and project stages as part of the DDA.</p>
17	CITY MAINTENANCE	<p>Upon Close of Escrow, Developer is responsible for all maintenance within the Property.</p> <p>City will convey one or more easements adjacent to the City open space for an area to-be defined (i.e. temporary construction easement; and long term no-build easement, use easement, and maintenance easement, including the outdoor terrace area shown on the Developer's site plan which encroaches into the City open space area) in consideration for Developer and/or subsequent owner providing on-going maintenance of the open space or the cost for ongoing maintenance of the open space in perpetuity. Developer must provide a guarantor with significant financial ability, as determined by City in its sole and absolute discretion, to guarantee payment/reimbursement to City of "perpetual" maintenance obligation.</p> <p>Open space maintenance standards to be negotiated and captured in easement itself which will be negotiated and agreed to between the Developer and the City.</p> <p>The groundcover will be low maintenance grasses and wildflowers requiring mowing once or twice a year. Temporary irrigation will be used for two or three years to establish the trees and shrubs. All plantings will adhere to Bay friendly practices and adhere to the State's Water Efficient Landscape Ordinance.</p>

18	NO COMMISSION	The parties shall hold each other harmless and defend against any claims for commissions or brokerage..
19	SIGNAGE	Developer may not install or place signage on any existing City street outside the Property or in the public corridor. Developer may install and place signage on the remaining Property in compliance with City codes, or other applicable codes or regulations.
20	STANDARD OF PROPERTY	Developer to maintain the Property and Project in first-class condition and will ensure at no time does the Property violate the City Blight Ordinance.
21	CITY PROGRAMS & COMMUNITY BENEFITS	If (and only if) the Developer decides to pursue a project that requires less than full market price for the land or includes some other City subsidy – below market loan, tax credits, etc. – the following City benefits would be required: labor peace agreement, prevailing wages, living wages, local and small local business, equal benefits, disabled access, and apprenticeship/job training/first source hiring programs, and any other benefit which a City statute requires by its terms applies to the Project. Developer is not exempt from any other benefit or requirement imposed by any governmental entity other than the City.
22	PAYMENT & PERFORMANCE BONDS	Developer to provide payment and performance bonds in an amount not less than 100% of the Project construction costs, pursuant to the Developer-executed construction contract.
23	RIGHT OF ENTRY	Developer to have the right to enter onto the property prior to transfer to conduct any investigation, testing, appraisals and other studies, at Developer's cost, required as part of its due diligence, subject to providing the City with indemnity, insurance and other reasonable conditions to entry.
24	FINANCING	DDA will include an objective standard (experience, size, etc.) of what an "Approved Lender" is, subject to administrative approval. The DDA shall include customary mortgagee protections in favor of any Approved Lender.
25	STANDARD CONDITIONS	DDA to include standard City conditions, including without limitation, completion guaranty executed on or before the Closing Date, and approval by City of financing plan, assignment and transfer, amendments to project and project approvals, default, notice and cure, and termination provisions, executed completion guaranty from Developer, copies of all required regulatory approvals, and insurance policies.

Attachment D: Analysis of Ground Lease Vs. Sale of the 12th Street Remainder Parcel

Below is a review of the pros and cons for ground lease and for sale of City property, based on the Agenda Report that accompanied Reso No. 85324 C.M.S., along with how those factors apply or do not apply in the case of the Remainder Parcel.

Ground Leasing City Property - PROS	In the case of 12 th St Remainder...	Ground Leasing City Property - CONS	In the case of 12 th St Remainder...
1. City retains ownership of a valuable City asset	By selling the parcel to a private developer, the City forever loses all its interest in the property, as opposed to leasing it long term and having the property revert back to the City for a new future use or development.	1. Ongoing liability for City	By leasing the property, the City retains potential landowner liability, including environmental and tort issues. (However, while not an absolute guarantee, these risks typically can be covered by requiring the ground tenant to obtain appropriate insurance, and provide warranties to the City).
2. City realizes benefit of property appreciation	By ground leasing, the City retains the right to get back the property at the end of the ground lease. In this case, the property may well have appreciated considerably over the ground lease term. The City, rather than a private developer, would then be the beneficiary of the property's appreciation for the public benefit.	2. Financing problems for Developer	A change to a ground lease would require UDR to re-evaluate this investment opportunity and could cause the project to be infeasible and/or slow development.
3. As Landlord, City increases its ability to oversee and enforce City policy objectives	Landlords have considerable more leverage to enforce lease provisions than a seller has once the seller has actually transferred its interest in land to a buyer. Accordingly, the City could more easily enforce community benefits, city policies and monitor and enforce the tenant's lease covenants and promises.	3. There is no downside to the additional leverage the landlord has to enforce the lease.	A sale, using a disposition and development agreement (DDA), also includes enforcement provisions requiring the developer to comply with City policies and objectives, although these enforcement provisions are more difficult to enforce and do not provide the same enforcement leverage as a lease.

Attachment D: Analysis of Ground Lease Vs. Sale of the 12th Street Remainder Parcel

Ground Leasing City Property- PROS	In the case of 12th St Remainder ...	Ground Leasing City Property- CONS	In the case of 12th St Remainder...
4. City preserves increased flexibility and potential profitability from a revenue stream	If the City desires a large upfront payment, the City could require the tenant to make a significant upfront lease payment, similar to a purchase price.	4. Because the City is retaining its right to get back the property at the end of the lease term and thereby reserving to the City the right to property appreciation and ownership, the upfront rent payment can approximate, but not equal the amount the City could get from a sale. The trade-off from the lesser up-front rent is the City's long-term right to property appreciation by retaining ownership rights.	In terms of "Net Present Value", the ongoing revenue stream from this Project that the City can receive through a likely ground lease deal is worth less than a payment upfront. The FMV appraisal already assumed sale of land for development of high-density residential, so a new appraisal would be needed to determine the FMV of land if it is for lease. That amount will be lower.
5. Retaining Public Property	By ground leasing the site to the developer, the City would be retaining a valuable future City property when the lease term is up.	5. Potential for higher infrastructure cost to City	Because title to the land would revert to the City when the lease expires, in some, but not all, cases developers legitimately expect the City to pay more upfront for infrastructure costs.
6. Meeting the City's Financial Goals	In general, sale of land meets the City's short term financial goals while ground lease meets the City's long term financial and public policy goals of maintaining public property for the public.	6. Less marketable	Most developers in California build projects as condominiums so that they can sell the project or the units when condominiums are valued higher than rental projects. Although condominium projects can be (and are) ground-leased in certain cases, leasing to a developer can reduce potential profit and increase its risks.
7. City can enforce Project Labor Agreements	Leasing provides greater legal justification for enforcing a Project Labor Agreement.	7. No downside to this factor, but a PLA is not contemplated in this project	City is not contemplating requiring a Project Labor Agreement on this deal.

Attachment D: Analysis of Ground Lease Vs. Sale of the 12th Street Remainder Parcel

Sale of City Property - PROS	As applied to 12 th St Remainder	Sale of City Property - CONS	As applied to 12 th St Remainder
1. Meeting the City's short-term Financial Goals	\$4 million of revenue from the sale of this transaction was already budgeted in the City's FY 2013-15 Budget.	1. Possible windfall to private developer by permanently transferring a valuable City asset to private use	Developer is paying the FMV for the land and is projecting to meet the minimum returns on investment required to attract the capital/equity that is needed for a development project of this size. Developer will enhance and maintain the adjacent open space on behalf of the City that is retained for public use. Developer will also be giving up 298 "condo conversion credits" that can be worth as much as \$20K each.
2. Faster Development	Developer has been working on this project for over two years and waiting on the City Council to adopt the Lake Merritt Station Area Plan and Final EIR. Developer is ready to move quickly and will start construction once the Planning Department issues building permits. Commencement of a new high rise construction in Oakland is likely to precipitate the developer interest and investment that Oakland is seeking to attract.	2. City gives up its longer-term right to keep the parcel as public property, and the City's right to future property appreciation.	The City's financial goal in FY 2013-15 is to receive \$4 million in revenue from land sale proceeds. The Remainder Parcel is the only property in the City's control that can meet this goal.

ATTACHMENT E: MAJOR HOUSING PROJECTS IN OAKLAND WITH AFFORDABLE HOUSING - COMPLETED OR IN PROGRESS SINCE 2012

City Council District	Project Name	Property Address	# of Affordable Units	Developer	Project Status	Year Completed	
1	1	Mural	MacArthur BART TOD	90	Bridge Housing	Under Construction	n/a
2	2	Merritt Crossings	609 Oak Street	70	SAHA	Completed New Const	2012
3		Clinton Commons	720 E. 11th Street	55	RCD	Completed New Const	2012
4		Lakeside Senior	1507 Second Ave	91	SAHA/ OHA	Completed New Const	2014
5		11th & Jackson	11th Street & Jackson	71	EBALDC	Pre-Dev New Const	n/a
6	3	Harrison Street Senior Housing	1633 Harrison Street	73	Christian Church Homes	Completed New Const	2012
7		Project Pride	2577-79 San Pablo Avenue	20	SAHA/ East Bay Community Recovery Project	Completed New Const	2012
8		Cathedral Gardens	638 21st Street	100	EAH	Completed New Const	2014
9		Ave Vista	460 Grand Avenue	68	Bridge Housing/OHA	Under Construction	n/a
10		1701 MLK Jr. Way	1701 MLK Jr. Way	26	RCD	Under Construction	n/a
11		Civic Center Apts	632 14th Street	40	Meta Housing	Pre-Dev New Const	n/a
12	4	Rising Oaks (aka Emancipation Village)	3800 Coolidge Avenue	32	SAHA	Completed New Const	2013
13		Redwood Hill	4856 Calaveras Ave	28	SAHA	Planning	n/a
14	5	Terraza Palmera - St. Joseph Family Apartments	1272 26th Avenue	62	Bridge Housing	Completed New Const	2013
15		Fruitvale Village - Phase Iia	35th Ave & 12th St	80	Unity Council/ LMD	Planning	
16	7	Lion Creek Crossings - Phase IV	6951 Lion Way	72	EBALDC	Completed New Const	2012
17		Kinsell Commons	949 85th Avenue	22	Habitat for Humanity	Completed New Const	2012
18		MacArthur Apartments	9800 MacArthur Blvd	32	AMCAL	Completed New Const	2013
19		Oakland 34	10920 MacArthur Blvd	33	Meta Housing	Completed New Const	2014
20		Lion Creek Crossings - Phase V	6951 Lion Way	128	EBALDC/OHA	Completed New Const	2014
21		Brookfield Court	9500 Edes Ave	12	Habitat for Humanity	Completed New Const	2014
22		94th & International	94th Ave & International	59	The Related Companies	Pre-Dev New Const	n/a
			Total Units	1264			

updated March 2015

Note: Excluded from this list are those affordable housing projects completed with public subsidy for rehab (i.e. not new construction), such as the 136 units of CA Hotel and 106 units of the Savoy; as well as "workforce housing" not relying on public subsidy or a City Regulatory Agreement, such as the 110 units of Coliseum Transit Village currently in planning by UrbanCore.

2015 MAR 31 PM 12:47

Approved as to Form



Deputy City Attorney

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AUTHORIZING: (1) THE CITY ADMINISTRATOR, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED DOCUMENTS BETWEEN THE CITY OF OAKLAND, AND A DEVELOPMENT ENTITY COMPRISED OF URBANCORE DEVELOPMENT, LLC, AND UDR, INC., (OR ITS RELATED ENTITIES OR AFFILIATES) FOR SALE OF THE 12TH STREET REMAINDER PARCEL LOCATED AT E12TH STREET AND 2ND AVENUE FOR NO LESS THAN \$5.1 MILLION AND DEVELOPMENT AS A RESIDENTIAL MIXED-USE PROJECT, ALL OF THE FOREGOING DOCUMENTS TO BE IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE TERM SHEET ATTACHED AS EXHIBIT A; (2) SET-ASIDE OF NO MORE THAN \$500,000 FROM LAND SALES PROCEEDS FOR REMEDIATION OF PROPERTY, AND (3) APPROPRIATION OF \$200,000 FROM LAND SALES PROCEEDS TO FUND AN ASSET PORTFOLIO MANAGEMENT PLAN

WHEREAS, the City owns approximately 0.925 acres of property bounded by East 12th Street to the east, Second Avenue and property owned by the Oakland Unified School District to the south, newly created open space to the west, and Lake Merritt Boulevard to the north (the "Property"), commonly known as the 12th Street Remainder Parcel; and

WHEREAS, the Property was previously public right-of-way for that portion of E. 12th Street situated between 1st and 2nd Avenue; and

WHEREAS, disposition of the Property is governed by Chapter 2.42 of the Oakland Municipal Code; and

WHEREAS, on December 21, 2012, the City issued a Request for Proposals ("RFP") to develop the Property; and

WHEREAS, of the two proposals received in response to the RFP, the City's review panel awarded the highest number of points to the proposal submitted by UrbanCore-Integral, LLC ("UCI"); and

WHEREAS, UCI was a partnership between UrbanCore Development, LLC ("UrbanCore") and The Integral Group, LLC; and

WHEREAS, the City Council authorized an Exclusive Negotiating Agreement in July 2013 ("ENA") between the City and UCI for the purposes of developing a project proposal for City review and approval, conducting California Environmental Quality Act ("CEQA") review and approval, and negotiating the terms and conditions of a Disposition and Development Agreement ("DDA") (Reso No. 84492 C.M.S.); and

WHEREAS, UrbanCore satisfied all the requirements of the ENA; and

WHEREAS, a December 2014 appraisal conducted by Yovino & Young concluded the as-is Fair Market Value of the land is \$5.1 million, considering the highest and best use of the Property to be a multi-unit residential project that conforms to the new zoning regulations under the Lake Merritt Station Area Plan; and

WHEREAS, UrbanCore is offering to pay \$5.1 million for the Property; and

WHEREAS, UrbanCore proposes to build a 24-story residential apartment tower with a three-level podium base, including approximately 298 residential units, approximately 2,000 square feet of ground level commercial space, approximately 209 parking spaces and associated amenities and improvements (the "Project") that conforms to the new zoning regulations under the Lake Merritt Station Area Plan; and

WHEREAS, UDR, Inc. is an S&P 400 Company and Real Estate Investment Trust ("REIT") with a demonstrated performance history of delivering dependable returns by successfully managing, buying, selling, developing and redeveloping attractive real estate properties in targeted U.S. markets; and

WHEREAS, UrbanCore proposes to form a new Limited Liability Company in a partnership with UDR, Inc to acquire and develop the Property; and

WHEREAS, since the Property is being sold for development for a particular use to promote the economic development, housing, environmental, and community development goals of the City, the Property is not "surplus" property of the City; and

WHEREAS, staff is recommending a set-aside of no more than \$500,000 from land sales proceeds for remediation of Property, pending findings of a Phase II environmental investigation to determine qualified remediation costs, if any; and

WHEREAS, Real Estate Services Division, under the direction of the City Administrator and in coordination with the Finance Department and the Public Works Department, has identified the need to develop an Asset Portfolio Management Plan for City-owned real estate, and is requesting that, unless previously funded from the sale proceeds of 3455 and 3461 Champion Street pursuant to Ordinance No. 13264 C.M.S., the Council appropriate \$200,000 from the sale proceeds of this Property transaction to fund such Plan; and

WHEREAS, a Disposition and Development Agreement (“DDA”) will set forth the terms and conditions under which the City will sell the Property to the development entity comprised of UrbanCore and UDR, Inc. (or its Related Entities or Affiliates; herein “Developer”) and by which the Developer will construct improvements to the Property; and

WHEREAS, the City Council adopted a Resolution in December 2014 to establish a general policy to lease rather than sell City property (Reso No. 85324 C.M.S.); and

WHEREAS, staff is recommending a sale of the Property instead of a ground lease in this case because a sale is necessary to promote the economic development and housing goals of the City for the reasons set forth in the Agenda Report for this item; now therefore

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

SECTION 1. The City Council hereby finds, pursuant to Resolution No. 85324 C.M.S., that it is in the best interests of the City to sell rather than lease the Property for the reasons described in the Agenda Report for this item, and hereby authorizes the conveyance of the Property to the Developer pursuant to the terms of the documents described in Section 6 hereof for the price of \$5.1 million.

SECTION 2. The City Council hereby finds and determines, based on the appraisal conducted by Yovino & Young, that the Property is being conveyed at its fair market value, and that the City is not granting any economic development subsidy to the Project.

SECTION 3. The City Council authorizes the City Administrator to deposit land sales proceeds in the General Purpose Fund (1010), Real Estate Services Organization (85231), Sale of Land (48111), Non-Project (0000000), Real Estate Program (PS32).

SECTION 4. The City Council authorizes the City Administrator to set-aside in escrow no more than \$500,000 from land sales proceeds for remediation of Property pursuant to the terms of the DDA and to be released directly to Developer as remediation work is completed; any amount remaining in escrow after remediation work is complete will be deposited in the General Purpose Fund (1010), Real Estate Services Organization (85231), Sale of Land (48111), Non-Project (0000000), Real Estate Program (PS32).

SECTION 5. Unless previously funded from the sale proceeds of 3455 and 3461 Champion Street pursuant to Ordinance No. 13264 C.M.S., the City Council authorizes the City Administrator to appropriate \$200,000 from this transaction’s land sales proceeds to the City’s Real Estate Services Division (General Fund (1010), Real Estate Division (85231), Contract Contingency (54011), and Real

Estate (PS32)) to fund the development of an Asset Portfolio Management Plan for all City-owned real estate.

SECTION 6. The City Council hereby authorizes the City Administrator or his/her designee, without returning to the City Council, to negotiate and execute: (1) a Disposition and Development Agreement and related documents with the Developer, for the sale and development of the Property, all of the foregoing documents to be in a form and content substantially in conformance with the Term Sheet attached as Exhibit A to this Ordinance; (2) grant deeds and any other agreements or documents as necessary to convey the Property to the Developer; (3) such other additions, amendments or other modifications to any of the foregoing documents that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions contemplated by this Ordinance, to be conclusively evidenced by the execution and delivery by the City Administrator of any such amendments; and (4) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the sale and development of the Property 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 7. The City Administrator, without returning to the City Council, shall determine satisfaction of conditions precedent to the conveyance of the Property to the Developer.

SECTION 8. All agreements associated with the Property and the Project 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 9. The City Council finds and determines that the anticipated environmental effects of the project have been evaluated by the Lake Merritt Station Area Plan Final Environmental Impact Report (Final EIR) (certified November 2014) and, as supported by substantial evidence in the record, no further environmental review is required for sale of the Property and the development of the Project. As separate and independent bases, the sale of Property and development of the Project are Categorical Exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15332 of the State CEQA Guidelines (in-fill exemption); Section 15183 of the State CEQA Guidelines (Projects consistent with a Community Plan, General Plan or Zoning); and, Section 15183.3 of the State CEQA Guidelines (Streamlining for Infill Projects).

SECTION 10. The 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 11. 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, including without limitation the Planning Commission Report and

all notices relating to this Ordinance and the DDA;

- B. All oral and written evidence received by City staff and the City Council before and during the consideration of this Ordinance, including without limitation the Planning Commission consideration of general plan conformity; and
- C. 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 12. The custodians and locations of the documents or other materials which constitute the record of proceedings upon which 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 13. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 14. 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.

IN COUNCIL, OAKLAND, CALIFORNIA, _____ 2015

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

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

EXHIBIT A

DDA TERM SHEET “LAKEHOUSE RESIDENCES” 12TH ST REMAINDER PARCEL

Note- This term sheet shall serve as the basis for the negotiations of a detailed final disposition agreement between City staff and the developer. The terms hereof are not binding on the City unless and until the Developer and the City Administrator, pursuant to City Council authorization, have executed a mutually acceptable disposition agreement for the proposed project.

1	OWNER	City of Oakland
2A	DEVELOPER	UrbanCore Development, LLC, a California limited liability company, or a to-be-formed limited liability company in which an entity directly or indirectly controlled by UDR, Inc., a Maryland corporation (“UDR”), and UrbanCore Development, LLC, a California limited liability company, are members (“Developer”)
2B	GUARANTY	<p>Developer to provide City a Guaranty as part of DDA. Developer must be financially strong entity, and identify a guarantor entity, with significant assets or capital commitments from its investors to complete the Project, as approved by City in its sole and absolute discretion.</p> <p>A “Form of Guaranty” will be included as an attachment to the disposition agreement and will need to be executed by the City-approved guarantor at close of escrow.</p>
3	PROPERTY	Approximately 0.92-acre of property located on the southeastern edge of the Lake Merritt district in the City of Oakland, Alameda County. The triangular parcel is generally bounded by Lake Merritt Boulevard to the north, East 12 th Street to the east, 2nd Avenue and a vacant building formerly occupied by the Oakland Unified School District (OUSD) to the south, and a recently re-vegetated 0.91-acre City park/water treatment basin installed as part of the East 12th Street Reconstruction Project and Lake Merritt Channel to the west. Lake Merritt is located immediately to the north of the site across Lake Merritt Boulevard.

4	PROJECT DESCRIPTION	A 21-story residential apartment tower over a 3-level podium base, including 298 market-rate residential units, 2,000 square feet of ground level market-rate commercial space, a minimum of 209 parking spaces, and associated amenities and improvements. The proposed building would not exceed an overall height of 275 feet, NOT including architectural and mechanical features that extend above the roofline.
5	PURCHASE PRICE	\$ 5,100,000, based on a Fair Market Value Final Appraisal Report dated December 2014 considering the highest and best use of the property
6	TERMS OF PAYMENT/CLOSING	Purchase Price to be due and payable in cash submitted into escrow 1 business day before close of escrow. Escrow to close in accordance with the schedule of performance contained herein.
7	DEPOSIT	Within 5 business days after executing the DDA, Developer will provide a \$50,000 good faith deposit. Subject to the next sentence, said good faith deposit shall be credited to the Purchase Price at closing. If the Developer fails to close the purchase under the DDA terms, unless extended in writing by the City, or for reasons beyond the Developer's control (excepting financial ability), or the Developer otherwise defaults on any obligation under the disposition agreement, the City may exercise its option to retain the Good Faith Deposit as liquidated damages.
8	REPURCHASE OPTION	<p>In addition to all other City remedies for Developer default, if construction on the Project does not start within 30 days after close of escrow or does not diligently continue construction thereafter, or the Developer does not complete construction within the time period required under the DDA (subject in each case to extension for force majeure), the City will have the option to repurchase the Property for the original sale price (the "Option").</p> <p>City's Option is assignable or transferable in its sole and absolute discretion.</p> <p>There will be a 30 day notice and cure process for any such default, and the cure period will be extended if the default cannot reasonably be cured within such 30-day period and the Developer has commenced and is proceeding diligently with efforts to cure the default; subject, however, to an maximum cure date deadline to be negotiated by the parties.</p> <p>The City will execute and record such instruments as Developer may reasonably request to terminate the Option, at such time as the Option is no longer exercisable in accordance with its terms.</p>

9

SCHEDULE OF PERFORMANCE

Schedule assumes (1) City Planning Commission approval of Planning Application, including CEQA determination, Conditional Use Permits, and other discretionary approvals on or about April 1, 2015, (2) no appeal of the Planning Commission's approval is filed with the City Council, and (3) DDA term sheet is approved by the City Council by May 5, 2015. If the Project is subject to any appeal or subsequent challenge, the time periods below shall be tolled during the pendency of the appeal/challenge, subject to a maximum tolling period to be negotiated between the parties.

DDA Schedule of Performance	# of months after City Council approval of DDA
1. Developer submits 2 years of audited financial statements for each principal and joint venture partner for City review and approval.	Resubmit updates prior to close of escrow
2. Developer submits updated and refined Project Proforma (Development Budget & Operating Cash Flow) for City review and approval.	Resubmit updates prior to close of escrow
3. Developer submits Financial Plan, especially evidence of funds/equity commitments for land acquisition for City review and approval..	Resubmit updates prior to close of escrow
4. Developer submits "Construction Pre-Application" and draft "Compliance Matrix" to Bureau of Building	6
5. Developer submits "Construction Permit Application" to Bureau of Building	12
6. Developer finalizes Project Financing: construction financing (if construction of the project will be financed with a construction loan), and other sources (which may include equity commitments from the investors in Developer) and submits for City review and approval.	15
7. Developer submits approved Construction Permits	17
8. Conveyance/Closing of Escrow, Execution of Completion Guarantee	18
9. Commence Construction (within 30 days after close of escrow)	19
10. Complete Construction (30 month max.)	48

10	OFF-SITE IMPROVEMENTS	<p>Developer to be responsible for the cost of off-site improvements proposed to the existing stormwater retention basin/open space, owned by the City (0.91 acres), located adjacent to the site.</p> <p>Per the recommendations of Measure DD Coalition, CALM and City staff (and pending approval by the Parks and Recreation Advisory Commission), these improvements will include the installation of natural landscaping and will function as a passive open green space consisting mostly of native plantings, groundcover, shrubs and trees:</p>
11	TITLE INSURANCE	<p>Developer to secure title insurance policy, if desired, at its own cost and expense. The issuance of a title insurance policy in favor of Developer insuring that Developer is the owner of the fee simple title to the Property, in form and substance acceptable to Developer, and subject only to exceptions that are acceptable to Developer, and containing such endorsements as Developer may require, shall be a condition precedent to Developer's obligations to close on the acquisition of the Property under the DDA.</p>
12	CLOSING COSTS	<p>Developer to pay all escrow fees and closing costs including, without limitation, city and any other county taxes.</p>
13	LIMITATIONS ON PROPERTY RIGHTS	<p>Without limiting Developer's title review contingencies, Developer accepts and acknowledges the Property is subject to deed restrictions and a recorded covenant to: 1) restrict use of property to a residential mixed-use project with ground floor commercial and associated building amenities, and 2) restrict property from generating "condo conversion rights".</p> <p>Developer to comply with provisions of: 1) the Central District Redevelopment Plan and nondiscrimination provisions of redevelopment law and 2) the Lake Merritt Station Area Plan</p>
14	CONDITION OF PROPERTY AT DELIVERY	<p>Developer agrees to accept the Property "as is" in its current condition without warranty express or implied by the City, including without limitation, with respect to the presence of hazardous materials known or unknown on or near the Property.</p> <p>The soil stored on the site due to recent construction activities of the City's Public Works Dept will be removed prior to conveyance to Developer</p>

15	ENVIRONMENTAL REMEDIATION	<p>Environmental Notice. The City hereby gives notice to the Developer that, to the best of its knowledge and relying on analysis performed by its environmental consultants, there are no Hazardous Materials present on or beneath the Property other than those set forth in those environmental site assessments (ESA) and reports as follows:</p> <ul style="list-style-type: none"> • <i>Phase I ESA, by Adanta, dated 9/1/14</i> • <i>several soils & geotechnical reports by ESA developed for the E12th Street Reconstruction Project, dating from 2006 to 2009</i> <p>However, depending on the findings of a pending Phase II report, a not-to exceed-amount will be determined and set aside in escrow for the purposes of reimbursing Developer during the construction for qualified receipts related to environmental remediation costs. For example, if dirty soil needs to be removed, City will reimburse Developer for only the marginal difference between the cost to remove soil and the cost to remove dirty soil.</p>
16	INDEMNIFICATION	<p>Developer shall agree to provide standard commercial hold harmless and defend provisions to the City of Oakland and its employees, officers, directors, shareholders, partners and agents. City and Developer to negotiate the various levels of indemnification and project stages as part of the DDA.</p>
17	CITY MAINTENANCE	<p>Upon Close of Escrow, Developer is responsible for all maintenance within the Property.</p> <p>City will convey one or more easements adjacent to the City open space for an area to-be defined (i.e. temporary construction easement; and long term no-build easement, use easement, and maintenance easement, including the outdoor terrace area shown on the Developer's site plan which encroaches into the City open space area) in consideration for Developer and/or subsequent owner providing on-going maintenance of the open space or the cost for ongoing maintenance of the open space in perpetuity. Developer must provide a guarantor with significant financial ability, as determined by City in its sole and absolute discretion, to guarantee payment/reimbursement to City of "perpetual" maintenance obligation.</p> <p>Open space maintenance standards to be negotiated and captured in easement itself which will be negotiated and agreed to between the Developer and the City.</p> <p>The groundcover will be low maintenance grasses and wildflowers requiring mowing once or twice a year. Temporary irrigation will be used for two or three years to establish the trees and shrubs. All plantings will adhere to Bay friendly practices and adhere to the State's Water Efficient Landscape Ordinance.</p>

18	NO COMMISSION	The parties shall hold each other harmless and defend against any claims for commissions or brokerage..
19	SIGNAGE	Developer may not install or place signage on any existing City street outside the Property or in the public corridor. Developer may install and place signage on the remaining Property in compliance with City codes, or other applicable codes or regulations.
20	STANDARD OF PROPERTY	Developer to maintain the Property and Project in first-class condition and will ensure at no time does the Property violate the City Blight Ordinance.
21	CITY PROGRAMS & COMMUNITY BENEFITS	If (and only if) the Developer decides to pursue a project that requires less than full market price for the land or includes some other City subsidy – below market loan, tax credits, etc. – the following City benefits would be required: labor peace agreement, prevailing wages, living wages, local and small local business, equal benefits, disabled access, and apprenticeship/job training/first source hiring programs, and any other benefit which a City statute requires by its terms applies to the Project. Developer is not exempt from any other benefit or requirement imposed by any governmental entity other than the City.
22	PAYMENT & PERFORMANCE BONDS	Developer to provide payment and performance bonds in an amount not less than 100% of the Project construction costs, pursuant to the Developer-executed construction contract.
23	RIGHT OF ENTRY	Developer to have the right to enter onto the property prior to transfer to conduct any investigation, testing, appraisals and other studies, at Developer's cost, required as part of its due diligence, subject to providing the City with indemnity, insurance and other reasonable conditions to entry.
24	FINANCING	DDA will include an objective standard (experience, size, etc.) of what an "Approved Lender" is, subject to administrative approval. The DDA shall include customary mortgagee protections in favor of any Approved Lender.
25	STANDARD CONDITIONS	DDA to include standard City conditions, including without limitation, completion guaranty executed on or before the Closing Date, and approval by City of financing plan, assignment and transfer, amendments to project and project approvals, default, notice and cure, and termination provisions, executed completion guaranty from Developer, copies of all required regulatory approvals, and insurance policies.

NOTICE AND DIGEST

An Ordinance Authorizing:

- (1) the City Administrator, without returning to the City Council, to negotiate and execute a Disposition And Development Agreement and related documents between the City of Oakland, and a development entity comprised of UrbanCore Development, LLC, and UDR, INC., (or its Related entities or Affiliates) for sale of the 12th Street Remainder Parcel located at E12th Street and 2nd Avenue for no less than \$5.1 million and development as a residential mixed-use project, all of the foregoing documents to be in a form and content substantially in conformance with the term sheet attached as Exhibit A;
- (2) a set-aside of no more than \$500,000 from land sales proceeds for remediation of property, and
- (3) appropriation of \$200,000 from land sales proceeds to fund an asset portfolio management plan

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2015 MAR 31 PM 12:47