

CITY OF OAKLAND

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OAKLAND
2017 JUN -1 PM 4:40

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: Fruitvale Transit Village Phase IIA-
Ground Lease Amended from 66 to
99 Years

DATE: May 9, 2017

City Administrator Approval

Date:

6/1/17

RECOMMENDATION

Staff Recommends That City Council Adopt The Following Legislation

An Ordinance Amending Ordinances No. 13313 C.M.S., No. 13346 C.M.S., And No. 13387 C.M.S. (Collectively "The Authorizing Ordinance") To Extend The Term Of The Ground Lease Between The City, The Spanish Speaking Unity Council And The East Bay Asian Local Development Corporation And/Or Related Entities For The Development Of Mixed Income Housing For The Fruitvale Transit Village Phase IIA From A Term Of Sixty-Six (66) Years To Ninety-Nine (99) Years.

EXECUTIVE SUMMARY

The purpose of this amendment is to increase the ground lease term from 66 years to 99 years for the development of the Fruitvale Transit Village Phase IIA project which contains 94 units of mixed-income housing. The Fruitvale Transit Village (FTV) Phase II project is comprised of 275 units divided into two phases: Phase IIA consisting of 94 mixed-income rental housing units and Phase IIB consisting of 181 mixed-income rental housing units. The Lease Disposition and Development Agreement (LDDA) and ground lease to be amended is between the City of Oakland, the Spanish Speaking Unity Council (Unity Council), and the East Bay Asian Local Development Corporation (EBALDC) and their related entities. The LDDA is for Phase IIA only.

Resolution No. 86300 C.M.S. to amend the City Charter was approved by the voters on November 8, 2016 subsequent to the approval of the LDDA and the ground lease for Phase IIA. The Charter amendment now authorizes the City to execute leases of City property for a term up to a maximum of 99 years. As a result, staff recommends that the lease with the Unity Council, EBALDC, and affiliated entities be extended from 66 years to 99 years because this will improve the long-term financial feasibility of the project.

The Fruitvale Transit Village Phase IIA project was approved for Low Income Housing Tax Credits (LIHTC) by the Tax Credit Allocation Committee (TCAC) on May 17, 2017. A 55 year term for affordable housing is used as a benchmark for LIHTC investors because that is typically

Item: _____
CED Committee
June 13, 2017

when full repayment is due for soft loans from public agencies. Investors often analyze the project and review how the project will repay its loans. If a developer cannot show that it will have the financial ability to pay off all the public agency debt when it is due in year 55, then the debt will be characterized as a grant for tax purposes, which significantly reduce the project's tax credit amount and hence, the amount of equity investment the developer could get.

In order to repay the public agency soft debt in year 55, the developer will need the ability to refinance at that time. If the project has 66 years for a lease term, there are only 11 years left in the ground lease when those soft loans will be due. Most banks will not re-finance a 11 year loan and prefer a 30 year loan. The extension to 99 years will allow for the 30 year loan, since 33 years will be added to the lease term. A letter dated November 13, 2015 from EBALDC's attorney, Gubb and Barshay LLP, regarding Fruitvale Village Phase IIA provides an explanation of why it is required (see **Attachment A**). In exchange for agreeing to provide the longer-term lease, after the initial 55 year regulatory period, the City of Oakland will require affordability restrictions at up to 80% area median income for the remainder of the lease term.

BACKGROUND / LEGISLATIVE HISTORY

Project Description

The Phase II project site is located immediately adjacent to the FTV Phase I project. The FTV Phase I was completed in 2003 with a gross building area of 257,000 sq. ft. of retail, office, and residential uses. The site for the FTV Phase II project will be on the City- owned 3.4 acre located on E. 12th Street between 35th and 37th Avenues (**Attachment B** is map of the area). The site has been further divided into Phase IIA and IIB and is currently used as a Bay Area Rapid Transit (BART) parking lot.

Previous Approvals

In July 2010, the Board of the former City of Oakland Redevelopment Agency (the "Agency") approved Resolution No. 2010-0100 C.M.S. (the "Agency Resolution") and authorized the Agency Administrator to purchase the parking lot from Fruitvale BART to develop the site for the FTV Phase II project. Phase II was originally entitled by the Unity Council in 2010. In January 2012 the property was transferred to the City from the Agency.

On October 15, 2013, the City Council approved Resolution No. 84660 C.M.S. that authorized the City Administrator to apply for, accept, and appropriate funds in a total amount not to exceed \$8 million from the California Department of Housing and Community Development (HCD) under the Transit Oriented Development (TOD) program for the FTV Phase II Housing Project. In February 2014, the City received the maximum \$4,000,000 grant and the Unity Council separately received the maximum \$4,000,000 loan amount for Phase II of the FTV project.

In May 2014 the Unity Council issued a Request for Qualifications to housing developers for Phase II of the project. The Unity Council selected L & M, a New York based for-profit development firm, with experience and expertise in developing large mixed-use affordable and market rate housing developments. In September 2014 a Memorandum of Understanding (MOU) was signed between the Unity Council and L & M to develop FTV Phase II.

On November 18, 2014 the City Council approved Resolution No. 85271 C.M.S. authorizing an Exclusive Negotiating Agreement (ENA) with the Unity Council for the development of the FTV Phase II. The Unity Council has now substantially completed the requirements of the ENA for Phase IIA. The Planning Commission approved the project permits and plans on May 6, 2015.

On June 22, 2015, the City Council approved Ordinance No. 13313 C.M.S. authorizing the City Administrator to negotiate and execute an LDDA and a related 66-year ground lease with the Unity Council and L & M Development Partners, Inc. The Lease is for the FTV Phase IIA mixed-income development. On July 1, 2015, the City, the Unity Council, and L & M Development Partners, Inc. signed and executed the LDDA.

On December 8, 2015, the City Council approved Ordinance No. 13346 C.M.S. to add EBALDC as an additional party to the Phase IIA LDDA and related documents. Staff negotiated with the Unity Council, EBALDC, and L & M regarding the Phase IIA Project development and L&M did not agree with the City's terms. L & M requested to remove itself from the development team and as a party to the LDDA and related documents.

Therefore, on July 19, 2016, the City Council approved Ordinance No. 13387 C.M.S. to remove L & M Development Partners, Inc. from the development team of the Fruitvale Transit Village Phase IIA project and retain the Unity Council and EBALDC as the "Developer."

Project Developers

The Unity Council

The Unity Council was founded in 1964, incorporated in 1967, and received 501(c) (3) tax-exempt status in 1968. The Unity Council is a non-profit community development corporation committed to enriching the quality of life of families primarily in the Fruitvale District of Oakland. Its mission is to help families and individuals build wealth and assets through comprehensive programs of sustainable economic, social, and neighborhood development. In order to move forward with the development of the affordable housing on the FTV Phase IIA site, the Unity Council partnered with EBALDC to undertake this project.

East Bay Asian Local Development Corporation (EBALDC)

EBALDC is a nonprofit community development organization with over 40 years of experience building healthy, vibrant, and safe neighborhoods in Oakland and the greater East Bay. EBALDC develops and manages high quality affordable apartments and homes, retail spaces for local small businesses and community centers, while fostering increased economic opportunities for low-income families and individuals. These comprehensive programs help families and individuals begin a path toward financial security and access the resources they need to lead healthy, stable, and fulfilling lives.

The Property

The 3.4-acre project site currently consists of two parcels. The Phase IIA component is approximately 1.23 acres (APN 033-2177-021) and Phase IIB, component (APN 033-2197-019),

is approximately 2.18 acres. The site currently serves as a surface parking lot for BART commuters and the general public. The surface parking lot will be phased out during the construction of the proposed project. The City has entered into an LDDA for Phase IIA for the mixed-income housing and, upon the satisfaction of conditions precedent under the LDDA, the City will enter into a ground lease with the Developer for this parcel. Created by the Unity Council and completed in 2003, Phase I of the FTV is a successful national model for livable communities. The Unity Council is working on partnering with another developer for Phase IIB to build the remaining 181 units of mixed-income housing.

The FTV Phase IIA project will provide additional housing units affordable to the following income levels:

Affordability	Units	% of Total
20% Area Median Income (AMI)	5	5%
30% Area Median Income	18	19%
40% Area Median Income	17	18%
50% Area Median Income	32	34%
60% Area Median Income	20	22%
Manager's unit	1	1%
Market Rate	1	
Total	94	100%

One unit is for the manager for a total of 94 mixed-income units.

The project site was purchased from BART with Coliseum Redevelopment Project Area Taxable Bond funds. BART required a number of conditions, covenants, and restrictions on the property that allow only Transit Oriented Development uses to be permitted.

Proposed Project In Context With Fruitvale Transit Village (FTV) Phase I

Located in the heart of the vibrant Fruitvale neighborhood, Fruitvale Village is a mixed-use development that includes retail spaces, offices, and apartments. The ground floor of the existing Fruitvale Transit Village is home to locally-owned retail spaces. The second floor offers office spaces for important community resources and organizations. Finally, on the third floor, there are 47 mixed-income one-and two-bedroom apartments. Fruitvale Village is adjacent to the Fruitvale BART station with a major AC Transit hub, making the property an internationally renowned TOD. Wide pedestrian plazas running through the village are host to weekly farmer's

markets and event spaces. Fruitvale Village is also adjacent to the bustling Fruitvale commercial district that has experienced a dramatic transformation over the past 10 years.

FTV Phase II is the continuation of the City's revitalization vision for the Fruitvale. This plan will bring new residents and rental units to the village and foster 24-hour, 7-day vibrancy and a sense of community that will further strengthen the commercial and retail components located at the village retail plaza. The guiding principles for the Phase II development are to provide mixed-income residences, to incorporate state of the art green building and energy savings systems, and well-designed buildings. The project site is governed by the S-15 TOD Zone capitalizing on both the BART transit resource as well as the Alameda County Bus Rapid Transit (BRT) line along International Boulevard line currently being developed two blocks north of the project.

ANALYSIS AND POLICY ALTERNATIVES

Amendment to LDDA

Staff recommends adoption of the proposed ordinance which will extend the ground lease term from 66 years to 99 years and authorize the City Administrator or designee to execute any and all necessary documents relating to the increased term. The necessary documents, including without limitation, an LDDA and a ground lease, will allow the Unity Council and EBALDC (collectively, the "Developer") and related entities to build Phase IIA.

If the Ordinance is not approved, the Unity Council and EBALDC will likely have a difficult time making the project feasible under a 66 year lease.

FISCAL IMPACT

There is no fiscal impact on the City's budget with the proposed amendment to the Ordinance No. 13387 C.M.S. The City-owned property for the FTV Phase IIA project was purchased with restricted bond funds. The property development must be used for redevelopment purposes in the redevelopment area that issued the bonds. The affordable housing development meets this requirement. The total project costs for Phase IIA is approximately \$58 million. However, because the project is an affordable housing use, there is no property tax derived to the City.

PUBLIC OUTREACH / INTEREST

The property is located in the former Coliseum Redevelopment Project Area. Local Neighborhood Crime Prevention Council (NCPC) meetings were held on a regular basis regarding the status of the project and community members are overwhelmingly supportive of the project. The proposed development was presented and approved for entitlements by the Planning Commission on May 6, 2015.

COORDINATION

Staff from Economic and Workforce Development and the Planning and Building Department worked with the Developer on the proposed new Fruitvale Transit Village Phase II. Real Estate Services and former redevelopment staff were directly responsible for the acquisition of the BART parking lot parcels.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed transit oriented development will complement and increase both affordable and market rate housing stock in Oakland as well as the Fruitvale district. This project will improve neighborhood conditions and make the neighborhood area more attractive to current and prospective residents, tenants, and businesses that can provide employment within Oakland.

Environmental: The proposed transit oriented development is expected to contribute to smart growth by stimulating neighborhood use of the existing Fruitvale district and the expansion of the Fruitvale Transit Village.

Social Equity: The project will provide 94 units of affordable housing which are in great demand in the Fruitvale area and the City of Oakland.

CEQA

An Environmental Impact Report (EIR) was certified in May 2010. Pursuant to Sections 15162-15164 of the California Environmental Quality Act (CEQA) Guidelines, no additional environmental review is necessary. The Planning Commission approved the project on May 6, 2015 and made required CEQA findings accordingly.

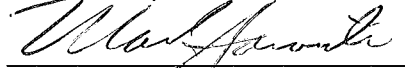
ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council adopt the following legislation:

An Ordinance Amending Ordinances No. 13313 C.M.S., No. 13346 C.M.S., And No. 13387 C.M.S. (collectively "the Authorizing Ordinance") to extend the term of the ground lease between the City, The Spanish Speaking Unity Council and The East Bay Asian Local Development Corporation and/or related entities for the development of mixed income housing for the Fruitvale Transit Village Phase IIA from a term of sixty-six (66) years to ninety-nine (99) years.

For questions regarding this report, please contact Theresa Lopez, Urban Economic Coordinator at (510) 238-6250.

Respectfully submitted,



Mark Sawicki,
Director, Economic and Workforce
Development Department

Reviewed by:

Larry Gallegos, East Oakland Area Manager

Prepared by:

Theresa Lopez, Urban Economic Coordinator
Project Implementation

Attachments:

- Attachment A - Gubb and Barshay LLP letter dated November 13, 2015, regarding Fruitvale Transit Village Phase IIA
- Attachment B - Map of the Fruitvale Transit Village Phase IIA and IIB

ATTACHMENT A

Law Offices of
GUBB & BARSHAY LLP

505 14th Street, Suite 1050
Oakland, California 94612

Telephone: (415) 781-6600
Facsimile: (415) 781-6967
sbarshay@gubbandbarshay.com

November 13, 2015

East Bay Asian Local Development Corporation
1825 San Pablo Avenue, Suite 200
Oakland, CA 94612-1517

Re: Fruitvale Village Phase 2

Ladies and Gentlemen:

A substantial part of the financing needed to construct the Project will be equity contributed by a tax credit investor. The amount the investor will contribute to the Partnership will depend, in large part, on the amounts of tax credits expected to be allocated to the investor.

For debt to be included when determining the amount of tax credits for which a Project is eligible, a loan used to finance the Project must be treated as true debt for federal income tax purposes. Among other things, the owner must be able to show the loan has a reasonable possibility of repaying the loan at the end of its term. This can be particularly difficult to show on projects that have soft debt that continues to accrue interest throughout the loan term.

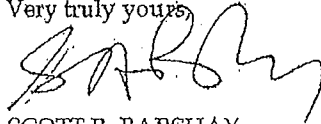
The investor will run a residual value analysis to compare the projected value of the project in year 55 with the expected accrued debt in year 55. For tax purposes, the investor assumes that the owner would obtain a new loan to refinance the year 55 debt. The size of the loan that the owner is able to get in year 55 needs to equal or exceed the expected value of the project in year 55. To determine the size of that new loan, the analysis takes into account the termination of the tax credit provisions in year 55 and other reasonable assumptions about the owner's ability to refinance the year 55 debt. Many investors want to assume the owner will be able to get a new 30-year loan to refinance the accrued debt.

When the project is owned in fee simple, the owner's new loan can be as long as necessary to make the residual analysis work. But the analysis is different with a ground lease—once the ground lease terminates, the lender's collateral disappears. No lender would make a 30-year loan on a 10-year lease.

For many projects, particularly those that serve special needs and have lower cash flow, you may need a large number of years to pay off the owner's year 55 loan. We have seen investors require 90-year leases. A determination of the exact term that will be required cannot be made accurately until we have more final numbers and have identified a tax credit investor in the Project.

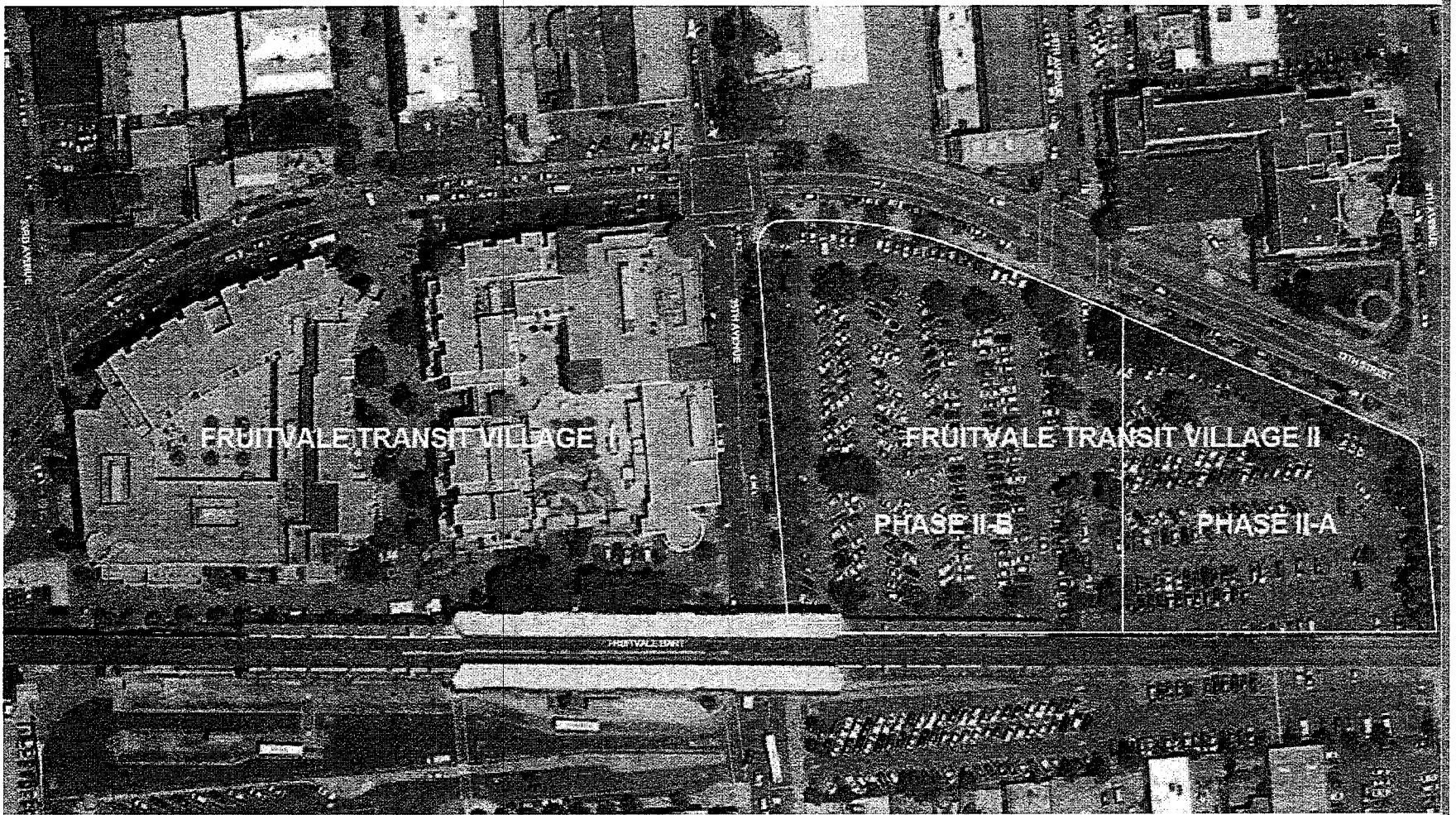
If the residual analysis does not allow the classification of the soft loans as true debt, the attorney for the tax credit investor will be unable to write a tax opinion approving the investment. Based on my experience with ground lease projects, I think it is quite unlikely the Project would be able find a tax credit investor to invest in the Project if it has only a 66-year lease.

Very truly yours,



SCOTT R. BARSHAY

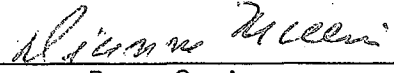
ATTACHMENT B- FRUITVALE TRANSIT VILLAGE PHASE IIA



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APPROVED AS TO FORM AND LEGALITY



DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING ORDINANCES NO. 13313 C.M.S., No. 13346 C.M.S., and No. 13387 C.M.S. (COLLECTIVELY "THE AUTHORIZING ORDINANCE") TO EXTEND THE TERM OF THE GROUND LEASE BETWEEN THE CITY, THE SPANISH SPEAKING UNITY COUNCIL AND THE EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION AND/OR RELATED ENTITIES FOR THE DEVELOPMENT OF MIXED INCOME HOUSING FOR THE FRUITVALE TRANSIT VILLAGE PHASE IIA FROM A TERM OF SIXTY-SIX (66) YEARS TO NINETY-NINE (99) YEARS

WHEREAS, pursuant to the authority granted in Resolution No. 2010-1000 C.M.S. adopted July 13, 2010, the former City of Oakland Redevelopment Agency (the "Agency") purchased a 3.4 acre surface parking lot consisting of two parcels, APN 033-2177-021 ("Phase IIA Property") and APN 033-2197-019 ("Phase IIB Property") bounded by 35th and 37th Avenues, East 12th Street and the Bay Area Rapid Transit District (BART) (Phase IIA Property and Phase IIB Property, collectively, the "Property"), to promote economic development in the community and to assist with the development of Phase II of the Fruitvale Transit Village; and

WHEREAS, in January 2012, all redevelopment agencies in the State of California were dissolved, the Oakland Redevelopment Successor Agency ("ORSA") became the successor agency to the Agency and pursuant to the long-range property management plan approved by the California Department of Finance in May 2014, the Property was transferred to the City of Oakland (the "City"); and

WHEREAS, pursuant to Ordinances No. 13313 C.M.S., No. 13346 C.M.S., and No. 13387 C.M.S. (collectively the "Authorizing Ordinance"), the City authorized execution of a Lease Disposition and Development Agreement ("LDDA") and a related 66-year ground lease ("Ground Lease") with the Spanish Speaking Unity Council and the East Bay Asian Local Development Corporation (or their affiliated entities as determined by the City Administrator) (collectively "Developer") for the development of a mixed-income housing project on the Phase IIA parcel ("Project"); and

WHEREAS, to enhance the ability of the Developer to obtain financing to make the Project feasible, it is necessary to authorize extension of the Ground Lease term from 66 years to 99 years; and

WHEREAS, June 2, 2015, a public hearing of the City Council was held to hear public comments on the Ground Lease of the Phase IIA Property to the Developer for the Project; and

WHEREAS, notice of the time and place of the public hearing was given by publication in a newspaper of general circulation in Alameda County at least once a week for at least two successive weeks prior to the public hearing; and

WHEREAS, as required by State Law, on June 2, 2015 the City made a report available to the public for inspection, no later than the first date of publication of the notice for the hearing, that contains: (i) a copy of the proposed Ground Lease of the Phase IIA Property and (ii) a summary of (a) the cost of the agreement to the City, (b) the estimated highest and best use value permitted under the City general plan or zoning, (c) the estimated value determined at the use required by the Ground Lease, with an explanation of the reasons for the difference between the two values, and (d) an explanation, with supporting facts and materials, of why the Ground Lease of the Phase IIA Property and development of the Project will assist in the creation of economic opportunity; and

WHEREAS, the City Council previously certified in May 2010 the Environmental Impact Report (EIR) for the Project and the Oakland City Planning Commission approved the Project for entitlements on May 6, 2015; now, therefore

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

SECTION 1. The City Council hereby amends the Authorizing Ordinance to allow for extension of the Ground Lease from a term of sixty-six (66) years to ninety-nine (99) years.

SECTION 2. The City Council hereby authorizes the City Administrator or his or her designee to negotiate and execute an amendment to the LDDA, the Ground Lease, or any related documents in order to effectuate the purpose and intent of this Ordinance and its basic purpose.

SECTION 3. The City Council hereby finds and determines that the Ground Lease for the Project will assist in the creation of economic opportunity in the City by creating and expanding new jobs, including approximately 261 construction jobs and 3 permanent jobs, which is at least one full-time equivalent permanent job for every \$35,000 in City investment; and

SECTION 4. The City Council hereby further finds and determines that the consideration for the Ground Lease is not less than the fair reuse value of the Phase IIA Property at the use and with the covenants and conditions and development costs authorized by the Ground Lease, and that it is in the best interest of the City to lease the Phase IIA Property to the Developer at its fair reuse value given the need to redevelop the Phase IIA Property for the benefit of the community.

SECTION 5. All agreements associated with the lease or conveyance of the Phase IIA Property for the Project shall be reviewed and approved as to form and legality by the Office of the City Attorney prior to execution by the City, and shall be placed on file with the City Clerk.

SECTION 6. The City Council hereby finds and determines that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 are present in that (1) there are no substantial changes proposed in the Project or the circumstances under which the Project is undertaken that would involve new significant environmental effects or a substantial increase in the severity of

previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3).

SECTION 7. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 8. The City Council hereby authorizes the City Administrator or his or her designees to (1) determine satisfaction of conditions precedent under the LDDA to the conveyance of the leasehold estate in the Project, such determination to be conclusively evidenced by the execution and delivery by the City Administrator of the Ground Lease; and (2) take whatever action is necessary with respect to the lease of the Phase IIA Property for the Project consistent with the Authorizing Ordinance, as amended by this Ordinance, and their basic purposes.

SECTION 9. This Ordinance shall be in full force and effect immediately upon final adoption, 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, _____, 2017

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

AN ORDINANCE AMENDING ORDINANCE NO. 13313 C.M.S., NO. 13346 C.M.S., and NO. 13387 C.M.S. (COLLECTIVELY "THE AUTHORIZING ORDINANCE") TO EXTEND THE TERM OF THE GROUND LEASE BETWEEN THE CITY, THE SPANISH SPEAKING UNITY COUNCIL AND THE EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION AND/OR RELATED ENTITIES FOR THE DEVELOPMENT OF MIXED INCOME HOUSING FOR THE FRUITVALE TRANSIT VILLAGE PHASE IIA FROM A TERM OF SIXTY-SIX (66) YEARS TO NINETY-NINE (99) YEARS

NOTICE AND DIGEST

The Authorizing Ordinance authorized the City Administrator to negotiate and enter into a Lease Disposition and Development Agreement and a related Ground Lease with the Spanish Speaking Unity Council of Alameda County and East Bay Asian Local Development Corporation and/or Related Entities (collectively "the Developer") for the development of a portion of City-owned property at 35th Avenue and East 12th Street known as assessor's parcel number 033-2177-021 ("Phase IIA Property"), to consist of 94 mixed income residential units and 47 parking spaces, and made associated findings with respect to the California Environmental Quality Act (CEQA) and other matters.

This Ordinance amends the Authorizing Ordinance to authorize extension of the term of the Ground Lease of the Phase IIA Property from sixty-six (66) years to ninety-nine (99) years.
