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OFFICE OF THE CITY CLERK  
OAKLAND

2016 JUL 14 PM 1:55

Approved as to Form and Legality

  
Deputy City Attorney

ORDINANCE NO. 18882 C.M.S.

**AN ORDINANCE: (1) AUTHORIZING 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 URBANCORE DEVELOPMENT, LLC OR ITS RELATED ENTITIES OR AFFILIATES (“URBANCORE”), AND EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION OR ITS RELATED ENTITIES OR AFFILIATES (“EBALDC”), FOR (A) SALE OF THE 12TH STREET REMAINDER PARCEL LOCATED AT E12TH STREET AND 2ND AVENUE (“PROPERTY”) FOR NO LESS THAN \$8.0 MILLION, (B) A SELLER CARRYBACK LOAN FROM THE CITY TO EBALDC IN THE AMOUNT OF \$3.3 MILLION PLUS THE COST OF LOAN ORIGATION, AND (C) DEVELOPMENT OF THE PROPERTY 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, AND; (2) ADOPTING CEQA EXEMPTIONS (15183 & 15183.3) AND ADDENDUM (RELYING ON THE PREVIOUSLY CERTIFIED 2014 LAKE MERRITT STATION AREA PLAN EIR)**

**WHEREAS**, the City owns approximately 0.925 acres of land bounded by East 12<sup>th</sup> 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”), identified as Assessor Parcel Number 19-27-14 and commonly known as the 12<sup>th</sup> Street Remainder Parcel; and

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

**WHEREAS**, on July 14, 2015, the City issued a Notice of Offer and Intent to Convey the Property (“Notice”) to potential developers; and

**WHEREAS**, the City received five (5) responses to the Notice; and

**WHEREAS**, Oakland Municipal Code Section 2.42.170 sets forth the following factors, in addition to price, that the City may consider in evaluating development proposals on City-owned property:

1. The value of the proposed use of the real property to the community and the City as a whole,
2. The compatibility of the proposed development and use with current zoning and community plans applicable to the real property,
3. The compatibility of the proposed development and use with the character of the surrounding neighborhood,
4. The experience, capacity and financial resources of the proposed developer,
5. The quality of the project design,
6. The environmental sustainability of the proposed development,
7. Community and public objectives achieved by the proposed development, such as creating jobs, expanding the tax base, providing other fiscal benefits, providing needed commercial or social services, providing or improving needed infrastructure, improving or preserving the stock of housing affordable to low and moderate income households, eliminating physical or economic blight, and contributing to the economic vitality of the neighborhood, and
8. Other factors, as the City Administrator deems applicable; and

**WHEREAS**, the City has considered these factors in evaluating the development proposals submitted in response to the Notice; 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**, the City Council authorized an Exclusive Negotiating Agreement (ENA) between the City and UrbanCore and EBALDC (collectively, “Developer”) based on a \$4.7 million land payment offer, for the purposes of developing a project proposal for the Property, completing California Environmental Quality Act (CEQA) review, and negotiating the terms and conditions of a Disposition and Development Agreement (DDA) (Reso No. 86056 C.M.S.); and

**WHEREAS**, a April 2016 appraisal conducted by Yovino & Young concluded the as-is Fair Market Value (FMV) of the land is \$8.0 million, considering the highest and best use of the Property; and

**WHEREAS**, Developer is offering to pay a purchase price of \$8.0 million for the Property, comprised of a \$4.7 million payment in cash and a seller carryback loan from the City to EBALDC in the amount of \$3.3 million plus the City's 2.5% loan origination fee (the "City Loan"); and

**WHEREAS**, the City Loan shall be evidenced by a promissory note in the amount of the City Loan and shall be secured by a deed of trust on the portion of the Property conveyed to EBALDC; and

**WHEREAS**, the City desires to continue funding affordable housing to further its planning goals and to comply with the regional Sustainable Communities Strategy and the Regional Housing Needs Allocation; and

**WHEREAS**, City is offering the City Loan to EBALDC to finance EBALDC's acquisition of a portion of the Property for the purpose of providing housing affordable to persons and families of low- or moderate- income; and

**WHEREAS**, the City Loan shall bear zero percent interest over a 55-year term; and

**WHEREAS**, Developer is proposing to build a mixed-use residential project that conforms to the zoning regulations under the Lake Merritt Station Area Plan and consists of the following minimum unit and square footage amounts: 361 residential units (with at least 90 of the units to be affordable to lower income households for a period of at least 55 years, and an additional 18 units to be affordable to moderate income households for the same period); and 5,000 square feet of ground floor commercial/community space, all as further described in the Term Sheet attached as Exhibit A (the "Term Sheet") and incorporated herein by this reference (the "Project"); and

**WHEREAS**, staff is recommending an appropriation of no more than \$300,000 from land sales proceeds for a Community Benefits Program as described in the Term Sheet; and

**WHEREAS**, a Disposition and Development Agreement ("DDA") will set forth the terms and conditions under which the City will sell the Property to Developer and by which Developer will construct improvements to the Property; and

**WHEREAS**, the City will have a continuing proprietary interest in the Project under the DDA in the form of its right to repurchase the Property in the event of a Developer default, and therefore will have an ongoing economic interest in ensuring that the Project is timely completed at minimal cost; and

**WHEREAS**, it is therefore in the economic interest of the City to ensure cooperation between the Developer and the construction trade unions and to avoid acrimonious and protracted labor/management conflicts in order to minimize delays in Project completion and avoid unnecessary Project costs; and

**WHEREAS**, in accordance with the requirements of the Term Sheet, the DDA will therefore require that the Developer have entered into a binding project labor agreement for the Project as a condition to conveyance of 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**, the City Administrator 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 and determines, 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 15 hereof for the purchase price of \$8 million.

**SECTION 2.** The City Council hereby finds and determines that the process by which the City has solicited and considered the development proposals and negotiated with interested entities has met the requirements of the California Surplus Lands Act and the Oakland Municipal Code Section 2.42.170.

**SECTION 3.** The City Council hereby finds and determines, based on the appraisal conducted by Yovino & Young, as follows: (a) the portion of the Property being conveyed to UrbanCore is being conveyed at its fair market value, and the City is not granting any economic development subsidy to the UrbanCore project; and (b) the portion of the Property being conveyed to EBALDC is being conveyed at its fair reuse value, and such below-market conveyance is justified to make the affordable housing component feasible.

**SECTION 4.** The City Council authorizes the City Administrator to deposit land sales proceeds up to \$4,700,000, including the “good faith deposit” in the amount of \$50,000, into the General Purpose Fund (1010), Real Estate Services Organization (85231), Sale of Land (48111), Non-Project (0000000), Real Estate Program (PS32).

**SECTION 5.** The City Council authorizes that no more than \$300,000 from land sale proceeds be appropriated for a Community Benefits Program (to be established) as further described in Term Sheet (Item 30, Attachment C).

**SECTION 7.** The City Council directs the City Administrator to include the balance of land sales proceeds, totaling \$4,400,000, in the FY 2016-17 Midcycle Budget for Council consideration and appropriation.

**SECTION 8.** The City Council hereby authorizes the City Administrator to provide a seller carryback loan to EBALDC or an affiliated entity approved by the City Administrator in the amount of \$3,382,500 (i.e., the \$3.3 million loan plus the City’s 2.5% loan origination fee).

**SECTION 9.** The City Loan shall be booked as due to the Affordable Housing Trust Fund (Fund 1870).

**SECTION 10.** The City Loan shall be for a maximum term of 55 years, with an interest rate of zero percent per year, with repayment to the City from surplus cash flow from the Project and other available funds during the term of the loan with the balance due at the end of the term, or on such other repayment terms and schedule as the City Administrator or his/her designee determines are in the best interests of the City and the Project.

**SECTION 11.** As a condition of the loan, the City will require that appropriate restrictions on Project occupancy, rents, and operations be recorded against Project improvements consistent with the provisions of the Term Sheet.

**SECTION 12.** The loan shall be secured by a deed of trust on the portion of the Project land and/or improvements conveyed to EBALDC.

**SECTION 13.** The making of the loan shall be contingent on and subject to such other appropriate terms and conditions as the City Administrator or his/her designee may establish.

**SECTION 14.** With respect to the EBALDC parcel, the City Council hereby authorizes the City Administrator or his/her designee in his/her discretion to subordinate the priority of the City's deed of trust and/or recorded restrictions to a lien or encumbrance of another private or governmental entity providing financial assistance to the Project, if the City Administrator or his or her designee determines that (1) an economically feasible alternative method of financing the Project on substantially comparable terms and conditions but without subordination is not reasonably available, (2) the City's investment in the Project in the event of default is reasonably protected, and (3) subordination is in the best interests of the City.

**SECTION 15.** 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; (2) grant deeds and any other agreements or documents as necessary to convey the Property to the Developer including, without limitation, the grant of any easement(s), covenants, or similar interests to Developer regarding City-owned open space adjacent to the Property for maintenance and other uses as negotiated by the City Administrator pursuant to the general provisions of Term Sheet Item 27; (3) promissory notes, deeds of trust and any other loan documents necessary to effectuate the City Loan, (4) 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 (5) 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 16.** 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 17.** 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 18.** 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 an Addendum thereto per CEQA Guidelines Section 15164 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 Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to 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 19.** 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 20.** 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 21.** 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, 5<sup>th</sup> Floor, Oakland, CA; (b) Planning and Building Department, 250 Frank Ogawa Plaza, 3<sup>rd</sup> Floor, Oakland, CA; and (c) the Office of the City Clerk, 1 Frank Ogawa Plaza, 1<sup>st</sup> Floor, Oakland, CA.

**SECTION 22.** The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

**SECTION 23.** 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, JUL 19 2016 2016

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, CAMPBELL WASHINGTON, ~~GALLO~~, GUILLEN, KALB, ~~KAPLAN~~, REID, and  
PRESIDENT GIBSON McELHANEY - 6

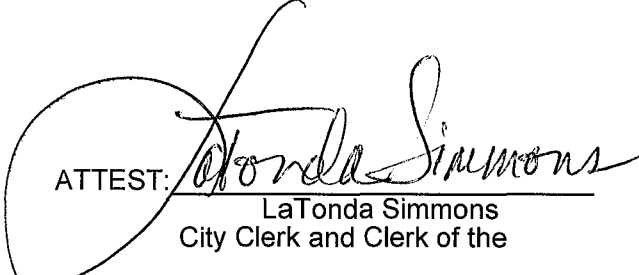
NOES - Gallo - NO - 1

ABSENT - 0

ABSTENTION - 0

Recused - Kaplan - 1

Council

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

Introduction Date

Date of Attestation

July 27, 2016

**EXHIBIT A**  
**TERM SHEET**  
*(attached)*



**EXHIBIT A**

**DDA TERM SHEET  
12<sup>TH</sup> ST REMAINDER PARCEL**

updated July 6, 2016

Note- This nonbinding term sheet shall serve as the basis for the negotiations of a detailed final Disposition and Development Agreement (DDA) 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.

<b>1</b>	<b>OWNER</b>	City of Oakland
<b>2A</b>	<b>DEVELOPER</b>	UrbanCore Development, LLC, a California limited liability company (“UrbanCore”), or a related entity controlled by UrbanCore, and East Bay Asian Local Development Corporation, a California nonprofit public benefit corporation (“EBALDC”), or a related entity controlled by EBALDC (collectively, “Developer”).
<b>2B</b>	<b>COMPLETION GUARANTY</b>	<p>Developer to provide City a Completion Guaranty as a condition to closing. Guarantor must be a financially strong entity with significant assets or capital sufficient to complete the Project, pursuant to criteria set forth in the DDA and acceptable to the City in its sole and absolute discretion. The Guarantor shall guarantee project completion, as determined by City. Developer will identify the Guarantor within 150 days after DDA approval.</p> <p>A “Form of Guaranty” will be included as an attachment to the DDA and will need to be executed by the City-approved guarantor at close of escrow.</p>

<p><b>2C</b></p>	<p><b>OWNERSHIP STRUCTURE</b></p>	<p>UrbanCore and EBALDC will create and prepare for recording a subdivision map of the Property that creates a two-unit condominium, governed by Conditions, Covenants &amp; Restrictions (CC&amp;Rs). The City will record the map and sell one condo unit to UrbanCore or a related entity controlled by UrbanCore (the “UrbanCore Condo” and the second condo unit to EBALDC or a related entity controlled by EBALDC (the “EBALDC Condo”). Each condo unit owner will solely own a fee interest in the improvements wholly within the unit; in addition, that owner will hold an undivided common interest in the land beneath the two condo units <u>and</u> the improvements that are to be jointly managed and maintained. A “master association” will be established to govern the common interest business of the two owners under the terms of the CC&amp;Rs.</p> <p>The full project will be built as a “Common Interest Development”: UrbanCore (or a related entity) will develop, own, and manage the market-rate project in the UrbanCore Condo (which will include 18 units affordable to moderate income households); EBALDC (or a related entity) will develop, own and manage the 100% affordable project in the EBALDC Condo (90 units affordable to lower income households).</p>
<p><b>2D</b></p>	<p><b>SUBDIVISION INSTRUMENTS</b></p>	<p>City, in its proprietary (and not regulatory) capacity, and the Developer will cooperate in the preparation of a vesting tentative map, final map and condominium plan (“Subdivision Instruments”) at the Developer’s cost, which shall subdivide the Project into a condominium development consisting of two condominiums: the affordable housing element in the EBALDC Condo, which consists of an approximately 8-9 story tower with 91 residential units; and the market-rate element in the UrbanCore Condo, which consists of a 26-27 story tower with 270 residential units.</p> <p>See <u><b>Attachment A</b></u> which identifies developer, ownership and management of the various non-residential spaces.</p> <p>The parties’ approval of the Subdivision Instruments shall be a precondition to the City’s obligation to convey the Property and to the Developer’s obligation to purchase the Property.</p>

<b>3</b>	<b>PROPERTY</b>	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 <sup>th</sup> 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.
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4	<p><b>PROJECT DESCRIPTION</b></p>	<p><u>Short version</u></p> <p>The Project will consist of residential and commercial development per the following minimum unit and square footage amounts: approximately 361 residential units; 5,000 square feet of ground floor commercial space, including community space (referred to as “The Commons”). At least 90 of the units to be affordable to lower income households for a period of at least 55 years, and additional 18 units to be affordable to moderate income households for the same period. These affordable units will be subject to a Regulatory Agreement with an affordability term of 55 years and will remain rental when other residential units are sold as condominiums.</p> <p><u>Long version</u></p> <p>Approximately 361 residential units total in two distinct buildings sharing a common entrance and garage: 8-9 story mid-rise (i.e., the EBALDC Condo) includes 90 units targeting households at or below 60% of AMI, plus one manager’s unit for a total of 91 units; and a 26-27 story tower (i.e., the UrbanCore Condo) includes 270+ units, at least 18 of which will be rent-restricted for households at several income levels between 80% to 120% of AMI. These affordable units will be subject to Regulatory Agreements with an affordability term of 55 years and will remain rental when other units are sold as condominiums. There will be approximately 2,000 sq. ft. of ground floor retail, 3,000 sq. ft. of ground floor community space (referred to as “The Commons”), and courtyard open space at the podium terrace. In addition, the buildings will include meeting spaces, leasing offices, exercise rooms and outdoor terraces at the podium and roof levels that will be shared and accessible to all residents of the two buildings. The parking garage will consist of approximately 242-320 total spaces on four levels: two levels below grade, one level at grade, and one level above grade.</p> <p>See Item#29B for details on the affordability levels for the affordable units; and <u>Attachment A</u> for details on the location, ownership, management responsibility and resident access to the non-residential spaces.</p>
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5	<b>PURCHASE PRICE</b>	<b>\$8.0 million</b> based on a Fair Market Value Appraisal Report (April 2016) considering the highest and best use of the property in as-is condition. UrbanCore will pay the City <b>\$4.7 million</b> in cash at closing for the UrbanCore Condo. The City Administrator will appropriate <b>\$300K</b> (of the \$4.7million in land sale proceeds) to fund a Community Benefits Program. The <b>\$3.3 million</b> purchase price for the EBALDC Condo will be financed through a seller carryback loan from the City to EBALDC (or a related entity controlled by EBALDC). (See <b>Attachment B</b> for terms of the loan)
6	<b>TERMS OF PAYMENT/ CLOSING</b>	The \$4.7million payment (which includes the \$300,000 payment to fund the community benefits program) will be due to the City and payable in cash submitted into escrow 3 business days before close of escrow. Escrow to close in accordance with the schedule of performance contained herein. (Item #9)
7	<b>GOOD FAITH DEPOSIT</b>	Upon execution of 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 retain the Good Faith Deposit as liquidated damages.

<p>8</p>	<p><b>REPURCHASE OPTION</b></p>	<p>In addition to all other City remedies for Developer default, and subject to the notice and cure rights described below if (i) construction on the Project does not start within 30 days after close of escrow (or within 24 months after the close of escrow if the closing occurs prior to July of 2017 pursuant to Item # 9 below); or (ii) the Developer fails to diligently continue construction thereafter; or (iii) the Developer does not complete construction within the time period required under the DDA (subject in each case to extension for force majeure ), then the City will have the option to repurchase the Property as described below (the "Option").</p> <p>If the Option is exercised prior to the commencement of construction, the repurchase price will be equal to the Purchase Price. If the repurchase option is exercised after the commencement of construction, the City may at its option a) require the Developer at its sole cost to demolish any improvements on the Property and repurchase the Property for the Purchase Price, or b) repurchase the Property with any improvements constructed thereon by the Developer for the Purchase Price plus the fair market value of the improvements. The appraisal process to determine fair market value of the improvements will be set forth in the DDA. Prior to close of escrow, if force majeure individually or cumulatively exceeds 12 months, either party shall have the right to terminate the agreement. Developer shall deposit an executed reversionary grant deed into escrow prior to closing with instructions to deliver the reversionary grant deed to City if City exercises the Option. 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 a 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>
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<p>9</p>	<p><b>SCHEDULE OF PERFORMANCE</b></p>	<ol style="list-style-type: none"> <li>1. Developer submits 2 years of audited financial statements for each principal and joint venture partner for City review and approval - 6 months after DDA approval and resubmit updates within 30 days prior to close of escrow</li> <li>2. Developer submits updated and refined Project Proforma (Development Budget &amp; Operating Cash Flow) for City review and approval - 6 months after DDA approval and resubmits updates within 30 days prior to close of escrow</li> <li>3. Developer submits Financial Plan, including evidence of funds/equity commitments for land acquisition for City review and approval. - 6 months after DDA approval and resubmits updates within 30 days prior to close of escrow</li> <li>4. Developer identifies the Guarantor and the controlling entity for City approval - 6 months after DDA approval</li> <li>5. Developer submits Schematic Designs (35%), Design Development (65%), and Construction Designs (90%) - 5, 10, 18 months respectively, after DDA approval</li> <li>6. Developer submits complete Applications for Building Permits – 18 months after DDA approval. <u>[Added per CM Abel Guillen's final motion on 7/5/16 City Council meeting]: Developer will consult closely with the Oakland Unified School District and come to agreement in developing the construction mitigation plan. Also, Developer will host a community meeting.</u></li> <li>7. Developer finalizes Project Financing: submit evidence of construction and permanent financing and copy of a construction contract; and other sources (which may include equity commitments from investors) - 21 months after DDA approval</li> <li>8. Developer submits approved Building Permits – 23 months after City approval of DDA.</li> <li>9. Conveyance/Close of Escrow – Within 30 days following satisfaction of all City conditions to closing but in no event later than 24 months following City approval of DDA. However, within 8 months of DDA approval, Developer may request a waiver of some standard conditions to allow a closing prior to July 1, 2017, to be approved by the City Administrator in his or her sole discretion. The following conditions cannot be waived by the City Administrator: (1) approval of the Subdivision Instruments (2) execution of Completion Guarantee (3) Affordable Housing and Sustainable Communities funding secured or other GAP funding sources necessary for the Affordable Building, (4) 65% Design Development Drawings, and (5) a signed Project Labor Agreement. In the event the City Administrator grants the requested waiver, the parties shall close escrow prior to July 1, 2017.</li> <li>10. Commence Construction – Within 30 days after close of escrow, unless the Developer requests and the City Administrator grants the waivers described above, in which case the Developer shall commence construction within 24 months after close of escrow.</li> <li>11. Complete Construction - Within 24 months after construction commencement. Developer may request a 6-month extension of this date, to be approved by the City Administrator, which approval shall not be unreasonably withheld if Developer has demonstrated good faith efforts to Commence and Complete Construction in accordance with the Schedule.</li> <li>12. Developer may request a 1 month extension of items 3 and 4 above, to be approved by the City Administrator, which approval shall not be unreasonably withheld if Developer has demonstrated progress on items 2 and 5 above.</li> </ol> <p>Note: Conveyance/Closing of Escrow required by or before <u>June 30, 2017</u> and compliance with standard City conditions precedent to closing do apply.</p>
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10	<b>TITLE INSURANCE</b>	Developer to secure title insurance policy, if desired, at its own cost and expense from Old Republic Title Company. 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.
11	<b>CLOSING COSTS</b>	Developer to pay all escrow fees and closing costs including, without limitation, city and any other county taxes.
12	<b>LIMITATIONS ON PROPERTY RIGHTS</b>	<p>Without limiting Developer's title review contingencies, Developer accepts and acknowledges the Property is subject to deed restrictions and recorded covenants to restrict use of property, as contained in the DDA.</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>
13	<b>CONDITION OF PROPERTY AT DELIVERY</b>	<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 and all other materials on the site due to recent construction activities of the City's Public Works Dept will be removed prior to conveyance to Developer.</p>
14	<b>ENVIRONMENTAL REMEDIATION</b>	<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"> <li>• <i>Phase I ESA, by Adanta, dated 9/1/14</i></li> <li>• <i>Several soils &amp; geotechnical reports by ESA developed for the E12th Street Reconstruction Project, dating from 2006 to 2009</i></li> </ul> <p>Developer ordered a Phase II site investigation report (prepared by Advantage Environmental Consultants, dated April 19, 2015). The City <b>will not set aside any funds</b> from land sale proceeds related to environmental remediation costs. If dirty soil needs to be removed, Developer will be responsible for paying for the marginal difference between the cost to remove soil and the cost to remove dirty soil.</p>



<b>15</b>	<b>INDEMNIFICATION</b>	Developer shall 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 as part of the DDA.
<b>16</b>	<b>NO COMMISSION</b>	The parties shall hold each other harmless and defend against any claims for commissions or brokerage..
<b>17</b>	<b>SIGNAGE</b>	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.
<b>18</b>	<b>STANDARD OF PROPERTY</b>	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.
<b>19</b>	<b>FINAL CONSTRUCTION PLANS (including Public Art)</b>	<p>The Developer and its design consultants must meet or exceed requirements of City's Green Building Ordinance as it pertains to this project.</p> <p>The Final Construction Plans shall include a plan and schedule to incorporate public art into the Project pursuant to Project's Condition of Approvals and Oakland Municipal Code Section 15.70.</p>
<b>20</b>	<b>PAYMENT &amp; PERFORMANCE BONDS</b>	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, only if they are a requirement of the Developer's lender.
<b>21</b>	<b>RIGHT OF ENTRY</b>	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.
<b>22</b>	<b>FINANCING</b>	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.

23	<b>STANDARD CONDITIONS</b>	DDA to include standard City conditions, including completion guaranty executed on or before the Closing Date; approval by City of financing plan, assignment and transfer, amendments to project and project approvals, copies of all required regulatory approvals, and insurance policies; and default, notice and cure, and termination provisions. Notwithstanding the foregoing, some of these standard conditions will not apply if waived by the City Administrator in his or her sole discretion to allow a closing prior to July 1, 2017, as further described in Item #9.
24	<b>PERMITTED TRANSFERS</b>	<p>Prior to Project completion, Developer shall not have the right to assign or transfer all or any portion of its rights and obligations under the DDA, other than an Affiliate Transfer, without the prior written consent of the City, in the City's sole and absolute discretion.</p> <p>An Affiliate Transfer shall not require consent (but will require notice to and review by City) and shall mean a transfer to an entity or entities for which UrbanCore and EBALDC maintain control as defined in the DDA.</p>
25	<b>CITY EMPLOYMENT PROGRAMS</b>	<p>EBALDC to comply with City's Local Employment Program for Construction of the affordable portion of the Project, , for which EBALDC is receiving the subsidy in the form of a \$3.3 million seller carryback loan on the terms described in <b><u>Attachment B</u></b>.</p> <p>For the tower building, UrbanCore will meet a 25% combined goal for local-business (LBE) and small-local-business (SBE) participation</p>
26 A	<b>OFF-SITE IMPROVEMENTS</b>	<p>Developer to be responsible for the cost of off-site improvements proposed to the existing storm water 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 as approved by the Parks and Recreation Advisory Commission (Feb 2015), 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>

26 B	<b>CAPITAL IMPROVEMENT</b>	<p>The City’s Capital Improvement Impact Fee (a “CI Requirement”) and Transportation Impact Fee (a “TI Requirement”) apply to the Project.</p> <p>To the extent applicable under the CI Requirement, any amount to be paid by Developer under Item 26A related to the cost to buildout the adjacent open space owned by the City would be credited against the CI Requirement.</p>
27	<b>DEVELOPER MAINTENANCE</b>	<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, 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>
28	<b>PROHIBITION OF GENERATION OF CONDO CONVERSION RIGHTS</b>	<p>The DDA shall include an acknowledgement and agreement by Developer that the Project shall not generate, and the Developer shall not assert, condominium “conversion rights” under Chapter 16.36 of the Oakland Municipal Code. Nothing in the DDA shall limit the Developer’s right to create condominium units on the Project.</p>

<p><b>29 A</b></p>	<p><b>AFFORDABLE HOUSING – CITY IMPACT FEES</b></p>	<p>The City’s affordable housing impact fee (an “AH Requirement”) applies to the Project.</p> <p>Any payment by Developer of an affordable housing impact fee pursuant to an AH Requirement would be credited against any amount to be paid under Item 29B.</p> <p>If City’s adopted AH Requirement includes an option to provide affordable units onsite, the number of affordable units required by Item 29B shall be reduced by the number of units provided onsite at the same affordability level to meet the AH Requirement.</p>																												
<p><b>29 B</b></p>	<p><b>AFFORDABLE HOUSING</b></p>	<p>Developer to set aside at least <b>30% of the total project units</b> (or 108 units of 361) to be affordable to low and moderate income households, subject to Regulatory Agreements with affordability terms of 55 years, as further described below. Such affordable units will remain rental if and when other units are sold as condominiums.</p> <p>55-year Regulatory Agreement for affordable units owned by EBALDC:</p> <table border="1" data-bbox="576 955 1323 1375"> <thead> <tr> <th></th> <th colspan="2"><b>One of the following:</b></th> </tr> <tr> <th><b>Income Level</b></th> <th><b># of Units (with AHSC funds)</b></th> <th><b># of Units (without AHSC funds)</b></th> </tr> </thead> <tbody> <tr> <td>30% of AMI</td> <td>20</td> <td>0</td> </tr> <tr> <td>50% of AMI</td> <td>10</td> <td>9</td> </tr> <tr> <td>60% of AMI</td> <td>60</td> <td>81</td> </tr> <tr> <td><b>Total Affordable Units</b></td> <td>90</td> <td>90</td> </tr> </tbody> </table> <p>In the event the AHSC funds are not approved by December 31, 2016, then the mix of the 90 affordable units would be adjusted to 9 at 50% AMI and 81 units at 60% of AMI.</p> <p>55-year Regulatory Agreement for affordable units to be owned by UrbanCore:</p> <table border="1" data-bbox="576 1648 1144 1900"> <thead> <tr> <th><b>Income Level</b></th> <th><b># of Units</b></th> </tr> </thead> <tbody> <tr> <td>80% of AMI</td> <td>6</td> </tr> <tr> <td>100% of AMI</td> <td>6</td> </tr> <tr> <td>120% of AMI</td> <td>6</td> </tr> <tr> <td><b>Total Affordable Units</b></td> <td>18</td> </tr> </tbody> </table>		<b>One of the following:</b>		<b>Income Level</b>	<b># of Units (with AHSC funds)</b>	<b># of Units (without AHSC funds)</b>	30% of AMI	20	0	50% of AMI	10	9	60% of AMI	60	81	<b>Total Affordable Units</b>	90	90	<b>Income Level</b>	<b># of Units</b>	80% of AMI	6	100% of AMI	6	120% of AMI	6	<b>Total Affordable Units</b>	18
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29 C	AFFORDABLE HOUSING LOAN	See <b>Attachment B</b> for the terms of the \$3.3 Million seller carryback loan to EBALDC
30	ADDITIONAL COMMUNITY BENEFITS	<ol style="list-style-type: none"> <li>1. Fully executed Project Labor Agreement for the entire project as a condition of conveyance</li> <li>2. Shared access to all residents of both buildings to the Project's common spaces and amenities</li> </ol> <p>See <b>Attachment A</b> for details on the developer, ownership, management responsibility and resident access to the non-residential spaces.</p> <ol style="list-style-type: none"> <li>3. At the time of transfer of property, \$300K of the land sale proceeds (which is <u>part of</u> the \$8 million purchase price), will be appropriated by the City Administrator to fund a Community Benefits Program.</li> </ol> <p>See <b>Attachment C</b> for how community benefit funds will be distributed.</p>

## ATTACHMENT A - LAKEHOUSE COMMONS - ALLOCATION OF NONRESIDENTIAL SPACES

	# bike/ car spaces	Sqft	Location in the Building	Developer (UrbanCore or EBALDC)	Ownership (UrbanCore or EBALDC)	Management	Access to all residents?
<b><u>Amenities</u></b>							
Bike Room - Level B2	151	3792	Below Grade	UrbanCore	UrbanCore	UrbanCore	North Commons only
Bike Room - Level 1	30	469	At Grade	UrbanCore	UrbanCore	UrbanCore	North Commons only
Bike Room - Level 2	59	1723	Above Grade	UrbanCore	EBALDC	EBALDC	South Commons only
<i>Bike Room Total Space</i>	<i>240</i>	<i>5984</i>					
Café/Retail Space - Level 1		1476	At Grade	EBALDC	EBALDC	EBALDC	All
Central Commons - Level 1		2656	At Grade	EBALDC	EBALDC	EBALDC	All
Lobby - North Commons - Level 1		2055	At Grade	UrbanCore	UrbanCore	UrbanCore	All
Lobby - South Commons- Level 1		1062	At Grade	EBALDC	EBALDC	EBALDC	All
Community Space - South Commons		1500	South Commons-2nd Level	EBALDC	EBALDC	EBALDC	South Commons Residents
Fitness Center - North Commons - Level 3 & 4		1926	North Commons-Podium	UrbanCore	UrbanCore	UrbanCore	All
Roof Terrace Community Rooms - Level 26		2350	North Commons-Roof	UrbanCore	UrbanCore	UrbanCore	All
<b><u>Roof Deck</u></b>							
Roof Deck - North Commons - Level 26		6563	North Commons	UrbanCore	UrbanCore	UrbanCore	All
Roof Deck - South Commons - Level 7		747	South Commons	EBALDC	EBALDC	EBALDC	All

## ATTACHMENT A - LAKEHOUSE COMMONS - ALLOCATION OF NONRESIDENTIAL SPACES

	# bike/ car spaces	Sqft	Location in the Building	Developer (UrbanCore or EBALDC)	Ownership (UrbanCore or EBALDC)	Management	Access to all residents?
<b><u>Circulation</u></b>							
Courtyards - Central - Podium Level (Level 3)		5324	Podium	UrbanCore	UrbanCore	UrbanCore	All
Courtyards - North - Podium Level (Level 3)		3579	Podium	UrbanCore	UrbanCore	UrbanCore	All
Courtyards - South - Podium Level (Level 3)		2228	Podium	EBALDC	EBALDC	EBALDC	All
Circulation - North Commons		49574	North Commons	UrbanCore	UrbanCore	UrbanCore	Restricted Access
Circulation - South Commons		11915	South Commons	EBALDC	EBALDC	EBALDC	Restricted Access
<b><u>Property Management Office</u></b>							
Administration - North Commons - Level 1		1423	North Commons	UrbanCore	UrbanCore	UrbanCore	All
Administration - South Commons - Level 1		779	South Commons	EBALDC	EBALDC	EBALDC	All
<b><u>Parking</u></b>							
Level B2	86-120	31519	Below Grade	UrbanCore	UrbanCore	UrbanCore	North Commons Residents Only
Level B1	80-114	33943	Below Grade	UrbanCore	UrbanCore	UrbanCore	North Commons Residents Only
Level 1	38-54	19888	At Grade	UrbanCore	UC / EBALDC	UrbanCore	Both North and South Residents
Level 2	38-54	16884	Above Grade	UrbanCore	EBALDC	EBALDC	South Commons Residents Only
<i>Total Spaces</i>		<i>242-342</i>					
<i>Garage Total Space</i>		<i>102234</i>					
<b><u>Service/Storage/Utility</u></b>							
Service - North Commons		8589	North Commons	UrbanCore	UrbanCore	UrbanCore	n/a
Service - South Commons		1733	South Commons	EBALDC	EBALDC	EBALDC	n/a

# ATTACHMENT B: Affordable Housing Loan Terms

## Section 29.C Affordable Housing Loan Terms

- (1) Loan Amount is \$3.3 million plus the origination fee of 2.5% of \$3.3 million for a total of \$3,382,500.
- (2) Payment of standard origination fees (2.5%) will not be due upon closing; however, will be added to the loan amount.
- (3) Annual full payment of City of Oakland monitoring fees of \$100 per affordable unit, which can be included as an operating expense from each of the project budgets. (\$9,000 from the affordable portion of the project and \$1,800 from the market rate portion of the project).
- (4) 0% interest rate on the subordinate note
- (5) 55-year loan term
- (6) A Regulatory Agreement to be placed on 90 affordable units at the income levels required by the other subsidy sources (ie, CDLAC, TCAC, HCD) in the affordable portion of the project. A second and separate Regulatory Agreement will be placed on the 18 moderate income units in the market rate portion of the project.
- (7) The following standard definitions from City's standard loan documents will apply:

**"Lender's Prorata Share"** means the portion of Available Cash Flow to which Lender is entitled, which shall be split among all Project lenders with surplus cash flow loans based on relative loan amounts.

**"Available Cash Flow"** means fifty percent (50%) of the excess of annual Operating Revenues over annual Operating Expenses for the Property.



**"Operating Expenses"** shall mean, without limitation:

- a) all direct costs and expenses necessary to operate the residential portion of Property (commercial expenses are excluded), as approved by Lender;
- b) debt service on any loans secured by the Property, provided that such loans have been used to acquire the Property or develop or improve the Project (or to refinance loans used for Project acquisition, development or improvement), have been approved by Lender, and are secured by a deed of trust on the Property that is senior in priority to the Deed of Trust;
- c) reasonable payments, approved by Lender, to reserves for operating contingencies, replacement of capital items, and other reserve uses as approved by Lender;
- d) deferred developer fee, if any;
- e) annual partnership management and asset management fees in an annual amount not to exceed twenty-five thousand dollars (\$25,000) increased by 3% annually;
- f) repayment of any loans to the partnership from general partner or limited partner;
- g) CA HCD's monitoring costs per the Uniform Multifamily Regulations ("URM"); and
- h) reasonable and necessary programmatic costs for the common area, not to exceed an annual amount of fifteen thousand dollars (\$15,000) without City approval.

**"Operating Revenues"** shall mean all residential income derived from the Property (commercial income excluded), and shall include, without limitation:

- a) rents (including rent common space within the Property);
- b) rent subsidy payments received on behalf of tenants;
- c) interest on income other than interest on reserve accounts approved by Lender; and
- d) receipts from laundry, parking, vending, or other services in which a fee is charged.

Gross Revenue shall not include tenants' security deposits, loan proceeds, equity contributions from Investor, or similar advances.

- (8) The City acknowledges that EBALDC will apply for a loan from the State of California's Department of Housing and Community Development ("HCD") consisting of funds from the Affordable Housing and Sustainable Communities Program ("AHSC"), which will be subject to the UMR's. The above conditions of the City's loan will be subject to HCD's approval. The City agrees to subordinate to State and Federal funding sources but the City will not subordinate its Regulatory Agreement to other lenders' financing.

## ATTACHMENT C: Community Benefits Program

At the time of transfer of property, \$300,000 of the land sale proceeds (which is part of the \$8 million purchase price), will be appropriated by the City Administrator to fund a Community Benefits Program

Staff will return to City Council with a Resolution for approval to distribute and allocate the funds, which may include the following:

- a) \$100,000 for a tenant-legal rights and education program(s) to help minimize the displacement of current tenants living within a three-mile radius of the project site, with a particular focus on outreach to monolingualists (residents whose primary language is not English).
- b) \$30,000 to the Lake Merritt Business Association's designated fiscal agent for a study to create a Business Improvement District or Community Benefits District in the E. 18th St/Lower Park Blvd. commercial area.
- c) \$100,000 to Oakland Parks and Recreation for the construction of a recreational facility on existing publicly-owned property in Council District 2, such as at San Antonio Park; or to organizations that already are recipients of this community benefits fund.
- d) \$50,000 to the East Lake Merchants Association's designated fiscal agent for graffiti abatement and neighborhood beautification.
- e) \$20,000 to the Sierra Club Tree Team (San Francisco Bay Chapter) for the purchase and maintenance of trees to be planted east of Lake Merritt in Council District 2, including around San Antonio Park.

## NOTICE AND DIGEST

Adoption of the proposed ordinance will enable the City Administrator to negotiate and execute a Disposition and Development Agreement that will allow the City to sell the Property to UrbanCore and the East Bay Asian Local Development Corporation (EBALDC) for the appraised fair market value of \$8 million for development of the Property as a residential mixed-use project; and allow the City to finance EBALDC's acquisition of its portion of the Property with a seller carryback loan in the amount of \$3.3 million to support the affordable housing project. The ordinance includes the California Environmental Quality Act (CEQA) findings for this action.

**ORDINANCE: (1) AUTHORIZING 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 URBANCORE DEVELOPMENT, LLC, OR ITS RELATED ENTITIES OR AFFILIATES ("URBANCORE"), AND EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION OR ITS RELATED ENTITIES OR AFFILIATES ("EBALDC"), FOR**

**(A) SALE OF THE 12TH STREET REMAINDER PARCEL LOCATED AT E12TH STREET AND 2ND AVENUE ("PROPERTY") FOR NO LESS THAN \$8.0 MILLION,**

**(B) A SELLER CARRYBACK LOAN FROM THE CITY TO EBALDC IN THE AMOUNT OF \$3.3 MILLION PLUS THE COST OF LOAN ORIGINATION, AND**

**(C) DEVELOPMENT OF THE PROPERTY 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, AND;**

**(2) ADOPTING CEQA EXEMPTIONS (15183 & 15183.3) AND ADDENDUM (RELYING ON THE PREVIOUSLY CERTIFIED 2014 LAKE MERRITT STATION AREA PLAN EIR)**