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OAKLAND

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# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Mark Sawicki  
Director, EWD

**SUBJECT:** 12<sup>th</sup> Street Remainder DDA  
Assignment

**DATE:** June 19, 2017

City Administrator Approval

Date:

## RECOMMENDATION

**Staff Recommends That The City Council Adopt A Resolution Authorizing The Partial Assignment of The Disposition and Development Agreement Between the City of Oakland and UrbanCore Development LLC ("UrbanCore") and LakeHouse Commons Affordable Housing, LP for the Sale and Development of the 12th Street Remainder Parcel Located at E12th Street And Second Ave From UrbanCore to LakeHouse Commons LLC Or Its Related Entities Or Affiliates.**

## EXECUTIVE SUMMARY

On February 15, 2017, the City Administrator executed a Disposition and Development Agreement (DDA) with UrbanCore Development, LLC ("UrbanCore") and an affiliate of East Bay Asian Local Development Corporation ("EBALDC") known as Lakehouse Commons Affordable Housing, LP (the "Partnership," and together with UrbanCore, the "Developer") for the sale of City-owned land located at E12<sup>th</sup> Street and Second Ave ("Property" or "12<sup>th</sup> Street Remainder Parcel"). The Project described in the DDA (named "LakeHouse Commons") consists of 361 residential units of which 108 (30 percent of the total) will be below market/rent-restricted. Lakehouse Commons will include two buildings ("LakeHouse North" and "LakeHouse South") sharing a common entrance, garage and other amenities.

Staff seeks authority to permit the assignment of UrbanCore's interest in the DDA to LakeHouse Commons, LLC, a to-be-formed California limited liability company to be composed of UrbanCore and its new equity investor, National Real Estate Advisors, LLC ("NREA"). All other terms and conditions of the DDA will remain the same. Note that the substitution of LakeHouse Commons, LLC for UrbanCore for the purposes of the DDA assignment requires Council approval because UrbanCore will no longer "control" the proposed new joint venture entity, as defined in the DDA. However, the Partnership, an affiliate of EBALDC, continues to remain a party to the DDA.

Approval of the assignment of a portion of the DDA to this new market-rate development entity is time-sensitive because much of the funding required to advance the Project in the design development phase will come from an investment fund that is managed by NREA. Bringing NREA on board will enable this Project to move forward as scheduled.

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## **BACKGROUND / LEGISLATIVE HISTORY**

On July 14, 2015, the City issued a Notice of Offer and Intent to Convey the Property ("Notice"). The City evaluated five proposals and on March 15, 2016, the City Council authorized an Exclusive Negotiating Agreement (ENA) with UrbanCore and EBALDC. (Resolution No. 86056 C.M.S.)

On July 19, 2016, the City Council adopted Ordinance No. 13382 C.M.S. approving the terms of the DDA with UrbanCore and EBALDC (or their affiliates). Key DDA terms included:

1. Sale of the Property for no less than \$8.0 million.
2. A seller carryback loan from the City to the Partnership in the amount of \$3.3 million plus the cost of loan origination.
3. Development of the Property as a residential mixed-use project, with 30 percent of the total units as below-market/rent-restricted, consistent with the plans approved by the Planning Commission on June 6, 2016.
4. Development Schedule: Sale of Property within 24 months from DDA execution, which is February 15, 2019. Construction to start within 30 days following close of escrow. Construction is to be completed within 24 months after commencing construction, expected spring 2021.
5. Community Benefits:
  - \$300,000 of the net \$4.7 million land payment will be appropriated by the City Administrator to fund a to-be-determined Community Benefits Program;
  - a Project Labor Agreement (PLA) for the entire Project;
  - landscaping and ongoing maintenance of the 0.92 acre of City-owned open space adjacent to the Property;
  - allowing shared access to the Project's common spaces and amenities to all residents of the Project; and
  - forgoing condo conversion credits that the Project would normally be entitled to under the current Condo Conversion Ordinance.

## **ANALYSIS AND POLICY ALTERNATIVES**

UrbanCore had been seeking a capital partner to help complete its market-rate component of the Project, leading to a partnership with the open-ended INDURE Build-to-Core Fund, LLC, ("INDURE") which is managed by NREA, a subsidiary of the National Electrical Benefit Fund, a major U.S. pension fund with more than \$13.1 billion in assets under management. UrbanCore will joint venture with NREA (or its affiliate) to form LakeHouse Commons, LLC. UrbanCore and NREA will have joint control and both will be Managing Members of this new entity, with UrbanCore providing the day-to-day project/development management (development member) and NREA providing input on all major decisions as the fund member.

Staff's assessment of the financial statements and qualifications of UrbanCore and NREA indicate that UrbanCore and NREA together have the institutional capabilities, expertise and resources that will be required to raise the necessary equity capital to fund their anticipated share of the Project costs.

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Project's Capital Sources

The City's DDA with UrbanCore and the Partnership requires UrbanCore and the Partnership to solicit partnerships and raise outside capital to fully capitalize their respective parts of the Project, start construction and guarantee construction completion.

EBALDC was awarded \$15,584,150 in AHSC (Affordable Housing and Sustainable Communities) funding for LakeHouse South, currently estimated to cost approximately \$40 million to develop. An additional \$2,543,053 in AHSC funds will go to fund transportation related amenities and sustainable transit infrastructure such as pedestrian scale lighting on E12<sup>th</sup> Street and pedestrian streetscape improvements on 10th Street between the project site and Lake Merritt BART. EBALDC anticipates the remaining funding will come from tax exempt bond and tax credit equity.

The market-rate development of LakeHouse North is currently estimated to cost \$159 million. Currently, UrbanCore is proposing to joint venture with NREA to form LakeHouse Commons, LLC, which will be the entity responsible for funding the equity requirements of LakeHouse North. An affiliate of NREA is expected to provide the completion guaranty for the Project.

The capital contribution requirements of the managing members of LakeHouse Commons, LLC are not yet formalized. However, the development team anticipates that of the estimated \$63.5 million equity required for LakeHouse North, \$8.4 million will be spent during the pre-development phase and \$55.1 million will be spent during the construction phase. UrbanCore projects approximately 25 percent of the required equity capital for the pre-development and 8 percent of the construction capital will be provided by UrbanCore, while 75 percent of the pre-development equity and 92 percent of the construction equity will be provided by NREA, as shown in **Table 1** below.

**Table 1: LakeHouse North Equity Requirements**

	<u>Predevelopment Equity</u>		<u>Construction Equity</u>		<u>Total Equity</u>	
UrbanCore	2,100,000	25%	4,250,000	8%	6,350,000	10%
NREA	6,300,000	75%	50,824,133	92%	57,124,133	90%
<b>Total</b>	<b>8,400,000</b>	<b>100%</b>	<b>55,074,133</b>	<b>100%</b>	<b>63,474,133</b>	<b>100%</b>

The total sources of equity for LakeHouse North will therefore be approximately 10 percent the responsibility of UrbanCore and 90 percent the responsibility of NREA as per the **Table 2** below:

**Table 2: LakeHouse North Capital Sources**

	Amount	% of Total Capital	% of Equity
UrbanCore	6,350,000	4%	10%
NREA	57,124,133	36%	90%
Debt	95,211,200	60%	
<b>Total Development Cost</b>	<b>158,685,333</b>	<b>100%</b>	

Verification of Availability of Capital

Staff engaged economic consultant firm Century Urban to evaluate the financial resources of UrbanCore and NREA to fund their proposed equity portions. From their review of 2016 Financial Statements and 2017 Quarterly Statements, Century Urban concluded that NREA has access not only to cash flow associated with its open-ended INDURE fund, but also cash flow from its existing projects, unused capacity on its line of credit, and potentially the ability to further leverage its portfolio. Therefore, NREA has more than enough capital to meet NREA's share (anticipated to be approximately 36 percent) of the development and construction costs for LakeHouse North, if NREA chooses to make such a commitment. Moreover, both UrbanCore and NREA have a strong track record of raising and deploying equity capital from third-party sources for urban infill development projects such as this one, although neither partner is likely to fund their portion of the required development equity from cash on hand.

According to UrbanCore, it has already invested approximately \$1.6 million to date on predevelopment activities over the last four and a half years, which represents 79 percent of UrbanCore's predevelopment contribution. UrbanCore expects the remaining \$500,000 to come from cash flow to be received from development fees on its other projects over the course of the next 12 to 15 months.

The projected costs of \$159 million for LakeHouse North (approximately \$587,000 per unit) appear to be in line with market costs of similar urban infill residential projects in the Bay Area. The assumption of 60 percent loan-to-cost construction financing as debt is reasonable for a compelling urban infill project with institutional quality sponsorship.

NREA

Since the Council has already approved a DDA with UrbanCore and the Partnership, the following profile is only for the NREA, the entity proposed to join UrbanCore in forming the new joint venture entity, LakeHouse Commons, LLC. **Exhibit A** illustrates the organizational chart for LakeHouse Commons and the Project's anticipated ownership structure by the Partnership, UrbanCore and NREA.

NREA is headquartered in Washington, DC and is a Security and Exchange Commission (SEC) registered investment advisor since 2010. NREA has 50 employees, with offices in Los Angeles and Philadelphia. Jeffrey Kanne is the President and Chief Executive Officer, leading NREA's efforts, including serving on the board of directors and serving as the Chairman of the Investment Committee.

NREA is wholly owned by a subsidiary of the National Electrical Benefit Fund, a major U.S. pension fund with more than \$13.1 billion in assets under management. NREA requires 100 percent union labor except in limited circumstances.

NREA manages \$2.7 billion in net assets and focuses its investments on leading U.S. urban markets, and invests in most major real estate sectors—mixed-use, apartments, office, retail, industrial, hotels, and data centers. Operating throughout the full range of financial structures, NREA invests equity and lends debt—providing its development partners a range of flexible financing solutions—preferred equity, mezzanine debt, senior debt, construction loans, and credit enhancements.

LakeHouse Commons will be a strategic investment for NREA's \$2 billion INDURE fund, a commingled, open-end real estate investment fund, which seeks to invest in institutional quality, geographically diversified properties. The NREA Investment Committee has already approved LakeHouse Commons and set aside approximately \$6.3 million for predevelopment funding. UrbanCore and NREA currently have a confidential Letter of Intent which is being used to draft their LLC Agreement. The Agreement will name UrbanCore as the "Development Member", and INDURE is the "Fund Member" and is in the process of being finalized, at the time of the writing of this report. The Agreement is expected to be finalized by June 30, 2017.

#### NREA's Comparable Projects

NREA has previously invested in a development project in Boston, MA, quite comparable to LakeHouse Commons, called One Greenway. Completed in 2015, One Greenway, is a development with 363 residential units in two buildings. Affordable rent and ownership units for low- and moderate-income households account for 40 percent of all units. Like LakeHouse Commons, One Greenway is composed of two buildings adjacent to publically accessible open space and includes community space, ground floor retail, and underground parking. The developers were Asian Community Development Corporation and New Boston Fund Inc., with NREA as the equity partner.

Also, NREA, as its predecessor firm National Electrical Benefit Fund, previously partnered as the construction lender with UrbanCore on the Fillmore Heritage Center, an \$85 million project. The Fillmore Heritage Center, completed in 2007, is a 14-story mixed use residential project containing 80 condominium units (12 affordable at 100 percent Area Median Income); 112 car public parking garage; and 40,000 square feet of commercial and entertainment space.

**FISCAL IMPACT**

There is no new fiscal impact associated with this action. Adoption of the proposed Resolution will change the name of and controlling interest in one of the two development entities for the 12<sup>th</sup> Street Remainder Parcel DDA, but all other terms and conditions of the DDA will remain the same and so the fiscal impact to the City also remains the same as adopted under Ordinance No. 13382 C.M.S.

The proposed legislation does not commit the City to expenditure of any funds. The Developer has agreed to pay for all escrow fees and closing costs related to this transaction, including any City and County taxes.

The sale of the Property would yield an immediate \$4.7 million in land sales proceeds which will be deposited into the City's General Purpose Fund (1010), Real Estate Services Organization (85231), Sale of Land (48111), Non-Project (0000000), Real Estate Program (PS32). The City Administrator has been authorized to appropriate \$300,000 of the land sales proceeds to fund a Community Benefits Program. Staff will return to City Council with a Resolution for approval to distribute and allocate these community benefits funds. Just like any other lender, staff from the City's HCD Department will routinely monitor the Partnership's (i.e. borrower's) compliance with the terms of the City's \$3.3 million affordable housing loan to ensure repayment and that loan funds are going for their intended use.

**PUBLIC OUTREACH / INTEREST**

No new public outreach is required for this proposed action and no comments from the public have been received by staff as of the time of publication of this report.

**COORDINATION**

Project Implementation staff have coordinated on this agenda item with the City Administrator's Office, the Office of the City Attorney, and the Controller's Bureau.

## **SUSTAINABLE OPPORTUNITIES**

**Economic:** The Developer's proposed Project will transform vacant underutilized land into a high-density residential development that will provide much-needed housing units, a modest amount of neighborhood-serving retail, and further stimulus to the local economy. Development of the site will produce several hundred construction jobs and tens of permanent jobs. Staff estimates the project will generate to the City \$45 million from property tax and \$21 million from business license tax over 66 years, in addition to other tax benefits from parking tax and sales tax. In addition to the upfront land sale proceeds, the sale of this Property at \$8 million will generate \$120,000 in City transfer taxes.

**Environmental:** The Developer's proposed Project is expected to maximize the potential use of the land while being environmentally-sensitive with its design, use of materials and operations. The proposed high-density development next to a regional transportation hub will likely encourage residents and retail customers to use BART and AC Transit and reduce automobile reliance, which will decrease the use of fossil fuels and resulting greenhouse gas emissions. UrbanCore will fund, as a community benefit, the cost to design, construct and provide ongoing maintenance for the adjacent open space parcel owned by the City.

**Social Equity:** The Developer will provide a minimum of 30 percent of the units at an affordable rent to low and moderate income households, comply with the City's local business and employment participation requirements, and enter into project labor agreements.

## **CEQA**

A project-specific CEQA analysis was completed May 27, 2016 and concluded that the Project qualifies for two separate CEQA statutory exemptions and that the Lake Merritt Station Area Plan Environmental Impact Report adequately addressed the potential environmental effects of the Project. The Project and CEQA determination was considered at the Planning Commission meeting on June 15, 2016 and approved, and the City Council, in approving Ordinance No. 13382 C.M.S., adopted CEQA exemptions (15183 and 15183.3) and, relying on the previously certified 2014 Lake Merritt Station Area Plan EIR and an Addendum thereto, determined that no further environmental review is required for sale of the Property and development of the Project.

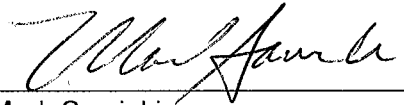
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**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council adopt a Resolution authorizing the assignment of a portion of the DDA between the City of Oakland and UrbanCore and LakeHouse Commons Affordable Housing, LP for the sale and development of the 12th Street Remainder Parcel located at E12th Street and Second Ave from UrbanCore to LakeHouse Commons LLC or its related entities or affiliates.

For questions regarding this report, please contact Patrick Lane, Project Implementation Division Manager, at (510) 238-7362 or Hui-Chang Li at (510) 238-6239.

Respectfully submitted,



Mark Sawicki  
Director, Economic & Workforce Development  
Department

Reviewed by: Patrick Lane, Manager  
Project Implementation Division

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

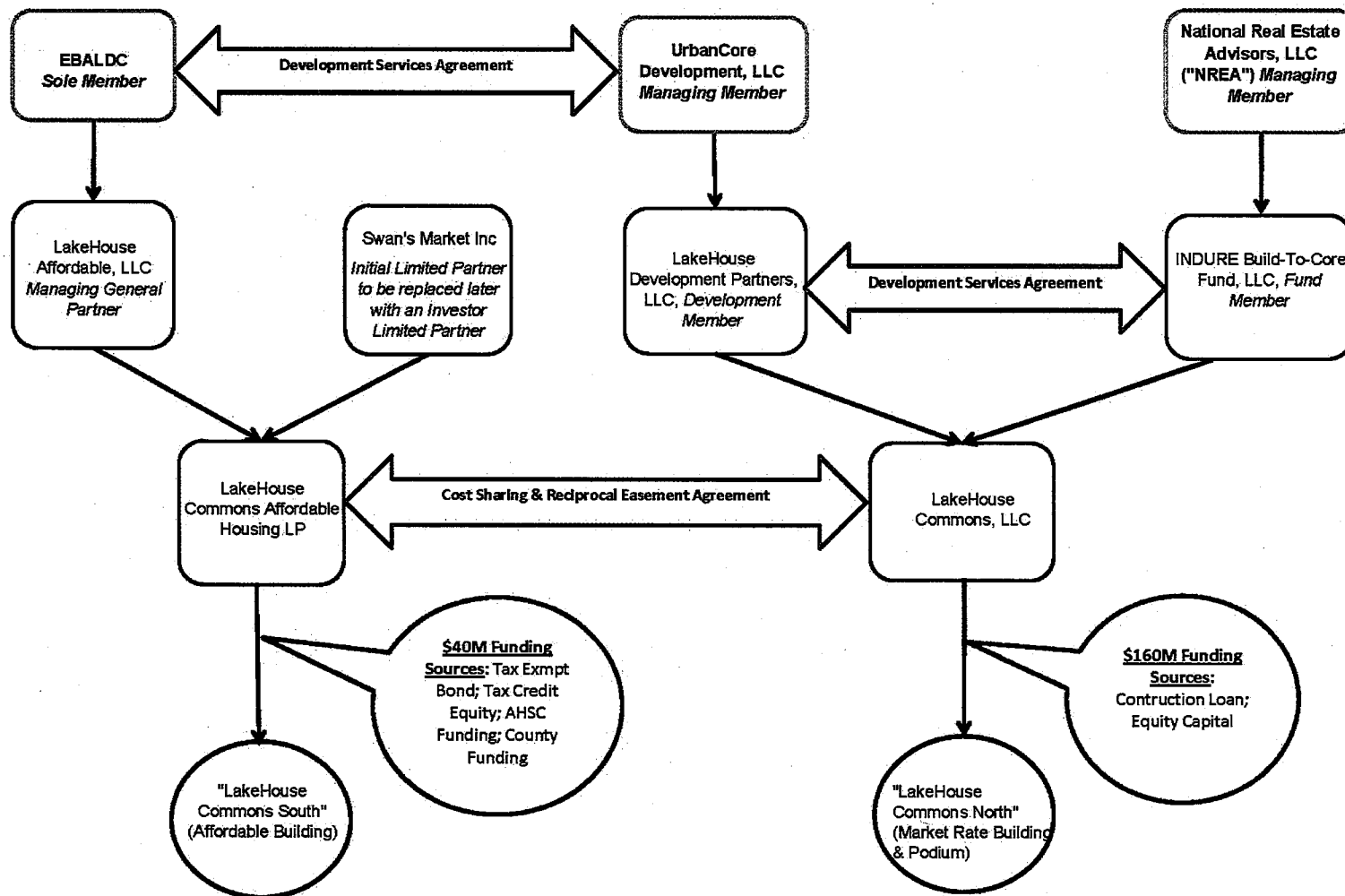
**Attachments (1)**

Exhibit A: LakeHouse Commons Organization Chart




**EXHIBIT A**

**LAKEHOUSE COMMONS ORGANIZATIONAL CHART**



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**OAKLAND CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_ C.M.S.**

**A RESOLUTION AUTHORIZING THE PARTIAL ASSIGNMENT OF THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND URBANCORE DEVELOPMENT LLC (“URBANCORE”) AND LAKEHOUSE COMMONS AFFORDABLE HOUSING, LP FOR THE SALE AND DEVELOPMENT OF THE 12TH STREET REMAINDER PARCEL LOCATED AT E12TH STREET AND SECOND AVE FROM URBANCORE TO LAKEHOUSE COMMONS LLC OR ITS RELATED ENTITIES OR AFFILIATES**

**WHEREAS**, the City of Oakland (“City”) owns approximately 0.925 acres of vacant property identified as Assessor Parcel Number 19-27-14, commonly known as the 12th Street Remainder Parcel, bounded by East 12th Street on the east, Second Avenue and property owned by the Oakland Unified School District on the south, newly created open space to the west, and Lake Merritt Boulevard to the north (the “Property”); and

**WHEREAS**, the City Council adopted Ordinance 13382 C.M.S. approving the terms of a Disposition and Development Agreement (the “DDA”) with UrbanCore Development, LLC (“UrbanCore”) and Lakehouse Commons Affordable Housing LP (the “Partnership”), an affiliate of East Bay Asian Local Development Corporation (“EBALDC”), for sale of the Property and the construction thereon of a mixed-use residential project (the “Project”) as further described in the term sheet attached to such Ordinance (the “Term Sheet”); and

**WHEREAS**, the Project described in the DDA is commonly known as “LakeHouse Commons” and will consist of 361 residential units in two buildings (i.e., “LakeHouse North” and “LakeHouse South”) sharing a common entrance and garage, with 30% of the total units below-market/rent-restricted; and

**WHEREAS**, the City Administrator executed the DDA with UrbanCore and the Partnership as of February 15, 2017; and

**WHEREAS**, UrbanCore has identified National Real Estate Advisors, LLC or its affiliate (“NREA”) as the financially strong entity with which it desires to form LakeHouse Commons, LLC (the “Joint Venture”) to develop the Project as a joint venture; and

**WHEREAS**, UrbanCore desires to transfer its interest in the DDA to the Joint Venture; and

**WHEREAS**, upon such transfer, the Joint Venture will be the entity responsible for the development and construction of LakeHouse North (i.e., the market-rate portion of the Project) under the DDA; and

**WHEREAS**, UrbanCore and NREA will have joint control and both will be managing members of the Joint Venture, with UrbanCore providing the day-to-day project/development management and NREA providing input on all major decisions as the capital partner; and

**WHEREAS**, the partial assignment of the DDA to the Joint Venture requires City Council approval because such assignment will result in a transfer of "control" over the developer as defined in the DDA; and

**WHEREAS**, Section 9.4.1.10 of the DDA provides for the City Council to approve such transfers by resolution or ordinance; and

**WHEREAS**, staff's review of NREA and UrbanCore's qualifications and financial capacity indicate NREA and UrbanCore together have the institutional capabilities, expertise and resources that will be required to raise the necessary equity capital to fund the Joint Venture's anticipated share of the Project costs; and

**WHEREAS**, the City Council desires to permit the assignment of UrbanCore's interest in the DDA from UrbanCore to the Joint Venture (or its related entities or affiliates); now, therefore be it

**RESOLVED:** The City Council hereby approves the assignment of UrbanCore's interest in the DDA from UrbanCore to LakeHouse Commons, LLC (or its related entities or affiliates) which will be composed of UrbanCore and NREA (or an affiliate); and be it further

**RESOLVED:** That the City Administrator or his or her designee is further authorized to negotiate and enter into other agreements and take whatever action is necessary consistent with this Resolution and its basic purposes.

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