

LDDA TERM SHEET
95TH AND INTERNATIONAL BOULEVARD

July 28, 2020

Note- This term sheet shall serve as the basis for the negotiation of a detailed final Lease Disposition and Development Agreement (“**LDDA**”), between the City of Oakland, a municipal corporation (the “**City**”), and Acts Community Development, a California nonprofit public benefit corporation (“**Acts**”) and The Related Companies of California, LLC, a California limited liability company (“**Related**”) through 95th & International Housing Partners, L.P., a California limited partnership (the “**Developer**”). City and Developer shall be referred to herein sometimes as the “**Parties** and each individually a “**Party**.” The terms hereof are not binding on the parties until Developer and City, pursuant to City Council authorization, have executed a mutually acceptable LDDA for the proposed project. The Final LDDA may include terms that differ from, or are in addition to, the terms set forth in this term sheet.

1	OWNER	City
2	DEVELOPER	95th & International Housing Partners, L.P., a California limited partnership, the general partners of which shall consists of affiliates of Acts and Related.
3	PROPERTY	<p>Approximately 0.74 of an acre of land, comprised of eight (8) contiguous parcels, owned by the City, currently having the following designated Assessor’s Parcel Numbers (APNs): 044-4967-001, 044-4967-002, 044-4967-003, 044-4967-004-02, 044-4967-004-03, 044-4967-005, 044-4967-007-01, and 044-4967-009, with frontage on International Boulevard between 94th Avenue and 95th Avenue (the “Property”).</p> <p>Parties acknowledge that the City currently owns seven (7) parcels composing the Property, and it is currently anticipated that Developer will transfer the Parcel currently designated as APN 044-4967-001 (the “Eighth Parcel”), to the City.</p> <p>Notwithstanding the foregoing, City may condition its acquisition /acceptance of the Eighth Parcel upon a determination by the City, in its sole and absolute discretion, that the Eight Parcel does not present any environmental liability to the City.</p>

		Following the City’s acquisition/receipt of the Eighth Parcel, Developer shall, at its sole cost and expense, prepare the application for a tentative map waiver to merge the City owned parcels with the Eighth Parcel for the City’s execution and submission (in its proprietary capacity).
4	PROJECT DESCRIPTION	The “ <i>Project</i> ” is proposed to include a four-story mixed-use building consisting of fifty-five (55) affordable units comprised of three (3) studios; twenty-four (24) one-bedroom units; fourteen (14) two-bedroom units; and fourteen (14) three-bedroom dwelling units for households with incomes between twenty (20%) and fifty percent (50%) of County of Alameda Area Median Income with approximately 2,514 square feet of ground floor retail area. The Project may also include up to thirty- three (33) parking spaces, which will be shared between the residential and commercial uses.
5	RIGHT OF ACCESS	Developer shall have the right to enter the Property prior to the commencement of the term of the Ground Lease (as defined below) to conduct investigations and testing at Developer’s cost and pursuant to the LDDA. Developer shall have the right to access the Property for purposes of completing Developer’s due diligence work, subject to providing City with indemnity, insurance and other terms set forth in the LDDA or that certain Exclusive Negotiation Agreement by and between City and Developer dated effective as of March 20, 2018, as extended from time to time (the “ <i>ENA</i> ”) (NOTE: if entering upon the Property prior to the execution of the LDDA; provided, that a license or professional services agreement may be required if extensive testing is warranted). Notwithstanding the prior sentence, Developer shall not do any invasive testing without the prior written consent of City, which shall not be unreasonably withheld, conditioned or delayed and which City acknowledges may be required by Developer’s lenders and/or investor.
6	ENVIRONMENTAL INVESTIGATION	The Developer may, at its sole cost and expense, engage its own environmental consultant to make such environmental site assessments or investigations of the Property with respect to possible contamination by hazardous materials as the Developer deems necessary, including conducting any “Phase I” and/or “Phase II” investigations of the Property. Notwithstanding Section 5 above, Developer shall conduct any such environmental investigations as follows:

		<ul style="list-style-type: none"> a) Developer shall provide advanced notice of any Phase I surveys or inspections of the Property. b) Developer may not conduct any Phase II investigations unless the City’s environmental specialist has reviewed and approved Developer’s proposed work plan. c) Developer shall promptly deliver to the City a copy of all reports and assessments provided by the Developer’s consultants. d) Developer, its consultants and agents shall neither contact any agency having jurisdiction as to environmental matters over the Property concerning the environmental reports and assessments performed nor provide such reports or assessments to such agency without the prior written consent of the City’s Environmental Protection and Compliance department. Violation of this provision shall constitute a material breach of the LDDA. e) The Developer shall use its commercially reasonable efforts, and at its sole cost and expense, to cause its environmental consultants to agree that the City may rely on the contents of such reports and assessments through reliance letters.
7	PRE-CONVEYANCE REQUIREMENTS	<p>As conditions precedent to the conveyance of the leasehold interest in Property to the Developer through the ground lease (the “Ground Lease”), all of the following conditions must first be met by the date indicated for each condition in the schedule of performance (the “Schedule”), attached hereto as <u>Exhibit A</u>. The LDDA may contain provisions to extend certain dates by mutual agreement by the Developer and the City Administrator; provided, however, that only the City Council, in its sole and absolute discretion, may extend the Outside Closing Date and the Completion of Construction date on behalf of the City.</p>
	7.1 <u>Financial Plan</u>	<p>No later than the date set forth in the Schedule, the Developer shall have submitted to the City for its review and obtained the City’s approval of the following, which together will be referred to as the “Financial Plan”:</p> <ul style="list-style-type: none"> • A detailed cost breakdown of construction of the Project (the “Project Development Budget”) containing an itemized construction budget for the Project, showing all construction related and non-construction related costs, including

		<p>reasonable contingencies, and the funding sources of payment for each item.</p> <ul style="list-style-type: none"> • A 30-year cash flow projection for the Project. • A copy of letters of commitment for construction financing and permanent financing from reputable institutional lenders, grant funding, equity contributions, tax credit allocations, and other financing from external sources (including proposed joint ventures and Partnerships) as necessary to finance development of the entire Project. • A certified financial statement or other financial statement in such form reasonably satisfactory to the City, evidencing other sources of capital, sufficient to demonstrate that the Developer has adequate funds available and is committing such funds to cover the difference, if any, between the Developer's costs of development and construction and the amount available to Developer from external financing sources. • Any other evidence reasonably requested by the City demonstrating the economic and financial feasibility of the Project.
	<p><u>7.2 Financing and Financing Documents</u></p>	<p><u>Financing.</u> The Developer shall be permitted to grant a security interest in its rights and beneficial interests under the LDDA and/or the Ground Lease in favor of a single lender or a group of public and private, institutional lenders solely in connection with financing of the Project.</p> <p>The Schedule shall allow time for Developer to use its best efforts to obtain competitive or other affordable housing financing (including, without limitation, state housing subsidy programs, Low Income Housing Tax Credits (LIHTCs), local subsidies) for up to two (2) rounds of funding, which would be equivalent to approximately, but no longer than, two (2) years from the Effective Date of the LDDA, subject to Force Majeure, which shall in no event exceed in the aggregate twelve (12) months.</p> <p>Force Majeure shall mean delays or defaults that are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires;</p>

		<p>casualties; acts of God; acts of the public enemy; pandemics or epidemics.</p> <p><u>Financing Documents.</u> Not later than the date set forth on the Schedule, Developer shall have submitted to the City for its review and obtained the City’s approval of a draft of the form of all documents to be used for financing construction of the Project pursuant to the approved Financial Plan (the “Financing Documents”). Prior to closing of the financing, the Developer shall submit to the City the final Financing Documents for the City’s review and approval. The full execution of the Financing Documents and the closing of all construction financing for the Project shall be a concurrent condition to conveyance of the Property to a Developer.</p>
	<p>7.3 <u>Schematic Designs.</u></p>	<p>By no later than the date set forth on the Schedule, Developer shall have submitted to the City for its review and obtained the City’s approval, in its proprietary capacity, of the Schematic Design Plans for the Project. The term “Schematic Design Plans” means schematic drawings, exterior elevations, site plans, floor plans and a garage layout, unit plans (including square footage), a landscaping plan, schematic plans for street and sidewalk improvements, and a sample materials board.</p>
	<p>7.4 <u>Design Development Plans.</u></p>	<p>By no later than the deadline set forth in the Schedule, Developer shall have submitted to the City for its review and obtained the City’s approval, in its proprietary capacity, of the Design Development Plans for construction of the Project. The term “Design Development Plans” means drawings, outline specifications and other documents based on the Schematic Design Plans that fix and describe the size and character of the Project as to architectural and basic structural systems, materials and other elements as appropriate.</p>
	<p>7.5 <u>Public Improvements.</u></p>	<p>The Project may include a number of Public Improvements as required by conditions of approval, and any such Public Improvements will be subject to the review and approval by the City in its proprietary capacity and by the appropriate City departments as part of standard review and permitting processes. For purposes of this subparagraph, the term “Public Improvements” shall include, without limitation, such matters and improvements as: (1) any permanent closure or rerouting of any existing public streets or sidewalks; (2) any traffic signals that may need to be replaced or</p>

		<p>installed; (3) any street lights that may need to be replaced or installed; (4) any relocation of existing utilities and easements to the extent required under planning and building approvals for the Project; and (5) any act that may be required to be performed as a mitigation measure under any environmental document for the Project or as a condition to the issuance of any governmental permit for the Project and any other improvement currently anticipated to be required to develop the Project.</p>
	<p><u>7.6 Final Construction Plans.</u></p>	<p>By no later than the date set forth on the Schedule, Developer shall have submitted to the City for its review and obtained the City’s approval of the Final Construction Plans for construction of the Project. The term "<i>Final Construction Plans</i>" means all construction documentation upon which a Developer and Developer’s general building contractor will rely on constructing the Project, and shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans, final specifications, plans for street and sidewalk repairs or improvements, a detailed breakdown of the costs of construction for the Project. The Final Construction Plans shall be substantially consistent with the Schematic Design Plans and Design Development Plans approved by the City.</p>
	<p><u>7.7 Green Building Requirements.</u></p>	<p>The Design Development Plans and Final Construction Plans shall demonstrate how principles of environmental sustainability will be incorporated to meet the applicable requirements of the City’s Green Building Ordinance (Ordinance No. 13040 C.M.S.), as set forth in Chapter 18.02 of the Oakland Municipal Code (Sustainable Green Building Requirements for Private Development) for residential construction development or applicable building use, as determined by the City. The Developer and its design consultants shall work with City staff to develop appropriate and economically feasible sustainable building goals and strategies using the City’s Sustainable Building Guide and Project Management Tool. Principles of environmental sustainability, including substantial use of such green building techniques as energy-conserving design and appliances, water-conserving fixtures, design of surface parking areas with bio-retention, bio-swales, and storm water filtration features, low-maintenance landscaping, recycled-content building materials and low waste construction techniques, shall be incorporated into the Design Development Plans and Final Construction Plans for the Project.</p>

	<p><u>7.8 Construction Contract.</u></p>	<p>Developer shall enter into a contract or contracts for the construction of the Project with a licensed and reputable general building contractor meeting the employment and contracting obligations contained herein (the “Construction Contract”). In no event shall a Developer contract with any party which has been debarred or suspended by HUD under 24 CFR Part 24. The Construction Contract shall provide for the Project to be constructed for a fixed and specified guaranteed maximum amount pursuant to the approved Final Construction Plans.</p> <p>No later than the date set forth on the Schedule, Developer shall have submitted to the City for its review and obtained the City’s approval of a draft of the form Construction Contract. Not later than the date set forth for this action in the Schedule, the Developer shall have submitted a draft of the final Construction Contract for the Project to the City for its review and obtained the City’s approval prior to execution to determine that the cost of the development of the Project has been clearly fixed and determined, that no material changes to the Project will be made without the prior written consent of the City to the extent required under the LDDA, and that the City’s employment and contracting requirements as set forth in the LDDA will be met, and that all of the terms and conditions required to be included in the construction contract by funding sources for the Project have been included. The Developer shall also submit, prior to or together with the final Construction Contract, a detailed cost breakdown budget for Project construction and development, and a construction schedule, and a construction cash flow (draw-down) projection to the City for its review and approval.</p>
	<p><u>7.9 Performance and Payment Bonds</u></p>	<p>Prior to the close of Escrow, Developer shall obtain a labor and materials payment bond in the amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer. Developer shall obtain a performance bond in an amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer.</p> <p>The performance bond and labor and materials payment bonds shall be issued by a licensed surety, shall name the City as co-obligee or assignee, and shall be in a form reasonably satisfactory to the City.</p>
	<p><u>7.10 Governmental Approvals</u></p>	<p>To the extent not already obtained, Developer shall, not later than the date specified in the Schedule, apply for all permits, land use entitlements, subdivision map approvals, plan and other required</p>

		<p>governmental regulatory approvals allowing any subdivision of the Property, if so proposed, and construction and development of the Project to completion (together, the “Governmental Approvals”). Developer shall also complete environmental review pursuant to CEQA and NEPA and incorporate any mitigation measures identified in the environmental review process and required to be included in the plans for Project development and operations. The Developer shall give the City ten (10) days’ prior notice of any hearings regarding matters described in the LDDA, or if the Developer shall receive less notice a reasonable amount of advance notice to enable the City to elect to attend such hearings.</p> <p>Developer acknowledges and agrees that receipt of all Governmental Approvals necessary to commence construction of the Project is a precondition to disposition of the Property to the Developer.</p>
	<p><u>7.11 Property Management Contract</u></p>	<p>Prior to close of Escrow, the Developer shall have submitted to the City for its review and have obtained the City’s approval of the draft contract or contracts with the selected property management company for management of the Project once developed (the “Property Management Contract”).</p>
	<p><u>7.12 Review and approval of Developer Submissions</u></p>	<p>If any Developer submission that is <u>timely submitted</u>, and <u>in its entirety</u>, is reasonably satisfactory to the City (in its proprietary capacity), then within ten (10) City Business Days of receipt by the City’s project manager (the “City Response Date”), the City shall, in its proprietary capacity, approve in writing that Developer submission, and no further filings by the Developer or approval by the City thereof shall be required for that Developer Submission, except for any subsequent Material Change in the contents of the Developer Submission. Notwithstanding the foregoing, the City may approve those portions of a Developer submission that are reasonably satisfactory and reject those portions that are not. The City may also approve all or a portion of a Developer submission subject to conditions requiring further submissions for City review and reasonable approval. City shall provide written notice of its approval or disapproval of any Developer submission (each, a “City Notice”) on or prior to the City Response Date, and in the event of disapproval or conditional approval shall include in any City Notice the specific basis and reasons for the City’s disapproval or conditional approval and changes that would make the Developer Submission or applicable portion thereof acceptable to City (in each case, “City Conditions”). If City fails to deliver the City Notice, then Developer shall provide a second written request for a response to the applicable Developer Submission, and the City shall have ten (10) City Business Days from receipt of the subsequent written request to provide the City Notice. Failure by City to meet the City</p>

		<p>Response Date or the additional ten (10) City Business Day period shall not constitute a default by City under this Agreement, and in such event, the subject Developer submission shall be automatically deemed disapproved.</p>
	<p>7.13 <u>Environmental Remediation;</u> <u>Environmental Liability</u></p>	<p>Developer shall, at its sole cost and expense, and as the responsible party, upon its execution of the Ground Lease and commencement of construction of the Project, perform the remediation necessary and required to address all environmental concerns relating to the Property, in accordance with that certain Corrective Action Plan 95th & International, dated January 6, 2020, and identified as Project No. 403385002, as it may be amended, restated and supplemented, from time to time (the “<i>CAP</i>”), which includes, without limitation, remediating the soil contaminants and removing the distill tank from the Eighth Parcel and any additional requirements that may be imposed as a result of the anticipated ground water analysis required by the Alameda County Department of Environmental Health (“<i>ACDEH</i>”). The remediation shall be performed pursuant to and in accordance with any and all applicable rules and regulations of the ACDEH and any others imposed by any agency having jurisdiction over the Property.</p> <p>Developer shall submit to the City and shall have obtained the written approval of the City’s Environmental Protection and Compliance department in accordance with Section 6(d) above, of the scope of its remediation prior to commencing the remediation work. The City shall have the right to inspect the remediation work from commencement through completion.</p> <p>Upon completion of the remediation work, Developer shall request, and provide as soon as available, a letter from the ACDEH noting that no further action is necessary in relation to any environmental remediation to be performed at the Eighth Parcel and the Property (the “<i>Closure Letter</i>”).</p> <p>Developer shall indemnify, defend, and hold the Indemnified Parties harmless from and against any liability arising out of a violation of any Environmental Law by Developer during the term of the Ground Lease, any Release directly caused by the activities of Developer during the term of the Ground Lease, and any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or emanating from the Property which is directly caused or exacerbated by the activities of Developer during the term of the Ground Lease.</p>

		<p>For purposes hereof, the following definitions shall apply:</p> <p>(i) “Hazardous Substance” shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. 9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls (“PCBs”), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code Section 25316 and Section 25281(d), all chemicals listed pursuant to the California Health & Safety Code 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances which occur naturally on the Site or commercially reasonable amounts of hazardous materials used in the ordinary course of construction and operation of a mixed use or residential development.</p> <p>(ii) “Environmental Law” shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, and Hazardous Substance releases or reporting requirements.</p> <p>(iii) “Release” shall mean any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance.</p>
8	CONSTRUCTION OF THE PROJECT	
	8.1 <u>Commencement of Construction</u>	The Developer shall commence construction work on the Project no later than the date set forth in the Schedule.
	8.2 <u>Construction Obligations</u>	Construction of the Project shall be substantially in accordance with the Final Construction Plans approved by the City, without substantial deviation therefrom unless approved by the City in writing.
	8.3 <u>Disabled Access.</u>	The Developer shall develop the Project in compliance with all applicable federal, state, and local requirements for access for disabled persons, including, without limitation and as applicable,

		Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. section 794).
	8.4 <u>Lead-based Paint.</u>	The Developer and its contractors and subcontractors shall not use lead-based paint in the construction of the Project or maintenance of Project units. The Developer shall insert this provision in all contracts and subcontracts for work performed on the Project which involves the application of paint.
	8.5 <u>Quality of Work.</u>	The Developer shall construct the Project in conformance with general industry standards and shall employ building materials of a quality suitable for the requirements of the Project. The Developer shall develop the Project in full conformance with applicable local, state, and federal statutes, regulations, and building and zoning codes.
9	COMPLETION GUARANTY	The Related Companies, L.P. (the “ <i>Guarantor</i> ”) shall provide City a Completion Guaranty pursuant to the LDDA and as a condition to closing on the Ground Lease, in a reasonable form to be agreed upon by the Guarantor and City and attached to the LDDA as an exhibit (the “ <i>Form of Guaranty</i> ”). The Guarantor shall guarantee completion of the Project in accordance with the terms of the LDDA.
10	REGULATORY AGREEMENT	Following completion of the Project, the use and operation of the Property and the improvements developed thereon shall be restricted according to the terms of the Ground Lease and the Regulatory Agreement, which shall contain income and rent restrictions for tenants for a term of not less than fifty-five (55) years from the date that fifty percent (50%) of the units have received a certificate of occupancy.
11	DEFAULT	The LDDA will include City’s standard remedies including, without limitation, the right to terminate the transaction upon Developer’s default, subject to standard notice and cure provisions permitting cure rights for Developer and the Project lenders and investor.
12	INDEMNIFICATION AND INSURANCE	The LDDA and Ground Lease will require Developer to indemnify, defend, and hold the City and its elected and appointed officials, employees, officers, commissioners, directors, partners and agents harmless from and against any liability directly or indirectly arising or resulting from Developer’s development, operation, and/or management of the Project, including, without limitation, liability arising as a result of property damage, personal injury, or violation of state, federal, or local laws.

13	DEVELOPER MAINTENANCE/ STANDARD OF PROPERTY	Following Project completion, Developer shall maintain the Property and the Project in compliance with applicable law and in good condition and repair to the reasonable satisfaction of the City. The Developer shall ensure that the Property does not violate the City’s Blight Ordinance.
14	PERMITTED TRANSFERS	Prior to Project completion, the Developer shall not have the right to assign or transfer all or any portion of its rights and obligations under the LDDA, other than an assignment to, and assumption of, the LDDA by a limited partnership (“ <i>Partnership</i> ”) of which the Developer (or another entity affiliated with and controlled by Acts and/or Related.
15	OFF-SITE IMPROVEMENTS	Developer shall be responsible for the cost of any and all off-site improvements and any relocation of existing utilities and easements to the extent required under planning and building approvals for the Project.
16	TRANSPORTATION IMPACT FEE	Developer shall pay any and all permit and regulatory fees, including, but not limited to, the City’s Transportation Impact Fee (“ <i>TIF</i> ”), which applies to the Project pursuant to City Ordinance OMC Chapter 15.74, Transportation Impact Fees.
17	CITY EMPLOYMENT & CONTRACTING REQUIREMENTS	Developer shall abide by all applicable City employment and contracting requirements, including, but not limited to, the following: the provisions of City’s Local and Small Local Business Enterprise Program; Local Employment Program; Required Prevailing Wages; Living Wage Ordinance; the City of Oakland’s First Source Employment Referral Program; Employment Nondiscrimination; and Reporting Requirements of the City of Oakland.
18	LEGAL REIMBURSEMENT	Developer shall deliver to City a payment equal to the lesser of (i) Fifty Thousand Dollars (\$50,000) or (ii) the amount necessary to reimburse City for the third-party attorneys’ fees incurred by City in the negotiation and drafting of the LDDA and the Ground Lease and all other exhibits thereto. Such payment shall be made within ten (10) business days after Developer’s receipt of reasonable documentation supporting the amount of attorneys’ fees incurred by City. The payment made shall be immediately non-refundable to Developer.

Exhibit A
Schedule

Task	Scheduled Completion Date
Pre-conveyance Requirements	
1. Financial Plan	December 31, 2021
2. Financing Documents	December 31, 2021
3. Schematic Designs	October 31, 2018 (Complete)
4. Design Development Plans	September 20, 2021
5. Public Improvements	August 1, 2023
6. Final Construction Plans	January 31, 2022
7. Construction Contract	January 31, 2022
8. Payment and Performance Bonds	January 31, 2022
9. Governmental Approvals	January 31, 2022
10. Property Management Contract	January 31, 2022
11. Outside Closing Date	January 31, 2022
Construction of the Project	
1. Commencement of Construction	February 1, 2022
2. Completion of Construction	August 1, 2023

95th and International Boulevard Project LDDA Term Sheet