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OFFICE OF THE CITY CLERK
OAKLAND

As revised by the Community & Economic Development Committee,

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**TERM SHEET FOR OWNER PARTICIPATION AGREEMENT
BETWEEN
OAKLAND ECONOMIC DEVELOPMENT CORPORATION, Urban Core Development, LLC
AND CITY OF OAKLAND
FOR
COLISEUM TRANSIT VILLAGE PHASE I**

DATED: November 30, 2015

Pursuant to an Exclusive Negotiating Agreement dated January 10, 2014 ("ENA") and a Predevelopment Loan Agreement dated January 10, 2014 ("Predevelopment Loan Agreement"), both by and between the City of Oakland, a municipal corporation ("City") and Oakland Economic Development Corporation, a California not for profit corporation ("OEDC") and Urban Core Development, LLC ("Urban Core") and/or affiliated entity ("Developer,"). City submits this non-binding summary of proposed terms ("Term Sheet") for the Owner Participation Agreement ("OPA") to be negotiated by and between the parties. All capitalized terms not specifically defined in this Term Sheet shall have the definitions provided in the ENA.

Property:

The term "Property" shall be further defined in the OPA but generally consists of the 1.3 acre Coliseum BART parking lot property (APN #:041-4166-031-02) bounded by 70th and 71st Avenues and Snell Street, Oakland, California (the "Property") and improvements now or hereafter located thereon.

Project:

Developer shall be fully responsible for the construction of the buildings and improvements including approximately 110 residential apartment units with approximately 50% Market Rate and 50% Affordable and approximately 95 parking spaces in a partially underground garage, along with an approximate 750 square feet for a publicly accessible community cafe (the "Project") on the Property.

Predevelopment Loan Funding:

In January 2014, pursuant to the Predevelopment Loan Agreement, the City loaned OEDC the amount of \$400,000 (the "Predevelopment Loan") to assist with predevelopment costs and expenses of the Project.

Owner Participation Agreement ("OPA"):

The City, OEDC, Urban Core and or its affiliate or related entity expect to enter into an Owner Participation Agreement based substantially on the terms agreed to herein, and which may be incorporated into an OPA for approval by the City Council.

Pursuant to the terms of the OPA the City shall provide an additional loan amount of \$11,600,000, which together with the Predevelopment Loan will total \$12,000,000 (the "Development Loan") to OEDC or its affiliate or related entity contingent upon the conditions set forth below under "Funding Commitment" to provide development funding to the Project during the predevelopment and construction phase. The Development Loan is comprised of \$11.6 million bond funds to be approved and appropriated by the City Council in its sole and absolute discretion, and the previously disbursed \$400,000 Predevelopment Loan. The OPA will set forth the terms by which the City shall release \$11.6 million of the remaining Development Loan proceeds, including but not limited to, an approved Development Budget to be attached to the OPA. The Developer and the City shall agree on the Development Budget for the Project, which will include: (a) the Development Loan, (b) a portion of the construction and soft costs (determined by draw requests approved by the City and the Project Lenders), and (c) invoices and other documentation of work completed on the Project on a monthly basis. Notwithstanding the above, the City shall reserve the right to re-evaluate its share of subsidy contribution in the event the total number of units or the unit mix (including the proportion of deed restricted below market rate units) changes significantly.

Taxes:

Once Developer obtains a leasehold interest in the Property from BART, Developer shall be solely responsible for the payment of any and all taxes, levies, assessments, fees or charges on the Property. Taxes, levies, assessments, fees or charges (collectively referred to as "Taxes") shall be assessed against Developer in relation to the leased premises and the occupation or operation thereof and the revenue derived therefrom, or any personal property or fixtures located thereon arising from Developer's construction and operations.

Development Documents:

As a condition precedent to the OPA closing, the Developer shall provide the City the following documents (the "Development Documents") for its review:

1. A detailed development schedule including, but not limited to, pre-construction, construction, marketing and leasing;
2. Signed and fully executed long term ground lease by and between Developer and BART for the Property;
3. Evidence of equity and construction financing commitments for total project costs;
4. Project completion guarantee;
5. Guaranteed Maximum Price set of architectural drawings;
6. Proper evidence of Project and zoning entitlements;
7. Compliance with local, state, and federal requirements such as environmental, accessibility, living wage, contracting, etc.; and
8. Other such documents relevant to the development of the Project as the City may reasonably request

Funding Commitment:

The City shall provide the Development Loan in the total amount of Twelve Million Dollars (\$12,000,000), contingent upon (i) the City's receipt of the Development Documents listed as 1-8 above; (ii) Review and approval of the proposed subsidy amount by the City's independent third party economic consultant; (iii) Council approval of the Development Loan; and (iv) Upon reimbursement to the City from the State of California Housing and Community Development Department of the Proposition 1C transit oriented development ("TOD") grant funds. The Development Loan shall fund a portion of the Project costs, including a portion of additional predevelopment costs and expenses in the amount of \$750,000 based on the Council's approval of the OPA and Development Budget, the construction of the off-site and on-site work, infrastructure costs, and the structured parking garage. The Development Loan shall bear 3% simple interest, and shall be subordinated to the lender's first deed of trust construction and permanent loan security instruments, and any mezzanine financing approved for the Project by the City. The Term of the Development Loan shall be 55 years from the date of execution of the OPA and shall be due and payable at the end of the Term, provided however, if the Developer has fulfilled the requirements under the Deed Restrictions for maintaining 50% of the total units as affordable, the Development Loan will be forgiven. The OPA shall also provide that annual payments to the City may be deferred until after the refinance or full repayment of the first mortgage on the Property. However, if prior to the refinance or full repayment of the first mortgage on the Property, the private equity has received a cumulative return of 15% annually, and assuming that any deferred developer fees have also been repaid from cash flow, then Developer and City shall each receive 50% of the available cash flow not paid to BART.

Tenants of Affordable Housing

To the extent allowed by law, preference in initial occupancy of affordable housing units will be given to teachers and staff of the Oakland Unified School District.

Replacement Parking:

The City shall construct approximately 20 spaces at the City owned Snell Street parking lot that shall be reserved for BART parking during the weekdays only and approximately 3 parking spaces that shall be reserved for a car share provider. In addition, the City shall work in good faith to enter into an MOU with BART to convert additional on-street parking into BART's paid parking system along Snell Street from 69th Avenue to 73rd Avenue. The City and BART expect to equally share the parking revenue generated from the converted Snell Street and Snell lot parking spaces. Parking rates shall be the same as the BART rate and shall be determined in a separate MOU between the City and BART. In the future, if another parking lot is constructed for BART, these spaces shall revert back as City public parking.

Refinance or Sale of Improvements:

The City and the Developer agree that in the event the Developer seeks to refinance the debt related to the Project, a written consent from the City will be required, which shall not be unreasonably withheld, and the City agrees to work in good faith with the Developer and the lender(s) to negotiate a form of consent to assignment satisfactory to the City; provided however the City shall not be obligated to accept terms imposed by Developer's lender(s). In the event the Developer sells their ownership interests in the Improvements on the Property, the provisions of this Term Sheet shall be applicable to the new owner. .

Performance and Payment Bonds:

A performance bond in an amount not less than 100% of the cost of construction of the Project as security for the faithful performance of such construction; and a labor and material payment bond in an amount not less than 100% of the cost of construction of the Project as security for payment to persons performing labor and furnishing materials in connection with such construction shall be required.

Completion Guaranty:

Prior to and as a condition to close escrow, ODEC shall cause a Guarantor(s) to execute a Completion Guaranty in a form attached to the OPA and deliver it to the City.

City's Contracting Requirements

Developer shall be required to fully comply with State Prevailing Wage requirements and follow the City's Contracting policies including application of local hire, apprenticeship programs, living wage, equal benefits requirements, employment nondiscrimination, and shall enter into a project labor agreement with the appropriate unions for the construction of the Project. Developer shall also be required to comply with the City's local and small local business enterprise and first source programs.

Non-Binding:

All proposed terms contained in this Term Sheet are preliminary and shall not be binding until both parties have executed the OPA. The other paragraphs of this Term Sheet are intended to create no legally binding obligations, express or implied. No party shall be bound to such other terms hereof until each party has executed mutually acceptable definitive documents with respect thereto.