



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2016 JAN 28 **AGENDA REPORT**

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

**FROM:** Rachel Flynn  
Director, PBD

**SUBJECT:** Jack London Square Development  
Agreement Transfer and Assignment

**DATE:** January 15, 2016

City Administrator Approval

Date:

1/26/16

**RECOMMENDATION**

**Staff Recommends That The City Council Adopt A Resolution Consenting To A Non-Affiliate Transfer And Assignment Of The Development Agreement (DA) Between The City Of Oakland, Jack London Square Partners LLC, And CEP-JLS I LLC, Dated July 6, 2004 (DA) To CIM Group Acquisitions, LLC Pursuant To The DA And Planning Code Section 17.138.080 (Development Agreement Procedure); Action Taken In Reliance on Previously Certified 2004 Environmental Impact Report (CEQA Guidelines 15162, 15183)**

**EXECUTIVE SUMMARY**

Jack London Square Ventures LLC, JLSV Land LLC and JLSV F-3 LLC ("Assignor"), requests City Council consent to a non-affiliate transfer and assignment of all interest in the Jack London District as defined in the DA. The DA requires written consent by the City Council for non-affiliate transfers of interest.

Adoption of the resolution would result in the current Assignor being relieved of all interest, rights and obligations under the DA and CIM Group Acquisitions assuming all of the Assignor's rights and obligations under the DA as the new Master Developer for the Jack London District (as defined in the DA). More specifically, the Assignor proposes assigning all of its rights, title and interest in and to the affected development parcels to CIM Group Acquisitions. The proposal in no way affects other changes the entitled development project and results only in a new project proponent.

**BACKGROUND / LEGISLATIVE HISTORY**

The City of Oakland originally approved the nine-site, multi-phased development project known as "Jack London District" (project) in 2004. The project is located on sites throughout the Jack London District of Oakland, south of Interstate 880, and owned by the Port of Oakland (with the exception of Sites D and F2, which are owned by JLSV Land, LLC). The project was subject to an Environmental Impact Report, Planned Unit Development (PUD), including a Preliminary Development Permit (PDP) and several Final Development Plans (and appeal), Major Conditional Use Permit (and appeal), Major Variance, Rezone, and Development Agreement

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(and appeal), with final approvals for the land use entitlements granted by the Oakland City Council on June 15, 2004. In 2014, the Oakland City Council approved an amendment to the PUD and PDP allowing for residential development options on Sites D and F2 and accepting a commitment to substantial community benefits offered by the Assignor. More recently, the Assignor submitted applications for Final Development Permits (FDPs) and Tentative Parcel Maps (TPMs) for primarily residential development of both Sites D and F2. These applications are currently under review by staff.

Since 2004, the project proponent has developed three sites: Sites "C", "G" and "F1". "Site C" is a commercial building that includes 16,000 square feet of above-ground floor office space and 16,000 square feet of vacant retail, dining and entertainment space on the ground floor. "Site G" includes 1,086 parking spaces (although the site was only required to have 743 spaces), 30,000 square feet of vacant retail space on the ground floor, and a pedestrian bridge connecting the building to Jack London Square over the railroad right-of-way along Embarcadero. "Site F1" is a six-story building with an approximately 33,000 square-foot footprint, and encompasses a total of 191,000 square feet; there is a restaurant located on the ground floor and mostly occupied office uses on the upper floors.

## ANALYSIS AND POLICY ALTERNATIVES

Staff has identified the following discussion points related to the proposal:

### *Compliance with the Development Agreement*

The DA Article X specifies limitations on the developer's right to transfer (see **Attachment A: DA Article X**). Specifically, Section 10.3.2 requires written consent of the City Council for a Non-Affiliate transfer. In addition, Section 10.2.3 requires that the applicant demonstrate that the transferee has the "(i)... financial capacity and business reputation to fulfill the obligations to be assumed by such Transferee..., and (ii) has the ability and intent to implement a concept that is consistent with the Estuary Policy Plan objectives of promoting a development that complements and enlivens the world-class, destination waterfront environment in the Project vicinity and that emphasizes high quality... uses... as envisioned by, the Project Approvals." The DA further provides that this information and documentation shall be reviewed at a properly noticed public meeting of the City Council. Section 10.3.2 of the DA provides that the City Council has the right to request such additional information as may be reasonably necessary for the Council to render its decision, but the Council's consent to such Transfer "shall be limited solely to the proposed Transferee's qualifications and financial capacity as specified in Section 10.2.3" of the DA.

Consistent with the requirements of the DA, the Assignor has identified CIM Group Acquisitions LLC (transferee), an entity owned and controlled by CIM Fund VIII, L.P., as the non-affiliate transferee for all interests in the DA. In addition, the developer has submitted information indicating that the transferee is committed to the growth and development of Oakland and Jack London Square (as evidenced by their extensive holdings in Oakland), and is financially prepared to fulfill the terms of the DA (based on expert review of CIM's financial term sheets). See **Attachment B: Letter Request from Jack London Square Ventures LLC, JLSV Land LLC and JLSV F-3 LLC, dated December 10, 2015** for details of transferee qualifications.

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*Compliance with the Oakland Planning Code*

The Oakland Planning Code Chapter 17.138 Development Agreement Procedure includes requirements for transfers of interest by the developer (see **Attachment C: Planning Code Chapter 17.138 Development Agreement Procedure**) for complete regulations regarding DAs. Specifically, Section 17.148.080 Adherence to development agreement, and amendment or cancellation by mutual consent states that "the interests of the applicant may not be transferred or assigned to a new person without the written consent of the city." The applicant is in compliance with this requirement by having submitted a request for City Council consideration of the proposed transfer.

**FISCAL IMPACT**

The proposed project is the transfer of interests owned privately and/or by and under Port of Oakland jurisdiction from a party to the DA to a non-affiliate. The project would not have any direct fiscal impact on the City of Oakland.

**PUBLIC OUTREACH / INTEREST**

Staff provided a 17-day 300' radius property owner and interested party mailing notice of this proposal and hearing.

**COORDINATION**

Staff has consulted with the City Attorney's Office and with the Controller's Bureau in the preparation of this staff report and legislation.

**PAST PERFORMANCE, EVALUATION AND FOLLOW-UP** *(If Applicable)*

The project is subject to the DA. City staff most recently performed a DA Compliance review in July 2015 and found the project to be in compliance with the terms of the DA at that time.

**SUSTAINABLE OPPORTUNITIES**

**Economic:** The proposed transfer of interests would allow a financially sound transferee to take on the responsibility of fulfilling the vision of the Estuary Plan and DA.

**Environmental:** The project would not in any way change the physical characteristics of the Jack London District nor would it change the planned land uses. There would be no environmental effects as a result of the proposed transfer of interests.

**Social Equity.** The proposed transfer of interests would not change the project physically or otherwise and would therefore not affect social equity in Oakland.

### CEQA

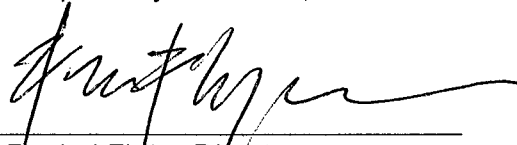
The City of Oakland Planning Commission certified the Jack London Square Redevelopment Environmental Impact Report (EIR) on March 17, 2004. Under the California Environmental Quality Act (CEQA) Section 15162, no subsequent environmental review is required unless there are new or substantially more severe significant impacts resulting from (1) substantial changes to the project, (2) the circumstances surrounding the project or (3) new information not known and which could not reasonably have been known at the time of the prior EIR. In reviewing the currently proposed transfer of interests, staff has determined that none of the circumstances necessitating further environmental review are present. The reasons for this determination include, among others, the following: (1) the currently proposed transfer of interest does not affect the physical development previously reviewed in the EIR and is not a change in the project that involves any new significant effects or a substantial increase in the severity of previously identified significant effects; (2) circumstances under which the project is undertaken have not occurred that will involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) no new information has come to light that would involve new or substantially more severe effects or feasible alternatives or mitigation measures. Accordingly, no further environmental review is required for this project at this time. The EIR identifies impacts and requires mitigation measures, and the proposed project will continue to be required to incorporate the mitigation measures. In addition, the City finds and determines, after independent review and consideration, that the proposal complies with CEQA because it is consistent with the development density established by existing general plan policies for which an EIR was previously certified, pursuant to CEQA Guidelines Section 15183. The EIR is available for review at 250 Frank Ogawa Plaza, Suite 3315, Oakland, CA 94612 during normal business hours.

**ACTION REQUESTED OF THE CITY COUNCIL**

**Adopt A Resolution Consenting To A Non-Affiliate Transfer And Assignment Of The Development Agreement (DA) Between The City Of Oakland, Jack London Square Partners LLC, And CEP-JLS I LLC, Dated July 6, 2004 (DA) To CIM Group Acquisitions, LLC Pursuant To The DA And Planning Code Section 17.138.080 (Development Agreement Procedure); Action Taken In Reliance on Previously Certified 2004 Environmental Impact Report (CEQA Guidelines 15162, 15183)**

For questions regarding this report, please contact Catherine Payne, Planner IV, at (510) 238-6168.

Respectfully submitted,



Rachel Flynn, Director  
Department of Planning and Building

Reviewed by:  
Robert Merkamp,  
Development Planning Manager

Prepared by:  
Catherine Payne, Planner IV  
Bureau of Planning

Attachments (4):

Attachment A: DA Article X

Attachment B: Letter request from Jack London Square Ventures LLC, JLSV Land LLC, JLSV F-3 LLC, dated December 10, 2015

Attachment C: Oakland Planning Code Chapter 17.138 Development Agreement Procedure

Attachment D: Jack London Square Redevelopment Project EIR and Addendum #1 (provided under separate cover to the City Council; available to the public at 250 Frank Ogawa Plaza, Suite 3315, Oakland CA, 94612 during regular business hours and at

<http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/OAK044560>.

Attachment A:  
DA Article X

provisions of a Development Parcel Ground Lease, shall at all times remain subject and subordinate to the Lessor's interest under the Development Parcel Ground Lease.

#### ARTICLE X

#### TRANSFERS AND ASSIGNMENTS; DEVELOPER CURE RIGHTS, ALLOCATION OF DEVELOPER RIGHTS, DUTIES AND OBLIGATIONS

##### 10.1. Limitations on Developer's Right to Transfer.

Developer acknowledges that the qualifications of Developer are of particular importance to City for, among others, the following reasons: (i) the importance of development of the Project Site to the Jack London Square area and to the general welfare of City, with particular reference to City's objectives as reflected in the Estuary Policy Plan and other applicable provisions of the General Plan; (ii) City's reliance upon the qualifications and ability of Developer to serve as the catalyst for development of the Project and to assure the quality of the use, operation and maintenance in the development of the Project; and that (iii) such qualifications and identity are material considerations inducing City to enter into this Agreement with Developer. In recognition of these factors, Developer's rights to Transfer any right or interest under this Agreement shall be governed strictly in accordance with the provisions of this Article X, and no voluntary or involuntary successor-in-interest of Developer shall

acquire any rights or powers under this Agreement except as expressly set forth in this Article X.

10.2. Conditions Precedent to Developer Right to Transfer. Except as otherwise provided in this Article X, Developer shall only have the right to effect a Transfer subject to and upon fulfillment of the following conditions precedent:

10.2.1. No Event of Default. No Event of Default by Developer shall be outstanding and uncured as of the effective date of the proposed Transfer, or in the event of a Transfer by Developer of its rights, duties and obligations with respect to a Development Parcel, no Event of Default by Developer (or a Transferee) shall be outstanding and uncured as to such Development Parcel as of the effective date of the proposed Transfer, unless City Council has received adequate assurances satisfactory to City Council in its sole discretion that such Event of Default shall be cured in a timely manner either by Developer or the Transferee under the Transfer.

10.2.2. Assumption Agreement. At least forty-five (45) days prior to the effective date of the proposed Transfer, Developer or the proposed Transferee has delivered to City an executed and acknowledged assumption agreement in recordable form. Such assumption agreement shall include provisions regarding (i) the portion or portions or interest in one or more Development Parcels proposed to be Transferred and the concomitant rights of Developer necessary to ensure that the



proposed Transferee will have the ability to perform all of the obligations of Developer the Transferee is to assume, (ii) the obligations of Developer under this Agreement that the proposed Transferee will assume, and (iii) the proposed Transferee's acknowledgment that such Transferee has reviewed and agrees to be bound by this Agreement and all applicable City Approvals. The assumption agreement shall also include the name, form of entity, and address of the proposed Transferee, and shall provide that the Transferee assumes the obligations of Developer to be assumed by the Transferee in connection with the proposed Transfer. The assumption agreement shall be recorded in the Official Records of the County of Alameda concurrently with the consummation of the Transfer, and a copy thereof, certified by the County Recorder as a duplicate copy of the approved assumption agreement with recording information, shall be delivered to City within three (3) days after consummation of the Transfer.

10.2.3. Qualifications of Transferee. Unless the proposed Transferee is an Affiliate, at least forty-five (45) days prior to the effective date of the proposed Transfer, Developer or the proposed Transferee has delivered to City Council, and City Council has approved, reasonably sufficient information and documentation (such as financial statements) evidencing that the Transferee (either directly or indirectly through the owner of one or more of its beneficial interests in the Transferee) (i) has the financial capacity and business

reputation to fulfill the obligations to be assumed by such Transferee under this Agreement, and (ii) has the ability and intent to implement a concept that is consistent with the Estuary Policy Plan objectives of promoting a development that complements and enlivens the world-class, destination waterfront environment in the Project vicinity and that emphasizes high quality, well-designed, diversified retail and entertainment uses, consistent with, and as envisioned by, the Project Approvals.

10.3. Limitations and Exceptions on Developer Right to Transfer. Developer's right to Transfer any right or interest under this Agreement shall be subject solely to the following limitations and exceptions:

10.3.1. Transfer to Affiliate. Developer shall have the right to Transfer all of its rights, duties and obligations under this Agreement to an Affiliate, and/or to effectuate a Development Parcel Transfer to an Affiliate. Such Affiliate shall become a Transferee upon (i) the acquisition by such Affiliate of the affected interest of Developer under this Agreement, and (ii) delivery to City of an assumption agreement pursuant to Section 10.2.2 above assuming, from and after the date such Affiliate so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement. By virtue of its demonstrated status as an Affiliate of Developer and recognizing that Transfers to Affiliates will facilitate

Developer's ability to develop the Project consistent with the Project Approvals, including this Agreement, City hereby consents to the Transfer to an Affiliate in accordance with this Section 10.3.1 and Section 17.138.080 of the Development Agreement Ordinance, and no further consent of City shall be required for any Transfer by Developer to an Affiliate pursuant to this Section 10.3.1.

10.3.2. Transfer to Non-Affiliate. Developer shall have the right to Transfer all of its rights, duties and obligations under this Agreement to a Transferee which is not an Affiliate of Developer, and/or effectuate a Development Parcel Transfer to a Transferee which is not an Affiliate of Developer, only with the prior written consent of City Council pursuant to Section 17.138.080 of the Development Agreement Ordinance and subject to this Article X. No such Transfer can be effectuated without prior written consent of the City Council notwithstanding City's failure to strictly comply with any of the provisions herein. If Developer intends to effect a Transfer pursuant to this Section 10.3.2, Developer shall so notify City and provide to City, with such notice, the assumption agreement required by Section 10.2.2\*above, and the information and documentation required by Section 10.2.3 above, which information and documentation shall include the identity of the proposed Transferee, the qualifications of the proposed Transferee which will enable it to perform Developer's rights, duties and

obligations under this Agreement to be Transferred to such Transferee, and financial information regarding the proposed Transferee demonstrating that it has the financial capacity to perform Developer's obligations to be Transferred to such Transferee under this Agreement. Within 45 days of receiving such information and documentation, City shall (subject to the requirements of the Ralph M. Brown Act, the City's Sunshine Ordinance and all other applicable legal noticing requirements then in effect) cause the proposed Transfer to be placed on the City Council agenda for consideration. At such City Council meeting, (as it may be reasonably continued by the Council) the City Council shall review such information and documentation and render a decision regarding its consent to the Transfer. City shall have the right to request such additional information regarding the proposed Transferee as may be reasonably necessary in order to enable City Council to render its decision hereunder.

City Council's consent to such Transfer shall be limited solely to the proposed Transferee's qualifications and financial capacity as specified in Section 10.2.3 above. The proposed Transferee shall become a Transferee upon (i) the receipt of City Council's written consent; (ii) the acquisition by such Transferee of the interest of Developer under this Agreement to be Transferred to such Transferee; and (iii) delivery to City of the assumption agreement pursuant to Section 10.2.2 above assuming, from and after the date such Transferee so acquires

such interest of Developer, the applicable rights, duties and obligations of Developer under this Agreement.

10.3.3. Mortgagee as Transferee. No Mortgage (including the execution and delivery thereof to the Mortgagee) shall constitute a Transfer. A Mortgagee shall be a Transferee only upon (i) the acquisition by such Mortgagee of the affected interest of Developer encumbered by such Mortgagee's Mortgage; and (ii) delivery to City of an assumption agreement pursuant to Section 10.2.2 above assuming, from and after the date such Mortgagee so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement. City hereby consents to the Transfer to a Mortgagee in accordance with this Section 10.3.3. No further consent of City shall be required for any such Transfer pursuant to this Section 10.3.3 or Section 17.138.080 of the Development Agreement Ordinance.

10.4. Effect of Transfer. Except for the limitations and exceptions specified in Sections 10.3 above, a Transferee shall become a Party to this Agreement only with respect to the interest Transferred to it under the Transfer and then only to the extent set forth in the assumption agreement delivered under Section 10.2.2 above. When and if, and only when and if, Developer Transfers all of its rights, duties and obligations under this Agreement in accordance with this Article X, Developer (or a Transferee, as the case may be) shall be released from any and all obligations accruing after the date of

the Transfer with respect to the rights, duties and obligations of Developer under this Agreement which the Transferee assumes. If Developer (or a Transferee, as the case may be) effectuates a Developer Parcel Transfer, Developer (or such Transferee) shall not be released from any of its obligations accruing before, during or after the date of the Transfer with respect to the rights, duties and obligations of Developer under this Agreement which the Transferee of the Development Parcel Transfer assumes, unless City has provided its prior written agreement to a release of such obligations in connection with such Development Parcel Transfer.

10.5. Right of Developer to Cure. If Developer completes a Development Parcel Transfer, then City shall deliver to Developer (or to Developer's Transferee if Developer has effectuated a Transfer of all of its rights, duties and obligations under this Agreement pursuant to Section 10.3.1 or 10.3.2 above), concurrently with service thereon to the Transferee under the Development Parcel Transfer, any notice given with respect to any claim by City that such Transferee has committed an Event of Default, including noncompliance with the Applicable Conditions of Approval for such Development Parcel Transfer. If City makes a determination of noncompliance under Article VI above, City shall likewise serve to Developer notice of such Transferee's noncompliance. Developer (or its Transferee) shall have the right to cure or remedy, or to

commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice within the applicable time periods for cure specified in this Agreement. If, however, the Event of Default or such noncompliance is of a nature which can only be remedied or cured by Developer (or its Transferee) upon obtaining possession of the affected Development Parcel, Developer (or its Transferee) shall seek to obtain possession with diligence and continuity, and shall thereafter remedy or cure the Event of Default or noncompliance as soon as reasonably possible after obtaining possession. So long as Developer (or its Transferee) demonstrates to the satisfaction of City that it is diligently pursuing cure of the Event of Default or noncompliance in conformance with the requirements of this Section 10.5, City shall not exercise any right or remedy under this Agreement on account of such Event of Default or noncompliance; however, nothing herein shall prevent the City from seeking any right or remedy under this Agreement if it determines in its sole discretion that the Developer (or its Transferee) has failed to make such a showing. Except with respect to the requirements of Section 4.3 of this Agreement (Terms and Conditions for Development of Minimum Project), no Event of Default or finding of noncompliance under Article VI with respect to a Development Parcel shall affect the rights, duties and obligations of Developer, or its Transferees, under this Agreement with respect to Development Parcels not affected

by such Event of Default or finding of noncompliance under Article VI, and all such rights, duties and obligations shall continue in full force and effect in accordance with their terms.

10.6. Allocation of Rights, Duties and Obligations of Developer. The provisions of this Section 10.6 are intended to provide City with a designated Person to represent Developer in accordance with the provisions of this Section 10.6, and nothing in this Section 10.6 shall limit City's rights and remedies with respect to any Developer, Affiliate of Developer or a Transferee, as applicable, under this Agreement, nor limit the performance by Developer of any of its obligations under this Agreement. Unless and until JLSP Transfers all of its rights, duties and obligations under this Agreement (including as a result of effectuating Development Parcel Transfers), JLSP shall have the sole and exclusive power to exercise all of the rights and remedies of Developer under this Agreement, and shall have the sole and exclusive responsibility to perform all of Developer's duties and obligations under this Agreement. From and after the date JLSP Transfers all of its rights, duties and obligations under this Agreement, then the Persons holding at least 51% of the legal and equitable interests as Lessees in the Development Parcels shall designate by written notice to City one of such Persons to act on behalf of Developer in the place and stead of JLSP pursuant this Section 10.6. On behalf of itself and its successors and assigns, CEP-JLS hereby consents to the



foregoing grant of authority to JLSP and such successor Person, and for itself and its successors and assigns hereby assigns to JLSP and such successor Person the foregoing rights and obligations. CEP-JLS, on behalf of itself and its successor and assigns, hereby constitutes and appoints JLSP and such successor Person as the true and lawful attorney-in-fact of CEP-JLS, and such successors and assigns, to exercise all rights and remedies of Developer under this Agreement and to perform all duties and obligations of Developer under this Agreement in accordance with the provisions of this Section 10.6. The power-of-attorney granted hereunder is irrevocable and continuing, shall survive the insolvency or dissolution of CEP-JLS, or any successors or assigns of CEP-JLS, and any Transfer, until Termination of this Agreement. Any document or instrument executed by JLSP or such successor Person pursuant to the foregoing grant of power-of-attorney shall be binding and enforceable on all Persons then comprising Developer.

#### ARTICLE XI

##### AMENDMENT AND TERMINATION

11.1: Amendment or Cancellation. Except as expressly provided in this Agreement, this Agreement may be Terminated, modified or amended only by the consent of the Parties made in writing, and then only in the manner provided for in Section 65868 of the Development Agreement Legislation. Neither this Agreement nor any term, covenant, condition or

Attachment B:

Letter request from Jack London Square  
Ventures LLC, JLSV Land LLC, JLSV F-3  
LLC, dated December 10, 2015

**JACK LONDON SQUARE VENTURES LLC  
JLSV LAND LLC  
JLSV F-3 LLC**

c/o Divco West Acquisitions, LLC  
575 Market Street, 35th Floor  
San Francisco, CA 94105

December 10, 2015

VIA FEDERAL EXPRESS

The City of Oakland  
250 Frank H. Ogawa Plaza  
Suite 3330  
Oakland, CA 94612  
Attn: Rachel Flynn, Director of City Planning

**Re: Request for Consent to Assignment of Development Agreement  
Jack London Square, Oakland, California**

Dear Ms. Flynn:

Reference is hereby made to that certain Development Agreement, dated as of July 6, 2004 and recorded in the official records of Alameda County on September 2, 2005 as Document No. 2005380062, by and among The City of Oakland, a California charter city ("**City**"), Jack London Square Ventures LLC, JLSV Land LLC and JLSV F-3 LLC (collectively, "**Assignor**"), as successors-in-interest to Jack London Square Partners, LLC and CEP-JLS I LLC (the "**Development Agreement**").

You are hereby notified that Assignor intends to sell to all of its right, title and interest in the real property subject to the Development Agreement to a wholly owned subsidiary of CIM Fund VIII, L.P. and its parallel funds ("**Assignee**"). Currently therewith, Assignor desires to assign all of its right, title and interest in and to the Development Agreement to Assignee.

Accordingly, pursuant to Article X of the Development Agreement, Assignor hereby requests City's consent to an assignment of Assignor's rights, title and interest in and to the Development Agreement to CIM Group Acquisitions, LLC, a Delaware limited liability company, or one or more affiliates thereof ("**Assignee**"). This letter hereby acts as Assignor's notice to City, as required pursuant to Section 10.3.2 of the Development Agreement.

In accordance with the requirements of Section 10.2.2 of the Development Agreement, attached hereto as Exhibit A is the form of Assignment and Assumption Agreement (Development Agreement) (the "**Assignment**") to be executed and delivered by Assignee and Assignor upon the closing of the proposed transaction. A fully executed Assignment shall be provided to you as and when available. In addition, information regarding Assignee as required

by Section 10.2.3 of the Development Agreement shall be provided to you under separate cover by Assignee.

We respectfully request that City provide written notice of its consent to the assignment of the Development Agreement to Assignee as soon as possible following City's receipt of this notice and the additional information regarding Assignee referenced herein by executing this letter in the space provided below and returning its signed counterpart to the undersigned.

In addition, please be advised that in connection with the foregoing assignment, at a later date, Assignor shall submit a request to City for an estoppel pursuant to Section 8.5 of the Development Agreement.

If you have any questions or require any further information, please do not hesitate to contact Melinda Ellis Evers, Ellis Partners, at (415) 391-9800.

*[Remainder of page intentionally left blank]*

Sincerely yours,

**JACK LONDON SQUARE VENTURES LLC,**  
a Delaware limited liability company

By: MSCP JLS, LLC,  
a Delaware limited liability company  
Its: Managing Member

By: J. Moore  
Name: Jacqueline Moore  
Its: Authorized Signatory

**JLSV LAND LLC,**  
a Delaware limited liability company

By: MSCP JLS, LLC,  
a Delaware limited liability company  
Its: Managing Member

By: J. Moore  
Name: Jacqueline Moore  
Its: Authorized Signatory

**JLVS F-3 LLC,**  
a Delaware limited liability company

By: MSCP JLS, LLC,  
a Delaware limited liability company  
Its: Managing Member

By: J. Moore  
Name: Jacqueline Moore  
Its: Authorized Signatory

*[City's acknowledgment appears on following page]*

**ACKNOWLEDGED, AGREED AND CONSENTED TO AS OF**  
**\_\_\_\_\_ DAY OF \_\_\_\_\_**

**CITY OF OAKLAND,**  
a California charter city

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Consent to Assignment of DA]

**EXHIBIT A**  
**ASSIGNMENT**

[See attached]

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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(Space above this line is for recorder's use)

**ASSIGNMENT AND ASSUMPTION AGREEMENT**  
(Development Agreement)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Agreement**") is entered into as \_\_\_\_\_, 2015, by and between Jack London Square Ventures LLC, a Delaware limited liability company, JLSV Land LLC, a Delaware limited liability company, and JLSV F-3 LLC, a Delaware limited liability company (collectively, "**Assignor**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Assignee**"). Capitalized terms not defined in this Agreement are defined in the Development Agreement (as defined below), unless otherwise indicated herein.

**RECITALS**

A. Assignor (as successor-in-interest to Jack London Square Partners, LLC and CEP-JLS I LLC) is a party to that certain Development Agreement dated July 6, 2004, and recorded in the Official Records of Alameda County on September 2, 2005, as Instrument No. 20055380062 ("**Development Agreement**"), with respect to certain land located in the Jack London Square area of the City of Oakland, as more particularly described in the Development Agreement.

B. The property subject to the Development Agreement includes those parcels of land commonly referred to as "70 Washington Street," "66 Franklin Street," "Pavilion I" (98 Broadway), "Water Street I", "Parcel D," "Parcel F-1," "Parcel F-2," "Parcel F-3" and "Parcel G" (collectively, the "**Development Parcels**"), as more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

C. Concurrently herewith, Assignor is assigning all of its right, title and interest in and to the Development Parcels to Assignee.

D. Assignor has agreed to assign its rights under the Development Agreement with respect to the Development Parcels to Assignee and Assignee has agreed to accept such assignment and to assume Assignor's obligations under the Development Agreement, on the terms and conditions set forth herein.



NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and adequacy of which are hereby mutually acknowledged, the parties agree as follows.

AGREEMENT

1. Assignment and Assumption of Development Agreement

1.1 Assignment. Assignor hereby assigns and transfers to Assignee as of the Effective Date all of Assignor's rights, privileges, obligations, title and interest in and to the Development Agreement relating to the Development Parcels, which Development Agreement shall continue in full force and effect.

1.2 Assumption. Assignee hereby accepts the foregoing assignment and hereby assumes and agrees to perform all of the obligations of Assignor under the Development Agreement and other Project Approvals (as defined in the Development Agreement). Assignee agrees to be bound by all of the terms, provisions and conditions of the Development Agreement relating to the Development Parcels and agrees to assume all of the obligations and liabilities of Assignor under the Development Agreement, to the extent arising on or after the Effective Date relating to the Development Parcels. Assignee also hereby agrees to be bound by the terms of all City Approvals (as defined in the Development Agreement) applicable to the Development Parcels.

1.3 Acknowledgement. Assignee hereby acknowledges that it has received and reviewed a copy of the Development Agreement and the City Approvals.

1.4 Address of Assignee. Assignee's address is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone:

Facsimile:

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone:

Facsimile:

1.5 Intentionally Omitted.

1.6 Intentionally Omitted.

1.7 This assignment is made by Assignor "as-is" without warranties, express or implied, except for the representations and warranties set forth in this Agreement, or in any purchase and sale agreement between Assignor and Assignee relating to the assignment of the ground leases for the Property.

1.8 For purposes of this Agreement, the foregoing assignment and assumption shall be effective as of the date of this Agreement ("**Effective Date**").

2. Representations.

2.1 Status. Assignee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_ and authorized to do business in the State of California and is in good standing therein. Assignor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and authorized to do business in the State of California and is in good standing therein.

2.2 Authority. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of each of the parties hereto. Assignor and Assignee each represent and warrant that the person signing this Agreement on behalf of such party has full power and authority to sign this Agreement on such party's behalf.

3. Miscellaneous.

3.1 Further Assurances. Each party hereby covenants that such party will, at any time, and from time to time, upon written request therefor, execute and deliver to the other parties such documents as the requesting party may reasonably request in order to fully satisfy and execute this Agreement.

3.2 Governing Law. This Agreement shall be governed by and construed in accordance with California law, without regard to conflict of law principles.

3.3 Counterparts. This Agreement may be signed in multiple counterparts which, when duly delivered and taken together, shall constitute a binding agreement between all parties.

(Signatures on following pages)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ASSIGNOR:

JACK LONDON SQUARE VENTURES  
LLC, a Delaware limited liability company

By: MSCP JLS, LLC,  
a Delaware limited liability  
company  
Its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

JLSV LAND LLC, a Delaware limited  
liability company

By: MSCP JLS, LLC,  
a Delaware limited liability  
company  
Its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

JLSV F-3 LLC, a Delaware limited liability  
company

By: MSCP JLS, LLC,  
a Delaware limited liability  
company  
Its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ASSIGNEE:

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared

\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

ORIGIN:DJCCA (415) 393-8324  
LUCY RAGNELL  
GIBSON DONNEL CRUTCHER LLP  
555 MISSION STREET, SUITE 3000  
SAN FRANCISCO CA 94105  
UNITED STATES US

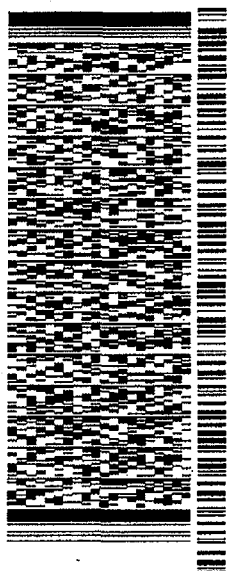
SHIP DATE: 10DEC15  
ACTWGT: 1.00 LB  
CAD: 10072380/MINET3870  
BILL SENDER

TO RACHEL FLYNN

THE CITY OF OAKLAND  
250 FRANK H. OGAWA PLAZA

OAKLAND CA 94612

(415) 393-8324  
INV. REF: 22637 00083  
PO. DEPT:



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Attachment C:  
Oakland Planning Code Chapter 17.138  
Development Agreement Procedure

## Chapter 17.138

DEVELOPMENT AGREEMENT  
PROCEDURE

## Sections:

- 17.138.010 Title, purposes, and applicability.
- 17.138.020 Application.
- 17.138.030 Planning Commission action.
- 17.138.040 Council action.
- 17.138.050 Criterion.
- 17.138.060 Factors for consideration.
- 17.138.070 Recordation.
- 17.138.080 Adherence to development agreement, and amendment or cancellation by mutual consent.
- 17.138.090 Periodic review and revocation.
- 17.138.100 Development agreement related to other special zoning approval or subdivision.

**17.138.010 Title, purposes, and applicability.**

The provisions of this chapter shall be known as the development agreement procedure. The purposes of these provisions are to prescribe the procedure for consideration of development agreements and, by encouraging appropriate projects, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development. This procedure shall apply to all proposals for development agreements as authorized by Section 17.102.310. (Prior planning code § 9350)

**17.138.020 Application.**

Application for a development agreement shall be made by a person, or the authorized agent of a person, having a legal or equitable interest in the affected property. Application shall be made on a form prescribed by the City Planning Department and shall be filed with such Department. The application shall be accompanied by the fee prescribed in the fee schedule in Chapter 17.150 and by the proposed development agreement and any support-

ing material which, between them, shall include the following:

A. An identification of the affected property and the proposed parties to the agreement;

B. A description of the development project, indicating the proposed kinds of uses, floor-area ratio or density, and building height and size, and such additional information as may be required to allow the applicable criterion and factors to be applied to the proposal. Such information may include, but is not limited to, site and building plans, elevations, relationships to adjacent properties, and operational data. Where appropriate the description may distinguish between elements of the project which are proposed to be fixed under the agreement and those which may vary;

C. An identification of any subsisting planned unit development permit or other special zoning approval which has already been obtained for the development project;

D. The special conditions, if any, to be imposed pursuant to Section 17.102.310;

E. The proposed duration of the agreement and timing of the development project;

F. A program for periodic review under Section 17.138.090. (Prior planning code § 9351).

**17.138.030 Planning Commission action.**

An application for a development agreement shall be considered by the City Planning Commission which shall hold a public hearing on the application. Notice of the hearing shall be given by posting notices thereof within three hundred (300) feet of the property involved in the application; a substantially enlarged notice shall also be posted on the premises of the subject property. Notice of the hearing shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property within three hundred (300) feet of the property involved. All such notices shall be given not less than ten days prior to the date set for the hearing. If, however, the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement these procedures. The

Commission shall determine whether the proposal conforms to the criterion set forth in Section 17.138.050, and may recommend approval or disapproval of the application, or recommend its approval subject to changes in the development agreement or conditions of approval, giving consideration to the factors set forth in Section 17.138.060. Should a decision not be rendered within sixty (60) days after the filing, the application shall be deemed approved except when, pursuant to the California Environmental Quality Act, an environmental document is required prior to decision, in which case should a decision not be rendered within sixty (60) days after final action on the environmental document, the application shall be deemed approved. In any case, however, the date by which a decision must be rendered may be extended by agreement between the Director of City Planning or the City Planning Commission and the applicant. The Commission shall, within ten days of its decision, forward its recommendations to the City Council. (Prior planning code § 9352)

#### **17.138.040 Council action.**

After a recommendation has been rendered by the Commission, the City Council shall set the date for consideration of the matter. After setting the hearing date, the Council, prior to hearing the appeal, may refer the matter back to the Planning Commission for further consideration and advice. Appeals referred to the Planning Commission shall be considered by the Commission at its next available meeting. Any such referral shall be only for the purpose of issue clarification and advice. In all cases, the City Council shall retain jurisdiction and, after receiving the advice of the Planning Commission, shall hold a hearing on and decide the appeal.

The City Clerk shall notify the Secretary of the City Planning Commission of the date set for consideration thereof; and said Secretary shall give notice of the hearing by mail or delivery to the applicant, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than ten days prior to the date set for the

hearing. The Council shall review the recommendation of the Commission and shall determine whether the proposal conforms to the criterion set forth in Section 17.138.050, and may approve or disapprove the proposed development agreement, or approve it subject to changes therein or conditions of approval, giving consideration to the factors set forth in Section 17.138.060. If the Council approves the development agreement or approves it subject to changes or conditions, it shall do so by ordinance and the agreement shall be effective upon the effective date of the ordinance. In any case, the decision of the Council shall be final. (Prior planning code § 9353)

#### **17.138.050 Criterion.**

A development agreement may be approved only if it is found that the proposal is consistent with the Oakland Comprehensive Plan and with any applicable district plan or development control map which has been adopted by the City Council, as said plans or map currently exist. (Prior planning code § 9354)

#### **17.138.060 Factors for consideration.**

In reviewing an application for a development agreement, the City Planning Commission and the City Council shall give consideration to the status and adequacy of pertinent plans; any uncertainty or issues about the affected area which may suggest the retention of flexibility; the traffic, parking, public service, visual, and other impacts of the proposed development project upon abutting properties and the surrounding area; the provisions included, if any, for reservation, dedication, or improvement of land for public purposes or accessible to the public; the type and magnitude of the project's economic benefits to Oakland, and of its contribution if any toward a meeting of housing needs; and to any other comparable, relevant factor. (Prior planning code § 9355)

#### **17.138.070 Recordation.**

Within ten days after the effective date of the development agreement, the City Clerk shall record with the County Recorder a copy of the agreement. If the agreement is amended, canceled, or revoked



pursuant to Section 17.138.080 or 17.138.090, the City Clerk shall record notice of such action with the recorder. (Prior planning code § 9356)

**17.138.080 Adherence to development agreement, and amendment or cancellation by mutual consent.**

A subsisting development agreement shall be enforceable by any party thereto. The interests of the applicant may not be transferred or assigned to a new person without the written consent of the city. In any case, the burdens of such agreement shall also bind, and its benefits shall also inure to, all successors in interest. A development agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. Such amendments and cancellations shall be processed in the same manner as an original application and shall be subject to the same procedural requirements. (Prior planning code § 9357)

**17.138.090 Periodic review and revocation.**

A. Periodic Review. Each development agreement shall be reviewed at least once every twelve (12) months, and the review period shall be specified in the agreement. Application for periodic review shall be made on a form prescribed by the City Planning Department and shall be filed with such department. The application shall be accompanied by the fee prescribed in the fee schedule in Chapter 17.150. Failure to file for such review within the time limits specified in the agreement shall render the agreement null and void. The applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the agreement. If the Director of City Planning finds that such compliance has been deficient, he or she shall forward this finding and his or her recommendation to the City Council, for consideration in accordance with subsection B of this section.

B. Revocation. At any time the Council may, at a public hearing, consider whether there are grounds for revocation of any development agreement. Notice of the hearing shall be given by posting notices

thereof within three hundred (300) feet of the property involved. Notice of the hearing shall also be given by mail or delivery to the holder of the development agreement, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than ten days prior to the date set for the hearing. At the hearing, the applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the agreement. If as a result of such review, the Council finds and determines, on the basis of substantial evidence, that the applicant or successor thereto has not complied in good faith with the terms or conditions of the agreement, the Council may revoke or modify the agreement in whole or in part. (Ord. 12237 § 4 (part), 2000: prior planning code § 9358)

**17.138.100 Development agreement related to other special zoning approval or subdivision.**

Whenever a development agreement is proposed for a project which requires additional planned unit development or other special zoning approval, or subdivision approval, the application for the development agreement may be substituted with the application for said approval, but shall nonetheless be subject to all the separate procedure, and criterion and factors, pertaining to review of development agreements. (Prior planning code § 9359)

## Attachment D:

Jack London Square Redevelopment Project  
EIR and Addendum #1 (provided under separate  
cover to the City Council; available to the public  
at 250 Frank Ogawa Plaza, Suite 3315, Oakland  
CA, 94612 during regular business hours and at  
[http://www2.oaklandnet.com/Government/o/PB  
N/OurOrganization/PlanningZoning/OAK04456](http://www2.oaklandnet.com/Government/o/PB<br/>N/OurOrganization/PlanningZoning/OAK04456)

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APPROVED AS TO FORM AND LEGALITY:



Deputy City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

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**RESOLUTION CONSENTING TO A NON-AFFILIATE TRANSFER AND ASSIGNMENT OF THE DEVELOPMENT AGREEMENT (DA) BETWEEN THE CITY OF OAKLAND, JACK LONDON SQUARE PARTNERS LLC, AND CEP-JLS I LLC, DATED JULY 6, 2004 (DA) TO CIM GROUP ACQUISITIONS, LLC PURSUANT TO THE DA AND PLANNING CODE SECTION 17.138.080 (DEVELOPMENT AGREEMENT PROCEDURE); ACTION TAKEN IN RELIANCE ON PREVIOUSLY CERTIFIED 2004 ENVIRONMENTAL IMPACT REPORT (CEQA GUIDELINES 15162, 15183)**

**WHEREAS,** the City of Oakland Planning Commission certified the Jack London Square Redevelopment Environmental Impact Report (EIR) on March 17, 2004; and

**WHEREAS,** the City of Oakland Planning Commission, on March 17, 2004, recommended approval of the Jack London District Preliminary Development Plan; Final Development Plans for Sites C, D, Pavilion 2, 66 Franklin, F1, F2, F3 and G; Major Variance for Fast Food Restaurant Commercial Activities; Major Conditional Use Permit for the hotel use on Site F-3, the two pedestrian bridges and a reduction in parking due to the shared parking provisions; Development Agreement; and Re-zoning for the Project on Site G (M-20 to C-45) and Sites F-2 and F-3 (R-80 to C-45); and

**WHEREAS,** the Oakland City Council, on June 15, 2004, approved the Jack London District: Preliminary Development Plan; Final Development Plans for Sites C, D, Pavilion 2, 66 Franklin, F1, F2, F3 and G; Major Variance for Fast Food Restaurant Commercial Activities; and Major Conditional Use Permit for the hotel use on Site F-3, the two pedestrian bridges and a reduction in parking due to the shared parking provisions; and

**WHEREAS,** the Oakland City Council, on July 6, 2004, adopted the "Development Agreement Between the City of Oakland, Jack London Square Partners LLC, and CEP-JLS I LLC (the developer)" (DA) (Ordinance No. 12613 CMS) and Re-zoned the Project on Site G (M-20 to C-45) and Sites F-2 and F-3 (R-80 to C-45) (Ordinance No. 12612 CMS); and

**WHEREAS,** the Oakland City Council, on September 23, 2014, approved the Jack London Square Redevelopment Project Revision #1, including: A) Adopting Addendum #1 to the Jack London Square Redevelopment Project Environmental Impact Report; B) Approving changes to the general plan designations of Sites D and F2 of the Jack London Square Project; C) Adopting revisions to the Jack London Redevelopment Project planned Unit Development and Design Review subject to conditions of approval; D) Approving a Minor Variance from loading requirements; and E) Accepting Assignor's offer to contribute additional community benefits; and

**WHEREAS,** the DA and Oakland Planning Code require City Council consent to Non-Affiliate transfers of interest, as defined in the DA; and

**WHEREAS**, Jack London Square Ventures, LLC, JLSV Land LLC and JLSV F-3 LLC (the Assignor) submitted a request on December 10, 2015, to transfer interest in Jack London Square to CIM Group Acquisitions, LLC; and

**WHEREAS**, CIM Group Acquisitions, LLC is an experienced real estate investment, development and management firm that is fully capable of delivering and managing the planned development of remaining Jack London Square sites; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA) the CEQA guidelines as prescribed by the Secretary of Resources and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied in that none of the circumstances requiring preparation of a subsequent or supplemental EIR are present because there is no evidence of new or substantially more severe significant impacts resulting from (1) substantial changes to the project, (2) the circumstances surrounding the project or (3) new information not known and which could not reasonably have been known at the time of the prior EIR; now therefore be it

**RESOLVED:** That the City consents to the Non-Affiliate transfer and assignment of all Assignor interests pertaining to the DA to CIM Group Acquisitions, LLC; and be it

**RESOLVED:** That the City Administrator is hereby authorized to consent to the Non-Affiliate transfer and assignment of all interests relating to the DA to CIM Group Acquisitions, LLC or a related entity consistent with this Resolution and its basic purposes; and be it further

**RESOLVED:** That the City finds and determines, after independent review and consideration, that this action complies with CEQA because none of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Section 15162 have occurred; and be it

**RESOLVED:** That the City finds and determines, as a separate and independent basis, and after independent review and consideration, that this action complies with CEQA because the proposal is consistent with the development density established by existing general plan policies for which an EIR was previously certified, pursuant to CEQA Guidelines Section 15183; and be it

**RESOLVED:** That the City Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Determination/Exemption for this action; and be it

**RESOLVED:** That the City Administrator is further authorized to take whatever action is necessary with respect to complete the transfer of rights and obligations under the DA consistent with this Resolution and its basic purposes; and be it

**RESOLVED:** That all documents necessary to complete the consent to the assignment and transfer of the Development Agreement rights and obligations pursuant to this Resolution shall be subject to review and approval by the City Attorney, and copies shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2016

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND  
CHAIRPERSON GIBSON McELHANEY

NOES-

ABSENT-

ABSTENTION-

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