

Oakland Oversight Board

Memorandum

TO: Oakland Oversight Board

FROM: Mark Sawicki, City of
Oakland

SUBJECT: City Center DDA Assignment

DATE: March 14, 2016

ITEM:

RECOMMENDATION

ORSA staff requests that the Oakland Oversight Board adopt a resolution approving the assignment, to the City of Oakland (“City”), of the Oakland Redevelopment Successor Agency’s (“ORSA”) rights and obligations under the City Center Disposition and Development Agreement (as amended, the “City Center DDA” or “DDA”) with Oakland T12 LLC (“Oakland T12”) for development of an office tower on property located at 601 12th Street (the “Property”). A map showing the location of the Property is attached as *Attachment A*.

ANALYSIS

On October 26, 2015, ORSA staff requested approval from the Oakland Oversight Board of ORSA board action taken on October 20, 2015, approving an assignment to the City of ORSA’s rights and obligations under the City Center DDA with Oakland T12. At the meeting, the Oversight Board and its legal counsel raised several issues about the proposed assignment and amendment of the City Center DDA. Oakland T12 is seeking the assignment to streamline future extensions and DDA amendments and eliminate the on-going need for Oversight Board and California Department of Finance (DOF) review. A copy of the previous staff report is attached as *Attachment B* and responses to the issues raised by the Board are addressed below.

Issue No. 1: Redevelopment dissolution law allows the Oversight Board to direct ORSA to renegotiate agreements to reduce liabilities and increase net revenues to the taxing entities. However, redevelopment dissolution law prohibits the transfer or assignment of any assets of ORSA, including contract rights. Is the proposed assignment of the DDA in conflict with the dissolution statutes?

Brief Response: The dissolution law permits renegotiations and amendments to existing agreements if the amendment (1) reduces liability to the taxing entities, (2) increases net revenue to the taxing entities, and (3) is in the best interests of the taxing entities. (Health & Safety Code Section 34181(e).) The Oversight Board may approve any renegotiation or amendment if it determines that the proposed amendment meets the above criteria. The proposed assignment of the DDA meets the above criteria. First, the assignment will reduce the financial liability of the taxing entities to fund \$50,000 in future annual staffing costs necessary to monitor project

construction and compliance with DDA terms that would not be listed on ORSA's Recognized Obligation Payment Schedule (ROPS) if the assignment from ORSA to the City is approved (currently the ROPS includes annual costs of approximately \$150,000 to pay for the significant staff work involved in the negotiation and preparation of legal documents for the proposed assignment and amendment of the DDA). Second, the assignment will increase net revenues to the taxing entities by increasing the amount of residual RPTTF funds that will flow to the taxing entities due to the elimination of the project staffing line item on the ROPS. Third, the assignment will be in the best interests of the taxing entities by reducing the burden of funding continued project staffing.

The developer discussed the possible DDA assignment with management staff at DOF, and DOF informally expressed its support and encouragement for this action. Shifting the responsibility for remaining enforceable obligations, such as the City Center DDA, from successor agencies to cities clearly facilitates DOF's goal of winding down redevelopment activities.

Issue No. 2: What financial benefits would ORSA give up with the proposed assignment and amendment of the DDA? Why should the City, and not ORSA, receive any assignment fees or DDA extension fees from the developer?

Brief Response: ORSA will not give up any financial benefits by approving the proposed assignment of the DDA. By removing ORSA as a party to the agreement, the obligation to administer the DDA will no longer be listed as an enforceable obligation on ORSA's ROPS. This will effectively increase net revenues to the taxing entities by eliminating staff charges related to the administration of the DDA that are currently listed on the ROPS. However, the City will receive an annual assignment fee from Oakland T12 in the amount of \$50,000 to compensate the City for the staff costs that would otherwise have been covered by ORSA through the ROPS until project completion in the coming years.

The City will also receive a yet-to-be-negotiated fee for a contemplated DDA amendment to extend performance deadlines. The City should be entitled to retain any fees for amendments to the DDA. Other than a brief four-year period of Redevelopment Agency ownership, the City owned and used the Property for City purposes for about 150 years before it was conveyed to the developer (The City is party to the DDA along with the Redevelopment Agency.). The four-year period of Agency ownership from 1985 to 1989 was simply to facilitate a sale-leaseback financing to support a bond issue designed to generate funds to pay for the retirement of Police and Fire Department employees, and the City had full possession and control of the site under a lease during this period. As far as staff can determine, the Redevelopment Agency never invested any tax increment funds or other Agency funds for the acquisition of the Property. This is explicitly stated in a 1988 Council Resolution authorizing the 7th Amendment to the DDA (*Attachment C*), which made the express finding that "none of the land in the City Center Redevelopment Project was purchased or otherwise acquired, either directly or indirectly, by the use of tax increment funds." Furthermore, staff did not discover any evidence showing that tax increment funds were used since 1988. Therefore, given the long-term history of the Property as a City-owned and operated asset, the minimal role played by the Redevelopment Agency, and the lack of Agency funding for the site, the City should be entitled to retain any revenue generated by T12, including developer payments for an extension of performance deadlines under the DDA. A brief history of the ownership of the Property is attached to this report as *Attachment D*.

Issue No. 3: The Board requested a copy of the proposed assignment of the DDA from ORSA to the City and a copy of the terms for the proposed 14th Amendment to the City Center DDA.

Brief Response: Drafts of the assignment and the term sheet are attached to this report as *Attachments E and F*. The second section of the term sheet for the extension of performance deadlines outlines the proposed extension periods and payments requested for those extensions. Oakland T12 has not yet agreed to these terms and negotiations are on-going.

For questions regarding this report, please contact Jens Hillmer, Urban Economic Coordinator at 238-3317.

Respectfully submitted,



Mark Sawicki
Director, Economic & Workforce
Development Department

Reviewed by:
Patrick Lane, Acting Manager
Economic & Workforce Development Department,
Project Implementation Division

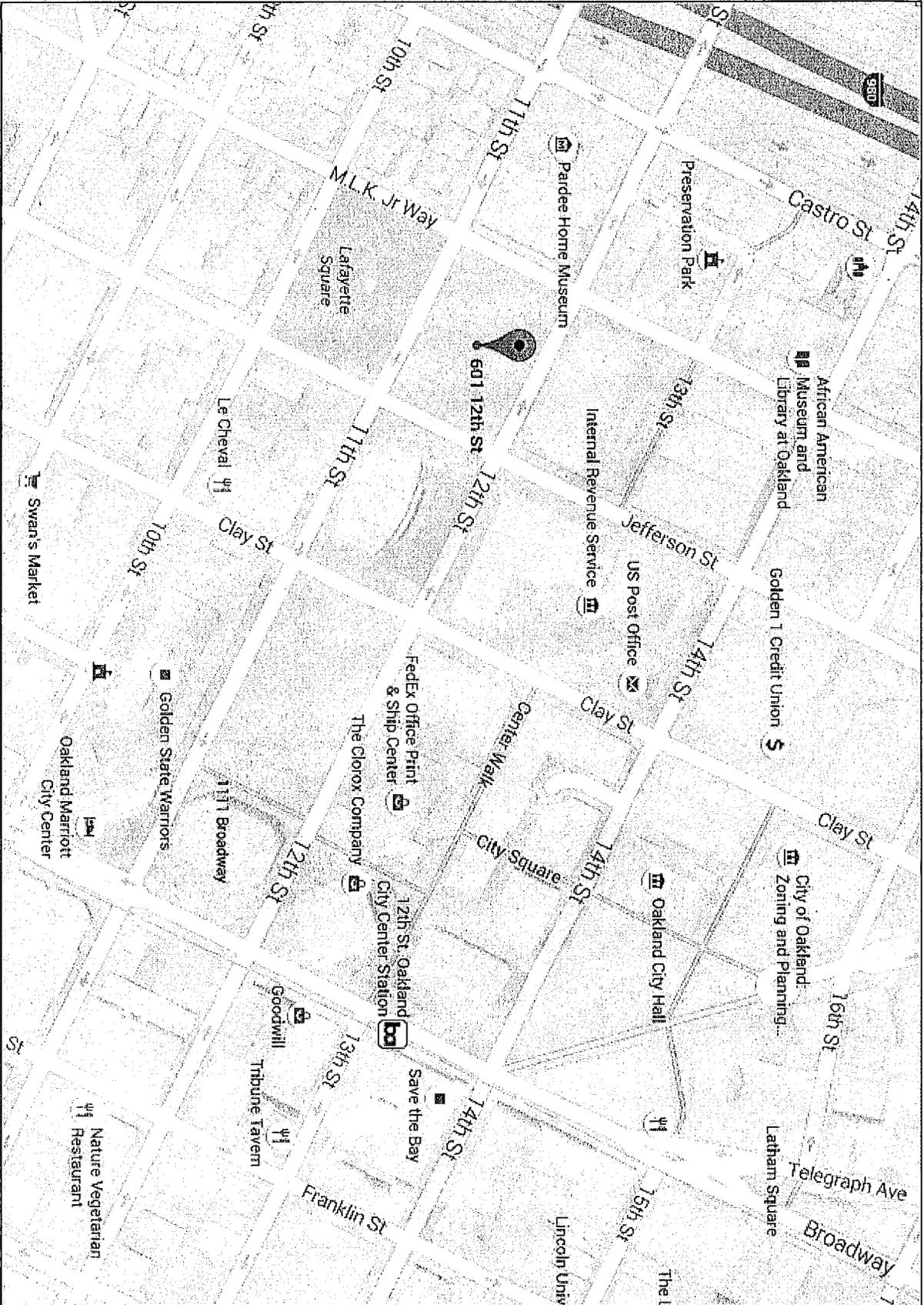
Prepared by:
Jens Hillmer, Urban Economic Coordinator
Economic & Workforce Development Department,
Project Implementation Division

Attachments (6)

- Attachment A – Map showing Property location
- Attachment B – October 26, 2015 Staff Report and Legislation to Oakland Oversight Board
- Attachment C – Resolution authorizing 7th Amendment to the DDA
- Attachment D – Ownership History of T12
- Attachment E – Draft Term Sheet for 14th Amendment to DDA
- Attachment F – Draft Assignment Agreement between ORSA and City

Attachment A

601 12th Street, Oakland



Attachment B

OAKLAND OVERSIGHT BOARD

RESOLUTION No. 2016-_____

A RESOLUTION APPROVING THE ASSIGNMENT TO THE CITY OF OAKLAND OF THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY'S RIGHTS AND OBLIGATIONS UNDER THE CITY CENTER DISPOSITION AND DEVELOPMENT AGREEMENT WITH OAKLAND T12 LLC FOR DEVELOPMENT OF PROPERTY LOCATED AT 601 12TH STREET

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA"), the City of Oakland ("City") and Oakland T-12 LLC ("Oakland T12") are parties to a Disposition and Development Agreement ("DDA"), as amended, whereby Oakland T12 is the master developer of a twelve-block area in the Central District Redevelopment Project Area, which is commonly referred to as the City Center Project; and

WHEREAS, on December 7, 2007, pursuant to the terms of the Twelfth Amendment to the DDA, the former Redevelopment Agency ("Agency") sold Block T12 of the City Center Project ("Property") to Oakland T12 for development of an office tower ("T12 Project"); and

WHEREAS, Oakland T12 started T12 Project construction in October of 2008; and

WHEREAS, in December of 2008, Oakland T12 suspended construction on the T12 Project because of the national recession, and requested an extension of the date to complete the T12 Project; and

WHEREAS, in February 2011, pursuant to Agency Resolution No. 2010-0106 C.M.S. and City Ordinance No. 13037 C.M.S., the Agency, the City and Oakland T12 executed a Thirteenth Amendment to the DDA extending development completion deadlines for the T12 Project from April 2012 to April 2015, with two additional extension options of 12 months each; and

WHEREAS, Oakland T12 did not exercise its option to extend the development completion deadline for the T12 Project for another year past the initial deadline of April 2015; and

WHEREAS, after dissolution of the Agency in February of 2012, ORSA was established as the successor to the Agency and assumed all rights and responsibilities of the Agency under the DDA; and.

WHEREAS, in April 2015, Oakland T12 informed the City and ORSA that it was evaluating resuming construction of the T12 Project given the current momentum in the regional office market; and

WHEREAS, Oakland T12 has requested a 14th Amendment to the DDA to allow for new T12 Project start and completion dates; and

WHEREAS, the City desires to amend the DDA per the request of Oakland T12 to facilitate development of the T12 Project on the Property; and

WHEREAS, ORSA desires to assign its rights and obligations under the DDA to the City to facilitate the development of the T12 Project; and

WHEREAS, the proposed assignment of ORSA's rights and obligations under the DDA to the City will remove ORSA as a party to the agreement, remove the DDA from ORSA's Recognized Obligation Payment Schedule ("ROPS"), and allow the City to amend the DDA; and

WHEREAS, ORSA is a Responsible Agency for the project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"); and

WHEREAS, ORSA has independently reviewed and considered the environmental effects of the proposed assignment of ORSA's rights and obligations under the DDA to the City; and

WHEREAS, ORSA has found and determined, after independent review and consideration, that the proposed assignment complies with CEQA because it is exempt from CEQA pursuant to Section 15061(b)(3) (general rule) of the CEQA Guidelines; now, therefore:

Based on the foregoing recitals and the documentation presented to the Oakland Oversight Board at a public meeting, the Oakland Oversight Board does resolve as follows:

SECTION 1. The Oakland Oversight Board finds and determines that the proposed assignment of ORSA's rights and obligations under the DDA to the City, as approved by ORSA, will benefit the taxing entities because the assignment will

- (1) reduce the financial liability of the taxing entities by removing the DDA from ORSA's Recognized Obligation Payment Schedule ("ROPS"), and therefore eliminate any employee costs related to the administration of the City Center DDA ; and
- (2) increase net revenues to the taxing entities by increasing the amount of residual Redevelopment Property Tax Trust Fund ("RPTTF") funds that will flow to the taxing entities due to the elimination of the project staffing line item on the ROPS; and

(3) reduce the burden of the taxing entities to fund continued project staffing which is in the best interest of the taxing entities.

SECTION 2. The Oakland Oversight Board hereby approves the action of the ORSA board authorizing the ORSA Administrator to assign ORSA's rights and obligations under the DDA to the City.

ADOPTED, OAKLAND, CALIFORNIA _____, 2016

PASSED BY THE FOLLOWING VOTE:

AYES- BYRD, CHAIR CARSON, MULVEY, ORTIZ, RINNE, TUCKER

NOES-

ABSENT-

ABSTENTATIONS-

ATTEST: _____
SECRETARY OAKLAND
OVERSIGHT BOARD

Oakland Oversight Board

Memorandum

TO: Oakland Oversight Board
SUBJECT: City Center DDA Assignment

FROM: Mark Sawicki
DATE: October 26, 2015
ITEM: #3

RECOMMENDATION

Staff recommends that the Oakland Oversight Board adopt a resolution approving the assignment, to the City of Oakland, of the Oakland Redevelopment Successor Agency's (ORSA) rights and obligations under the City Center Disposition and Development Agreement (as amended, the "City Center DDA" or "DDA") with Oakland T12 LLC for development of property located at 601 12th Street.

EXECUTIVE SUMMARY

In December of 2008, Oakland T12 LLC, a Delaware limited liability company ("Oakland T12"), an affiliate of Shorenstein Properties LLC ("Shorenstein"), suspended construction of a 26-story 596,000 square foot Class A office building (the "Project") on property located at 601 12th Street (the "Property"), previously owned by the former Oakland Redevelopment Agency ("Redevelopment Agency"). As a result, in February of 2011, the Redevelopment Agency, the City, and Oakland T12 executed a 13th Amendment to the City Center DDA, extending development completion deadlines for the Project from April 2012 to April 2015, with two additional extension options of 12 months each for a total potential extension of up to five years. Oakland T12 did not exercise its option to extend the completion date of the Project past the initial April 2015 deadline. Oakland T12 is now in default under the terms of the DDA. In April of this year, Oakland T12 informed the City that it was evaluating a restart of Project construction. Since development deadlines previously established in the 13th Amendment to the DDA have expired, they must be extended by a 14th Amendment to the DDA, which would require the approval of the Oversight Board and the California Department of Finance ("DOF"). DOF generally does not permit amendments to existing agreements, except under certain circumstances.

OUTCOME

By removing ORSA as a party to the DDA, the City will be able to amend the DDA without having to seek Oversight Board and DOF approval. Moreover, the City Center DDA would no longer be listed on ORSA's Recognized Payment Obligation Schedule ("ROPS"). This will effectively increase net revenues to the taxing entities by eliminating any staff charges related to the administration of the DDA that are currently listed on the ROPS. The proposed assignment will also reduce ORSA's liabilities since it will no longer have any rights or responsibilities under the DDA.

BACKGROUND/LEGISLATIVE HISTORY

The original DDA between the Redevelopment Agency and Grubb & Ellis Company was executed on November 4, 1970, and covered a twelve-block area of downtown Oakland known as City Center, which includes the Property. The DDA was amended 13 times and assigned to Shorenstein and its affiliated entities pursuant to the Eighth DDA Amendment in 1996.

On December 7, 2007, the Redevelopment Agency sold the Property to Oakland T12 for \$5.2 million. Oakland T12 started Project construction in October of 2008. In December of 2008, after completing the environmental clean-up of the Property, the developer suspended all construction activities at the site. At the time, Oakland T12 cited the widening Great Recession, rising vacancies in the regional office real estate market, and the loss of American President Lines, one of the anchor tenants in Shorenstein's former holdings in Oakland, as primary reasons for their action.

In February of 2011, pursuant to Redevelopment Agency Resolution No. 2010-0106 C.M.S. and City Ordinance No. 13037 C.M.S., the Redevelopment Agency, the City and Shorenstein executed a 13th Amendment to the DDA extending development completion deadlines for the Project from April 2012 to April 2015, with two additional extension options of 12 months each for up to five years. However, Oakland T12 did not exercise an option included in the 13th Amendment to extend the development completion deadline for the Project past April of 2015. Oakland T12 is now in default under the terms of the DDA.

After dissolution of the Redevelopment Agency in February of 2012, ORSA was established as the successor to the Redevelopment Agency and it assumed all rights and obligations of the Redevelopment Agency under the DDA.

In April of this year, Oakland T12 informed the City that it was evaluating resumption of Project construction given the current momentum in the regional office market. Since Oakland T12 must sign up an anchor tenant for the building before moving forward, the developer decided that the Project can only be marketed effectively if they can show prospective tenants a fully-approved and fully-permitted Project that can be delivered by a certain date. Oakland T12 is therefore diligently working with City staff to secure planning and building approvals required for the resumption of Project construction activities.

Oakland T12 has also requested a 14th Amendment to the DDA to allow for new Project start and completion dates that has yet to be fully negotiated. The developer plans to resume construction as soon as they have secured a tenant, and received all planning approvals and building permits.

ANALYSIS

The Assignment

Generally, a successor agency is required to wind down all affairs of the former redevelopment agency. Toward this goal, the proposed assignment of ORSA's rights and obligations under the

DDA to the City would remove ORSA as a party to the City Center DDA, and the agreement would no longer be listed on ORSA's ROPS. This will effectively increase net revenues to the taxing entities by eliminating any employee costs related to the administration of the City Center DDA which are listed on the ROPS. The proposed assignment will also reduce ORSA's liabilities since it will no longer have any rights or responsibilities under the DDA.

California Department of Finance (DOF) Approval

If approved by the Oversight Board, the proposed assignment of ORSA's rights and responsibilities to the City will be submitted to DOF for approval. Oakland T12 representatives reviewed the proposed action with DOF, and DOF staff appeared willing to approve the proposed assignment to the City once it has been authorized by ORSA, the City, and the Oversight Board.

COST SUMMARY/IMPLICATIONS

The proposed assignment of the City Center DDA would remove the agreement from ORSA's Recognized Payment Obligation Schedule ("ROPS"). This will effectively increase net revenues to the taxing entities by eliminating any staff charges related to the administration of the City Center DDA, which are currently listed on the ROPS. These on-going staff charges amount to approximately \$48,000 per year.

For questions regarding this report, please contact Jens Hillmer, Urban Economic Coordinator at 238-3317.

Respectfully submitted,



Mark Sawicki
Director, Economic & Workforce
Development Department

Reviewed by:
Patrick Lane, Acting Manager
Economic & Workforce Development Department,
Project Implementation Division

Prepared by:
Jens Hillmer, Urban Economic Coordinator
Economic & Workforce Development Department,
Project Implementation Division

Attachment C

History of Property located at 601 12 Street also known as T-12

- The City acquired the property for \$900 from Anselm H. Jayne on March 10, 1862. The purpose of the acquisition was to develop a public high school on the site.
- The “Oakland High School” operated from 1895 to 1928 on the property. (We have no record of any lease or conveyance to the school district. It may be that there was an unrecorded lease or other conveyance to the school district for this use, or it may be that the City in fact operated public schools in Oakland during this time. Even if the former, the school district must have transferred the property back to the City upon cessation of school-related activities on the site.)
- In 1929, Oakland High School became Oakland Tech, until 1944, when the school was demolished for a surface public parking lot. The City operated the public parking lot on the site until sale of the property to the developer in 2007.
- In November of 1970, the Redevelopment Agency entered into the 1970 City Center DDA with the Grubb & Ellis Company. The DDA at the time did not encompass the T-12 property.
- The City was admitted to the 1970 City Center DDA via a 2nd DDA Amendment in August of 1974.
- In December of 1974, the Redevelopment Agency entered into the 1974 City Center DDA, which was initially a separate agreement from the 1970 City Center DDA, but with the same developer, the Grubb & Ellis Company. The 1974 DDA included T-12, but the property was still owned by the City.
- The two DDAs were ultimately merged and become a three-party agreement among the Agency, the City, and the developer (which was then an affiliate of Bramalea Ltd.) beginning with the 6th Amendment in July 1982.
- In August 1985 the Redevelopment Agency acquired the property from the City, but assessor’s records do not indicate a purchase price. The transfer was made pursuant to a sale-leaseback public financing transaction, whereby fee title to property was conveyed to the Agency and immediately leased back to the City. Lease payments from the City were used to service debt under Certificates of Participation issued by the Agency to support a retirement fund for Police and Fire Department employees. The City continued to hold and use the property as a public parking lot during the sale-leaseback period.
- The Agency owned the property until 1989, when the City exercised a purchase option included in a Master Lease Agreement between the City and the Agency. It is not clear whether the City paid anything for the land, although the Master Lease Agreement set the option price at \$100.
- In December of 2007, the City quitclaimed the Property to the Redevelopment Agency, which immediately transferred the property to Oakland T12 in a simultaneous escrow on the same date. Clearly the Agency was acting as a pass-through for the conveyance from the City to the developer.

Attachment D

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

duc

RESOLUTION No. 88-34 C. M. S.

INTRODUCED BY AGENCY MEMBER _____

RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR
TO EXECUTE THE SEVENTH AMENDMENT TO THE CITY
CENTER DISPOSITION AND DEVELOPMENT AGREEMENT
WITH BRAMALEA PACIFIC, INC.

WHEREAS, on or about November 4, 1970, the Agency entered into a Disposition and Development Agreement for the development of certain blocks within the City Center Redevelopment Project; and

WHEREAS, on or about December 30, 1974 the Agency entered into a Contract for Sale of Land for Private Development for the disposition and development of the remaining blocks in the City Center Redevelopment Project (exclusive of the property known as Preservation Park); and

WHEREAS, additional agreements between the Agency and the master developer of the City Center Redevelopment Project have resulted in amendments to the 1970 and the 1974 agreements which added the City of Oakland as a party thereto and incorporated the 1974 agreement into the 1970 agreement. The 1970 and the 1974 agreements (and all amendments thereto) are hereby referred to collectively as the "DDA"; and

WHEREAS, the last amendment to the DDA (the Sixth Amendment) was entered into on or about July 9, 1982; and

WHEREAS, several major events (including the Master Developer's assignment of rights to the Agency for the Oakland Federal Building) have occurred since the execution of the Sixth Amendment which have altered the development plans and schedules as set forth in the DDA and which require a Seventh Amendment to the DDA. These major events are described in greater detail in the memorandum from George H. Williams to Henry Gardner dated May 24, 1988; and

WHEREAS, on or about May 31, 1988, the Agency approved the conceptual components to the proposed Seventh Amendment as described in the above referenced May 24, 1988 memorandum; and

WHEREAS, the City, Agency, and Developer have agreed upon the form of said Seventh Amendment containing the conceptual points approved by the Agency on May 31, 1988; and

WHEREAS, none of the land in the City Center Redevelopment Project was purchased or otherwise acquired, either directly or indirectly, by the use of tax increment funds; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970, the Guidelines as prescribed by the Secretary for Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied and this action on the part of the Redevelopment Agency of the City of Oakland and the City Council will not have a significant effect upon the environment; now therefore be it

RESOLVED: That the Agency hereby authorizes the Agency Administrator to execute the Seventh Amendment to the Disposition and Development Agreement in substantially the form attached hereto as Exhibit A with the Developer of the City Center Redevelopment Project; and

FURTHER RESOLVED: That the Agency Administrator is hereby authorized to execute any and all documents which are necessary and appropriate in order to carry out the provisions of said agreement, as amended.

I certify that the foregoing is a full, true and correct copy of a Resolution passed by the Redevelopment Agency of the City of Oakland, California,

on JUN 14 1988

ARRECE JAMESON
Agency Secretary

Per *L. Francis* Deputy

Attachment E

OAKLAND BLOCK T12
DDA Amendment Term Sheet
February 25 2016

I. Amendment:

- a) Developer and City¹ will enter into a 14th Amendment to the existing DDA (the "Amendment") immediately upon completion of the following:
 - CEQA review (including traffic analysis).
 - Planning commission Approval of the Final Development Permit ("FDP") and other associated Planning Approvals.
 - City Council Approval of the Amendment²
- b) The Amendment shall be effective as of the later of execution of the Amendment or expiration of any applicable appeal periods on the Amendment or the FDP approvals ("Effective Date").

II. Resumption and Completion Deadlines:

- a) Within 5 business days after Effective Date, Developer shall make an initial payment of \$750,000, of which \$250,000 shall be held in escrow and thereafter the Developer shall be required to notify City of its intention to resume construction ("Resumption Notification") prior to a date 18 months after Effective Date (the "Initial Resumption Deadline").
- b) In the event that Resumption Notification occurs prior to the Initial Resumption Deadline, the \$250,000 shall be released from escrow to Developer.
- c) In the event that Resumption Notification does not occur by the Initial Resumption Deadline, Developer may extend the Resumption Notification by one year later than the Initial Resumption Deadline (the "Second Resumption Deadline") by notifying City prior to the Initial Resumption Deadline and the \$250,000 shall be released from escrow to City.
- d) Developer shall have a further right to extend the Resumption Notification deadline by one year later than the Second Resumption Deadline (the "Third Resumption Deadline") by making an additional \$250,000 payment to City prior to the date that is one year after the Second Resumption Deadline.
- e) So long as Resumption Notification occurs prior to the Initial Resumption Deadline, the Second Resumption Deadline or the Third Resumption Deadline as applicable pursuant to the foregoing (the "Resumption Deadline"), Substantial Completion (as defined in the DDA) shall be 30 months after the applicable Resumption Notification (the "Completion Deadline").
- f) The right of reverter set forth in the DDA shall be available as a remedy to City only if Substantial Completion does not occur prior to the Completion Deadline (as may be extended) pursuant to the foregoing.

Comment [h1]: This amount has not been agreed to by the developer.

III. City Approvals:

- a) Developer shall make annual payments to City in the amount of \$50,000 for staff oversight costs, paid within 5 days after Effective Date and on each successive anniversary of _____ 2016 through Substantial Completion.
- b) City shall charge a fixed fee upon submittal of application for building permit³ and shall perform full building permit review (including code compliance review, submittals and responses and all other review necessary for issuance) for a fee equal to \$112,249.94 (as previously proposed by City). Any deferred submittals may be submitted at a later time for additional individual fees.

OAKLAND BLOCK T12
DDA Amendment Term Sheet
February 25 2016

- c) City shall review permit application in a timely way, and Developer shall respond to City comments in a timely way. Parties anticipate a review and approval period of ___ weeks, without overtime review charges.
- d) City review and approval shall not require outside seismic or structural review panel.
- e) Building permit shall be issued by City at a time selected by Developer between the date when it has been approved by City and one year after submittal; and the fee charged on issuance of the building permit shall be amount calculated pursuant to the standard City process less \$112,249.94.
- f) The Project shall be subject only to the requirements set forth in the FDP conditions and to the extent any such requirements involve the payment of fees, the amounts of those fees will be the amounts in effect at Effective Date (based on an attached list thereof). The Project shall not be subject to any increases in such exactions nor to any new requirements of exactions imposed after Effective Date.
- g) The Building Code applicable to the Project shall be the Building Code in effect as of December 2015 so long as application is submitted submittal prior to January 1, 2017. Any deferred submittals shall be reviewed under the same code, regardless of their separate submittal dates.
- h) Once applied for, building permit shall not be subject to code revisions, expiration or discretionary revocation by City unless:
- Developer fails to cause issuance of the approved building permit within one year after being submittal.
 - Within six months after issuance of building permit Developer fails to either: (1) call for an¹ inspection by the City of the first portion of the work related to the resumption of excavation and shoring that is appropriate for inspection pursuant to the Building Code (the "First Inspection") or (2) request an extension of the building permit and pay a \$156.06 fee.
 - In the event that Developer requests an extension of building permit pursuant to the foregoing, Developer fails to call for a First Inspection within 6 months after receiving such extension.
 - Subsequent inspection(s) have not been called for within six months after the First Inspection and every six months after each such subsequent inspection⁴.
- i) Temporary Certificates of Occupancy shall be issued floor-by-floor to allow tenant improvement work to proceed concurrent with core and shell work.
- j) The FDP and related Planning Approvals shall remain effective and shall not expire unless Substantial Completion has not occurred by the Completion Deadline.

¹ For purposes hereof in the event that ORSA has assigned all of its rights and obligations under the DDA to the City (after all required approvals thereof), all references to City include the City only. In the event that ORSA has not assigned all of its rights and obligations has not occurred as of Effective Date, all references to the City shall include ORSA and the City as applicable.

² In the event that ORSA has not assigned all of its rights and obligations has not occurred as of Effective Date, approval of the 14th Amendment by the Oversight Board and CA DOF shall also be required.

OAKLAND BLOCK T12
DDA Amendment Term Sheet
February 25 2016

³ Building permit as used herein is a single building permit covering the construction of the entire structure or a site permit and related addenda (in which case issuance shall mean issuance of the first addenda). In either case, building permit includes foundation, structural, architectural, life safety and any deferred submittals. Deferred submittals as used herein shall mean MEPP, curtainwall and other similar trades, which trades may be included in the initial permit or, as separate deferred submittals but shall be considered part of the building permit as used herein. As used herein, submittal shall mean receipt by the City of an application for the building permit and the fees referred to in Section II(b).

⁴ Subsequent inspections as used herein shall mean any inspection after the first inspection for completion of any additional work under the building permit.

DRAFT PREPARED BY DEVELOPER - UNDER NEGOTIATION

Attachment F

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
City of Oakland
c/o Oakland City Attorney's Office
One City Hall Plaza, 6th Floor
Oakland, California 94612
Attn:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT AND ASSUMPTION OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF DISPOSITION AND DEVELOPMENT AGREEMENT (the "Assignment Agreement") is executed this ____ day of _____, 2016 ("Effective Date") by and among the Oakland Redevelopment Successor Agency, successor agency to the Redevelopment Agency of the City of Oakland ("Redevelopment Agency") under California Health and Safety Code Section 34173 ("Successor Agency" or "Assignor") and the City of Oakland, a municipal corporation ("City" or "Assignee").

1. Background and Purposes

Oakland T12 LLC, a Delaware limited liability company ("Oakland T12"), the City and the Successor Agency, as successor-in-interest to the Redevelopment Agency, are parties to that certain Disposition and Development Agreement dated November 4, 1970, between the City, the Redevelopment Agency, and Grubb & Ellis Development Company (Oakland T12's predecessor), recorded on Reel 2732, Image 1, Official Records of Alameda County, California ("Records"), as amended by (i) a First Amendment dated March 20, 1972, for which a memorandum was recorded April 7, 1972, Reel 3101 at Image 870 of the Records, (ii) a Second Amendment dated August 29, 1974, recorded February 2, 1976, Reel 4247 at Image 1 of the Records, (iii) a Third Amendment dated January 6, 1976, recorded January 8, 1976, Reel 4221 at Image 121 of the Records, (iv) a Fourth Amendment dated March 1, 1976, recorded March 30, 1976, Reel 4309 at Image 389 of the Records, (v) a Fifth Amendment dated January 14, 1980, recorded January 18, 1980, Series No. 80-010678 of the Records, (vi) a Sixth Amendment dated July 9, 1982, recorded July 16, 1982, Series No. 82-105743 of the Records, (vii) a Seventh Amendment dated August 1, 1988, recorded August 3, 1988 Series No. 88-194557 of the Records (the "Seventh Amendment"), (viii) an Eighth Amendment dated as of December 20, 1996, recorded December 31, 1996, Series No. 96-332060 of the Records (the "Eight Amendment"), (ix) a Ninth Amendment dated as of May 17, 2000, recorded May 19, 2000, Series No. 2000-150073 (the "Ninth Amendment"), (x) a Tenth Amendment dated as of August 23, 2002, recorded September 20, 2002, Series No.

2002423595 (the "Tenth Amendment"), (xi) an Eleventh Amendment dated as of April 12, 2006, recorded May 11, 2006, Series No. 2006188850 (the "Eleventh Amendment"), (xii) a Twelfth Amendment dated as of April 11, 2007, recorded April 11, 2007, Series No. 2007140383 (the "Twelfth Amendment"), (xiii) a Thirteenth Amendment dated as of February 1, 2011, recorded February 16, 2011, Series No. 2011059157 (as assigned and amended through the Thirteenth Amendment and as further amended from time to time hereafter, the "DDA"), which DDA covers a twelve block area of downtown Oakland, California, bounded by Broadway, 11th Street, Martin Luther King, Jr. Way and 14th Street ("Oakland City Center Project").

2. Assignment of DDA. Assignor hereby assigns, transfers and conveys to Assignee as of the "Effective Date" all of Assignor's rights and interests in, to and under the DDA and all of the instruments referenced therein executed by Assignor in connection therewith ("Related Documents"), all of which shall continue in full force and effect.

3. Assumption of DDA. Assignee hereby accepts the foregoing assignment and hereby assumes all rights and interests of Assignor in, to and under the DDA and Related Documents.

4. Further Assurances. The Assignor and Assignee shall execute such further documents or instruments as may be necessary or desirable to fully implement the provisions of this Assignment Agreement.

5. Successors and Assigns. This Assignment Agreement shall be binding on and inure to the benefit of the parties to it, their heirs, executors, administrators, successors and assigns.

6. Governing Law. This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of California (without reference to the principles of conflicts of laws).

[Signatures on following page]

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

ASSIGNOR:

Oakland Redevelopment Successor Agency,
successor agency to the Redevelopment Agency of the
City of Oakland under California Health and Safety Code
Section 34173

By: _____
ORSA Administrator

Approved as to form and legality:

By: _____
ORSA Counsel

ASSIGNEE:

City of Oakland, a municipal corporation

By: _____
City Administrator

Approved as to form and legality:

By: _____
Office of the City Attorney

DRAFT

Memorandum

TO: Oakland Oversight Board

FROM: Laurie N. Gustafson OFFICE: San Francisco

DATE: March 9, 2016

RE: Follow-up Item from October 26, 2015 Oversight Board Meeting: Proposed Assignment to the City of Oakland of the Redevelopment Successor Agency's Rights and Obligations under the City Center Disposition and Development Agreement with Oakland T12 LLC for Development of the Property Located at 601 12th Street (the "T12 Site")

At the October 26, 2015 meeting of the Oakland Oversight Board, the Board requested more information from the City of Oakland with regard to its Proposed Assignment to the City of the Redevelopment Successor Agency's ("ORSA") rights and obligations under the City Center Disposition and Development Agreement ("DDA") with Oakland T12 LLC (the "Developer") for development of the T12 Site. The Board and its counsel had questions with regard to numerous issues.

On February 1, 2016, City staff and attorneys and Oversight Board counsel had a conference call to discuss the issues raised by the Oversight Board and its counsel. Subsequent to that call City staff sent to Oversight Board counsel a draft of the Proposed Assignment and a draft Term Sheet for the Fourteenth Amendment to the DDA between the Developer and the City (assuming the DDA is assigned from ORSA to the City). Copies of these two documents are attached to this Memorandum

In making a decision to approve or disapprove the Assignment of the DDA from ORSA to the City, the Oversight Board may wish to consider the following:

- **Assignment of Contract Rights Prohibited by HSC.** How can the Proposed Assignment be reconciled with the prohibition on assignment of contracts rights under California Health and Safety Code ("HSC") Section 34163(d)(1) and (f)? As previously discussed, HSC Section 34181(e) allows the Oversight Board to direct ORSA to **renegotiate agreements to reduce liabilities and increase net revenues to the taxing entities**, but HSC Section 34163(d)(1) and (f) prohibit the transfer or assignment of any assets of ORSA, including contract rights and any other rights to payment of any kind. In assigning the DDA from ORSA to the City, ORSA would assign over its rights to any extension payments from the Developer to ORSA that are proposed in Section II. of the Term Sheet. The City has provided no further analysis to assist with this reconciliation. The City, does, however, note that the intent of the Dissolution Statutes is to unwind the former redevelopment agencies, and the City contends that the assignment of the DDA from ORSA to the City will further achieve that goal. That argument appears to have some merit – the City is already a party to the DDA, and an assignment to the City could take one more item off of ORSA's plate and off of the ROPS. This does not, however, answer the statute's prohibition on the transfer of contract rights or rights to payments of money, such as the proposed extension payments.

- **Will there be an Increase in Net Revenues to the Taxing Entities?** Even if the Board were to construe an "assignment" of an agreement to be a type of "renegotiation" of an agreement, how would the Proposed Assignment (1) reduce liabilities and (2) increase net revenues to the taxing entities? City staff reports that ORSA would save approximately \$48,000 per year in staff costs on

the ROPS, so some liabilities may in fact be reduced. Other than that reduction, it does not appear that the Proposed Assignment would “increase net revenues to the taxing entities.” Here, if the Proposed Assignment is implemented, any extension fees (amount unknown, but others in the past have ranged from \$300,000 - \$400,000; and as shown in Section II. of the Term Sheet, the City has proposed to the Developer a \$500,000 fee for the first 18 month extension, another \$250,000 for another year, and a further \$250,000 for a third extension, but these have not yet been accepted by the Developer). If the DDA is assigned to the City, the right to these extension fees would go to the benefit of the City and none of the other taxing entities. This is in contrast to the amendment to the LDDA with Sears pursuant to HSC Section 34181(e). The Oversight Board and Department of Finance (“DOF”) both approved the Sears LDDA amendment because the developer would pay ORSA an extension fee of \$100,000, which would benefit all of the taxing entities, not just the City. Here, if ORSA were to receive the assignment and/or extension fees, the taxing entities would both benefit through an increase in net revenues (as was the case with the amendment of LDDA with Sears) and going forward, with the staff costs being removed from the ROPS, a reduction in liabilities would be achieved, meeting both of the requirements of HSC Section 34181(e).

- **Why should the City, instead of all of the Taxing Entities, be entitled to receive the Fees?** The City Attorney has stated that if the assignment is approved by the Board and DOF and executed, the City will receive an assignment fee from the Developer. The City has not disclosed the amount of this assignment fee, and the Proposed Assignment does not recite the consideration. At the October 26 meeting, the Oversight Board asked why the City, as opposed to ORSA and ultimately all of the taxing entities should be entitled to receive any assignment and/or extension fees from the Developer. The City expressed its opinion (not derived from any provision of the HSC), that the City deserves all such fees from the Developer because the City, not ORSA or the former Redevelopment Agency (“RDA”), has owned the T12 Site for a very long time.

The City has now researched the ownership of the T12 Site and has provided documentation of that ownership. It appears that the City is correct that the City has owned the T12 Site since 1862, with the exception of the time from 1985-1989 when the RDA owned the T12 Site and leased it to the City. The City also states that as far as the Staff can determine, the RDA never invested any tax increment or other funds into the T12 Site. It appears, however, from the documentation provided by the City, that in 1985 when the RDA acquired the T12 Site from the City, along with many other properties, the Base Value of the T12 Site was \$1,791,000. When the City repurchased the T12 Site in 1989, it is not clear what value, if any, the City paid the RDA to reacquire the T12 Site. City Staff has explained that as far as they can tell no funds were in fact transferred in either the 1985 transfer or the 1989 transfer. They have explained that the City used the RDA as a vehicle to purchase bonds to fund police and fire retirement obligations. The City transferred the T12 Site (and other properties) to the RDA and leased the properties back; the RDA used the lease payments received from the City to repay the bondholders. The bonds were refinanced in 1989 and the vehicle was unwound.

Although it appears that the City has owned the T12 Site for many years, the idea that entitlement to any assignment, extension or other fees should be based on what entity has held title to the T12 Site the longest period of time has no basis in any provision of the HSC. Right now, certain contract rights under the DDA are held by ORSA. Certainly, any transfer of those contract rights, even if it were permitted by the HSC, must include consideration to ORSA as the party foregoing its rights.

City Staff has suggested that the City should be entitled to any assignment and/or extension fees in order to reimburse the City for the project staff costs (about \$48,000 per year) that, if the DDA is

assigned from ORSA to the City, will be removed from future ROPS and need to be paid by the City. It does not appear, however, that if the staff costs are removed from the ROPS that the City would in turn absorb that cost. Under the proposed DDA Amendment (see Section III of the Term Sheet), the Developer is required to pay the City \$50,000 per year for staff costs. So payment of any assignment or extension fees to the City to reimburse it for staff costs that are removed from the ROPS is not necessary – those costs will be paid by the Developer.

If the assignment and/or extension fees are instead paid to ORSA (and flow to the benefit of all of the taxing entities), it could help to reimburse the staff costs that have been listed on the ROPS and paid out over the last five years, at \$48,000 a year. The taxing entities could recoup \$240,000 of the staff costs that were paid for what is and always has been City property and will be a City project. And, if ORSA receives the payments, it would not be assigning away its rights to payments, in violation of HSC Section 34163(d)(1) and (f).

- Finally, any assignment of the DDA should be reviewed and approved as to form and legality by ORSA and Board Counsel prior to execution by ORSA.

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
City of Oakland
c/o Oakland City Attorney's Office
One City Hall Plaza, 6th Floor
Oakland, California 94612
Attn:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT AND ASSUMPTION OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF DISPOSITION AND DEVELOPMENT AGREEMENT (the "Assignment Agreement") is executed this _____ day of _____, 2016 ("Effective Date") by and among the Oakland Redevelopment Successor Agency, successor agency to the Redevelopment Agency of the City of Oakland ("Redevelopment Agency") under California Health and Safety Code Section 34173 ("Successor Agency" or "Assignor") and the City of Oakland, a municipal corporation ("City" or "Assignee").

1. Background and Purposes.

Oakland T12 LLC, a Delaware limited liability company ("Oakland T12"), the City and the Successor Agency, as successor-in-interest to the Redevelopment Agency, are parties to that certain Disposition and Development Agreement dated November 4, 1970, between the City, the Redevelopment Agency, and Grubb & Ellis Development Company (Oakland T12's predecessor), recorded on Reel 2732, Image 1, Official Records of Alameda County, California ("Records"), as amended by (i) a First Amendment dated March 20, 1972, for which a memorandum was recorded April 7, 1972, Reel 3101 at Image 870 of the Records, (ii) a Second Amendment dated August 29, 1974, recorded February 2, 1976, Reel 4247 at Image 1 of the Records, (iii) a Third Amendment dated January 6, 1976, recorded January 8, 1976, Reel 4221 at Image 121 of the Records, (iv) a Fourth Amendment dated March 1, 1976, recorded March 30, 1976, Reel 4309 at Image 389 of the Records, (v) a Fifth Amendment dated January 14, 1980, recorded January 18, 1980, Series No. 80-010678 of the Records, (vi) a Sixth Amendment dated July 9, 1982, recorded July 16, 1982, Series No. 82-105743 of the Records, (vii) a Seventh Amendment dated August 1, 1988, recorded August 3, 1988 Series No. 88-194557 of the Records (the "Seventh Amendment"), (viii) an Eighth Amendment dated as of December 20, 1996, recorded December 31, 1996, Series No. 96-332060 of the Records (the "Eight Amendment"), (ix) a Ninth Amendment dated as of May 17, 2000, recorded May 19, 2000, Series No. 2000-150073 (the "Ninth Amendment"), (x) a Tenth Amendment dated as of August 23, 2002, recorded September 20, 2002, Series No.

2002423595 (the "Tenth Amendment"), (xi) an Eleventh Amendment dated as of April 12, 2006, recorded May 11, 2006, Series No. 2006188850 (the "Eleventh Amendment"), (xii) a Twelfth Amendment dated as of April 11, 2007, recorded April 11, 2007, Series No. 2007140383 (the "Twelfth Amendment"), (xiii) a Thirteenth Amendment dated as of February 1, 2011, recorded February 16, 2011, Series No. 2011059157 (as assigned and amended through the Thirteenth Amendment and as further amended from time to time hereafter, the "DDA"), which DDA covers a twelve block area of downtown Oakland, California, bounded by Broadway, 11th Street, Martin Luther King, Jr. Way and 14th Street ("Oakland City Center Project").

2. Assignment of DDA. Assignor hereby assigns, transfers and conveys to Assignee as of the "Effective Date" all of Assignor's rights and interests in, to and under the DDA and all of the instruments referenced therein executed by Assignor in connection therewith ("Related Documents"), all of which shall continue in full force and effect.

3. Assumption of DDA. Assignee hereby accepts the foregoing assignment and hereby assumes all rights and interests of Assignor in, to and under the DDA and Related Documents.

4. Further Assurances. The Assignor and Assignee shall execute such further documents or instruments as may be necessary or desirable to fully implement the provisions of this Assignment Agreement.

5. Successors and Assigns. This Assignment Agreement shall be binding on and inure to the benefit of the parties to it, their heirs, executors, administrators, successors and assigns.

6. Governing Law. This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of California (without reference to the principles of conflicts of laws).

[Signatures on following page]

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

ASSIGNOR: Oakland Redevelopment Successor Agency,
successor agency to the Redevelopment Agency of the
City of Oakland under California Health and Safety Code
Section 34173

By: _____
ORSA Administrator

Approved as to form and legality:

By: _____
ORSA Counsel

ASSIGNEE: City of Oakland, a municipal corporation

By: _____
City Administrator

Approved as to form and legality:

By: _____
Office of the City Attorney

OAKLAND BLOCK T12
DDA Amendment Term Sheet

I. Amendment

- a) Developer and City¹ will enter into a 14th Amendment to the existing DDA (“Amendment”) immediately upon completion of the following:
 - CEQA review (including traffic analysis).
 - Planning commission Approval of the Final Development Permit (“FDP”) and other associated Planning Approvals.
 - City Council Approval of the Amendment²
- b) The Amendment shall be effective as of the later of execution of the Amendment or expiration of any applicable appeal periods on the Amendment or the FDP approvals (“Effective Date”).

II. Resumption and Completion Deadlines:

- a) Within 5 business days after Effective Date, Developer shall make an initial payment of **\$750,000**, of which \$250,000 shall be held in escrow and thereafter the Developer shall be required to notify City of its intention to resume construction (“Resumption Notification”) prior to a date 18 months after Effective Date (the “Initial Resumption Deadline”).
- b) In the event that Resumption Notification occurs prior to the Initial Resumption Deadline, the \$250,000 shall be released from escrow to Developer.
- c) In the event that Resumption Notification does not occur by the Initial Resumption Deadline, Developer may extend the Resumption Notification by one year later than the Initial Resumption Deadline (the “Second Resumption Deadline”) by notifying City prior to the Initial Resumption Deadline and the \$250,000 shall be released from escrow to City.
- d) Developer shall have a further right to extend the Resumption Notification deadline by one year later than the Second Resumption Deadline (the “Third Resumption Deadline”) by making an additional \$250,000 payment to City prior to the date that is one year after the Second Resumption Deadline.
- e) So long as Resumption Notification occurs prior to the Initial Resumption Deadline, the Second Resumption Deadline or the Third Resumption Deadline as applicable pursuant to the foregoing (the “Resumption Deadline”), Substantial Completion (as defined in the DDA) shall be 30 months after the applicable Resumption Notification (the “Completion Deadline”).
- f) The right of reverter set forth in the DDA shall be available as a remedy to City only if Substantial Completion does not occur prior to the Completion Deadline (as may be extended) pursuant to the foregoing.

III. City Approvals:

- a) Developer shall make annual payments to City in the amount of \$50,000 for staff oversight costs, paid within 5 days after Effective Date and on each successive anniversary of July 1, 2016 through Substantial Completion.
- b) City shall charge a fixed fee upon submittal of any application for building permit³ and shall perform full building permit review (including code compliance review, review of subsequent

OAKLAND BLOCK T12
DDA Amendment Term Sheet

submittals and responses and all other review necessary for issuance) for a fee equal to \$112,249.94 (as previously proposed by City).

- c) Building permit may be issued by City at a time selected by Developer between the date when it has been approved by City and the Resumption Deadline; and the fee charged on issuance of the building permit shall be amount calculated pursuant to the standard City process less \$112,249.94.
- d) The Project shall be subject only to the requirements set forth in the FDP conditions and to the extent any such requirements involve the payment of fees, the amounts of those fees will be the amounts in effect at Effective Date (based on an attached list thereof). The Project shall not be subject to any increases in such exactions nor to any new requirements or exactions imposed after Effective Date.
- e) The Building Code applicable to the Project shall be the Building Code in effect as of December 2015.
- f) Once applied for, building permit shall not be subject to code revisions, expiration or discretionary revocation by City unless:
 - Developer fails to cause issuance of the building permit within 12 months after being informed that the building permit is available for issuance.
 - Developer fails to either: (1) call for a first inspection or (2) request an extension of the building permit within 12 months after issuance of building permit.
 - In the event that Developer requests an extension of building permit pursuant to the foregoing, Developer fails to call for a first inspection within 12 months after requesting such extension.
- g) The FDP and related Planning Approvals shall remain effective and shall not expire unless Substantial Completion has not occurred by the Completion Deadline.

¹ For purposes hereof in the event that ORSA has assigned all of its rights and obligations under the DDA to the City (after all required approvals thereof), all references to City include the City only. In the event that ORSA has not assigned all of its rights and obligations has not occurred as of Effective Date, all references to the City shall include ORSA and the City as applicable.

² In the event that ORSA has not assigned all of its rights and obligations has not occurred as of Effective Date, approval of the 14th Amendment by the Oversight Board and CA DOF shall also be required.

³ Building permit as used herein is a single building permit covering the construction of the entire structure or a site permit and related addenda (in which case issuance shall mean issuance of the first addenda). In either case, building permit includes foundation, structural, architectural, MEP and other addenda, permits or sub-permits required for construction of the full structure.