

Hillmer, J H

From: Jean Bellas [jean.bellas@nprecac.com]
Sent: Tuesday, May 06, 2014 2:19 PM
To: Hillmer, J H
Cc: 'John L Guillory'; Lane, Patrick; Millner, Dianne
Subject: RE: Signed copy of the 1st Amendment to the LDDA

Thank you Jens, I will also discuss with John,

Jean

From: Hillmer, J H [mailto:JHillmer@oaklandnet.com]
Sent: Tuesday, May 06, 2014 1:57 PM
To: Jean Bellas
Cc: John L Guillory; Lane, Patrick; Millner, Dianne
Subject: RE: Signed copy of the 1st Amendment to the LDDA

Hi, we are confirming receipt. However, please be aware that the document does not match the documents that we forwarded to John a while back. I have forwarded the agreement to Dianne Millner of the City Attorney's Office for review and approval, and my sense is that she will want to go back to the original documents. Anyway, I will let John know about her response as soon as possible.

Thank you!

Jens

Jens Hillmer
Urban Economic Coordinator
Office of Neighborhood Investment
City of Oakland
250 Frank H. Ogawa Plaza, Ste. 5313
Oakland, CA 94612
Tel.: 510-238-3317
Jhillmer@oaklandnet.com

From: Jean Bellas [mailto:jean.bellas@nprecac.com]
Sent: Tuesday, May 06, 2014 1:06 PM
To: Hillmer, J H
Cc: 'John L Guillory'
Subject: Signed copy of the 1st Amendment to the LDDA

Jens,
Hope this note finds you well.

John asked me to forward to your attention a signed copy of the 1st Amendment to the LDDA for the Telegraph Avenue site which is attached.

Would you please confirm your receipt?

Thank you,

Jean



Jean Bellas

PARTNER

1210 Excelsior Avenue

Oakland, CA 94612

510.967.8834

jean.bellas@npreca.com

RECORDING REQUESTED BY

City of Oakland

WHEN RECORDED RETURN TO:

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

**FIRST AMENDMENT TO
AND
TRANSFER OF RIGHTS AND ASSIGNMENT AND ASSUMPTION AGREEMENT OF
~~LEASE DISPOSITION AND DEVELOPMENT AGREEMENT~~
(2000-2016 Telegraph Avenue and 490 Thomas L. Berkley Way, Oakland)**

This First Amendment to and Transfer of Rights and Assignment and Assumption Agreement ("**Agreement**") is entered into as of this ____ day of _____, 2014, by and between SEARS DEVELOPMENT CO., a Delaware corporation ("**Assignor**"), and AG-STRADA OAKLAND DEVELOPMENT LLC, a Delaware limited liability company ("**Assignee**"), and consented to by the City of Oakland ("**City**"), and is executed as of the date below each signature on the signature page but is made to be effective and delivered on _____, 2014 (the "**Effective Date**").

RECITALS

A. On October 20, 2005, the Redevelopment Agency of the City of Oakland ("**Agency**"; the term "**Agency**" shall include the Oakland Redevelopment Successor Agency which has oversight of the Redevelopment Agency of the City of Oakland's obligations after its dissolution on February 1, 2012) and Assignor, as "Developer", entered into that certain Lease Disposition and Development Agreement (the "**LDDA**") for the development of a Sears Tire and Auto Center (the "**Project**") at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkley Way, Oakland (together, the "**Site**"), as legally described on **Exhibit A**, attached hereto and made a part hereof. The LDDA was recorded on October 20, 2005 as Document No. 2005454030.

B. All capitalized terms used but not defined herein shall have the meanings assigned to such terms in the LDDA.

C. The LDDA, among other things, provides for the transfer of the Site and completion of the Project by a certain date.

D. On or about January 31, 2012, the City acquired the Site and assumed the LDDA from the Agency.

E. Notwithstanding the transfer to the City, the Agency was not released from its obligations under the LDDA, including, without limitation, the requirement, if necessary, to make a payment as more particularly described in Sections 16.4(a)(iii), 16.5(a)(i), 16.6 and 16.8 of the LDDA.

F. Except for a Permitted Transfer under Section 11.4 of the LDDA, Section 11.3 of the LDDA requires City approval for any sale, assignment or transfer of the Developer's rights under of the LDDA, such approval not to be unreasonably withheld, conditioned or delayed.

G. Pursuant to a separate purchase and sale agreement (the "**Purchase Agreement**") to be between or between Assignor, as seller, and AG as defined below, an affiliate of Assignee, Assignor will agree or has agreed to sell and assign to Assignee or its permitted assignee or designee, as applicable, and Assignee or its permitted assignee or designee, as applicable, will agree or has agreed to purchase and obtain from Assignor, one hundred percent (100%) of the rights to develop the Project on the Site pursuant to the terms and conditions of the LDDA, subject to obtaining the City's consent to the sale and assignment.

H. By Ordinance _____, dated _____, 2014 (the "**Ordinance**"), the City Council authorized the City Administrator to negotiate and execute: (1) an LDDA amendment extending the Project completion date to October 2016 for a payment of \$100,000; and (2) its consent to the assignment of the LDDA, as amended, to Assignee.

I. Assignee is an affiliate of Angelo Gordon Real Estate Inc., a Delaware corporation, the original buyer under the Purchase Agreement ("**AG**").

J. The parties now wish to amend the LDDA to provide an extended Project completion date on payment of an extension fee. For purposes of this Agreement, the LDDA, as amended by this Agreement shall be referred to herein as the "**Amended LDDA**".

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein as a substantive part of this Agreement.

2. Extension of Project Completion Date. Section 9.1 of the LDDA is hereby deleted in its entirety and replaced with the following:

"Section 9.1 Complete Construction. Developer shall make all reasonable efforts to Complete Construction on or before October 20, 2016."

3. Assignment of Rights and Obligations. As of the Effective Date, Assignor does hereby sell, assign and transfer unto Assignee all of Assignor's right, title and interest in, to and

under the Amended LDDA, including, without limitation, the right to any payments that may become payable by City to Assignor pursuant to Sections 16.4(a)(iii), 16.5(a)(i), 16.6 and 16.8 of the LDDA.

4. Assumption of Rights and Obligations. As of the Effective Date, Assignee hereby accepts without recourse to Assignor such assignment of and assumes all of the rights, duties and obligations of Assignor first arising under the Amended LDDA on or after the Effective Date, and agrees that Assignee shall be bound by, pay, perform, and discharge, as and when due, all of the agreements, duties, obligations, and liabilities of the "Developer" arising under or resulting from the Amended LDDA.

5. City's Consent. City hereby consents to the assignment of all of Assignor's right, title and interest in, to and under the Amended LDDA and to the assumption of all of Assignor's rights, duties, obligations, agreements, and liabilities as the "Developer" under the Amended LDDA to Assignee, and City agrees that Assignee shall be recognized as the sole "Developer" under the Amended LDDA and, except for claims for damages, indemnity or similar obligations arising under Section 13.1 of the Amended LDDA from the acts or omissions of Assignor prior to the Effective Date, Assignor shall be fully released from all duties, obligations, liabilities, claims, payments, damages, demands and rights, whatsoever under the Amended LDDA, in law or in equity, now existing or which may hereinafter accrue which City had, now has, or may have against Assignor by reason of any facts, known or unknown. City recognizes, understands and agrees that there is a risk that, subsequent to the execution of this Agreement, it may suffer, or discover, loss or damage which is presently unknown, unsuspected, unanticipated or undisclosed, arising from or relating to the matters released herein. City expressly waives any and all rights relating to the claims against Assignor released herein under the provisions of Section 1542 of the Civil Code of California, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

CITY'S INITIALS: _____

6. No Modification. No addition to or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by both Assignor and Assignee, and approved in writing by the City.

7. Successors and Assigns. Except as otherwise specifically set forth herein, (i) this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns, (ii) all of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, Civil Code Section 1468, and (iii) each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Site, as appropriate, runs with the Site and each successive owner during its ownership of the Site.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

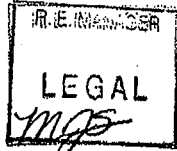
10. Extension Fee. Upon the second reading of the Ordinance by the City Council which constitutes the final approval of the Ordinance, and as a condition of the effectiveness of this Agreement, Assignor shall pay City an extension fee in the amount of One Hundred Thousand and No/100 (\$100,000.00) as consideration for both this Agreement and the sale, assignment and assumption of one hundred percent (100%) of the rights to develop the Project on the Site pursuant to the terms and conditions of the LDDA as contemplated by the Purchase Agreement.

(Remainder of Page Intentionally Left Blank; Signature Page Immediately Follows)

IN WITNESS WHEREOF, each party hereto has caused this First Amendment to and Transfer of Rights and Assignment and Assumption Agreement of Lease Disposition and Development Agreement to be duly executed on the date set forth below but effective as of the Effective Date.

ASSIGNOR:

SEARS DEVELOPMENT CO., a Delaware corporation



By: [Signature]
Name: James B. Terrell
Its: Vice President

Date: May 6, 2014

ASSIGNEE:

AG-STRADA OAKLAND DEVELOPMENT LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

Date: _____

CITY:

CITY OF OAKLAND, a municipal corporation

By: _____
Name: _____
Its: _____

Date: _____

Approved as to form and legality:

City Counsel

[ALL SIGNATURES MUST BE NOTARIZED]

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

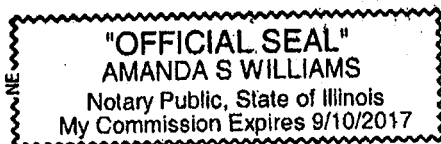
THE undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that James B. Terrell, personally known to me to be the Vice President of SEARS DEVELOPMENT CO., a Delaware corporation, appeared before me this day in person and acknowledged under oath that in such capacity he signed and delivered the said instrument pursuant to authority duly given to him by said corporation.

GIVEN under my hand and seal this 6th day of May, 2014.

Amanda S. Williams

Notary Public

My Commission Expires: 9/10/2017



STATE OF CALIFORNIA

COUNTY OF _____

)
) SS
)

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.

Notary Public

STATE OF CALIFORNIA

COUNTY OF _____

)
) ss
)

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.

Notary Public

EXHIBIT A

Legal Description of the Site

Order Number: 0131-613987ala

Page Number: 9

LEGAL DESCRIPTION

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL ONE:

BEGINNING AT A POINT ON THE NORTHEASTERN LINE OF 20TH STREET, DISTANT THEREON SOUTH 63° 45' EAST 100 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE EASTERN LINE OF TELEGRAPH AVENUE, AS SAID TELEGRAPH AVENUE EXISTED JUNE 28, 1907; RUNNING THENCE 63° 45' EAST ALONG SAID LINE OF 20TH STREET, 86.58 FEET TO A POINT DISTANT THEREON NORTH 63° 45' WEST, 165.50 FEET FROM THE POINT OF INTERSECTION THEREOF WITH NORTHWESTERN LINE OF BROADWAY; THENCE NORTH 26° 15' EAST 100 FEET; THENCE NORTH 63° 45' WEST 105.81 FEET TO A LINE DRAWN PARALLEL WITH SAID EASTERN LINE OF TELEGRAPH AVENUE AND DISTANT 104 FEET EASTERLY THEREFROM, MEASURED ALONG A LINE DRAWN PARALLEL WITH THE SOUTHERN LINE OF HOBART STREET; THENCE SOUTH 11° 13' WEST PARALLEL WITH SAID LINE OF TELEGRAPH AVENUE 74 FEET; MORE OR LESS, TO THE POINT OF INTERSECTION WITH A LINE DRAWN NORTH 26° 15' EAST FROM THE POINT OF BEGINNING; THENCE SOUTH 26° 15' WEST 28 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERN LINE OF 20TH STREET, FORMERLY DELGER STREET, WITH THE EASTERN LINE OF TELEGRAPH AVENUE, AS SAID TELEGRAPH AVENUE EXISTED JUNE 28, 1907, RUNNING THENCE NORTH 11° 13' EAST ALONG SAID LINE TELEGRAPH AVENUE 90.91 FEET; THENCE SOUTH 78° 27' 20" EAST 104 FEET; THENCE SOUTH 11° 13' WEST 90 FEET, MORE OR LESS, TO THE POINT OF INTERSECTION WITH A LINE DRAWN NORTH 26° 15' EAST FROM A POINT ON SAID NORTHERN LINE OF 20TH STREET, DISTANT THEREON 100 FEET EASTERLY, FROM THE INTERSECTION THEREOF WITH SAID EASTERN LINE OF TELEGRAPH AVENUE; THENCE SOUTH 26° 15' WEST 28 FEET, MORE OR LESS, TO SAID NORTHEASTERN LINE OF 20TH STREET; AND THENCE NORTH 63° 45' WEST 100 FEET TO THE POINT OF BEGINNING.

APN: 008-0649-009 (Affects: Parcel One) and 008-0649-010 (Affects: Parcel Two)