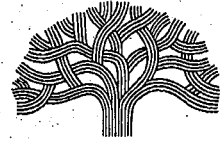


# CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Community and Economic Development Agency  
Redevelopment Division

June 21, 2011

(510) 238-3015  
FAX (510) 238-3691  
TDD (510) 238-3254

Mr. James B. Terrell  
Vice President Real Estate  
Sears Development Co.  
c/o Sears, Roebuck and Co.  
3333 Beverly Road  
Hoffman Estates, Illinois 60179

RE: Lease Disposition and Development Agreement (LDDA) dated October 18, 2005  
between the Redevelopment Agency of the City of Oakland and Sears  
Development Company for properties located at 2000-2016 Telegraph Avenue  
and 490 Thomas L. Berkeley Way in Oakland

Dear Mr. Terrell:

This is a follow-up to our meeting of April 18<sup>th</sup>, regarding your request for an extension to the 5-year term of the Lease Disposition and Development Agreement (LDDA) dated October 18, 2005 between the Redevelopment Agency ("Agency") of the City of Oakland and Sears Development Co ("Sears") for properties located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way (the "Property") in Oakland.

We are prepared to propose an amendment including the requirements outlined below for approval to the Agency's Governing Board.

**1<sup>st</sup> Amendment:** A 24-month LDDA extension beginning October 18, 2010 and ending October 17, 2012. If Sears satisfies all those requirements that must be met by March 1, 2012 (as more specifically described below), the Agency will recommend to the Agency's Governing Board a second extension of the LDDA by up to 24 months to complete construction of the Project.

**Sears Obligation:** Sears shall invest at least \$50,000 to improve the current condition of the display windows at its Sears department store located at 1955 Broadway in downtown Oakland. As part of the improvements to your windows, we would like you to use dynamic digital signage for several display windows. Digital signage would allow you to change your advertising content faster, more easily and less expensively compared to using traditional signage. It also gives you the capability to provide regional, local and even site-specific content. In addition, we would also like you to make the following improvements upon execution of the first amendment to the LDDA:

All windows shall get a new interior "shell" which would include better lighting, flooring and paint colors. Sears shall inform the Agency of its projected schedule for rotating displays in the refurbished windows.

Sears shall restore all windows that are not currently utilized and covered with a bronze film to the extent possible. These windows should be activated either as display windows or by attachment of semi-permanent vinyl graphics showing iconic images of Oakland, such as the Fox Theater, the Paramount Theater or other pictures of Oakland landmarks and destinations. Again, we would welcome the use of dynamic digital displays for these windows, where possible, because it would allow you to put these windows back into productive use, while at the same time displaying local images that customers will recognize and appreciate. We request that the window improvements and new displays be implemented throughout the proposed first extension term and any amendments thereto.

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#### **Proposed Schedule of Performance**

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##### **By October 31, 2011, Sears shall:**

- Submit a Project description suitable for environmental review purposes.
- Submit a detailed description, including references, of the Project development team's experience. The development team shall include the architect, general contractor, and the retail specialist and marketing firm for the proposed undertaking.

##### **By February 1, 2012, Sears shall:**

- Submit a description of the specific financial and legal structures of the proposed development in a form that reasonably satisfies the Agency that the Project is feasible.
- Retain an environmental and professional design consultant to prepare all environmental documentation required to conduct environmental review under the California Environmental Quality Act ("CEQA") for the Project, if necessary.
- Submit to the Agency for its review and approval the following Financial Plan for the proposed Project:
  - A detailed Project Development Budget.
  - A list of lenders and investors that will be approached for financing the Project.

##### **By March 1, 2012, Sears shall:**

- Cause the issuance of a Notice of Preparation (NOP) for the Project Environmental Impact Report (EIR), or related document, if necessary.
- Submit letters of interest from proposed anchor and other tenants, including Sears (if applicable).

**By September 1, 2012, Sears shall:**

- Cause the issuance of Draft EIR or related documents for the Project.

**By October 15, 2012, Sears shall:**

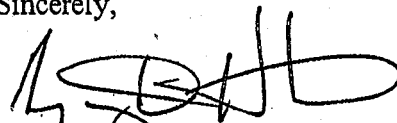
- Cause issuance of Final EIR or related documents.
- Secure all planning approvals for the Project.
- Enter into a contract or contracts for the construction of the Project with a licensed and reputable general building contractor.

**After October 17, subject to approval of a second amendment to the LDDA extending the term by another 24-month period, Sears shall:**

- Submit a copy of firm commitments for construction and permanent financing, grant funding, equity contributions, tax credit allocations, and other financing from external sources (including proposed joint ventures and partnerships) as necessary to finance development of the Project.
- An audited financial statement or other financial statement in such form reasonably satisfactory to the Agency evidencing other sources of capital, sufficient to demonstrate that Sears, or a developer selected by Sears, has adequate funds available and is committing such funds to cover the difference, if any, between the costs of Project development and construction, as set forth in the development budget for the Project received by the Agency, and the amount available for the Project from external financing sources.
- Submit to the Agency its final design documents for construction of the Project for the Agency's review and comment.
- Start Project construction

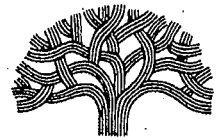
If you have any questions, please do not hesitate to contact Jens Hillmer at 510.238.3317.

Sincerely,



GREGORY HUNTER  
Deputy Director  
Economic Development and  
Redevelopment

# CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Community and Economic Development Agency  
Redevelopment Division

November 15, 2010

(510) 238-3015  
FAX (510) 238-3691  
TDD (510) 839-6451

Mr. James B. Terrell  
Vice President Real Estate  
Sears Development Co.  
c/o Sears, Roebuck and Co.  
3333 Beverly Road  
Hoffman Estates, Illinois 60179

Dear Mr. Terrell:

This is in response to your letter of September 21, 2010, in which you request a 28-month extension to the "Completion of Construction" date as stated in Section 9.1 of the Lease Disposition and Development Agreement (LDDA) dated October 18, 2005 between the Redevelopment Agency of the City of Oakland ("Agency") and Sears Development Co ("Sears") for properties located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way (the "Property") in Oakland.

During our meeting with your representative John Guillory on October 27, 2010, it became apparent that you will not be able to meet a 24-months extension of the "Completion of Construction" date from October 18, 2010 to October 18, 2012, to develop a mixed-use project, including a Sears Auto Center, on the Property. It was agreed during our meeting that you will require 48 months or until October of 2014 to complete a project on the site.

We are prepared to recommend a 48-months extension to the City Council, if Sears is willing to pay \$200,000 for the proposed extension: as follows: You would receive an initial extension of 36 month from October 18, 2010 to October 18, 2013, for which you would be charged \$100,000. You would further be entitled to an option to extend the term by another 12 months, from October 18, 2013 to October 18, 2014, for payment of an additional \$100,000. The first \$100,000 payment would be payable at the time of executing an Amendment to the LDDA to extend the "Completion of Construction" date from October 18, 2010, to October 18, 2013, while the second amount of \$100,000 would be payable in the event that you exercise the extension option. We have provided this type of performance extension to other developers that are under contract with the Agency, and we requested and received payments for such extensions in each instance.

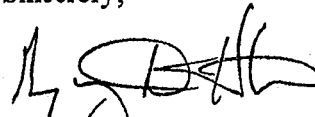
Mr. James B. Terrell  
November 15, 2010  
Page 2

If you agree with our proposal, we will take the matter to the City Council in the beginning of the 2011. Please note that the City Council, in its sole and absolute discretion, has the right to accept or reject our recommendation.

As you know, Sears currently is in default per Section 16.4 (a) (iii) of the LDDA. If you do not agree to staff's proposal as described in this letter, staff intends to advise the City Council of its enforcement options for Sears' default.

If we do not hear from you by December 15, 2010, this staff proposal shall terminate. If you have any questions, please do not hesitate to contact Jens Hillmer at 510.238.3317.

Sincerely,



GREGORY HUNTER

Deputy Director

Economic Development and  
Redevelopment

Cc: John Guillory

Hillmer, J H

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**From:** Hillmer, J H  
**Sent:** Wednesday, May 07, 2014 8:28 AM  
**To:** 'John L Guillory'  
**Cc:** Millner, Dianne  
**Subject:** FW: Proposed Sears Amendment and Assignment (Oakland CA) [IWOV-  
image.FID129547]  
**Attachments:** Sears LDDA First Amendment (8\_27\_13 City Draft).nrl

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Hi John:

Dianne asked me to forward the email below to 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](mailto:Jhillmer@oaklandnet.com)

---

**From:** Millner, Dianne  
**Sent:** Tuesday, May 06, 2014 5:12 PM  
**To:** 'Melinda.JesseSmith@searshc.com'  
**Cc:** Hillmer, J H; Hunter, Gregory; John Guillory ([JGuill1043@aol.com](mailto:JGuill1043@aol.com)); ORA\_050010\_ ORA \_ Sears Tire Center Purchase Uptown Project Req for Assignment <[F129547.imate@oca-svr-dms1.oca.oakland.local](mailto:F129547.imate@oca-svr-dms1.oca.oakland.local)>  
**Subject:** Proposed Sears Amendment and Assignment (Oakland CA) [IWOV-imate.FID129547]

Hello Melinda;

I understand you are representing Sears in connection with a proposed amendment and assignment which was forwarded to City staff by Mr. Guillory.


However, in order to review this matter and advise my client, I need you to markup and forward to me your revisions to the attached clean Amendment form we previously provided Sears in connection with Sears' prior proposed amendment.

Thank you and I look forward to receiving your draft.

Dianne

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**This is a confidential attorney-client communication. This email contains confidential attorney-client privileged information and is for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message and any attachments.**

 Please consider the environment before printing this email

[v1.03]

**Hillmer, J H**

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**From:** Hillmer, J H  
**Sent:** Monday, November 18, 2013 9:36 AM  
**To:** 'jguill1043@aol.com'; 'AlanDones@aol.com'  
**Cc:** Hunter, Gregory  
**Subject:** FW: LDDA Amendment and Transfer and Assignment Agreement  
**Attachments:** LDDA Amendment Final Draft.docx; Transfer and Assignment Final Draft.docx

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Gentlemen:

Since I have not heard from anyone since I transmitted these documents to John in September, I want to resend the document again. It is important that we finalize these documents as soon as possible in order to ensure a smooth transfer of the properties at the corner of Telegraph and Thomas L. Berkley Way.

Please let me know if you have any questions.

Thank you!

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  
[Jhhillmer@oaklandnet.com](mailto:Jhhillmer@oaklandnet.com)

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**From:** Hillmer, J H  
**Sent:** Wednesday, September 18, 2013 3:49 PM  
**To:** 'jguill1043@aol.com'  
**Cc:** Hunter, Gregory  
**Subject:** FW: LDDA Amendment and Transfer and Assignment Agreement

Hi John:

I just want to make sure that you received the attached documents that I sent to you last week. Please let me know if you have any questions or comments.

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  
[Jhhillmer@oaklandnet.com](mailto:Jhhillmer@oaklandnet.com)

**From:** Hillmer, J H  
**Sent:** Thursday, September 12, 2013 4:00 PM  
**To:** 'jguill1043@aol.com'  
**Subject:** LDDA Amendment and Transfer and Assignment Agreement

Dear John:

I hope that all is well with you. I have attached for your review and forwarding to Jim Terrell of Sears the first drafts of the Amendment to the LDDA between the City and Sears, and the Transfer and Assignment Agreement between Sears, TB2 and consented to by the City of Oakland. Once you have approved these documents, I would like to forward them to the principal of TB2. Please let me know if you have any questions.

Thank you!

Jens Hillmer  
Urban Economic Coordinator  
Office of Neighborhood Investment  
City of Oakland  
250 Frank H. Ogawa Plaza, Ste. 5313  
Oakland, CA 94612  
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**Hillmer, J H**

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Oakland, CA 94612  
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Jens Hillmer  
Urban Economic Coordinator  
Office of Neighborhood Investment  
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250 Frank H. Ogawa Plaza, Ste. 5313  
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Tel.: 510-238-3317  
[Jhhillmer@oaklandnet.com](mailto:Jhhillmer@oaklandnet.com)

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**Subject:** LDDA Amendment and Transfer and Assignment Agreement

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Thank you!

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](mailto:Jhillmer@oaklandnet.com)

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**RECORDING REQUESTED BY**

City of Oakland

WHEN RECORDED RETURN TO:

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

**FIRST AMENDMENT TO  
LEASE DISPOSITION AND DEVELOPMENT AGREEMENT  
SEARS DEVELOPMENT CO.**

The Lease Disposition and Development Agreement between the Redevelopment Agency of the City of Oakland, and Sears Development Company, dated October 18, 2005 ("LDDA"), is hereby amended by this First Amendment ("First Amendment") dated for reference as of \_\_\_\_\_, 2013 ("Effective Date") as executed by and between the CITY OF OAKLAND, a municipal corporation ("City") (as successor to the REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND (the "Agency")), and SEARS DEVELOPMENT CO. a Delaware limited corporation ("Developer") (together, City and Developer are referred to as the "Parties").

**RECITALS**

A. On October 18, 2005, the Agency (the term "Agency" shall include the Oakland Redevelopment Successor Agency which has oversight of the Agency's obligations after its dissolution on February 1, 2012) and Developer entered into the LDDA for the development of a Sears Tire and Auto Center (the "Project") at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way, Oakland (the "Properties").

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 Property and completion of the Project by a certain date.

D. On or about January 31, 2012, the City acquired the Properties 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), 16.6 and 16.8 of the LDDA.

F. Section 11.3 of the LDDA requires City approval for any sale, assignment or transfer of the Developer's rights under of the LDDA.

G. On May \_\_, 2013, Assignor entered into that certain Purchase and Sale Agreement ("Purchase Agreement") with Assignee, pursuant to which Assignor agreed to sell to, and Assignee agreed to purchase rights to develop the Project on the Property pursuant to the terms and conditions of the LDDA, subject to obtaining the City's consent to the sale and assignment.

H. By Ordinance 13159 C.M.S., dated May 21, 2013, the City Council authorized the City Administrator to negotiate and execute: (1) a 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 Strategic Urban Development Alliance, LLC ("SUDA") or a related affiliate.

I. Concurrently herewith, City, Developer and TB2 RETAIL COMPLEX, LLC, a California limited liability company ("TB2 Retail") have executed that certain Transfer and Assignment and Assumption Agreement ("Transfer Agreement"), pursuant to which, among other things, the parties thereto agreed that Sears may transfer its interest in the LDDA to TB2 Retail on the terms stated therein, subject to the terms of the LDDA, as amended by this First Amendment.

J. The parties now wish to amend the LDDA to provide, among other things: (1) an extended Project completion date on payment of an extension fee; (2) provisions allowing assignment of the Amended LDDA to TB2 Retail under specified conditions, including, without limitation, the requirement to provide a Completion Guaranty for the Project from a Guarantor on the terms specified herein; and (3) certain required clarifications and updates. The LDDA, as amended by the First Amendment, shall herein be referred to as the Amended LDDA.

NOW, THEREFORE, the LDDA is amended as follows:

1. To clarify and conform the Recital to the Parking License Agreement dated October 20, 2005, between the City and Developer, that portion of Recital H that reads: "...no longer operates a department store in downtown Oakland" ... is deleted and the following substituted therefor: "... no longer operates the Sears Store (as defined in the Parking License Agreement) in downtown Oakland..."
2. Section 4 is deleted in its entirety and the following substituted therefor: "City, as successor to Agency, has acquired fee title to the Properties through the Condemnation Process."
3. Section 6.5 is deleted in its entirety and the following substituted therefor: "This Section 6.5 is Intentionally Omitted."

4. The following is deleted from Sections 10.1(a), 10.1(b), and 10.2: "If, and only if required by a lender..."
5. Subsection (f) is added to Section 11.4 as follows:

"(f) A Transfer to TB2 Retail but only pursuant to the terms of the Transfer Agreement and the Amended LDDA, and further provided that title shall not transfer to TB2 Retail under the Amended LDDA, by leasehold, fee or other transfer, until TB2 Retail:

(A) has provided to City as a condition to close of escrow or other transfer a standard form of commercial Completion Guaranty used for similar development projects (the form to be provided by the City) that is: (i) executed by a Guarantor who demonstrates to City's satisfaction, in City's sole and absolute discretion, that it has a financial net worth in liquid assets of the greater of: (a) the estimated cost to complete the Project; or (b) Three Million Dollars (\$3,000,000), along with a continuing covenant that the Guarantor will maintain such net worth at least through Project completion, and that failure to do so will be considered a default under the Amended LDDA;

(B) in addition to any other insurance requirements of the Amended LDDA, provides additional insurance or other security, as reasonably determined by the City, to adequately satisfy the City that TB2 Retail will have sufficient resources to comply with any Developer indemnity obligations set forth in the Amended LDDA;

(C) provides written confirmation to City, in a form reasonably acceptable to City, that it represents, warrants and covenants as of the First Amendment Effective Date that it has complied with Section 17.2; and

(D) Provides the address or other information for Notice required under Section 18.2 hereof.

6. That portion of the first sentence of Section 16.4(a) (iii) which reads: "Subject to Section 18.7, in the event that Developer fails to Complete Construction...", is amended to read as follows: "Subject to Section 18.7, in the event that Developer either fails to close on the Ground Lease Escrow or fails to Complete Construction."
7. Sections 16.4(a)(ii) and 16.5(a) are both deleted in their entirety and amended to read as follows: "Intentionally Deleted."
8. Section 19.1(ss) which defines the Project is amended to read as follows:

"Project" means the development and construction of a new retail Sears Auto Center building, comparable to other Sears Auto Centers in urban areas; and building(s) of other lawful uses, in addition to a new retail Sears Auto Center building as described

in this definition, including retail and residential uses with parking, landscaping, and accessory uses on the Site.”

9. The Ground Lease attached to the Amended LDDA is amended as follows:

A. The provisions of the Ground Lease referring to the Agency shall be modified at closing to reflect that the City is the successor to the Agency and that the parties executed the First Amendment to the LDDA.

B. Sections 5.1 and 5.2 are hereby deleted and the following substituted therefor:  
“Intentionally Deleted.”

C. Section 9.7.1(b)(i) is deleted in its entirety and amended to read as follows:

“The Grant Deed conveying Landlord’s interest to the Tenant, free and clear of all claims, liens and encumbrances except for the terms of the Grant Deed and the Permitted Exceptions.”

D. The definition of “Grant Deed” in Exhibit B “Glossary of Defined Terms” is deleted and the following substituted therefor:

“Grant Deed. The term ‘Grant Deed’ shall mean the form of grant deed attached hereto as Exhibit D.”

E. The following term shall be added in Exhibit B “Glossary of Defined Terms”:

“Amended LDDA means the LDDA as amended by the First Amendment to the LDDA executed by and between Landlord and Tenant, dated:

\_\_\_\_\_, 2013

F. Exhibit D attached to this First Amendment shall be attached to the Ground Lease as Exhibit D.

10. Concurrently with execution of this First Amendment, and as a condition of its effectiveness, Developer shall pay City One Hundred Thousand Dollars (\$100,000) as consideration for the First Amendment.

IN WITNESS WHEREOF, this First Amendment has been executed by the Parties as of the date first written above.

[Signatures on following page]

**SEARS DEVELOPMENT CO.,** a Delaware corporation

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

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

Date: \_\_\_\_\_

**CITY:**

**CITY OF OAKLAND,** a municipal corporation

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

Date: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_  
City Attorney's Office

[ALL SIGNATURES MUST BE NOTARIZED]

EXHIBIT D

NO FEE DOCUMENT

RECORDING REQUESTED BY:

The City of Oakland

WHEN RECORDED, MAIL TO:

The City of Oakland  
Office of Neighborhood Investment  
250 Frank Ogawa Plaza, 5th Floor  
Oakland, California 94612  
Att'n.: Jens Hillmer

The undersigned grantor(s) declare(s):  
CITY TRANSFER TAX: Consideration less than \$100  
DOCUMENTARY TRANSFER TAX: Consideration less than \$100  
SURVEY MONUMENT FEE:

Computed on the consideration or value of property conveyed: OR  
Computed on the consideration of value less liens or encumbrances  
remaining at time of sale.

MAIL TAX STATEMENTS TO:

[INSERT DEVELOPER ADDRESS]

APN: \_\_\_\_\_

**GRANT DEED**

The City of Oakland, a municipal corporation, herein called "Grantor," hereby grants to \_\_\_\_\_ a \_\_\_\_\_, herein called "Grantee," that real property situated in the City of Oakland, County of Alameda, State of California more particularly described in Exhibit A (attached hereto and incorporated by this reference), hereinafter referred to as the "Property."

1. This Grant Deed is subject to easements of record, and to the covenants, conditions and restrictions set forth in that certain Lease Disposition and Development Agreement between Grantor (as successor to the Redevelopment Agency of the City of Oakland) and Sears Development Co., a Delaware corporation ("Developer"), dated October 18, 2005, and recorded as document no. \_\_\_\_\_ with the Alameda County Recorder, hereinafter called the "Original LDDA," as the Original LDDA has been subsequently amended by that First Amendment to LDDA dated \_\_\_\_\_, 2013, and assigned by Developer to Grantee. The Original LDDA, as amended by the First Amendment, is herein referred to as the LDDA. Though not intended by the parties

to be merged with this Grant Deed, the LDDA is incorporated into this Grant Deed by this reference.

2. This Grant Deed is further subject to that option to repurchase the Property held by Grantor as set forth in the LDDA.
3. Grantee covenants and agrees for itself, and its successors and assigns to all or any part of the Property that Grantee, and such successors and assigns, shall:
  - (i) Devote the Property to, and only to and in accordance with, the uses specified in the LDDA, and this Grant Deed; and
  - (ii) Not discriminate upon the basis of race, color, ancestry, national origin, marital status, religion, creed, sex, sexual preference, AIDS or AIDS-related complex, or disability in the sale, lease, or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof. Grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, ancestry, national origin, marital status, religion, creed, sex, sexual preference, AIDS or AIDS-related complex, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall Grantee or any person claiming under or through it establish or permit any such practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land. The restrictive covenants contained herein shall remain in full force and effect without limitations as to time.
4. If there is any conflict between the provisions of this Grant Deed and the LDDA, it is the intent of the parties that the LDDA shall control.
5. The parties intend that the covenants of Grantee contained in this Grant Deed shall constitute covenants running with the land and shall bind the Property and every person having an interest in the Property, and that they shall be, to the fullest extent permitted by law and equity, binding for the benefit of and enforceable by the City of Oakland. Grantee agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property.

IN WITNESS WHEREOF, the parties hereto have executed this Grant Deed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**“GRANTOR”**

The City of Oakland, a California municipal corporation

By: \_\_\_\_\_

City Administrator

Approved as to form and legality:

By: \_\_\_\_\_

Agency Counsel

**“GRANTEE”**

\_\_\_\_\_,

a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A TO GRANT DEED**

**PROPERTY DESCRIPTION**

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DRAFT

RECORDING REQUESTED BY

City of Oakland

WHEN RECORDED RETURN TO:

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

**TRANSFER AND ASSIGNMENT AND ASSUMPTION AGREEMENT OF  
LEASE DISPOSITION AND DEVELOPMENT AGREEMENT**  
(2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way, Oakland)

This Transfer and Assignment and Assumption Agreement ("**Agreement**") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between SEARS DEVELOPMENT CO., a Delaware corporation ("**Assignor**"), and TB2 RETAIL COMPLEX, LLC, a California limited liability company ("**Assignee**"), and consented to by the City of Oakland ("**City**"), is executed as of the date below each signature on the signature page but is made to be effective and delivered on \_\_\_\_\_, 2013 (the "**Effective Date**").

**RECITALS**

A. On October 18, 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. Berkeley Way, Oakland (the "**Properties**"). The LDDA was recorded on \_\_\_\_\_, \_\_\_\_ as Document No. \_\_\_\_\_.

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 Property and completion of the Project by a certain date.

D. On or about January 31, 2012, the City acquired the Properties 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. Section 11.3 of the LDDA requires City approval for any sale, assignment or transfer of the Developer's rights under of the LDDA.

G. On May \_\_, 2013, Assignor entered into that certain Purchase and Sale Agreement ("Purchase Agreement") with Assignee, pursuant to which Assignor agreed to sell to, and Assignee agreed to purchase rights to develop the Project on the Property pursuant to the terms and conditions of the LDDA, subject to obtaining the City's consent to the sale and assignment.

H. By Ordinance 13159 C.M.S., dated May 21, 2013, 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 Strategic Urban Development Alliance, LLC ("SUDA") or a related affiliate.

I. Assignee is an affiliate of SUDA.

J. Currently herewith, City and Assignor have executed that certain First Amendment to the LDDA (the "First Amendment"); pursuant to which, among other things: (1) the parties agreed to an extension of the date to complete the Project from October 18, 2010 to October 18, 2016 for a payment of One Hundred Thousand Dollars (\$100,000) simultaneously with execution of the First Amendment by Assignor to City; (2) the City agrees to consent to the assignment of the LDDA to the Assignee under specified conditions, including, without limitation, the requirement to provide a Guaranty for the Project; and (3) certain LDDA provisions are clarified and updated to reflect the assignment to Assignment. For purposes of this Agreement, the LDDA, as amended by the First Amendment, 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. 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 the right to any payments that may become payable by Agency to Assignor pursuant to Sections 16.4(a)(iii), 16.5(a)(i), 16.6 and 16.8 of the LDDA.

2. Assumptions 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 arising under the Amended LDDA whether arising before 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.

3. 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.

4. 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.

5. 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 Property, as appropriate, runs with the Property and each successive owner during its ownership of the Property.

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

7. Further Assurances. The parties hereto shall execute and deliver, upon demand by the other party or the City, such further documents, instruments and conveyances, and shall take such further actions as such other party may request from time to time to document the transactions set forth herein.

8. 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.

**ASSIGNOR:**

**SEARS DEVELOPMENT CO.,** a Delaware corporation

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

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**ASSIGNEE:**

**TB2 RETAIL COMPLEX, LLC,**  
a California limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY:**

**CITY OF OAKLAND,** a municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_  
Agency Counsel

[ALL SIGNATURES MUST BE NOTARIZED]

**Hillmer, J H**

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**From:** Hillmer, J H  
**Sent:** Monday, November 18, 2013 9:36 AM  
**To:** 'jguill1043@aol.com'; 'AlanDones@aol.com'  
**Cc:** Hunter, Gregory  
**Subject:** FW: LDDA Amendment and Transfer and Assignment Agreement  
**Attachments:** LDDA Amendment Final Draft.docx; Transfer and Assignment Final Draft.docx

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Gentlemen:

Since I have not heard from anyone since I transmitted these documents to John in September, I want to resend the document again. It is important that we finalize these documents as soon as possible in order to ensure a smooth transfer of the properties at the corner of Telegraph and Thomas L. Berkley Way.

Please let me know if you have any questions.

Thank you!

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](mailto:Jhillmer@oaklandnet.com)

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**From:** Hillmer, J H  
**Sent:** Wednesday, September 18, 2013 3:49 PM  
**To:** 'jguill1043@aol.com'  
**Cc:** Hunter, Gregory  
**Subject:** FW: LDDA Amendment and Transfer and Assignment Agreement

Hi John:

I just want to make sure that you received the attached documents that I sent to you last week. Please let me know if you have any questions or comments.

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](mailto:Jhillmer@oaklandnet.com)