

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

13438


City Attorney

2017 MAY 24 AM 9:20 ORDINANCE No. _____ C.M.S.

AN ORDINANCE: (1) Amending The Term Sheet For The Disposition And Development Agreement For The Properties Located At 3455 And 3461 Champion Street Previously Approved By Ordinance Number 13400 C.M.S. To Modify The Project Schedule, Including Extending The Outside Dates For Closing And Completion Of Construction, And The Hours Of Operation; And (2) Authorizing The City Administrator, Without Returning To The City Council, To Negotiate And Execute Such Disposition And Development Agreement And Related Documents Between The City of Oakland And Carlos Soloman And Dominica Rice-Soloman (Or Their Related Entities Or Affiliates), All Of The Foregoing Documents To Be In A Form And Content Substantially In Conformance With The Amended Term Sheet Attached As Exhibit A

WHEREAS, Ordinance Number 13400 C.M.S. approved by the City Council on November 29, 2016 authorized the City Administrator to negotiate and execute a disposition and development agreement (the "DDA") for the sale of the properties located at 3455 and 3461 Champion Street (the "Property") to Carlos Soloman and Dominica Rice-Soloman (collectively, the "Developer") based on terms and conditions contained in a term sheet attached to such ordinance (the "Term Sheet"); and

WHEREAS, during subsequent negotiations with the Developer, staff and lenders have identified several proposed changes to the Term Sheet that are necessary or desirable to help assure the success of the Developer's project; and

WHEREAS, such proposed changes to the Term Sheet are as follows: (a) extending the deadline for buyer to remove property inspection and financing contingencies from March 31, 2017 to the date that is sixty-one (61) days after execution of the DDA, but in no event later than September 30, 2017 (Item 21); (b) extending the deadline to close escrow from May 30, 2017 to January 1, 2018 (Item 22); (c) extending the construction commencement date from July 30, 2017 to March 1, 2018 (Item 23); (d) extending the construction completion deadline from February 28, 2018 to March 30, 2019 (Item 24); (e) extending the deadline for business opening from May 15, 2018 to April 30, 2019 (Item 25); and (f) modifying the business hours of operation to provide for operation from 11:00 a.m. to 11:00 p.m., Tuesday through Sunday, closed Monday and on major holidays, subject to review by the City Administrator in his or her reasonable discretion should the Developer demonstrate that such hours are economically infeasible or a financial hardship, all as shown on the Amended Term Sheet attached as Exhibit A (the "Amended Term Sheet") (Item 30); and

WHEREAS, the City Council has previously found and determined that the requirements of the California Environmental Quality Act of 1970 ("CEQA"), the Guidelines as prescribed by the Secretary for Resources (the "CEQA Guidelines"), and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of CEQA (collectively, "CEQA Requirements") have been satisfied, and in accordance with Sections 15061(b)(3)(general rule exemption), 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), Section 15183

(projects consistent with the General Plan), 15312 (Surplus Government Property Sales), 15303 (New Construction or Conversion of Small Structure), and 15332 (In-fill Development) of the CEQA Guidelines, the adoption of this Ordinance is exempt from the provisions of CEQA; and

WHEREAS, the City Council desires to grant the City Administrator authority to negotiate and enter into the DDA reflecting the terms and conditions set forth in the Amended Term Sheet; now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

Section 2. The City Council hereby amends the Term Sheet to reflect the changes incorporated into the Amended Term Sheet attached as Exhibit A.

Section 3. The City Council hereby authorizes the City Administrator or her designee to negotiate and enter into the DDA with the Developer reflecting the terms and conditions set forth in the approved Amended Term Sheet.

Section 4. The Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 20 2017

PASSED BY THE FOLLOWING VOTE:

AYES-~~seven~~ CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, and PRESIDENT REID 7

NOES-0

ABSENT-0

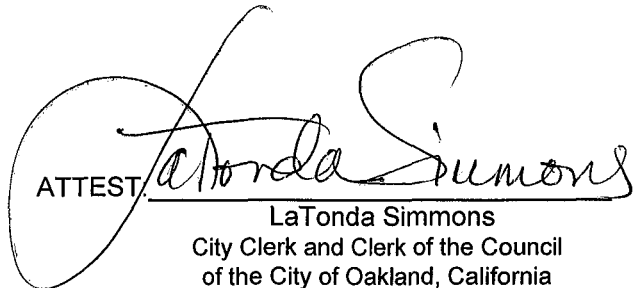
ABSTENTION-0

Excused - Brooks - 1

Introduction Date

JUN 06 2017

ATTEST


LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION:

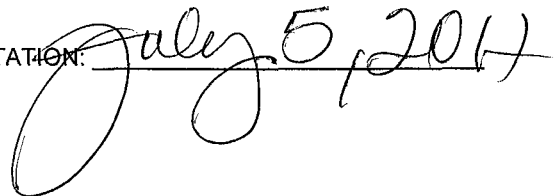

July 5, 2017

EXHIBIT A

DDA TERM SHEET FOR THE CHAMPION STREET DISPOSITION APRIL 25, 2017

1	OWNER:	City of Oakland (City)
2	DEVELOPER:	Carlos Soloman & Dominica Rice-Cisneros Or A Legal Entity Affiliated with Carlos Soloman & Dominica Rice-Soloman, as approved in writing by the City.
3	GUARANTY:	Developers to provide City a Guaranty prior to closing. Guarantor must be financially strong entity with significant assets, pursuant to criteria set forth in the DDA and acceptable to the City in its sole and absolute discretion, to guarantee project completion obligation, as determined by City. Minimum guarantor net worth requirement equal to twenty-five percent (25%) of the approved project development budget.
4	PROPERTY:	3455 & 3461 Champion Street, Oakland, CA
5	PROJECT DESCRIPTION:	Unsubsidized acquisition for the development and ongoing operation of a full-service restaurant.
6	PURCHASE PRICE:	<p>\$425,000 Four hundred twenty five thousand dollars.</p> <p>The buyers have placed on deposit a \$5,000 non-refundable option fee.</p> <p>Upon executing the DDA, the Developer will provide a \$37,500 nonrefundable good faith deposit by Certified Check made out to Old Republic Title Company. Except as otherwise provided herein below, such good faith deposit [and the option fee] shall be credited against the purchase price at closing. Should the Property not be conveyed to Developer by the outside date for closing in the DDA, the City may terminate the DDA and retain the good faith deposit [and the option fee] as liquidated damages, unless the failure to close is for reasons beyond Developer's control (which reasons shall not include financial inability).</p>

7	TERMS OF PAYMENT; CLOSE OF ESCROW:	Purchase Price to be due and payable in cash submitted into escrow 3 days before close of escrow. Escrow to close within five (5) business days following satisfaction (or written waiver) of all contingencies, including issuance of Developer's building permit.
8	USE:	Full service restaurant
9	EXECUTION OF DDA:	If the parties have not mutually executed the DDA by July 30, 2017 the City (at its sole discretion) may terminate negotiations and sell the Property to another party.
10	CONVEYANCE:	<p>Conveyance of Property to be contingent upon satisfaction of all DDA conditions precedent to closing including, but not limited to:</p> <ol style="list-style-type: none"> 1) City approval of five year operating plan and proforma; 2) Full financing in place to develop the Project, including: <ol style="list-style-type: none"> a. Predevelopment b. Acquisition c. Construction d. Permanent e. Startup cost 3) City approval of project plans and specifications 4) City approval of construction contract; 5) Receipt of all government approvals for the Project including all necessary approvals from state or federal authorities or other agencies having jurisdiction over the Property and its use.
11	TITLE INSURANCE:	Developer to secure title insurance policy, if desired, at its own cost and expense. City to provide standard owner affidavits regarding tenants, work on site, etc. if required by the title company for issuance of an ALTA policy. Developer acknowledges that it will take title to the Property subject to the easements described in Item #33 below.
12	CLOSING COSTS:	Developer to pay all escrow fees and closing costs including, without limitation, city and any other county taxes.
13	LIMITATIONS ON PROPERTY RIGHTS:	Developers accept and acknowledge the Property is subject to deed restrictions and a recorded covenant to restrict use of the Property.
14	TAXES:	Developer to pay all customary taxes and assessments.

15	CONDITION OF PROPERTY AT DELIVERY:	Property and all structures on the Property shall be conveyed in an "as is" physical condition.
16	ENVIRONMENTAL REMEDIATION:	<p>After acquisition of the Property, and during construction, Developer shall be responsible for completion of any and all environmental remediation discovered at, on, under or in the Property, including, but not limited to, remediating and removing existing utility infrastructure, and obtaining closure letters from environmental regulatory agencies.</p> <p>Developer agrees to accept the Property "as is" in its current condition without warranty express or implied by the City with respect to the presence of hazardous materials known or unknown on or near the Property.</p>
17	INDEMNIFICATION:	Developers shall agree to provide standard commercial hold harmless and defend provisions to the City of Oakland and its employees, officers, directors, shareholders, partners and agents. City and Developers to negotiate the various levels of indemnification and project stages as part of the DDA.
18	CONTRACTOR'S GENERAL LIABILITY REQUIREMENTS DURING CONSTRUCTION:	Requires compliance with standard City insurance requirements.
19	DEVELOPER MAINTENANCE:	Upon close of escrow, Developer is responsible for all maintenance of the Property.
20	NO COMMISSION:	Neither the City nor the Developer shall pay or be liable for any commissions or brokerage fees. The parties shall defend and hold each other harmless against any claims for commissions or brokerage fees.
21	DEADLINE FOR BUYER TO REMOVE PROPERTY INSPECTION AND FINANCING CONTINGENCIES:	Sixty-one (61) days after execution of the DDA, but in no event later than September 30, 2017.
22	DEADLINE TO CLOSE ESCROW:	January 1, 2018.
23	CONSTRUCTION COMMENCEMENT DATE:	March 1, 2018.
24	CONSTRUCTION COMPLETION DEADLINE:	March 30, 2019.

25	DEADLINE FOR BUSINESS OPENING:	April 30, 2019.
26	TRANSFER / ASSIGNMENT OF RIGHTS:	Not permissible without the City's written consent in its sole and absolute discretion
27	RIGHT OF ENTRY:	<p>Developer to have the right to enter onto the Property prior to transfer to conduct any investigation, testing, appraisals and other studies, at Developers cost, required as part of its due diligence.</p> <p>Developer shall be required to provide City with indemnity and evidence of insurance (in form and amounts to be further described in an exhibit to the DDA) and meet other standard City conditions to entry. Indemnity obligation shall not include matters arising out of the mere discovery of existing conditions at the Property or City's gross negligence or willful misconduct.</p> <p>City to have right of entry onto the property following close of escrow to inspect the Property and the Project during standard operating hours and upon required notice (except no notice is required for emergencies); this provision does not otherwise limit City's right to enter under its separate regulatory authority.</p>
28	DDA SUBJECT TO REVIEW BY LENDER/INVESTORS:	Developer's selected financial institution or lender(s) may review DDA prior to execution. In the event financial institution or lender(s) provides written comments regarding the DDA, City to consider responding and revising DDA at the sole and absolute discretion of the City.
29	TITLE COMPANY:	Old Republic Title Company, Oakland, CA
30	BUSINESS HOURS OF OPERATION:	11:00 a.m. to 11:00 p.m., Tuesday through Sunday, closed Monday and on major holidays. Hours of operation are subject to review by the City Administrator in his or her reasonable discretion should the Developer demonstrate that such hours are economically infeasible or a financial hardship.

31	REPURCHASE OPTION/RIGHT OF REVERTER (“Reversion Rights):	<p>Subject to force majeure delays and a 30-day default notice period, in addition to the remedies described in Item 34 below, if construction does not start by March 1, 2018, or if the Project is not completed by March 30, 2019, City will have the option to repurchase/right of reversion for the Property for the original sale price (City’s “Reversion Rights”). The City can assign or transfer its Reversion Rights. The repurchase rights shall be subject to the mortgagee protection provisions included in the DDA. City may (at its sole discretion) may terminate negotiations and sell the Property to another party, or reasonably extend this target date without returning to City Council.</p> <p>A Deed Restriction, CC&R’s or DDA will be recorded against 3455 & 3461 Champion St. that will restrict the use of the properties to the operation of a full service restaurant for a term of five years from the date that the Developer received written authorization from the City Building/Planning department and the County Health Department to open for business.</p> <p>I. Reversion rights;</p> <ol style="list-style-type: none"> a. Start Up - The Buyer shall open the restaurant for service on or prior to April 30, 2019. If the Buyer fails the City may exercise its Reversion Rights. b. Continued Restaurant Operations – Buyer shall operate a full service restaurant for a term not less than five years. If the Buyer fails the City may exercise its Reversion Rights. c. If the Buyer complies with the terms and conditions of this DDA the City’s Reversion Rights expire one day after the fifth anniversary of the date the Developer was authorized (in writing) by the City and County to open for business.
32	CONTRACTOR’S WORKERS COMPENSATION INSURANCE REQUIREMENTS DURING CONSTRUCTION:	<p>Requires compliance with City Standards.</p>

33	EASEMENTS FOR COMCAST FACILITY:	<p>3461 Champion Street will be delivered to the Developer subject to easements in favor of the City over the area covered by an existing lease between the City and Comcast for the operations of a fiber optics hub.</p> <ul style="list-style-type: none"> a. The Comcast fiber optics hub will remain at its existing location, operational and is excluded from the sale. b. The lease between the City and Comcast at 3461 Champion St. will remain the property of the City. The income stream from the Comcast lease is excluded from the sale. c. Easements for the benefit of the City at 3461 Champion St.: <ul style="list-style-type: none"> i. One for the existing location of the Comcast fiber optics Hub (approximately 20 feet by 20 feet.) ii. One for underground conduit for fiber, power, telecommunications, ingress, egress, repairs and maintenance thereto, that will run West to East (approximately 20 feet by 40 feet from the Hub to the Street). Buyer may use for parking. iii. One for underground conduit for fiber, power, telecommunications, ingress, egress, repairs and maintenance thereto, that will run North to South (approximately 20 feet by 40 feet from the Hub to the Street). Developer may use for parking. iv. Developer may use 3461 Champion St. for parking. Other uses require written approval by the City in its sole and absolute discretion.
34	RIGHTS RESERVED:	<p>The City reserves the right to accept or reject any and all terms of the DDA, whether or not minimum qualifications are met, and to modify, postpone, or cancel the negotiation without liability, obligation, or commitment to any party, firm or organization.</p>