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OAKLAND

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Approved as to Form and Legality


Deputy City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. 13565 C.M.S.

AN ORDINANCE TO AMEND ORDINANCE NO. 13368 C.M.S. TO AUTHORIZE A FIRST AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND 500 KIRKHAM, LLC TO (1)(A) CHANGE THE PROJECT DEFINITION TO ALLOW DEVELOPMENT CONSISTING OF THREE BUILDINGS AND 1,032 RESIDENTIAL UNITS, (B) ADJUST THE AFFORDABLE HOUSING REQUIREMENT TO INCLUDE 85 VERY LOW INCOME UNITS ON-SITE AND A \$7.1 MILLION PAYMENT TO THE AFFORDABLE HOUSING TRUST FUND, (C) ALLOW THE PROJECT SCHEDULE TO BE EXTENDED ANNUALLY FOR UP TO TEN YEARS IF PAYMENT OF EXTENSION FEES ARE MADE ACCORDING TO THE EXTENSION SCHEDULE SHOWN IN EXHIBIT A, (D) REQUIRE 500 KIRKHAM, LLC TO PAY A \$1 MILLION WORKFORCE TRAINING PAYMENT DIRECTLY TO THE FOLLOWING ENTITIES IN THE AMOUNTS SPECIFIED: (I) \$300,000 TO THE WEST OAKLAND JOB RESOURCE CENTER; (II) \$300,000 TO THE WORKFORCE COLLABORATIVE; (III) \$200,000 TO CIVICORPS; AND (IV) \$200,000 TO THE WEST OAKLAND YOUTH CENTER, BY THE DATE AND WITH THE FORM OF EVIDENCE SPECIFIED BY THE CITY ADMINISTRATOR, AND (E) REQUIRE EVIDENCE OF A FUNDING COMMITMENT FOR THE WEST OAKLAND SHUTTLE, AND (2) TO MAKE THE DETERMINATION THAT AN ADDENDUM PURSUANT TO CEQA GUIDELINES SECTION 15164 IS APPROPRIATE AND ALTERNATIVELY, THE PROJECT IS EXEMPT FROM CEQA PURSUANT TO CEQA GUIDELINES SECTIONS 15168, 15183, AND 15183.3

WHEREAS, the California Department of Transportation ("Caltrans") owned approximately 2.85 acres of excess land that was the site of the former Cypress Freeway on the block bounded by 5th Street, 7th Street, Kirkham Street and Union Street in West Oakland, commonly known as 500 Kirkham Street (the "Property"); and

WHEREAS, on October 14, 2014, the City of Oakland (the "City") and Caltrans entered into an Option to Purchase-Cash Sale Agreement ("Option") to establish the Property's purchase price and facilitate the transfer of the Property for a transit-oriented development

project, for a term that expired on April 12, 2017; and

WHEREAS, the City Council adopted Ordinance No. 13368 C.M.S. on May 17, 2016, approving the purchase of the Property from Caltrans and authorizing a Disposition and Development Agreement (“DDA”) with TL Partners V, L.P. (“Original Developer”) to convey the Property to the Original Developer via a double escrow sale, relying solely on the Original Developer’s funds for the purchase, for development as a transit-oriented mixed-use residential and commercial project; and

WHEREAS, the DDA, which was executed on October 24, 2016, provides the terms and conditions under which the City agreed to sell the Property to the Original Developer, and the Original Developer agreed to develop the Property; and

WHEREAS, when the Original Developer was unable to attract the investment capital to close the sale by the April 12, 2017 deadline, it asked the City to approve the assignment of the DDA to 500 Kirkham, LLC (“Developer”), an affiliate of Panoramic Interests; and

WHEREAS, the City Council adopted Ordinance No. 13423 C.M.S. on March 28, 2017, to approve the assignment of the DDA from the Original Developer to Developer; and

WHEREAS, Developer provided the \$4,253,977 in funds necessary to exercise the Option on April 12, 2017 to acquire the Property from Caltrans and simultaneously convey the Property to Developer via a double escrow sale for development of the Property; and

WHEREAS, Developer acquired an adjacent corner lot located at 1255 7th Street (the “7th Street Property”) to expand the development footprint of the Property and pursued Planning approval and California Environmental Quality Act (“CEQA”) review for the Project on the Property and the 7th Street Property (collectively, the “Development Site”); and

WHEREAS, Developer is now seeking an amendment to the DDA to include: (1) change the project definition to allow development consisting of three buildings totaling 1,032 residential units, approximately 32,127 square feet of ground floor retail and/or flex space; approximately 32,965 square feet of privately-owned and maintained open space available to the public, and a minimum of 59 parking spaces; (2) allow the project schedule to be extended annually for ten (10) years if Developer makes the required annual extension fee payments according to the extension fee schedule as shown in the attached Exhibit A (the “Extension Fee Schedule”); (3) adjust the affordable housing requirement to include 85 very low income units on-site and a \$7.1 Million payment to the Affordable Housing Trust Fund (“AHTF”); and (4) require the Developer submit evidence of a written commitment to provide funding for the launch of a West Oakland Shuttle service; and

WHEREAS, staff’s review of the Project and its financial proforma models indicate these four modifications to the DDA (collectively, the “First Amendment”) are justified and necessary to keep the development moving forward to produce 1,032 homes, including 85 at below market rents without government subsidy, a \$7.1 Million payment to the AHTF, a \$1 Million workforce training payment by Developer, hundreds of construction jobs, 175 permanent jobs, and over

\$1.3 Million in ongoing annual tax revenue to the City upon full build-out; and

WHEREAS, Section 12.23 of the DDA provides any amendments to the DDA must be in writing, approved as to form and legality by the City of Attorney of Oakland, and must be executed by both City and the Developer; and

WHEREAS, the City Council desires to authorize the First Amendment to the DDA by adoption of this Ordinance; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby finds, that it is in the best interests of the City to amend Ordinance No. 13368 C.M.S. to amend the DDA by the First Amendment.

SECTION 2. The City Council hereby authorizes the City Administrator or his/her designee, without returning to the City Council, to negotiate and execute: (1) the First Amendment, in a form and content substantially in conformance with the terms described herein; (2) such other additions, amendments or other modifications to the foregoing document that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transaction contemplated by this Ordinance, to be conclusively evidenced by the execution and delivery by the City Administrator of any such amendments; and (3) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the First Amendment and development of the Property in order to consummate the transaction in accordance with this Ordinance, or to otherwise effectuate the purpose of this Ordinance and its basic purposes.

SECTION 3. The City Council authorizes the City Administrator to accept, deposit and appropriate the Annual Extension Fee proceeds, an amount which will range from as low as \$25,000 in Year 1 to as high as \$363,000 in Year 10 according to the Extension Fee Schedule as shown in *Exhibit A*, into the Miscellaneous Capital Project Fund (5999), West Oakland Redevelopment Organization (85241), West Oakland Transit Village Project (1001500), West Oakland Redevelopment Project (SC06) for purposes of reimbursing the City for its project-related staff costs and third-party expenses.

SECTION 4. The City Council authorizes the City Administrator or his/her designee to accept and appropriate a \$7.1 Million payment from the Developer, which could be made in up to three (3) installments over the term of the DDA, and deposit said payment into the Affordable Housing Trust Fund (1870), Housing Development Organization (89929), for a project(s) to be determined for housing development activities.

SECTION 5. The City Council authorizes the City Administrator to require Developer to pay a \$1 Million workforce training payment to the following entities in the amounts specified: (a) \$300,000 for the West Oakland Job Resource Center; (b) \$300,000 to The Workforce Collaborative; (c) \$200,000 to Civicorps; and (d) \$200,000 to the West Oakland Youth Center;

Exhibit A: 500 Kirkham - Amended Project Schedule For Ten 1-Year Extensions And Related Extension Fee Schedule

Performance Benchmark	ORIGINAL DDA Due Dates	NEW Due Dates		
		Phase I & II	Phase III	Phase IV
		Building 1	Building 2	Building 3
1. Submit draft Remediation Program to DTSC	Dec 2016	completed	completed	completed
2. City completes Poplar Street vacation	Dec 2016	completed	completed	completed
3. Submit form of Environmental Insurance policy	Dec 2016	completed	completed	completed
4. Submit Financial Statements	Dec 2016	completed	completed	completed
5. Submit Preliminary Financial Plan	Dec 2016	completed	completed	completed
7. Close of Escrow	April 12 2017	completed	completed	completed
8. Submit Schematic Design Plans	Jan 2017	completed	completed	completed
9. Submit Design Development Plans	June 2017	completed	completed	completed
12. Submit DTSC approvals to City	Dec 2017	August 2019	August 2019	August 2019
10. Submit Final Construction Plans including Public Art Plan	Nov 2017	Nov 2019	May 2024	June 2028
6. Submit Completion Guaranty	May 2018	Sept 2020	March 2025	April 2029
17. Submit Payment and Performance Bonds	May 2018	Sep 2020	March 2025	April 2029
11. Submit Governmental Approvals	Dec 2017	Oct 2020	April 2025	May 2029
13. Submit Final Financial Plan	May 2018	Oct 2020	April 2025	May 2029
14. Submit form Financing Documents	May 2018	Oct 2020	April 2025	May 2029
15. Submit final Financing Documents	May 2018	Oct 2020	April 2025	May 2029
16. Submit Construction Contract	May 2018	Oct 2020	April 2025	May 2029
18. Commencement of Site Preparation	Dec 2019	Nov 2020	May 2025	June 2029
19. Commencement of Construction	April 2020	Nov 2020	May 2025	June 2029
20. Completion of Construction	Dec 2022	Nov 2022	May 2027	Dec 2032

500 Kirkham Extension Fee Schedule										
Year	1	2	3	4	5	6	7	8	9	10
Due January 15,	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>2032</u>
If No Building Started Construction	\$53,000	\$63,000	\$74,000	\$114,000	\$128,000	\$143,000	\$286,000	\$311,000	\$337,000	\$363,000
If Building 1 Started Construction	\$25,000	\$25,000	\$25,000	\$77,000	\$86,000	\$96,000	\$234,000	\$255,000	\$277,000	\$298,000
If Building 1 & 2 Completed, Building 3 Started Construction	\$0	\$0	\$0	\$25,000	\$25,000	\$25,000	\$129,000	\$141,000	\$153,000	\$164,000

NOTICE AND DIGEST

AN ORDINANCE TO AMEND ORDINANCE NO. 13368 C.M.S. TO AUTHORIZE A FIRST AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND 500 KIRKHAM, LLC TO (1)(A) CHANGE THE PROJECT DEFINITION TO ALLOW DEVELOPMENT CONSISTING OF THREE BUILDINGS AND 1,032 RESIDENTIAL UNITS, (B) ADJUST THE AFFORDABLE HOUSING REQUIREMENT TO INCLUDE 85 VERY LOW INCOME UNITS ON-SITE AND A \$7.1 MILLION PAYMENT TO THE AFFORDABLE HOUSING TRUST FUND, (C) ALLOW THE PROJECT SCHEDULE TO BE EXTENDED ANNUALLY FOR UP TO TEN YEARS IF PAYMENT OF EXTENSION FEES ARE MADE ACCORDING TO THE EXTENSION SCHEDULE SHOWN IN EXHIBIT A, (D) REQUIRE 500 KIRKHAM, LLC TO PAY A \$1 MILLION WORKFORCE TRAINING PAYMENT DIRECTLY TO THE FOLLOWING ENTITIES IN THE AMOUNTS SPECIFIED: (I) \$300,000 TO THE WEST OAKLAND JOB RESOURCE CENTER; (II) \$300,000 TO THE WORKFORCE COLLABORATIVE; (III) \$200,000 TO CIVICORPS; AND (IV) \$200,000 TO THE WEST OAKLAND YOUTH CENTER; BY THE DATE AND WITH THE FORM OF EVIDENCE SPECIFIED BY THE CITY ADMINISTRATOR, AND (E) REQUIRE EVIDENCE OF A FUNDING COMMITMENT FOR THE WEST OAKLAND SHUTTLE, AND (2) TO MAKE THE DETERMINATION THAT AN ADDENDUM PURSUANT TO CEQA GUIDELINES SECTION 15164 IS APPROPRIATE, AND ALTERNATIVELY, THE PROJECT IS EXEMPT FROM CEQA PURSUANT TO CEQA GUIDELINES 15168, 15183, AND 15183.3.

This Ordinance authorizes the City Administrator to execute a First Amendment to the Disposition and Development Agreement between the City of Oakland and 500 Kirkham, LLC, the developer of 500 Kirkham Street, and an affiliate of Panoramic Interests, LLC, to: (1) change the Project definition to allow development consisting of three buildings totaling 1,032 residential units, approximately 32,127 square feet of ground floor retail and/or flex space; approximately 32,965 square feet of privately-owned and maintained open space available to the public, and approximately 59 parking spaces; (2) to allow the project schedule to be extended annually up to ten years if payment of annual extension fees are made beginning the year after the original construction completion deadline (December 2022), according to the Extension Fee Schedule shown in *Exhibit A* of the Ordinance; (3) adjust the affordable housing requirement to include 85 very low income units on-site and a \$7.1 Million payment to the Affordable Housing Trust Fund; (4) require 500 Kirkham, LLC to pay a \$1 Million workforce training payment direct to the following entities in the amounts specified: (a) \$300,000 for the West Oakland Job Resource Center; (b) \$300,000 to The Workforce Collaborative; (c) \$200,000 to Civicorps; and (d) (\$200,000 to the West Oakland Youth Center; by the date and with the form of evidence specified by the City Administrator; and (5) require the Developer submit evidence of a written commitment to launch a West Oakland shuttle service. Also, by adopting the

Ordinance, the City Council is making the determination that an Addendum pursuant to CEQA Guidelines Section 15164 is appropriate, and alternatively, the Project is exempt pursuant to CEQA Guidelines Sections 15168, 15183, and 15183.3.