

**CITY OF OAKLAND**  
**COUNCIL AGENDA REPORT**

OFFICE OF THE CITY CLERK  
CITY OF OAKLAND

2006 FEB -1 PM 3:27

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: February 14, 2006

RE: **An Ordinance to: (1) Consent to the Transfer of the Franchise Pursuant to Ordinance 8005 C.M.S. Dated July 24, 1969 Granting a Franchise to Construct, Maintain and Operate a Bridge and Tunnel at 21<sup>ST</sup> Street (The Kaiser Center) in the City of Oakland to Prentiss Properties Acquisition Partners L.P. and SIC-Lakeside Drive, LLC, and (2) Amend Said Ordinance to Increase the Amount of the Liability Insurance to \$25,000,000 and the Annual Franchise Consideration to \$1,500**

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**SUMMARY**

An Ordinance has been prepared to request the consent to the transfer of the franchise pursuant to Ordinance 8005 C.M.S. ("Existing Ordinance") passed on July 24, 1969 and entitled "An Ordinance granting a franchise to Kaiser Center Properties and Kaiser Center, Inc., to construct, maintain and operate a tunnel and bridge for the transportation of people and material under and over certain designated areas of 21st Street in the City of Oakland." The Ordinance also request that the Existing Ordinance be amended to include all other named grantees in the chain of title, and to increase the amount of liability insurance of the owners from \$1,000,000 to \$25,000,000 and the annual franchise consideration paid to the City from \$270 to \$1,500.

Staff recommends the passage and adoption of this Ordinance in order to cause the following:

1. Consent to the transfer of the franchise to Prentiss Properties Acquisition Partners L.P. ("Prentiss") who is the current owner of Assessor's Parcel Number: 008-653-019-03 (also known as "One Kaiser Plaza"), and SIC-Lakeside Drive, LLC ("SIC") who is the current owner of Assessor's Parcel Number: 008-652-001-05 (also known as "The Kaiser Center") plus all other named grantees in the chain of title to the franchise property in accordance with the Existing Ordinance.
2. Increase the aggregate amount of the liability insurance on the franchise property as defined under the Existing Ordinance to "... mean all property and facilities constructed, installed, operated or maintained in public way or public place pursuant to any right or privilege granted by this franchise." including the existing bridge across and above and the existing tunnel across and underlying 21<sup>st</sup> Street from \$1,000,000 to \$25,000,000 with periodic increases every 5 years based on the relative increase in the Consumer Price Index (Bay Area).

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3. Increase the annual franchise consideration from \$270 to \$1,500 with periodic increases every 5 years based on the relative increase in the Consumer Price Index (Bay Area).

### **FISCAL IMPACT**

An annual franchise consideration of \$270 is now paid to the City under the Existing Ordinance and shall increase to \$1,500 under the Ordinance for the remaining term of the franchise in excess of 33 years. The annual franchise consideration of \$1,500 will be placed into the General Purpose Fund (1010), Treasury Operations Unit (#08721), Miscellaneous Franchise Taxes (#41619) Non-Project (0000000), Financial Management Program (#IP59). Thereafter, the annual franchise consideration shall be paid to the City on the same day and month for each year of the remaining term of the franchise. The City shall be reimbursed for the processing costs of \$1,359 which will be placed in the General Purpose Fund (#1010), Real Estate Org (#88639), Miscellaneous Land Rentals (#44219), Real Estate Surplus Property Project (#P47010), Real Estate Program (#PS32). The current owners of the franchise property shall be responsible for these payments.

### **BACKGROUND**

The City of Oakland granted to Kaiser Center Properties and Kaiser Center, Inc. a franchise to construct, install, operate, maintain, repair and renew an enclosed pedestrian bridge and tunnel for the purpose of transporting people and material across and under that certain street in the City known as 21<sup>st</sup> Street, between Valdez Street and Harrison Street. Section 2. (f) of the Existing Ordinance states that "Grantee shall make the franchise property available during regular business hours to persons having legitimate business in the buildings to which the franchise property connects." When the City granted this franchise in 1969, Kaiser Center Properties and Kaiser Center, Inc. were the owners of One Kaiser Plaza and the Kaiser Center separated by 21<sup>st</sup> Street. The franchise applies to the existing bridge above and across 21<sup>st</sup> Street and the existing tunnel lying below and across 21<sup>st</sup> Street which are the "franchise property" as defined under the Existing Ordinance to "... mean all property and facilities constructed, installed, operated or maintained in public way or public place pursuant to any right or privilege granted by this franchise." Section 2 of the Existing Ordinance states that "It is deemed to be in the best public interest to avoid traffic congestion on 21<sup>st</sup> Street by keeping as much as possible the movement of people, supplies and equipment between the two buildings off of said Street."

Kaiser Center Properties and Kaiser Center, Inc. have subsequently sold and transferred their interest in One Kaiser Plaza and The Kaiser Center including the franchise property. Intervening transfers and sales have occurred without obtaining the City's prior written consent to the transfer of the franchise property as outlined in the franchise agreement.

The Existing Ordinance also provides for the following:

1. The term of the franchise is 70 years commencing July 24, 1969 and ending July 23, 2039, so the remaining term is more than 33 years.
2. The owner of the franchise property is required to maintain liability insurance with an aggregate amount of not less than \$1,000,000 for each accident or occurrence.

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3. The annual franchise consideration is \$270.

The City's staff time and current cost to process this matter is \$1,359. The City will be reimbursed for its costs.

#### **KEY ISSUES AND IMPACTS**

The key issues include the following:

1. Whether the City should consent to the transfer of the franchise to Prentiss and SIC pursuant to the Existing Ordinance?
2. Whether the City should amend the Existing Ordinance in consenting to the transfer of the franchise to Prentiss and SIC?

The City should consent to the transfer of the franchise to Prentiss and SIC because they both have substantial net worth and experience in investing and managing real estate:

1. Prentiss Properties Trust (NYSE: PP) is a public real estate investment trust. According to Form 10-Q filed with the United States Securities and Exchange Commission for the quarterly period ending June 30, 2005, the total shareholder's equity in Prentiss Properties Trust exceeds \$916,000,000 and total assets exceeds \$2,500,000,000. Prentiss Properties Trust operates through an operating partnership, Prentiss Properties Acquisition Partners L.P. who is the owner of One Kaiser Plaza. Other ownership of interest of Prentiss in Oakland includes 155 Grand Avenue (also known as the Lake Merritt Tower), 2101 Webster Street and 1333 Broadway.
2. The Swig Company, headquartered in San Francisco, is a private company with more than 70 years of history in development, ownership and management of commercial real estate in the United States with a portfolio that includes 8 million square feet of office space, over 1,600 full-service hotel rooms, and about 650,000 square of industrial space. Through a joint venture between GMAC Institutional Advisor and the Swig Company, SIC-Lakeside Drive, LLC is the owner of The Kaiser Center.

As consideration for the City's consent, the Existing Ordinance should be amended:

1. The named grantee under the Existing Ordinance is Kaiser Center Properties and Kaiser Center, Inc. and should include Prentiss and SIC plus every other person, firm, or corporation in the chain of title to the franchise property so that this Ordinance and the Existing Ordinance cover each and every named grantee in the chain of title to the franchise property for liability purposes.
2. The liability insurance limits under the Existing Ordinance is not less than \$500,000 for injury to property and \$500,000 for bodily injury, with an aggregate liability of not less than \$1,000,000 for each accident or occurrence. The Existing Ordinance should be amended to provide limits in the sum of not less than \$1,000,000 for damage to property and

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\$1,000,000 for bodily injury, with an aggregate liability of not less than \$25,000,000 for each accident or occurrence, and shall name the City, its officers, officials and employees as named insured (rather than additional insured). Such limits shall be adjusted every five years based on the relative increases (and no decreases) in the Consumer Price Index – All Urban Consumer (San Francisco-Oakland-San Jose, CA) published by the U.S. Department of Labor Statistics calculated from the effective date of this Ordinance and continuing thereafter for the remaining term of this franchise ending July 23, 2039.

3. The annual franchise consideration paid to the City is now \$270 and should be increased to \$1,500 per annum with periodic adjustments every 5 years to reflect the relative increases in the Consumer Price Index (Bay Area).

**PROJECT DESCRIPTION**

The City has been requested to consent to the transfer of the franchise (rather than the franchise property) to the current owners of the franchise property pursuant to the Existing Ordinance. To accommodate this request, the City’s consent should be conditioned on amending the Existing Ordinance to include the names of all grantees within the chain of title and to increase the liability insurance limits and the annual franchise consideration paid to the City to reflect current conditions. No new construction or improvements will be made to the franchise property. Since the City has no incidence of ownership and to minimize or eliminate any exposure to liability, the City should avoid exerting any control over the use of the franchise property except as set forth in the Existing Ordinance.

**ENVIRONMENTAL IMPACTS**

The California Environmental Quality Act (CEQA) and the CEQA Guidelines (Existing Facilities) does not apply because no improvements will be made to the franchise property and the use of the franchise property under the Existing Ordinance will not change.

**SUSTAINABLE OPPORTUNITIES**

Economic: The franchise property consisting of the bridge and tunnel will continue to serve their intended purpose of minimizing congestion on 21<sup>st</sup> Street.

Environmental: Since the use of the franchise property will not change, the project has no impact on the environment.

Social Equity: The franchise property will continue to be accessible to the public in accordance with the Existing Ordinance.

**DISABILITY AND SENIOR CITIZEN ACCESS**

Disabled and senior citizens will continue to have access to the franchise property in accordance with the Existing Ordinance.

**RECOMMENDATION AND RATIONALE**

Staff recommends that the City Council approve this Ordinance to: (1) consent to the transfer of the franchise property and (2) amend the Existing Ordinance in order to cause the following:

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1. Consent to the transfer of the franchise to Prentiss and SIC because both owners of the franchise property have substantial net worth and experience in real estate investment and management and to all other named grantees in the chain of title to the franchise property so that this Ordinance and the Existing Ordinance are applicable to each and every named grantee.
2. Increase the limits of the liability insurance coverage on the franchise property for both Prentiss and SIC in the aggregate amount from \$1,000,000 to \$25,000,000 for each accident or occurrence, with periodic adjustments every 5 years based on relative increase in the Consumer Price Index to minimize or eliminate the City's exposure to any liability.
3. Increase the annual consideration for the franchise from \$270 to \$1,500 with periodic adjustments every 5 years based on the relative increase in the Consumer Price Index (Bay Area) to assist the City in covering the City's administrative cost of granting the franchise.

**ACTION REQUESTED OF THE CITY COUNCIL**

Adoption of this Ordinance is required to consent to the transfer of the Franchise to the new property owners, increase the annual franchise consideration to \$ 1,500 and increase the liability insurance coverage requirements to \$25,000,000.

Respectfully submitted,



Daniel Vanderprien, Director  
Redevelopment, Economic Development, Housing and  
Community Development

Forwarded by:

Frank Fanelli, Manager,  
Real Estate Services

Prepared by:

Edwin Kawamoto, Real Estate Agent  
Real Estate Services

**APPROVED AND FORWARDED  
TO THE FINANCE AND MANAGEMENT COMMITTEE**

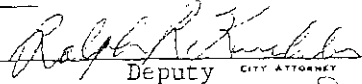
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OFFICE OF THE CITY ADMINISTRATOR

# Exhibit A

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMAN \_\_\_\_\_

  
Deputy CITY ATTORNEY

ORDINANCE NO. 8005 C.M.S.

AN ORDINANCE GRANTING A FRANCHISE TO KAISER CENTER PROPERTIES AND KAISER CENTER, INC., TO CONSTRUCT, MAINTAIN AND OPERATE A TUNNEL AND BRIDGE FOR THE TRANSPORTATION OF PEOPLE AND MATERIAL UNDER AND OVER CERTAIN DESIGNATED AREAS IN 21ST STREET IN THE CITY OF OAKLAND.

The Council of the City of Oakland does ordain as follows:

## SECTION 1. DEFINITIONS.

As used in this franchise, the singular number includes the plural, and the plural number includes the singular. Unless it shall be apparent from the context that they have a different meaning the following words and phrases shall have the meaning herein specified.

### (a) FRANCHISE PROPERTY

The words "franchise property" shall mean all property and facilities constructed, installed, operated or maintained in a public way or public place pursuant to any right or privilege granted by this franchise.

### (b) GRANTEE

The word "Grantee" shall mean Kaiser Center Properties, a partnership, and Kaiser Center, Inc., a California corporation, and any person, firm or corporation to which this franchise may hereafter be lawfully transferred as herein provided.

### (c) CITY

The word "City" shall mean the City of Oakland, a municipal corporation.

## SECTION 2. NATURE OF GRANT.

Grantee is the owner of two blocks of real property in the City separated by 21st Street, a dedicated public street. Grantee, having already built one large building on one block in which several thousand persons are employed, is now desirous of building and has commenced building another large building on the other block in which several further thousands of persons will be employed. Due to the inter-relationship of the various companies who will occupy the buildings, the persons employed in each building will be required from time to time to travel from one building to the other and to move supplies and equipment from one building to the other. It is deemed to be in the best public interest to avoid traffic congestion on 21st Street by keeping as much as possible the movement of people, supplies and equipment between the two buildings off of said street. The City of Oakland hereby grants to Kaiser Center Properties, a partnership, in which Kaiser Industries Corporation, Kaiser

Aluminum & Chemical Corporation, Kaiser Cement & Gypsum Corporation, and Kaiser Steel Corporation are general partners, and Kaiser Center, Inc., a corporation, a franchise to construct, install, operate, maintain, repair and renew an enclosed pedestrian bridge and tunnel for the purpose of transporting people and material across and under that certain street in the City known as 21st Street, between the intersection of Valdez Street and Harrison Street, as hereinafter described, and in accordance with the terms and conditions contained in this ordinance, to-wit:

(a) DESCRIPTION

The real property to which this franchise applies shall be as follows:

BRIDGE.

All of that certain air space 15 feet in width lying across and above 21st Street beginning at a horizontal plane 21 feet, more or less, above the existing center line grade of 21st Street and extending upward 18 feet therefrom. The longitudinal center line of said space being a line drawn at right angles to said 21st Street at a point on the northerly line thereof located westerly 325.55 feet, more or less, from the western line of Harrison Street.

TUNNEL.

All of that certain underground space 21 feet wide and 11 feet high, more or less, lying below and across 21st Street, the longitudinal center line of said space being a line drawn at right angles to said 21st Street at a point on the northerly line thereof located westerly 227.88 feet, more or less, from the western line of Harrison Street.

The outside top of the tunnel proposed to be constructed in said space shall have a minimum cover of 1.85 feet at the existing center line grade of 21st Street.

The elevation of the outside bottom of the tunnel is contingent upon the actual elevation of the top of the existing 72-inch diameter storm conduit located in 21st Street and the design of the joint or clearance between the bottom of the tunnel and the storm conduit shall be subject to approval by the Director of Public Works of the City of Oakland.

(b) PROTECTION

The pedestrian bridge shall at all times be maintained with appropriate and effective protection against objects being thrown or allowed to fall therefrom.

(c) APPROVAL OF PLANS AND SPECIFICATIONS

The bridge and tunnel shall be constructed pursuant to plans and specifications approved by City.

(d) NON-EXCLUSIVE NATURE OF FRANCHISE

The granting of this franchise, or any of the terms or conditions contained herein, shall not be construed to

prevent the City from granting over the same location specified or elsewhere any identical, similar or other type of franchise to any person, firm or corporation so long as the further granting of any franchise does not materially interfere with the franchise granted herein.

(e) DURATION, REVOCATION AND TERMINATION

(i) This grant shall be for a period of seventy years from and after the effective date hereof.

(ii) If any term or condition of this franchise shall be or become invalid or unenforceable the City Council may by ordinance terminate the franchise, provided the City Council shall find and declare that the invalid or unenforceable term or condition constituted a consideration material to the grant of this franchise.

(f) USE

Grantee shall make the franchise property available during regular business hours to persons having legitimate business in the buildings to which the franchise property connects. Grantee shall not charge a toll or other monetary sum to any person lawfully using the franchise property.

SECTION 3. ENCUMBRANCES.

Grantee shall pay when due all lawful taxes, utility charges and encumbrances of any nature on the franchise property.

SECTION 4. JOINT USE OF FACILITIES.

If there be space available in the franchise property operated or maintained pursuant to this franchise, and not required by grantee for use in connection with said franchise, then grantee shall, free of charge, permit the City for the period of such availability, to use such space for the placing of facilities necessary or appropriate to the use of City.

SECTION 5. RESTORATION, MAINTENANCE AND CHANGES IN PUBLIC WAYS.

(a) This franchise does not relieve grantee of any requirement of the City Charter or of any ordinance, rule, regulation or specification of the City, including but not limited to any requirement relating to street work, street excavation permits, or the use, removal or relocation of property in streets, public ways or public places.



(b) Except in the case of routine maintenance and repairs which can be accomplished without interfering with street traffic, before grantee shall engage in any work in the streets for the installation, construction, maintenance, repair, replacement, reconstruction, or removal of franchise property, written notice thereof shall be given to the Superintendent of Streets. Except in the case of emergency work necessary to avoid an immediate interruption of service, or for the immediate preservation of the public safety, such notice shall be given at least forty-eight (48) hours, exclusive of Saturdays and Sundays and holidays, prior to commencement of such work.

(c) The Superintendent of Streets shall have authority to regulate and restrict the time and manner of performing any work in the public streets to the extent necessary, in his opinion, to provide for the public safety and convenience.

(d) Grantee shall comply with all lawful ordinances now in force or hereafter adopted by the City in the exercise of its police powers or in aid of public travel applicable to the privileges, obligations and undertakings set forth in this franchise and for the term hereof. All work undertaken or performed and all franchise property constructed, maintained or used under this franchise, shall be of the standard and performed as required by law, and by any governmental authority having jurisdiction in the premises. The construction and installation of the franchise property shall be subject to City inspection and final approval of the City before the bridge and tunnel are put to use. Grantee shall pay for any City inspection costs not included in the construction permit fees.

(e) Grantee shall be responsible for damage or destruction of public and private facilities and installations resulting from construction, installation, maintenance or operation by grantee of its franchise property. With the prior approval of the Superintendent of Streets, public installations and facilities in or adjacent to the franchise property may be relocated by grantee as necessary or desirable for purpose of construction of the franchise bridge and tunnel, at grantee's expense.

#### SECTION 6. PUBLIC IMPROVEMENTS.

(a) The City, the State and any political subdivision or governmental agency or instrumentality may construct, reconstruct, improve, install, repair, maintain and remove any public improvements or facilities such as sewers, drains, water or gas pipes, electric or other lines or conduits, and the like in, under or above any street or portion thereof covered by this franchise. This subsection is intended for the benefit of the above named governmental agencies only.

(b) If the Superintendent of Streets shall give to grantee reasonable and at least twenty (20) days' written notice of the fact that work is to be done pursuant to any right reserved in subdivision (a) of this section, specifying the general nature of the work and the area in which the same is to be performed, then grantee shall as soon as practicable at

its own expense do all things necessary to support and protect its franchise property during the progress of such work, and to permit the maintenance, operation and use of such public improvement or of the street as so improved. If the location of grantee's franchise property in such streets or portion thereof increases the cost of such work described in paragraph (a) above, grantee shall be liable and pay for such increased cost caused by the location of such franchise property.

SECTION 7. INSTALLATION OF OTHER STREET UTILITIES.

The City reserves to itself, as against the grantee, the following rights:

(a) To permit others to construct, install, maintain, repair and renew property of any character in and upon the street covered by this franchise.

(b) To permit others to operate and use, for every lawful purpose, any property constructed, installed, maintained or renewed in the street covered by this franchise, other than property of grantee.

Provided, however, the City shall include in any authority granted to others pursuant to the rights reserved in (a) and (b) above reasonable provisions for the protection by and at the expense of such others of the franchise property of grantee, including, but not limited to, reasonable provisions as to the method and time of performance of work by such others on, under, over and adjacent to grantee's franchise property.

Grantee shall bear the expense of all repairs, reconstruction or support and protection of its franchise property made necessary by the use, operation, maintenance, repair or renewal of any property constructed or installed in the streets prior to the construction or installation therein of grantee's franchise property.

(c) The rights reserved to the City in and by this section are independent of, and in addition to, the rights of the City with respect to public improvements under Section 6 of this franchise.

SECTION 8. REMOVAL OF FACILITIES.

(a) Upon the cessation of the use of any of the hereinabove enumerated franchise property or the expiration or termination of this franchise, the grantee shall, unless requested not to do so by the City, remove all structures and other appurtenances and shall replace the paving in the streets and public places in good condition with the same kind of material as is used in the remaining width of 21st Street; all such work shall be done to the satisfaction of the Superintendent of Streets.

(b) For the purpose of this section, failure to use the franchise property for a period of six (6) months shall constitute abandonment of the franchise, except where such failure is due to strikes, acts of God, or other causes beyond the reasonable control of grantee.

(c) In the event grantee fails or refuses to remove its franchise properties from the streets as provided for in subsection (a) hereinabove, the City Council may declare a breach of the conditions of this franchise and grantee shall be liable and pay to the City the reasonable cost of doing the work required by said subsection (a).

SECTION 9. INDEMNIFICATION AND INSURANCE.

(a) Indemnification of City. Grantee does hereby indemnify, save and hold harmless City, its officers, officials and employees, against and from all claims, suits, actions brought by any person or persons for or on account of any bodily injuries or disease or illness or damage, or damage to property, and all judgments, decrees, costs and expenditures which City or such officers, officials or employees may suffer or which may be recovered from or obtained against them or any of them, for or by reason of or growing out of or resulting from the exercising by grantee of any or all rights or privileges granted by this franchise or by reason of any act or acts of grantee or its officers, agents or employees, in exercising this franchise.

(b) Before any work of construction or installation of franchise property is commenced by grantee or its contractor, agent or employees, grantee will provide City, its officers, officials and employees with comprehensive bodily injury and property damage liability insurance coverage, specifically including contractual liability covering liability assumed hereunder, arising out of the construction or installation of the franchise property, and its use, operation and maintenance after completion by grantee, its contractor, agents or employees. Such insurance shall provide limits in the sum of not less than \$500,000 for injury to property and \$500,000 for bodily injury, with an aggregate liability of not less than \$1,000,000 for each accident or occurrence, and shall name the City, its officers, officials and employees as additional insureds. The insurance shall cover any accident or occurrence resulting or arising from the operations of grantee, its agents and employees, in construction, use, operation or maintenance of the franchise property, and shall contain the following endorsement:

"Notwithstanding any other provision in this policy, the insurance afforded hereunder to the City of Oakland shall be primary as to any other insurance or reinsurance covering or available to the City of Oakland, and such other insurance or reinsurance shall not be required to contribute to any liability or loss until and unless the appropriate limit of liability afforded hereunder is exhausted."

A certificate evidencing such insurance coverage to the satisfaction of the City Attorney shall be filed with the City and accepted and approved by the City Attorney before any such work commences. Such certificate shall also provide that it may not be suspended, cancelled or terminated by the insuring company or the coverage reduced until after ten days' written notice of intention to do so has been served upon City. Such insurance shall be maintained in force and effect by grantee during the term of this franchise and any renewal thereof.

(c) Upon receipt by City of notice, as provided in Section (b) above, of suspension, termination, cancellation or

reduction of the required liability insurance, grantee shall immediately cease all construction, use and operation under this franchise until the required insurance is again provided to the satisfaction of the City Attorney.

SECTION 10. FORFEITURE.

If grantee shall fail, neglect or refuse to comply with any of the terms or conditions of this grant, and if such failure, neglect or refusal shall continue for more than sixty (60) days after written demand by the City or its City Manager for compliance therewith, then, and in that event, the City by its legislative body, in addition to all rights and remedies allowed by this franchise or by law, may thereupon declare a forfeiture of the franchise, right and privilege granted by this ordinance; provided, however, that if such failure of compliance or fulfillment shall be beyond the cause or control of grantee then no such forfeiture shall be declared until such failure shall have continued for a period of six (6) months after grantee has power to comply. Upon any such forfeiture all the franchise rights and privileges of grantee hereby shall thereupon be at an end.

No provision herein made for the purpose of securing the enforcement of the terms and conditions of this franchise shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedures outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

SECTION 11. CONSIDERATION FOR FRANCHISE.

As a consideration for the granting of this franchise, grantee shall pay to the City Treasurer concurrently with the grantee's acceptance of this franchise and annually thereafter, the sum of \$270.00. The foregoing payments and the agreements and obligations of grantee hereunder are deemed by the City Council to be an adequate consideration for the privilege hereby granted.

SECTION 12. TRANSFER OR ASSIGNMENT RESTRICTED.

Grantee shall not sell, transfer or assign this franchise or any of the rights or privileges granted hereby without the prior written consent of City by ordinance, nor shall this franchise or rights or privileges be sold, transferred or assigned except by a duly executed instrument in writing filed in the office of the City Clerk of City; and provided further that nothing in this franchise shall be construed to grant to grantee any right to sell, transfer or assign this franchise or any of the rights or privileges hereby granted except in the manner aforesaid. Nothing herein shall be construed to prevent grantee from including this franchise in a mortgage or deed of trust without such express consent.

SECTION 13. DELIVERY OF NOTICE.

Any notice or communication from grantee to City shall be delivered by grantee either by personal service upon the City Clerk, or by registered mail to the City Clerk, in the office of the City Clerk, City Hall, Oakland, California.

Any notice or communication from City to grantee shall be delivered by City either by personal service or by registered mail to Kaiser Center, Inc., 300 Lakeside Drive, Oakland, California, 94604.

SECTION 14. EFFECTIVE DATE.

This franchise shall become effective upon the date of final passage of this ordinance.

SECTION 15. ACCEPTANCE OF FRANCHISE.

Grantee shall within ten (10) days after the effective date of this franchise file with the City Clerk a written instrument in form satisfactory to the City Attorney accepting the terms and conditions hereof and at the same time pay to the City the first annual franchise fee referred to in Section 3. If grantee shall fail to file said acceptance with the City Clerk and to make said payment to City within said time, the franchise hereby granted shall be void.

IN COUNCIL, OAKLAND, CALIF., JUL 24 1969, 19\_\_

PASSED BY THE FOLLOWING VOTE:

~~BINNS~~ ENG VUKASIN,  
AYES - /BROM, CHALVO, MAGGIORA, ~~XXXXXXXX~~ OGAWA, ~~XXXXXXXXXXXX~~ ROSE,  
AND Vice PRESIDENT READING *Karl - 6*

NOES - *none*

ABSENT - *Birno, Chalvo, Reading - 3*

ATTEST: *Joshua Rose*  
MAYOR OF THE CITY OF OAKLAND, CALIF.  
ATTEST: *Clayton H. Quincey*  
CITY CLERK AND CLERK OF THE BOUNCIL  
OF THE CITY OF OAKLAND, CALIF.

NOTICE AND DISSEMINATION OF ORDINANCE GRANTING A FRANCHISE TO KAISER CENTER PROPERTIES AND KAISER CENTER, INC. TO CONSTRUCT, MAINTAIN AND OPERATE A TUNNEL AND BRIDGE FOR THE TRANSPORTATION OF PEOPLE AND MATERIALS UNDER AND OVER CERTAIN DESIGNATED AREAS IN 21ST STREET IN THE CITY OF OAKLAND.

**SECTION 1. DEFINITIONS.** This section defines certain terms used therein.

**SECTION 2. NATURE OF GRANT.** Grant to the franchisee, for the public benefit, to avoid traffic congestion on 21st Street, to construct, maintain and operate a tunnel and bridge under and over 21st Street between Harrison Street and Valdez Street in certain designated areas. Requires adequate protection against objects being thrown or falling from bridge. Requires approval of plans and specifications by City.

The proposed franchise shall be non-exclusive and for a term of 20 years, provides for termination under certain conditions and for charging of a toll for use of franchise property.

**SECTION 3. ENCUMBRANCES.** Requires payment by grantee of all taxes and assessments on the franchise property.

**SECTION 4. JOINT USE OF FACILITIES.** Permits City to use franchise property under certain conditions.

**SECTION 5. RESTORATION, MAINTENANCE AND CHANGES IN PUBLIC WAYS.** Regulates work on the franchise property which interferes with street or utility use of public property. Imposes liability on grantee for damage or destruction of public and private facilities.

**SECTION 6. PUBLIC IMPROVEMENTS.** Requires grantee to pay any increased cost of public improvement occasioned by granting of franchise.

**SECTION 7. INSTALLATION OF OTHER STREET FACILITIES.** Permits use of street facilities by others.

**SECTION 8. REMOVAL OF FACILITIES.** Requires removal of structure and improvements when franchise terminated.

**SECTION 9. INDEMNIFICATION AND INSURANCE.** Requires grantee to indemnify City for injuries and requires grantee to provide insurance.

**SECTION 10. FORFEITURE.** Provides for forfeiture of franchise under certain conditions.

**SECTION 11. CONSIDERATION FOR FRANCHISE.** Requires payment of \$270.00 per year by grantee to City.

**SECTION 12. TRANSFER OR ASSIGNMENT RESTRICTED.** Restricts assignment of franchise without approval by City.

**SECTION 13. DELIVERY OF NOTICE.** Provides for place and manner for notices to be delivered.

**SECTION 14. EFFECTIVE DATE.** Franchise shall become effective upon final adoption of ordinance.

**SECTION 15. ACCEPTANCE OF FRANCHISE.** Requires grantee to accept terms and conditions of franchise within 10 days after effective date.

This ordinance was introduced at the regular Council meeting Tuesday evening July 15, 1969, passed to print by a 9-0 vote. Hearing on final adoption is set for regular Council meeting in Council Chambers, City Hall, Oakland, California, Thursday, July 24, 1969, at 10:30 A.M.

Three 4011 copies are available for use and examination by the public in the office of the City Clerk.

GLADYS H. MURPHY, City Clerk

No. 223-July 21-1969

# Affidavit of Publication

IN THE MATTER OF

CITY OF OAKLAND

CITY CLERK

Affidavit of Publication of

NOTICE AND DIGEST

STATE OF CALIFORNIA.

County of ALAMEDA

ss.

P. L. MERRITT

\$ 55 50

of said County, being duly sworn, says:

That he is and was during all the time herein mentioned a citizen of the United States, over the age of twenty-one years, not a party to or interested in the matter or action herein set forth.

That he is now and at all times hereinafter mentioned, was the authorized representative of THE TRIBUNE PUBLISHING CO., a corporation, the publisher and printer of the OAKLAND TRIBUNE, which was during all the time hereinafter mentioned, and now is a newspaper of general circulation, as decreed in the Superior Court of the State of California in and for the County of Alameda, Judgment No. 237798, December 4, 1951, and as that term is defined by Section 6000 of the Government Code, and as provided by said Section, is printed and published in the City of Oakland, County of Alameda, State of California, for the dissemination of local and telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and is not devoted to the interests or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination or for any number of such classes, professions, trades, callings, races or denomination.

That said newspaper has been established, printed and published at regular intervals, in the said City of Oakland, County of Alameda, State of California, for more than two years preceding the date of the first publication of the notice herein mentioned; that said notice describes and expresses in general terms, the purport and character of the notice intended to be given.

That the notice AND DIGEST

of which the annexed is a printed copy, was published in said newspaper, 1 TIME

to-wit: from the 21ST day of JULY A. D. 19 69  
to and until the day of A. D. 19  
both days inclusive, and as often during said period as said newspaper was published, to-wit: ON THE 21ST DAY OF JULY 1969

Subscribed and sworn to before me this 22ND day of JULY A. D. 19 69

AN ORDINANCE TO AMEND CHAPTER 17D 1968.  
CITY OF OAKLAND, CALIFORNIA.  
ROADWAY FORD  
LEASE  
Than The Best  
Payments  
JTA MOTORS  
or Night

OFFICIAL SEAL  
RAYMOND A. CHRISTIANER  
NOTARY PUBLIC - CALIFORNIA  
ALAMEDA COUNTY  
My Commission Expires Oct. 3, 1972

No. ....

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# Affidavit

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MATTER OF

CITY OF OAKLAND

CITY CLERK

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Affidavit of Publication

OR

NOTICE AND DIGEST

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Filed July 23, 1969

Gladys H. Murphy  
Clerk

By R. Jacobsen  
Deputy



## Exhibit B

Assessor's Parcel Number  
8-653-19-3

### Deeds within Chain of Title from 1/1/68 through 9/16/05

December 23, 1968	BA-141702 R2316/11	Kaiser Center Inc Kaiser Center Properties
December 30, 1983	83-244952	Kaiser Center Properties Ordway Associates
December 30, 1983	83-244955	Kaiser Center, Inc Kaiser Center Properties (Air Space above 21 <sup>st</sup> St)
December 30, 1983	83-244956	Kaiser Center Properties Ordway Associates (Air Space above 21 <sup>st</sup> St)
July 13, 1992	92-225712	Ahmanson Commercial Development Company Ordway Associates (Ease)
May 21, 1998	98-170662	Ordway Associates Prentiss Properties Acquisition Partners

### Deed of Trust

May 1, 2000	00-228199	Prentiss Properties Acquisition Partners Chicago Title Company Metropolitan Life Insurance Company \$49,500,000.00
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Exhibit B



Exhibit D

MARSH CERTIFICATE OF INSURANCE TO PRENTISS  
Dated August 10, 2005

Exhibit D

# MARSH

## CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER  
HOU-000650737-03

PRODUCER  
Robin Reyes (214) 303-8090  
MARSH USA  
4400 Bank One Center  
1717 Main Street  
Dallas, TX 75201-7357

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

**COMPANIES AFFORDING COVERAGE**

- COMPANY  
A AMERICAN HOME ASSURANCE COMPANY
- COMPANY  
B ILLINOIS NATIONAL INSURANCE COMPANY
- COMPANY  
C HARTFORD CASUALTY COMPANY
- COMPANY  
D GREAT AMERICAN INSURANCE COMPANY

INSURED  
PRENTISS PROPERTIES ACQUISITION PARTNERS, L.P.  
The Plaza on Bachman Creek  
3890 West Northwest Highway, Suite 400  
Dallas, TX 75220

**COVERAGES** This certificate supersedes and replaces any previously issued certificate for the policy period noted below.

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM, OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	GL 4571756	08/01/05	08/01/06	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000 PERSONAL & ADV INJURY \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 1,000,000 MED EXP (Any one person) \$ NIL
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CA 1468785 TX CA 1468782 O/S CA 1468784 MA	08/01/05 08/01/05 08/01/05	08/01/06 08/01/06 08/01/06	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: \$ EACH ACCIDENT \$ AGGREGATE \$
B	EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	BE 2910796	08/01/05	08/01/06	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL	WC 1241859 O/S WC 1241860 CA	08/01/05 08/01/05	08/01/06 08/01/06	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 1,000,000 EL DISEASE-POLICY LIMIT \$ 1,000,000 EL DISEASE-EACH EMPLOYEE \$ 1,000,000
C	OTHER CRIME	83BBFBM3988	09/01/04	09/01/05	\$5,000,000 Limit \$100,000 Ded.
D	EXCESS CRIME	FS2687507	09/01/04	09/01/05	\$5,100,000 Limit
E	MISC. PROF. LIABILITY	NPG109381	09/01/04	09/01/05	\$3,000,000 Each Loss

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS**

Re: The Ordway Building - Bridge  
GMAC Commercial Mortgage Corporation, its successors and/or assigns; ATIMA; The Swig Company; and The City of Oakland are named as Additional Insured as their interest may appear.

**CERTIFICATE HOLDER**

City of Oakland  
SIC - Lakeside Drive, LLC  
c/o The Swig Company  
Kaiser Center  
300 Lakeside Dr., Ste. 130  
Oakland, CA 94612

**CANCELLATION**

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

MARSH USA INC.

BY: Sally H Dillenback

*Sally H. Dillenback*

MM1(3/02)

VALID AS OF: 08/10/05

**ADDITIONAL INFORMATION**

HOU-000650737-03      DATE (MM/DD/YY) 08/10/05

**PRODUCER**

Robin Reyes (214) 303-8090  
MARSH USA  
4400 Bank One Center  
1717 Main Street  
Dallas, TX 75201-7357

**COMPANIES AFFORDING COVERAGE**

COMPANY

E      NUTMEG INSURANCE CO

COMPANY

F

**INSURED**

PRENTISS PROPERTIES ACQUISITION  
PARTNERS, L.P.  
The Plaza on Bachman Creek  
3890 West Northwest Highway, Suite 400  
Dallas, TX 75220

COMPANY

G

COMPANY

H

**TEXT**

**CERTIFICATE HOLDER**

City of Oakland  
SIC - Lakeside Drive, LLC  
c/o The Swig Company  
Kaiser Center  
300 Lakeside Dr., Ste. 130  
Oakland, CA 94612

MARSH USA INC. BY

Sally H Dillenback

*Sally H. Dillenback*

**MARSH****EVIDENCE OF PROPERTY INSURANCE**

CERTIFICATE NUMBER:

HOU-000650738-0

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES LISTED HEREIN.

**PRODUCER**Robin Reyes (214) 303-8090  
MARSH USA  
4400 Bank One Center  
1717 Main Street  
Dallas, TX 75201-7357**COMPANY**

SEE ATTACHED PAGE FOR CARRIERS

**INSURED**PRENTISS PROPERTIES ACQUISITION  
PARTNERS, L.P.  
The Plaza on Bachman Creek  
3890 West Northwest Highway, Suite 400  
Dallas, TX 75220**LOAN NUMBER****POLICY NUMBER**

SEE ATTACHED

**EFFECTIVE DATE (MM/DD/YY)**

08/01/05

**EXPIRATION DATE (MM/DD/YY)**

08/01/06

CONT. UNTIL  
TERMINATED  
IF CHECKED 

THIS REPLACES PRIOR EVIDENCE DATED:

**PROPERTY INFORMATION****LOCATION / DESCRIPTION**Re: The Ordway Building - Bridge  
Total Insured Value - \$94,696,033**COVERAGE INFORMATION** This certificate supersedes and replaces any previously issued certificate for the policy period noted below:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES LISTED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

COVERAGES / PERILS / FORMS	AMOUNT OF INSURANCE (\$)	DEDUCTIBLE
(A) All Risk Coverage-See Attached Schedule For Property Carriers & Limits, Incl. Loss of Rents Replacement Cost; Ordinance Law Included No Coinsurance Earthquake, Windstorm, Demolition & ICC, Ordinance of Law		25,000
Terrorism - Per Occurrence/Annual Aggregate	100,000,000	1,000,000
Boiler & Machinery - Any One Occurrence	100,000,000	25,000
Transit	500,000	
Terrorism - Included for Boiler & Machinery Mold/Fungus Excluded		

**REMARKS (Including Special Conditions)**\$25,000 Ded except 5% of TIV Subject to a \$25,000 Minimum, \$100,000 Maximum Per Occurrence Flood Deductible, \$25,000 Ded except 5% of TIV of location subject to a \$100,000 Minimum Per Occurrence Deductible for California Earthquake.  
Tier 1 Wind - 2% of TIV Subject to Minimum of \$100,000 Per Occurrence.**CANCELLATION**

SHOULD ANY OF THE POLICIES LISTED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

**CERTIFICATE HOLDER****NAME AND ADDRESS**City of Oakland  
SIC - Lakeside Drive, LLC  
c/o The Swig Company  
Kaiser Center  
300 Lakeside Dr., Ste. 130  
Oakland, CA 94612**NATURE OF INTEREST**

MORTGAGEE

ADDITIONAL INSURED

LOSS PAYEE

(OTHER)

MARSH USA INC.

By Sally H Dillenback

*Sally H. Dillenback*

MM3 (3/02)

VALID AS OF 08/10/05

Exhibit E

ACORD CERTIFICATE OF LIABILITY INSURANCE TO SWIG  
Dated August 9, 2005

Exhibit E

<b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 08/09/05
PRODUCER Frank Crystal & Co of CA, Inc License #OB64537 120 Montgomery St., Ste. 600 San Francisco, CA 94104-4602	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED SIC Lakeside Drive, LLC and The Swig Company 220 Montgomery Street San Francisco, CA 94104	INSURERS AFFORDING COVERAGE INSURER A: Federal Insurance Company INSURER B: Navigators Insurance Co. INSURER C: INSURER D: INSURER E:	NAIC # 20281 42307

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GENL. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	35821673	06/30/05	06/30/06	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/OP AGG \$2,000,000
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
B		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000	NH05UMB000006NV279	06/30/05	06/30/06	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000
		WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is named as Additional Insured as respects the use of premises described as tunnel storage space at 300 Lakeside Drive, Oakland, CA.

<b>CERTIFICATE HOLDER</b>  City of Oakland City Hall 1 Frank H. Ogawa Plaza Oakland, CA 94612	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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## IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

FILED  
OFFICE OF THE CITY CLERK  
APR 10 2006

2006 FEB -1 PM 3:27

Approved as to Form and Legality

OAKLAND CITY COUNCIL

Ordinance No. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE TO (1) CONSENT TO THE TRANSFER OF THE FRANCHISE PURSUANT TO ORDINANCE 8005 C.M.S. DATED JULY 24, 1969 GRANTING A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A BRIDGE AND TUNNEL AT 21<sup>ST</sup> STREET (THE KAISER CENTER) IN THE CITY OF OAKLAND TO PRENTISS PROPERTIES ACQUISITION PARTNERS L.P. AND SIC-LAKESIDE DRIVE, LLC, AND (2) AMEND SAID ORDINANCE TO INCREASE THE AMOUNT OF THE LIABILITY INSURANCE TO \$25,000,000 AND THE ANNUAL FRANCHISE CONSIDERATION TO \$1,500**

**WHEREAS**, the City of Oakland granted to Kaiser Center Properties and Kaiser Center, Inc. a franchise to construct, install, operate, maintain, repair and renew an enclosed pedestrian bridge and tunnel for the purpose of transporting people and material across and under that certain street in the City known as 21<sup>st</sup> Street, between Valdez Street and Harrison Street pursuant to Ordinance No. 8005 C.M.S. ("Existing Ordinance") dated July 24, 1969 entitled "An Ordinance granting a franchise to Kaiser Center Properties and Kaiser Center, Inc., to construct, maintain and operate a tunnel and bridge for the transportation of people and material under and over certain designated areas in 21<sup>st</sup> Street in the City of Oakland" (a copy is attached hereto and incorporated herein as Exhibit A); and,

**WHEREAS**, Kaiser Center Properties and Kaiser Center, Inc. were the owners of the two blocks of real property separated by 21<sup>st</sup> Street and the franchise applies to the existing bridge lying across and above 21<sup>st</sup> Street and the existing tunnel lying below and across 21<sup>st</sup> Street which are "franchise property" as defined under the Existing Ordinance to "... mean all property and facilities constructed, installed, operated or maintain in public way or public place pursuant to any right or privilege granted by this franchise;" and,

**WHEREAS**, Kaiser Center Properties and Kaiser Center, Inc. have subsequently sold and transferred their interest in these two blocks of real property consisting of Assessor's Parcel Number: 008-653-019-03 (also known as "One Kaiser Plaza") and Assessor's Parcel Number: 008-652-001-05 (also known as "The Kaiser Center"), and after intervening transfers and sales which have occurred without obtaining the City's prior written consent to the transfer of the franchise property, Prentiss Properties Acquisition Partners L.P. ("Prentiss") is the current owner of One Kaiser Plaza (see Deeds within Chain of Title from Prentiss attached hereto and incorporated herein as Exhibit B), and SIC-Lakeside Drive, LLC ("SIC") is the current owner of The Kaiser Center (see Deeds within Chain of Title from SIC attached hereto and incorporated herein as Exhibit C); and,

**WHEREAS**, the term of the franchise under the Existing Ordinance is for 70 years commencing July 24, 1969 and ending July 23, 2039, the remaining term is more than 33 years; and,

**WHEREAS**, the Existing Ordinance requires an aggregate liability of not less than \$1,000,000 for each accident or occurrence, the current excess liability (umbrella form) affecting the bridge is in the aggregate amount of \$25,000,000 (see Marsh Certificate of Insurance to Prentiss dated August 10, 2005 attached as Exhibit D) and the current excess/umbrella liability affecting the tunnel storage space is in the aggregate amount of \$10,000,000 (see Accord Certificate of Liability Insurance to Swig also known as SIC dated August 9, 2005 attached as Exhibit E); and,

**WHEREAS**, the Existing Ordinance requires an annual payment of \$270 to the City as consideration for the granting of the franchise; and,

**WHEREAS**, City's staff time and cost to process the transfer of the franchise is \$1,359, **now, therefore:**

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

**SECTION 1. CONSENT TO TRANSFER OF THE FRANCHISE PURSUANT TO THE EXISTING ORDINANCE**

Section 1. (b) of the Existing Ordinance states, "The word "Grantee" shall mean Kaiser Properties, a partnership, and Kaiser Center, Inc., a California Corporation, and any person, firm, or corporation to which this franchise may hereafter be lawfully transferred as herein provided." In addition to Kaiser Properties and Kaiser Center, Inc., the word "Grantee" also includes any person, firm, or corporation to which this franchise may hereafter be lawfully transferred as provided in the Existing Ordinance. In accordance with Section 12 of the Existing Ordinance, the City hereby consents to the transfer of the franchise to all of the named grantees listed in the Exhibit B Deeds within Chain of Title from Prentiss and the Exhibit C Deeds within Chain of Title from SIC subject to the terms and conditions of this Ordinance and the Existing Ordinance and provided further that each and every named grantee in the chain of title to the franchise property shall be jointly and severally liable under this Ordinance and the Existing Ordinance. Nothing in this Ordinance shall constitute a waiver of the City's right to enforce any provision or release any person, firm, or corporation from any liability under this Ordinance and Existing Ordinance. When the name of any person, firm, or corporation appears in the chain of title, the owner of the franchise property shall be subject to the terms and conditions of this Ordinance and the Existing Ordinance. The City's consent to the transfer of the franchise under this Ordinance shall not be construed as consent to any subsequent or further transfer of the franchise.

**SECTION 2. AMEND THE EXISTING ORDINANCE TO INCREASE LIMITS OF LIABILITY INSURANCE COVERAGE**

Section 9. (b) of the Existing Ordinance states in part that "Such insurance shall provide limits in the sum of not less than \$500,000 for injury to property and \$500,000 for bodily injury, with an aggregate liability of not less than \$1,000,000 for each accident or occurrence, and shall name the City, its officers, officials and employees as additional insured." This sentence shall be amended and shall be restated as follows:

Such insurance shall provide limits in the sum of not less than \$1,000,000 for damage to property and \$1,000,000 for bodily injury, with an aggregate liability of not less than \$25,000,000 for each accident or occurrence, and shall name the City, its officers, officials and employees as named insured (rather than additional insured). Such limits shall be adjusted every five years based on the relative increases (and no decreases) in the Consumer Price Index – All Urban Consumer (San Francisco-Oakland-San Jose, CA) published by the U.S. Department of Labor Statistics calculated from the effective date of this Ordinance and continuing thereafter for the remaining term of this franchise ending July 23, 2039.

### SECTION 3. AMEND THE EXISTING ORDINANCE TO INCREASE ANNUAL FRANCHISE CONSIDERATION

Section 11 of the Existing Ordinance states in part that “As a consideration for the granting of this franchise, grantee shall pay to the City Treasurer concurrently with grantee’s acceptance of this franchise and annually thereafter, the sum of \$270.” The annual consideration for the granting of the franchise shall increase from \$270 to \$1,500 per year and shall be subject to adjustments every five years based on the relative increases (and no decreases) in the Consumer Price Index. - All Urban Consumer (San Francisco-Oakland-San Jose, CA) published by the U.S. Department of Labor Statistics. The five year period shall commence on the effective date of this Ordinance and shall be adjusted every five years calculated from the effective date of this Ordinance and shall continue thereafter until the end of the remaining term of this franchise.

### SECTION 4. NOTICE

Section 13 of the Existing Ordinance shall be amended as follows:

Any notice or communication from City to Prentiss and Swig shall be delivered by City either by personal service or by certified or registered mail to:

Prentiss Properties Acquisition Partners L.P.  
One Kaiser Plaza  
Oakland, CA 94612

SIC-Lakeside Drive, LLC  
Kaiser Center, 300 Lakeside Drive, Suite 130,  
Oakland, CA, 94612

### SECTION 5. PAYMENT OF PROCESSING COSTS AND OTHER PAYMENTS

Within ten calendar days after the effective date of this Ordinance, the City shall be paid the processing costs of \$1,359 which will be placed in the General Purpose Fund (#1010), Real Estate Org (#88639), Miscellaneous Land Rentals (#44219), Real Estate Surplus Property Project (#P47010), Real Estate Program (#PS32). The annual franchise consideration of \$1,500 which shall be placed in the General Purpose Fund (1010), Treasury Operations Unit (#08721), Miscellaneous Franchise Taxes (#41619) Non- Project (0000000), Financial Management Program (#IP59). Thereafter, the annual franchise consideration shall be paid to the City on the same day and month for each year of the remaining term of the franchise.

**SECTION 6. EFFECT OF THE EXISTING ORDINANCE**

Except as set forth in this Ordinance, the Existing Ordinance shall remain in full force and effect and nothing contained in this Ordinance shall in any way decrease the scope of liability on the part of any grantee of the franchise property described in Exhibit B and Exhibit C or in any way increase the City's scope of liability involving the City's granting of the franchise or consenting to the transfer of the franchise.

**SECTION 7. EFFECTIVE DATE**

This Ordinance shall become effective immediately on the final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

**SECTION 8. ACCEPTANCE OF TERMS AND CONDITIONS**

Within ten calendar days after the effective date of this Ordinance, Prentiss and SIC shall file with the City Clerk a written instrument in form acceptable to the City Attorney confirming the unconditional and irrevocable acceptance of the terms and conditions of this Ordinance and the Existing Ordinance. If Prentiss and SIC shall fail to file the requested written instrument in a timely manner, the consent to the transfer of the franchise granted under this Ordinance pursuant to the Existing Ordinance shall be void and the City shall be entitled to exercise all rights and remedies under the Existing Ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006

**PASSED BY THE FOLLOWING VOTE:**

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, AND  
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California

ORDINANCE NO. \_\_\_\_\_ C.M.C.

**Table of Exhibits**

<b>Exhibit</b>	<b>Description</b>
A	Ordinance No. 8005 dated July 24, 1969
B	Deeds within Chain of Title from 1/1/68 through 9/16/05 (Assessor's Parcel Number: 008-0653-019-03)
C	Deeds within Chain of Title from 1/1/68 through 9/16/05 (Assessor's Parcel Number: 008-0652-001-05)
D	Marsh Certificate of Insurance to Prentiss dated August 10, 2005
E	Accord Certificate of Insurance to Swig also known as SIC dated August 9, 2005

OFFICE OF THE CITY CLERK  
OAKLAND

2006 FEB -1 PM 3:27

NOTICE AND DIGEST



**AN ORDINANCE TO (1) CONSENT TO THE TRANSFER OF THE FRANCHISE PURSUANT TO ORDINANCE 8005 C.M.S. DATED JULY 24, 1969 GRANTING A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A BRIDGE AND TUNNEL AT 21<sup>ST</sup> STREET (THE KAISER CENTER) IN THE CITY OF OAKLAND TO PRENTISS PROPERTIES ACQUISITION PARTNERS L.P. AND SIC-LAKESIDE DRIVE, LLC, AND (2) AMEND SAID ORDINANCE TO INCREASE THE AMOUNT OF THE LIABILITY INSURANCE TO \$25,000,000 AND THE ANNUAL FRANCHISE CONSIDERATION TO \$1,500**

An ordinance has been prepared consenting to the transfer of a Franchise to Prentiss Properties Acquisition Partners L.P. and SIC-Lakeside Drive, LLC for the maintenance and operation of a bridge and tunnel at 21<sup>st</sup> Street in the City of Oakland. As consideration for the City's consent, the amount of the liability insurance will be increased to \$25,000,000 and the annual franchise consideration will be increased to \$1,500.