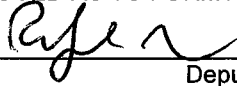


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OFFICE OF THE CITY CLERK  
OAKLAND

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APPROVED AS TO FORM AND LEGALITY:

BY:



Deputy City Attorney

**ORDINANCE NO. ~~13350~~ 13444 C.M.S.**

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**AN ORDINANCE: (1) CONSENTING TO A CHANGE IN THE OWNERSHIP STRUCTURE AND CONTROL OF TDP-WEBSTER, LLC (“DEVELOPER”) WITH WHICH THE CITY OF OAKLAND (“CITY”) HAS PREVIOUSLY ENTERED INTO A DISPOSITION AND DEVELOPMENT AGREEMENT (“DDA”) FOR THE SALE AND DEVELOPMENT OF TWO CONTIGUOUS CITY-OWNED PARCELS LOCATED AT 2330 WEBSTER STREET AND 2315 VALDEZ STREET, INCLUDING CONSTRUCTION OF A NEW CITY PARKING GARAGE (“CITY GARAGE”); (2) AUTHORIZING THE CITY ADMINISTRATOR, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE DDA TO (A) CHANGE THE INTEREST RATE CALCULATED ON THE CITY’S SELLER CARRYBACK LOAN TO DEVELOPER FOR THE DEVELOPER’S ACQUISITION OF THE PROPERTY, (B) CHANGE THE FORMULA USED TO CALCULATE THE PURCHASE PRICE TO BE PAID BY THE CITY FOR THE ACQUISITION OF THE CITY GARAGE, (C) INCREASE THE REQUIRED MINIMUM NET WORTH OF THE GUARANTOR PROVIDING THE COMPLETION GUARANTY, (D) WAIVE PERFORMANCE AND PAYMENT BOND REQUIREMENTS, UNLESS OTHERWISE REQUIRED BY LENDER, AND (E) MODIFY THE AFFORDABILITY LEVEL OF THE PROJECT’S MODERATE INCOME HOUSING UNITS; (3) ALLOCATING AND APPROPRIATING UP TO \$350,000 TO CREATE A CONTINGENCY ACCOUNT FOR FINISH AND EQUIPMENT ENHANCEMENTS RELATED TO SECURITY AND ENERGY EFFICIENCIES; (4) AUTHORIZING THE CITY ADMINISTRATOR, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE PARKING LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND CIM OAKLAND 1 KAISER PLAZA, L.P. (“CIM”) PROVIDING FOR THE TEMPORARY RELOCATION OF CIM’S PARKING RIGHTS TO THE FRANKLIN GARAGE AND RECORDATION OF SUCH AMENDMENT AND RELATED DOCUMENTS ON TITLE FOR THE FRANKLIN GARAGE UNTIL THE CITY IS ABLE TO TRANSFER CIM’S PARKING RIGHTS TO THE NEW CITY GARAGE; AND (5) MAKING RELATED CEQA FINDINGS PURSUANT TO PUBLIC RESOURCES CODE SECTION 21166 (CEQA GUIDELINES SECTION 15162)**

**WHEREAS**, on September 1, 2016, the City of Oakland (“City”), pursuant to City Ordinance No. 13350 C.M.S., entered into a Disposition and Development Agreement (“DDA”) with TDP-Webster, LLC (“Developer”) for the development of a mixed-use residential project and public parking garage on City-owned property located at 2330 Webster Street and 2315 Valdez Street (the “Project”); and

**WHEREAS**, the existing partners in the Developer entity wish to transfer their ownership to NCCH 104 Webster, LP (“NCCH”), or a related entity; and

**WHEREAS**, NCCH is a controlled affiliate of Trammell Crow Residential, LLC (“Trammell Crow”), which is a Texas-based multi-family housing developer with projects across the United States, including northern California; and

**WHEREAS**, based on analysis of financial and other documents provided by NCCH by two different outside experts hired by the City to review the proposed transfer of ownership and control of the Developer, staff concludes that NCCH and Trammell Crow will add financial strength to the Project and help attract institutional investors; and

**WHEREAS**, the day-to-day management of the Project will be unchanged, and will remain with Thompson Dorfman Partners; and

**WHEREAS**, construction contractor bids came in substantially higher than estimated costs, causing the Developer to seek ways to mitigate the difference between expected and real costs including increasing the Developer’s equity investment, value engineering, and increasing its loan amount; and

**WHEREAS**, Section 3.2.2 of the DDA provides for Developer to pay a portion of the purchase price of the Property by delivering to the City a \$9,400,000 promissory note (the “Note”), which will bear interest at a compound annual rate equal to a percentage that is one percent greater than the highest interest rate required by the Developer’s construction financing; and

**WHEREAS**, the Developer proposes to change the interest rate in the Note to a compound annual rate equal to the 12-month London Interbank Offered Rate (“LIBOR”) at the time of land conveyance plus 3.75 percent; and

**WHEREAS**, Section 2.5 and Exhibit F-2 (Section 2) of the DDA outline a formula for calculating the purchase price of the City Garage; and

**WHEREAS**, the Developer proposes to modify such formula as shown in Exhibit A to this Ordinance; and

**WHEREAS**, Sections 2.1.7.1 and 2.1.7.2 of the DDA require the Developer to secure a performance bond and a labor and material payment bond, respectively, each in an amount not less than 100 percent of construction costs; and

**WHEREAS**, Section 2.1.6.1 of the DDA requires the Developer to provide a completion guaranty from a person or institution having a net worth of at least 25 percent of the estimated Project costs; and

**WHEREAS**, the Developer requests a waiver of the bonding requirements in the DDA in exchange for an increase in the required net worth of the guarantor providing the completion guaranty from 25 percent of the estimated Project costs (\$29,259,000), to 100% of the estimated Project costs (\$117,036,000), not including any amounts invested by the Guarantor in the Developer or the Project; and

**WHEREAS**, the performance and payment bonds requirement adds significant costs to the Project; and

**WHEREAS**, the proposed changes to the DDA will reduce overall costs to the Developer, making the Project more financially feasible; and

**WHEREAS**, the DDA requires that the Project include thirty-six (36) units of below-market-rate housing, eleven (11) of which will be eligible to moderate income households earning up to one hundred percent (100%) area mean income (AMI); and

**WHEREAS**, to improve the Project revenue stream to support increased financing the Developer requests a change in the affordability level of the moderate income units from one hundred percent (100%) of AMI to one hundred twenty percent (120%) AMI; and

**WHEREAS**, during the design development phase of the Project, Public Works staff identified several security and energy efficiency enhancements that may require additional expenditures and payments to the Developer as these items are currently not in the budget for the development of the new City Garage; and

**WHEREAS**, CIM Oakland 1 Kaiser Plaza ("CIM") is the licensee under a parking license agreement with the City for two hundred (200) parking spaces on the Project site; and

**WHEREAS**, CIM and City staff have negotiated terms of an amendment to such parking license agreement (the "Parking License Amendment") to transfer the licensed spaces to the Franklin Garage, located at 19<sup>th</sup> and Franklin Streets, during the construction period on condition that (1) if the relocation lasts more than 36 months, the parking rates for the licensed parkers at the Franklin Garage will be reduced by 15 percent of the market rate charged to monthly parkers at that location, and (2) that the Parking License Amendment and associated documents will be recorded against the Franklin Garage at the time of relocation and shall remain on title until the earlier of the date on which City is able to transfer CIM's parking rights to the new City Garage or termination of the parking license agreement; now therefore,

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

**SECTION 1.** The City Council hereby consents to in the proposed transfer of ownership and control of TDP-Webster, LLC to NCCH or a related entity.

**SECTION 2.** The City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to negotiate and execute an amendment to the DDA to change the interest rate on the City's seller carryback loan to the Developer reflected in the Note to a rate based on the 12-month London Interbank Offered Rate ("LIBOR") at time of Property conveyance plus 3.75 percent.

**SECTION 3.** The City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to negotiate and execute an amendment to the DDA to change the formula used to calculate the purchase price paid by the City for the acquisition of the City Garage as shown in attached Exhibit A.

**SECTION 4.** The City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to negotiate and execute an amendment to the DDA to increase the required net worth of the guarantor providing the completion guaranty from 25 percent of the estimated Project costs presented in Exhibit G of the DDA to 100 percent of the estimated Project costs, not including any amounts invested by the Guarantor in the Developer or the Project.

**SECTION 5.** The City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to negotiate and execute an amendment to the DDA to waive performance, and labor and material payment bond requirements.

**SECTION 6.** The City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to negotiate and execute an amendment to the DDA to modify the affordability level of the Project's moderate income housing units from 100% AMI to 120% AMI.

**SECTION 7.** The City Council hereby allocates and appropriates up to \$350,000 from the Central District: TA Bond Series 2009T Fund (5613), CIP Central District (94889), CD Major Development Project (1000184), Undetermined Program (0000) for finish and equipment enhancements related to security and energy efficiencies.

**SECTION 8.** The City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to negotiate and execute an amendment to the parking license agreement between the City of Oakland and CIM Oakland 1 Kaiser Plaza, LP ("CIM") providing for the temporary relocation of CIM's parking rights to the Franklin Garage and to record such amendment and related documents on title for such property until the City is able to transfer CIM's parking rights to the new City Garage.

**SECTION 9.** The City Council hereby finds that the CEQA Analysis for the Broadway Valdez Redevelopment Specific Plan provides substantial evidence to support the findings that the Project is exempt from any additional CEQA Analysis under the "Community Plan Exemption" of Public Resources Code section 21083.3 (CEQA Guidelines Section 15813) and/or the "Qualified Infill Exemption" under Public Resources Code section 21094.5 (CEQA Guidelines Section 15183.3), and that,

pursuant to Public Resources Code section 21166 (CEQA Guidelines Section 15162), there are no changes to the Project, new information, or changes in circumstances that would result in new significant environmental impacts or substantially more severe impacts from those previously identified requiring subsequent or supplemental environmental analysis, and that therefore no additional environmental analysis beyond the BVRSP EIR and the CEQA Analysis is necessary.

**SECTION 10.** The City Administrator is hereby authorized to negotiate and execute documents and take other action with respect to the transfer of ownership and control of the Developer, amendment of the DDA as described in this Ordinance, and the Parking License Amendment consistent with this Ordinance and its basic purposes.

**SECTION 11.** 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 the Council, or upon the seventh day after final adoption if adopted by fewer votes.

**IN COUNCIL, OAKLAND, CALIFORNIA, JUL 27 2017**

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON-McELHANEY,  
GUILLEN, KALB, KAPLAN, AND CHAIRPERSON REID *-8*

NOES- *∅*

ABSENT- *∅*

ABSTENTION- *∅*

Introduction Date

**JUN 20 2017**

ATTEST: *Latonda Simmons*  
LATONDA SIMMONS  
Secretary of the Oakland  
Redevelopment Successor Agency

*Date of Attestation*

*July 5, 2017*

**Exhibits (1):**

Exhibit A – Sections 2.5.1 and 2.5.2 of DDA

**Exhibit A**  
**Formula for Calculation of City Garage Purchase Price As Shown In**  
**Section 2.5 and Exhibit F-1 (Section 2) of DDA Between**  
**The City of Oakland**  
**And**  
**TDP-Webster, LLC**  
**Dated September 1, 2016**

The purchase price of the City Parking shall be an amount equal to the lesser of the following:

- a. The lesser of (i) Twelve Million Two Hundred Fourteen Thousand and 0/100 Dollars (\$12,214,000.00), plus interest on the Purchase Price less the good faith deposit of Fifty Thousand and 0/100 Dollars (\$50,000) calculated at a compound annual rate equal to ~~a percentage that is one percent (1%) greater than the interest rate required by the Developer's construction loan~~ the 12-month London Interbank Offer Rate (LIBOR) at the time of close of escrow on the conveyance of the Property to the Developer, plus 3.75 percent, for the period from close of escrow on the conveyance of the Property to the Developer through the close of escrow on the conveyance of the City Parking to the City, or (ii) Thirteen Million Four Hundred Sixty Eight Thousand Seven Hundred Eighty and 0/100 Dollars (\$13,468,780.00); or
- b. The actual prorated cost of developing the City Parking calculated in the manner used to calculate the estimated costs as shown in Exhibit G ("Actual City Parking Cost"), plus interest on such cost calculated at a compound annual rate equal to ~~the interest rate required by the Developer's construction loan~~ the 12-month LIBOR at the time of close of escrow on the conveyance of the Property to the Developer, plus 2.75 percent, for the period from close of escrow on the conveyance of the Property to the Developer through the close of escrow on the conveyance of the City Parking to the City. The Actual City Parking Cost shall be determined by a cost certification prepared by a neutral third party mutually selected by the parties.