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# REDEVELOPMENT AGENCY AND THE CITY OF OAKLAND

## AGENDA REPORT

TO: Office of the City/Agency Administrator  
ATTN: Dan Lindheim  
FROM: Community and Economic Development Agency  
DATE: January 27, 2009

RE: **Redevelopment Agency And City Resolutions (1) Authorizing An Amendment To The Disposition And Development Agreement With Olson 737 – Oakland 1, LLC, For The City Center T-10 Residential Project At 14th Street, 13th Street Pedestrian Walk, Jefferson Street And Martin Luther King, Jr. Way: (A) To Permit the Project To Be A Rental Project, (B) To Extend The Dates For Project Development and Completion, (C) To Authorize Transfer Of The Project and Property To DCA City Walk, L.P., Or To Another Qualified Entity Approved By The Agency Administrator Without Returning To The Agency, (D) To Add Local Construction Employment Requirements, And (E) To Modify The Profit-Sharing Provision; And (2) Rescinding Resolution No. 2007-0087**

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### SUMMARY

Resolutions have been prepared authorizing the Redevelopment Agency to amend the Disposition and Development Agreement (“DDA”) with Olson 737 – Oakland 1, LLC (“Olson”) for the T-10 Residential Project located on the block bounded by 14th Street, 13th Street Pedestrian Walk, Jefferson Street and Martin Luther King, Jr. Way and known as the City Center T-10 Block . The amendment is required because the project has been delayed due to contractor problems and the completion date needs to be extended from December 31, 2007 to December 31, 2010. Other development dates will be extended as well. The amendment will also allow the project to be developed as a rental project. The profit-sharing clause will be amended to change the method for calculating project development costs for purposes of determining the Agency’s profit share if and when project units are sold as condominiums. In addition, the amendment will authorize transfer of the DDA and sale of the property to DCA City Walk, L.P. (“DCA”), a new limited partnership set up by Simpson Housing Corporation (“SHC” or “Simpson”). Simpson is the rental developer proposed for the project by Olson. Staff is also requesting that the Council delegate to the Agency Administrator the authority to approve any transfers of the project and property from Olson to another qualified development entity without returning to the Agency Board. This authorization would only apply if the proposed sale to DCA cannot be completed. The amendment also will add local employment obligations for the remainder of project construction. Staff has prepared a draft DDA Amendment, which is still under negotiation with Olson, and is attached to this report. See Attachment A - Draft T-10 Residential Project First Amendment to the Disposition and Development Agreement.

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Community and Economic Development Committee  
January 27, 2009

## **FISCAL IMPACTS**

The project delays have reduced the projected tax increment revenues of the Redevelopment Agency and the amendment will further reduce potential revenues. The amendment will generate real estate transfer tax for the City of up to \$306,000 as soon as the transfer to another developer takes place. However, this amount will be substantially less than the anticipated transfer tax from the sale of the condominium units, previously estimated at \$1,591,000, which the City will no longer receive. When completed, the project will generate approximately \$455,000 per year in general tax increment and \$210,000 per year in Low and Moderate Income Housing Funds for the Agency; and the City will receive its portion of the pass-through payments of tax increment of approximately \$50,000 per year. The project will provide housing for approximately 428 new residents who will support businesses in the area and thereby increase sales tax and parking tax revenue for the City.

## **BACKGROUND**

On July 6, 2004, the Agency Board approved a resolution authorizing a DDA for the sale of the project site to Olson for a cash purchase price of \$8.7 million for its development as a condominium project. The resolution also authorized a short-term Agency seller-financing loan of \$1.7 million. The purchase price included a profit sharing arrangement wherein the Agency would receive 50% of the development profit greater than 10.85% of the sales proceeds, and 25% of the development profit greater than 14% of the sales proceeds. At that time, the profit share the Agency would receive was estimated to be \$1.5 million. The Agency and Olson entered into the DDA on August 6, 2004. Olson then purchased the property on September 22, 2004, and repaid the Agency loan in full with market-rate interest by December 31, 2004. Olson diligently pursued the project, receiving a grading permit on January 26, 2005, and a shoring permit on March 4, 2005, and began construction of the project immediately.

Project construction was delayed several times due to problems with framing sub-contractors. The initial framers performed substandard work and had labor problems which required them to be replaced. Work had to be removed and reconstructed. A third framing sub-contractor was later hired. Olson eventually put the general contractor in default for various construction defects and other problems on the site. Rather than correct the defects, the contractor vacated the site in July 2007 and eventually went bankrupt. Due to the suspension of construction, among other things, the construction lender, Wells Fargo Bank, N.A. ("Wells Fargo"), placed Olson in default and suspended disbursements under its construction loan on October 17, 2007. Wells Fargo placed several conditions on reinstating its loan, including resumption of construction and extension of the DDA completion deadline.

On December 18, 2007, the Agency Board approved Resolution No. 2007-0087 authorizing an amendment to the DDA that extended the date for project completion, and required as conditions of the extension that Olson (1) enter into a binding labor harmony agreement with the Building and Construction Trades Council of Alameda County, and (2) commit to local hiring in the project. Olson never agreed to this amendment and it was never executed.

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Once Agency staff determined that the amendment was not going to be executed, it placed Olson in default under the DDA. The January 18, 2008 default letter listed two issues: (1) failure to diligently prosecute construction; and (2) failure to complete construction by December 31, 2007. Olson cannot cure these defaults without an amendment to the DDA.

Olson is now marketing the project and property for sale to a rental housing developer, and has requested that the DDA be amended to facilitate the sale.

## **PROJECT DESCRIPTION**

### **Project Scope**

The project, now known as “City Walk”, was originally scheduled to provide 252 units of market rate for-sale housing and approximately 3,000 square feet of retail space. The proposed amendment will allow the units to be operated as rental housing. It is anticipated that the units will be rented at least until the housing market substantially improves and then sold at some later date. The ground floor residential units will have individual entries to activate the street level. The retail will further activate the street at the corner of 13<sup>th</sup> and Jefferson Streets. In addition, there will be 252 structured parking spaces accessible from Martin Luther King Jr. Way, and the project will have up to 200 spaces available in the City Center West Garage. The total project cost is in excess of \$80 million.

### **Project Schedule**

Under the project schedule set forth in the original DDA, Olson was required to complete project construction by December 31, 2007. Failure to meet project schedule dates constitutes an event of default under the DDA. Olson has requested a new schedule that will bring them out of default. The revised schedule of completion for the Project will include several intermediate dates. The tentative schedule of dates includes: (1) obtain building permits by February 28, 2009; (2) execute a construction contract by March 30, 2009; (3) recommence construction by May 31, 2009; (2) complete the first phase of the project by September 30, 2010; and (4) complete the entire project by December 31, 2010.

### **Project Status**

Olson spent the last year negotiating with Liberty Mutual, the surety for the construction performance bond for the project, to work out a settlement for the failure of UPA California, the previous contractor for the project, to perform under the construction contract. Olson has worked out a settlement with Liberty Mutual and used the proceeds from the settlement to pay down the construction loan with Wells Fargo. Olson now owes approximately \$3.5 million in principal to Wells Fargo.

Olson’s defaults under the DDA entitle the Agency to exercise its remedies and take back the site. Under the DDA and the Agency’s agreement with Wells Fargo, the Agency must first pay

off the loan, and then pay the developer the property's current appraised fair market value (less the amount of loan repayment) in order to take back the property. Olson's deal with the prospective new developer is for a sales price of approximately \$20 million, which is a good approximation of the current market value of the site and the cost to the Agency, should the Agency choose to exercise its reversionary rights.

Olson's building permit for the project has expired and the developer is working with the Building Department to comply with the new International Building Code ("IBC"). Olson has completed several new Alternate Materials and Methods Requests ("AMMRs") to address certain permit issues, but the developer is also revising drawings and plans to resubmit the project for new permits under the IBC. Olson has also been cleaning the exterior of the building and weatherproofing the structure, including repairing the roof and installing Hippwrap on the substantially completed portion of the project. This has improved the condition of the site but the vacant, half completed structure, remains a blight on the neighborhood.

Because of the decline in the condominium market and the fact that Olson is a condominium developer, Olson began looking for a rental developer that could complete the project. Olson has tentatively negotiated a sale of the project to DCA City Walk, L.P., for approximately \$20 million. Olson is now requesting the Agency's consent to transfer the DDA and sell the property to DCA or some other qualified developer should the deal with DCA not work out, and has asked for several other DDA amendments to facilitate the sale.

## **KEY ISSUES AND IMPACTS**

### **Profit-Sharing**

When Olson reduced its purchase offer from \$10.2 million to \$8.7 million during DDA negotiations in 2004, and after a financial feasibility analysis of the project showed it could not support the higher price, the profit sharing clause was negotiated to provide additional consideration for the sale. If the developer had been able to sell units for the 2006 prices, when deposits were being first received, the Agency should have received more than \$1.5 million in profit sharing. But given that condominium sales have dropped approximately 30% from pro forma estimates in July 2004 (\$431/sq. ft.) to current (\$300/sq. ft.), while costs have continued to rise and construction delays have substantially increased the interest costs on the construction loan, it is unlikely that any developer would receive even the preferred profit from sales as originally agreed upon between Olson and the Agency. Even without the financing costs from delays and increased construction costs that resulted from the bankruptcy of the contractor, the drop in sales price for condominiums would erase any chance for the Agency to participate in any profit. Moreover, if the project is developed as rental housing, the profit sharing formula will no longer apply since it is derived from the profits at sale. Therefore, staff is proposing that the profit sharing clause stay in place, but any profit sharing would be postponed during any rental period. The profit sharing clause will be modified so that in calculating development costs, the amount received by Olson from the bond company will be subtracted from development costs. Development costs would be certified in two phases: (1) at the sale of the

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project by Olson to the new developer, and (2) at completion of construction. These certified costs would then be adjusted for inflation based on changes in the Consumer Price Index from the date of completion to the date of sale of individual units as condominiums. The rest of the terms for the Agency's share of profits at sale would remain in place.

### **Project Transfer**

Olson is negotiating a sale of the property and a transfer of the project to DCA City Walk, L.P. This partnership was created by Simpson to complete the development of the City Walk Project. A brief history of Simpson and its related companies is as follows

1. Harold A. Simpson & Associates was formed in 1948, for the purpose of developing single-family homes. The company started developing in Colorado, New Mexico, Texas and Arizona.
2. Simpson & Associates became SHC in 1980 and expanded into the Northwest and started to focus on affordable and luxury multifamily housing.
3. SHC and its affiliates formed Simpson Housing Limited Partnership with MWT Holdings, LLC ("MWT"), in 1995. The owner of MWT is the State of Michigan Retirement System ("SMRS"), the beneficiaries of which are various public employee retirement systems in the state. SMRS is also the investor for Olson's City Walk condominium project, which is part of the reason that Olson chose Simpson.
4. The latest evolution of Simpson occurred in 2006, when the Alaska Permanent Fund Corporation ("APFC") bought just under a 50 percent interest in the company. With the financial backing of both SMRS and APFC, Simpson is looking to double the firm's asset value by 2012.
5. Simpson Housing Corporation set up a limited partnership, DCA City Walk, L.P., in 2008 with SMRS as the equity investor with the intent to purchase and complete the City Walk Project.

Simpson has recently built similar mid-rise housing projects in Yonkers, New York; Dallas, Texas; Seattle, Washington; and San Diego, California. Simpson has eight regional offices across the United States; over 50,000 multifamily units developed; growing assets of nearly \$2 billion and employs more than 1,200 professionals. Simpson is interested in developing the City Walk Project but has been having problems securing construction and permanent financing. Interest rates are presently high and lenders are requiring loan to cost and loan to value ratios of 1:2. The project is not feasible with these financing requirements.

Staff is recommending that the Agency Board give the Agency Administrator the authority to approve DCA or other similarly experienced developers, should the deal with DCA fall through. Staff has developed minimum qualifications for any developer to be approved for the transfer, including: (i) the proposed transferee is a nationally or regionally recognized real estate development company with a good business reputation, which has, within the preceding ten year period, on its own or through its assembled development team or affiliates, successfully

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developed at least three residential projects of at least comparable size to the project, 200 plus units in each, and at least 2,000 units of rental housing; (ii) the proposed transferee, along with affiliates, has a net worth which is adequate given the scope of the obligations being assumed by such transferee; and (iii) neither the proposed transferee, nor any of its principals, members or partners, has been convicted, found guilty of, or admitted criminal or civil liability for any felony, fraud, misrepresentation or act of moral turpitude or has been a party to any actions against the City or the Agency within the preceding five years.

### **Labor and Employment**

Olson has entered into an agreement with Carpenters 46 Northern California Counties Conference Board for the project. The agreement requires Olson to use union labor for work covered by the Carpenters Union. The agreement provides that it is legally binding on any successor-in-interest to Olson on the project; see Attachment B.

Olson has also agreed to include local hiring provisions in the DDA. The DDA will require that 15% of the total work hours for the remainder of project construction be performed by Oakland residents. The 15% requirement is based on the aggregate hours generated by the contractor, not on a craft-by-craft basis. The building contractor must meet with Contract Compliance staff before start of construction; and within 60 days of completion of construction, the developer must submit documents certifying compliance with its local employment obligations. The penalty imposed for the developer not meeting its obligation will be equal to \$50 times the number of hours the developer is short of the 15% requirement. See Attachment A for the specific language of the local hiring provisions.

The local hiring requirement for this unsubsidized project is higher than the minimum requirement for on-site compliance under the standard City Local Employment Program, which is 12.5%. However, unlike the Local Employment Program, there is no requirement for compliance on a craft-by-craft basis; nor is there any requirement for the contractor to provide additional off-site hours equal to 12.5% of the project in order to meet the 25% minimum local hiring goal of the Local Employment Program.

### **Building Permit Fees**

There is approximately \$600,000 in outstanding building permit fees for the project. The majority of these fees are Obstruction Permits for occupying the sidewalk and metered parking spaces on Jefferson Street, 14<sup>th</sup> Street and Martin Luther King, Jr. Way. Council has been concerned that these fees be paid prior to executing this DDA Amendment. However, Olson is not in a position to pay these fees until the sale of the property. Staff has worked out a compromise that would allow the fees to be paid and the DDA Amendment to be executed concurrently through escrow when the property is sold to a new developer.

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## **SUSTAINABLE OPPORTUNITIES**

### ***Economic***

The proposed project will take an underutilized site and convert it to better economic use. The project will generate approximately \$50,000 per year in additional property tax revenue for the City's General Fund beginning in FY 2009-10 and increase the Redevelopment Agency's general tax increment by \$455,000 per year.

### ***Environmental***

Developing this type of "infill" high-density residential project in the urban core reduces suburban sprawl by reducing development pressures on communities at the Bay Area's periphery and preserves open space. Moreover, the project's location next to mass transit will reduce the reliance on automobiles and decrease pollution from cars.

### ***Social Equity***

The project will generate approximately \$210,000 per year for the Housing Set-aside, which will fund approximately 3 new affordable housing units per year or over 40 units by the end of Central District Redevelopment Area's period to collect tax increment in 2022.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

All housing development projects are required to construct and set aside units to be occupied by persons with disabilities as required by Federal ADA Accessibility Guidelines, the Fair Housing Act and the State of California's Title 24 accessibility regulations. This means that at least 5 percent of the newly constructed units will be available to people with disabilities. Also the use of "green building" materials may reduce any incidence of environmental illness disabilities.

## **RECOMMENDATION(S) AND RATIONALE**

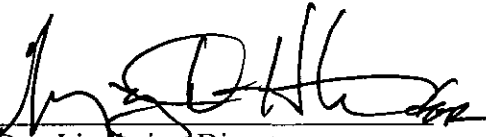
It is recommended that the Agency authorize the amendment to the DDA with Olson extending the project completion date by three years, to December 31, 2010, extending other development dates, allowing conversion of the project to rental housing, modifying the profit-sharing provision, adding local employment requirements, and allowing the transfer of the property and project to DCA or another developer approved by the Agency Administrator. Unless Olson is able to amend the DDA and cure its defaults, it will be difficult to get the project back under construction quickly. Working with Olson and approving the amendment will help get the project completed swiftly and provide good construction jobs at a time when the industry is experiencing a slow down. Once completed the project will improve conditions in the Central District and provide transfer tax and property tax revenue to the City and Redevelopment Agency.

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**ACTIONS REQUESTED OF THE AGENCY/CITY COUNCIL**

It is recommended that the Agency and City Council pass the attached resolutions authorizing the amendment to the DDA with Olson for the T-10 Residential Project.

Respectfully submitted

  
\_\_\_\_\_  
Dan Lindheim, Director  
Community and Economic Development Agency

Reviewed By: Gregory Hunter, Deputy Director  
*Economic Development and Redevelopment*

Prepared by: Patrick Lane  
Redevelopment Manager

APPROVED AND FORWARDED  
TO THE COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE:

  
\_\_\_\_\_  
Office of the City/Agency Administrator

Office of the City/Agency Administrator



[DRAFT January 27, 2009]

**NO FEE DOCUMENT**

**Gov't. Code 27383**

RECORDING REQUESTED BY:

The Redevelopment Agency of the City of Oakland

WHEN RECORDED, MAIL TO:

The City of Oakland  
Community and Economic Development Agency  
250 Frank Ogawa Plaza, 5th Floor  
Oakland, California 94612  
Attn.: Patrick Lane, Project Manager

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**T-10 RESIDENTIAL PROJECT**

**FIRST AMENDMENT TO DISPOSITION  
AND DEVELOPMENT AGREEMENT**

This First Amendment to Disposition and Development Agreement ("**Amendment**") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the Redevelopment Agency of the City of Oakland ("**Agency**"), a community redevelopment agency organized and existing under the California Community Redevelopment Law, and Olson 737-Oakland 1, LLC ("**Developer**"), a California limited liability company, pursuant to Agency Resolution No. \_\_\_\_\_ passed on \_\_\_\_\_, 2009.

**RECITALS**

A. In connection with the development of real property located within the Central District Redevelopment Project Area in the City of Oakland ("**Project**"), the Agency and Olson Urban Housing, LLC, a Delaware limited liability company ("**Olson**"), entered into that certain Disposition and Development Agreement ("**DDA**") dated August 6, 2004, which was recorded in the Official Records of County of Alameda, State of California ("**Official Records**") on September 22, 2004 as document no. 2004429412. By that certain Assignment and Assumption Agreement dated September 17, 2004, Olson assigned to the Developer, and the Developer assumed from Olson, all of Olson's rights and obligations under the DDA. The DDA among other things provides for the completion of the Project described in the DDA by a certain date.

B. As a result of a construction dispute between Developer and its general contractor, Developer was not able to complete construction in compliance with the DDA. Project construction is currently suspended, and the building permit for the Project has expired. .

C. The Agency issued a Notice of Breach and Default under the DDA to the Developer dated January 18, 2008 ("**Agency Default**").

D. The Agency, the Developer, and Wells Fargo Bank N.A. (“**Wells Fargo**”), a national banking association, the construction lender for the Project, entered into that certain Collateral Assignment and Subordination Agreement (“**Lender’s Agreement**”) as of September 17, 2004, which was recorded in the Official Records on September 22, 2004 as document no. 2004429420. That agreement, among other things, required the consent of Wells Fargo prior to the any amendment to the DDA.

E. Wells Fargo issued a default letter to the Developer dated October 17, 2007, for the Project. Wells Fargo and the Developer entered into a forbearance agreement on or about July 1, 2008, under which Wells Fargo has agreed to give Developer a period of forbearance under certain terms and conditions.

F. The Developer wishes to transfer the Project to [INSERT NEW DEVELOPER] a \_\_\_\_\_ (“\_\_\_\_\_”), who desires to acquire the Property, assume Developer’s obligations under the DDA, and resume and complete construction of the Project subject to certain terms and conditions requiring amendment of the DDA.

G. The DDA allows transfers and changes in Developer (“**Transfer**”) with the Agency’s consent and approval. [INSERT NEW DEVELOPER]’s acquisition of the Property and the Project is a Transfer under the DDA. Developer wishes to Transfer its interests in the Project and assign and delegate its rights and obligations under the DDA to [INSERT NEW DEVELOPER], and has prepared a “**Transfer and Assignment and Assumption Agreement**” (the “Transfer Agreement”), a form of which is attached hereto as **Exhibit A**.

H. To facilitate the Transfer, Developer seeks to modify certain terms of the DDA, including Agency’s acknowledgment that the Project’s for-sale condominium units may be maintained indefinitely as rental units, modification of the DDA’s profit sharing provisions, establishment of a date for submittal of an amended Financial Plan by [INSERT NEW DEVELOPER] following the Transfer, and modification of the Schedule of Performance.

NOW, THEREFORE, Agency and Developer agree as follows:

1. Section 2.2 of the DDA is hereby amended to read as follows:

2.2 Profit sharing. As additional consideration for the sale of the Property by the Agency to the Developer, the Developer agrees to pay to the Agency the amount, if any, equal to the sum of (a) fifty percent (50%) of the Development Profit greater than 9.85% of the Sales Proceeds, until the Development Profit equals 13% of the Sales Proceeds, plus (b) twenty-five percent (25%) of the Development Profit greater than 13% of the Sales Proceeds. Such amount is referred to as the “Agency Profit Share.”

“Sales Proceeds” means the sum of the gross sales prices received for sales to condominium homebuyers for all residential units in the Project, if and when such units are sold, and the gross proceeds, if any, from the sale of retail space in the Project to commercial users, if and when such space is

sold, but shall not include any sales proceeds in connection with a Transfer of the Property or Project to a new Developer.

"Development Costs" means the total actual cost to the Developer (including costs incurred by Olson 737-Oakland 1, LLC, as original Developer, and costs incurred by [INSERT NEW DEVELOPER] or any other Developer who has assumed this Agreement pursuant to an approved Transfer of the Property) of planning, designing, financing, constructing, and developing the Project, and the costs of conveying the completed residential units to homebuyers of the Project. Development Costs shall include, but not be limited to, the following:

- The Purchase Price for the Property paid by the Developer to the Agency (but not including any purchase price paid in connection with a Transfer of the Property or Project by Olson 737-Oakland 1, LLC to [INSERT NEW DEVELOPER] or otherwise between Developers);
- Developer's entitlement fee, equal to \$2,500 per residential unit;
- Grading and site preparation costs;
- The cost of onsite and offsite improvements paid by Developer;
- Construction costs for the residential units, retail spaces and related common areas and parking improvements, including the cost of purchasing and installing options and upgrades to residential units;
- Developer's construction management fee not to exceed two and one-half percent (2.5%) of the Development Costs exclusive of Developer's entitlement fee, overhead fee, warranty reserve funds, and interest;
- Salaries, auto allowances, and bonus compensation for Developer's project specific construction staff, to include a construction project manager, project engineer, and an administrative assistant, not to exceed \$950,000 total for all Developers;
- General contractor's general conditions and fee;
- Performance and completion bond premiums;
- Architectural, engineering, design and reproduction fees;
- Consulting and professional fees paid to third parties with respect to this Agreement and the construction of the Project;
- Development, permit and inspection fees charged by any public agency incurred and paid by the Developer;
- An overhead fee payable to the Developer which shall not exceed three percent (3%) of other Development Costs listed herein;
- Construction loan fees and points payable by the Developer;
- Construction loan interest and contingent interest on participating debt payable by the Developer as set forth in financing documents approved by the Agency;
- Permanent loan fees and points payable by the Developer;

- Other fees and costs of construction loans and equity financing, including interest paid pursuant to the Purchase Note;
- Property taxes, insurance costs, security costs, utility costs and maintenance expenses incurred during the construction period;
- Homeowners' association dues payable by the Developer;
- Developer's cost of marketing the residential units for sale to homebuyers, including but not limited to sales office and model design (whether real or virtual), furnishings, fixtures, finishes, security, maintenance, utilities and supplies; sales office rental (including associated parking); signs, flags and billboards; advertising and promotional materials (including design, artwork and production); market research and public relations services provided by third parties; promotional events; and website development and maintenance;
- Sales commissions payable to the Developer's agents and brokers and cooperating buyers' agents and brokers for the sale of the residential units and for the sale of the retail space(s), if any;
- Other reasonable and actual costs of conveying the residential units to homebuyers, including DRE, Fannie Mae, and VA/FHA fees, escrow fees, title insurance fees, taxes and fees imposed with respect to the sale of the residential units;
- Builder's warranty reserve funds not to exceed \$4,000 per residential unit; and
- Any other actual costs to the Developer of planning, designing, financing, constructing and developing the Project which have not been paid by the Agency or other parties (but not including any purchase price paid in connection with a Transfer of the Property or Project to a new Developer).

Notwithstanding the above, any amounts paid to or on behalf of the Developer, or to any Holder for the Project, by any surety on any payment and/or performance bond in connection with the Project ("Bond Payments"), including without limitation those amounts paid or to be paid by Liberty Mutual pursuant to the settlement entered into with Olson 737-Oakland 1, LLC with respect to a performance bond for the Project issued by Liberty Mutual as surety, shall be deducted from Development Costs.

As the first step in the calculation of Development Costs, Olson 737-Oakland 1, LLC, as original Developer, shall make a determination of the Development Costs it has incurred up to the date of any Transfer to a new Developer, deducting any Bond Payments, and shall provide such determination to the Agency in writing prior to such Transfer, along with any other backup information reasonably requested by the Agency. As the second step in such calculation, [INSERT NEW DEVELOPER] or any other new Developer who acquires the Property through a Transfer shall make a determination of the Development Costs it incurs following the date of a Transfer, and shall provide such determination to the Agency in writing

immediately following completion of construction of the Project, along with any other backup information reasonably requested by the Agency. Within 15 business days of receipt of either determination, the Agency may either (1) give notice to Developer, that it has accepted its determination of the relevant Development Costs, or (2) request an audit of said Development Costs. Any such audit shall then follow the auditing procedure set forth below with respect to determination of final Agency Profit Share. Developer shall be responsible for paying the cost of the audit and the independent determination of Development Costs if the final relevant Development Costs determined through such audit or independent determination is less than 95% of the amount of the relevant Development Costs determined by the Developer. Otherwise, the Agency shall be responsible for paying these costs.

Following completion of construction of the Project and final determination of Development Costs, Development Costs shall be adjusted each year by the percentage change in the CPI for the previous year until the date a Project residential unit is first sold to a condominium homebuyer. For purposes of this paragraph, "CPI" means the Consumer Price Index, All Urban Consumers, San Francisco/Oakland/San Jose Average, Subgroup "All Items," published by the United States Department of Labor, Bureau of Labor Statistics, or should the United States Department of Labor cease publishing such index, such other consumer price index most comparable to the above index.

"Development Profit" means the Sales Proceeds less the Development Costs (factoring into Development Costs the deduction of Bond Payments and the adjustment for CPI, as set forth above).

The Developer shall estimate the Agency Profit Share no later than the close of sale of ninety-five percent (95%) of Project residential units to condominium homebuyers, and shall pay to the Agency the estimated Agency Profit Share at such time. Such payment to the Agency shall be accompanied by the Developer's calculation of Sales Proceeds, Development Costs (as previously determined and as adjusted for CPI), and Development Profit as of such date, the current Project pro forma, and a copy of the escrow closing statement for each of the residential units which have been sold. The Developer and the Agency shall submit mutually acceptable escrow instructions with respect to the escrow for the last residential unit to be sold which provides for the entire amount of the net sales proceeds for such residential unit to be placed in an escrow account until the final Agency Profit Share has been calculated and agreed upon by the Agency and the Developer. The Developer agrees that it shall not convey the last residential unit to a homebuyer until such escrow instructions have been submitted to the appropriate escrow agent.

As soon as possible after the final sale of a residential unit, the Developer shall provide to the Agency in writing its determination of the final Agency Profit Share. Such determination shall be accompanied by copies of the escrow closing statement for each of the last five percent (5%) of the residential units which have been sold, any adjustments to the previous estimated calculation of Sales Proceeds and Development Profit, and any other backup information reasonably requested by the Agency. Within 15 business days of receipt of such determination, the Agency may either (1) give notice to the Developer that it has accepted the Developer's determination of the final Agency Profit Share, or (2) request an audit of Sales Proceeds and/or Development Profit. If the Agency requests an audit, the Developer shall cause such an audit to be performed by a certified public accountant. The audit report shall be submitted to the Agency upon completion. If following the audit the parties are unable to agree upon the final Agency Profit Share, the parties shall jointly hire an independent certified public accountant, which has not previously worked for either party, to determine the final Agency Profit Share. The determination of such independent certified public accountant shall be deemed the final Agency Profit Share. Upon mutual agreement on the amount of the final Agency Profit Share, or a determination of the independent certified public accountant of such amount, any additional portion of the Agency Profit Share in addition to the estimated Agency Profit Share previously paid to the Agency shall be released to the Agency from such escrow account, with the remaining amount in the escrow account to be released to the Developer. In the event that the estimated Agency Profit Share paid by the Developer to the Agency exceeds the final Agency Profit Share, the Agency shall promptly refund the overpayment to the Developer, in no event later than thirty days after the date of determination of the final Agency Profit Share.

The Developer shall be responsible for paying the cost of the audit and the independent determination of Agency Profit Share if the final Agency Profit Share determined through such audit or independent determination exceeds 105% of the amount of the final Agency Profit Share determined by Developer. Otherwise, the Agency shall be responsible for paying these costs.

2. Not later than 60 calendar days from the closing of the transfer of the Project and assignment of the DDA to [INSERT NEW DEVELOPER], [INSERT NEW DEVELOPER] as Developer shall submit to the Agency for its review and approval, an Amended Financial Plan with the information required under Section 2.7 of the DDA with respect to the Financial Plan as such information relates to financing for [INSERT NEW DEVELOPER]'s resumption and completion of Project construction following the date of this Amendment. Section 2.7.2 is hereby amended to read: "A cash flow projection for the sale or rental of Project units."

3. Section 5.6 of the DDA is hereby amended to read as follows:

5.6 Completion of Project. The Developer shall diligently prosecute construction of the Project, and shall complete the entire Project, as evidenced by issuance of a temporary certification of occupancy or certificate of occupancy for the entire Project by the appropriate officer of the City of Oakland, no later than the Completion of Project date set forth in the Schedule of Performance.

4. The Schedule of Performance attached to the DDA as Exhibit G is hereby replaced in its entirety with the Revised Schedule of Performance (“Revised Schedule”) attached hereto as Exhibit B. Under that Revised Schedule, Developer must obtain a new building permit and enter into a new construction contract in connection with resumption of construction of the Project following the date of this Amendment.

5. Section 6.1 of the DDA is hereby amended to read as follows:

6.1 Use restrictions. Use of the Property for the remaining term of the Redevelopment Plan shall be restricted to residential uses and uses ancillary to residential use, retail uses on the first two floors of the Project, residential and commercial uses in live/work units, and structured parking. All of the Project’s residential and live/work units may be either for-sale units or rental units.

6. Section 7.4.1.5 of the DDA is hereby amended to read as follows:

7.4.1.5. The sale or lease of, or agreement to sell or lease, Project residential units to residents, including the leaseback of model units.

7. The Agency hereby withdraws the Agency Default. Notwithstanding the above, the Agency reserves the right to declare a default and pursue any of its remedies in accordance with the DDA for any events of default occurring following this Amendment, including without limitation failure to meet any of the dates set forth in the Revised Schedule with respect to resumption and completion of construction on the Project.

8. The Agency hereby consents to the conveyance of the Property and the Project and the assignment and delegation of the DDA to [INSERT NEW DEVELOPER] under the terms of the Transfer Agreement. Upon the execution of the Transfer Agreement and conveyance of the Property and the Project to [INSERT NEW DEVELOPER], [INSERT NEW DEVELOPER] shall be considered the “Developer” under the DDA as amended by this Amendment.

9. Wells Fargo is consenting to this Amendment under the terms of the Lender’s Agreement. Execution of the attached consent form by Wells Fargo is a condition to the effectiveness of this Amendment. Additionally, by executing this Amendment the Agency and the Developer confirm, for the benefit of Wells Fargo, that the existing Lender’s Agreement remains in full force and effect, unmodified and unimpaired by the terms of this Amendment

10. For construction work on the Project occurring after the date of this Amendment, no less than 15% of total work hours must be performed by Oakland residents. This requirement shall be applied against the aggregate number of construction work hours on the Project occurring after the date of this Amendment, not on a trade-by-trade, craft-by-craft, or contractor-by-contractor basis. Prior to the restart of Project construction, the Developer and Developer's general building contractor shall meet with the City's Contract Compliance staff to discuss compliance with this requirement. The Agency will make available the services of the City's Local Construction Employment Referral Program (LCERP) to the Developer and its contractors and subcontractors as needed. Within 60 calendar days after completion of Project construction, the Developer shall submit to the Agency independently-certified payroll records through its web-based certified payroll system verifying compliance with this requirement, including appropriate backup documentation reasonably requested by the Agency concerning worker residency and employment hours. Such records must identify the address, Social Security number, ethnicity, gender, trade and status (journeyman or apprentice) of all employees on the Project.

In the event of noncompliance, the Developer shall pay as liquidated damages to the Agency an amount equal to \$50 multiplied by the number by which the total construction work hours actually performed by Oakland residents is less than 15% of total work hours for Project construction work occurring after the date of this Amendment. The Developer and the Agency agree that it would be impracticable or extremely difficult to fix the actual damages the Agency would suffer from violations of this local employment provision, and that the amount designated herein as liquidated damages represents a reasonable approximation of the damages the Agency is likely to suffer from violations of these terms. The Developer agrees to pay in full any accrued liquidated damages to the Agency within ten business days of a written demand by Agency for such payment.

11. All other provisions of the DDA not modified or amended by this Amendment shall remain in full force and effect.

**[SIGNATURE BLOCKS ON NEXT PAGE]**



IN WITNESS WHEREOF, the undersigned parties have executed this First Amendment to Disposition and Development Agreement as of the date first above written.

**“AGENCY”**

THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND,  
a community redevelopment agency organized and existing under the California  
Community Development Law

By: \_\_\_\_\_  
Agency Administrator

Approved as to form and legality:

By: \_\_\_\_\_  
Agency Counsel

**“DEVELOPER”**

OLSON 737 – OAKLAND 1, LLC,  
a California limited liability company

By: Olson Urban Housing, LLC,  
a California limited liability company

Its: Sole Member

By: DenCity, Inc.,  
a California corporation, formerly known as The Olson Company,

Its: Managing Member

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

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

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

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

**ATTACHMENT B**

Agreement

By And Between Carpenters 46 Northern California Counties  
Conference Board And The Olson Company

Item: \_\_\_\_\_

Community and Economic Development Committee

January 27, 2009

## AGREEMENT

BY AND BETWEEN CARPENTERS 46 NORTHERN CALIFORNIA COUNTIES  
CONFERENCE BOARD AND THE OLSON COMPANY.

This Agreement is entered into this 31 day of October, 2008, by and between Olson 737 – Oakland 1, LLC, and the Carpenters 46 Northern California Counties Conference Board.

Olson 737 – Oakland 1, LLC, (“Owner”) acknowledges that Carpenters 46 Northern California Counties Conference Board, United Brotherhood of Carpenters and Joiners of America has performed and will perform valuable services and facilitate the development of its property and completion of its City Walk Project/ City Center T-10 Residential Project. Location and description of project(s) is 1307 Jefferson Street, 14<sup>th</sup> Street, 13<sup>th</sup> Street, Pedestrian Walk, Jefferson Street and Martin Luther King Junior Way in Oakland, California.

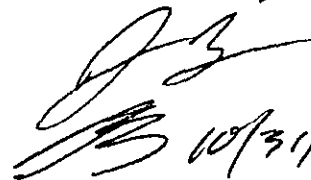
Owner hereby acknowledges that in connection with the completion of said project it will retain plenary control over labor relations on said project including, but not limited to, the hiring of a Construction Manager and/or General Contractor.

Owner does not presently directly employ any person to perform work within the jurisdiction of the Carpenters Union as defined by the Carpenters’ Master Agreement for Northern California. However, in the event that the Owner directly employs such persons, the Owner shall, by virtue of signing this Agreement, be automatically bound to the appropriate 46 Northern California Counties Memorandum Agreement covering the work performed by such persons.

For valuable consideration rendered by Carpenters 46 Northern California Counties Conference Board, and in the interest of fostering labor harmony and avoiding labor disputes, Owner covenants, guarantees and warrants that all work on said project(s) coming within the jurisdiction of the Carpenters Union as defined by the Carpenters’ Master Agreement for Northern California shall be performed by employees employed by contractors signatory to said Master Agreement. The purpose of this agreement is to reduce the friction and avoid the tensions that may arise when union and non union employees of different employers were to work side by side on the project.

Owner further agrees that in connection with said project it shall ensure that any construction manager or general contractor performing work in connection with the above project(s) shall cause the foregoing covenant to be satisfied on behalf of Owner.

The parties agree that this Agreement is and shall be binding and legally effective upon any successor-in-interest to the Owner, whether by merger or acquisition, and upon any entity which acquires title to the Project whether by sale, lease, or other transfer, or contribution to partnership, joint venture or other entity. Any agreement for a sale, lease or other transfer of, or contribution, to the Project or an agreement for a merger or acquisition including ownership or control of the Project, shall include an express

  
10-31-08.  
10/31/08

assumption of the obligations and undertakings of Owner in this Agreement, including this successorship provision. Owner shall provide the Carpenters with notice in writing at the close of any sale, acquisition, merger, lease, other transfer or contribution, and an original executed assumption of this Agreement by the successor.

In consideration of the agreement of Owner herein, Carpenters 46 Northern California Counties Conference Board agrees to express support for Owner's project before the Oakland City Council.

The parties agree that any alleged breach of this Agreement, will be resolved before Neutral Arbitrator Gerald McKay pursuant to the grievance and arbitration provisions set forth in the above referenced Carpenter's Master Agreement.

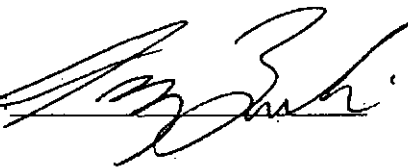
Any dispute regarding the interpretation or application of this Agreement, including its successorship provisions, and any determination as to the actual damages suffered, if any, will be resolved through final and binding arbitration before Neutral Arbitrator Gerald McKay pursuant to the grievance and arbitration provisions set forth in the above referenced Carpenter's Master Agreement. Said arbitration shall be the exclusive means of enforcing this Agreement and remedying any alleged breaches hereof and the decision of Arbitrator McKay shall be final and binding upon all the parties.

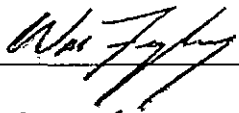

The effectiveness of this agreement is conditioned upon and subjected to the execution and effectiveness of the first amendment to DDA by The Redevelopment Agency of Oakland and Olson 737 – Oakland 1, LLC amending the original DDA dated 8/6/04.

Executed at Oakland, California, this 31 day of October 2008.

The Olson Company

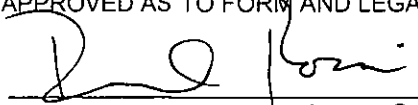
CARPENTERS 46 NORTHERN  
CALIFORNIA COUNTIES  
CONFERENCE BOARD

By: 

By:   


FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2009 JAN 15 PM 12:51

APPROVED AS TO FORM AND LEGALITY:

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

# REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. \_\_\_\_\_ C.M.S.

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**A RESOLUTION (1) AUTHORIZING AN AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH OLSON 737 – OAKLAND 1, LLC, FOR THE CITY CENTER T-10 RESIDENTIAL PROJECT AT 14TH STREET, 13TH STREET PEDESTRIAN WALK, JEFFERSON STREET AND MARTIN LUTHER KING, JR. WAY: (A) TO PERMIT THE PROJECT TO BE A RENTAL PROJECT, (B) TO EXTEND THE DATES FOR PROJECT DEVELOPMENT AND COMPLETION, (C) TO AUTHORIZE TRANSFER OF THE PROJECT AND PROPERTY TO DCA CITY WALK, L.P., OR TO ANOTHER QUALIFIED ENTITY APPROVED BY THE AGENCY ADMINISTRATOR WITHOUT RETURNING TO THE AGENCY, (D) TO ADD LOCAL CONSTRUCTION EMPLOYMENT REQUIREMENTS, AND (E) TO MODIFY THE PROFIT-SHARING PROVISION; AND (2) RESCINDING RESOLUTION NO. 2007-0087**

**WHEREAS**, a Disposition and Development Agreement ("DDA") with Olson 737 – Oakland I, LLC ("Olson") was entered into on August 6, 2004, per Agency Resolution No. 2004-37 C.M.S. adopted on July 6, 2004, which sets forth the terms and conditions of the sale of certain property located on the block bounded by 14<sup>th</sup> Street, the 13<sup>th</sup> Street pedestrian walk, Jefferson Street, and Martin Luther King, Jr., Way (the "Property") to Olson, and governs the development of the City Center T-10 Residential Project, 252 residential condominium units, and approximately 3,000 square feet of retail space (the "Project") on the Property; and

**WHEREAS**, on September 26, 2004, Olson purchased the Property from the Agency in order to develop the Project; and

**WHEREAS**, the DDA requires that Olson complete the Project by December 31, 2007; and

**WHEREAS**, construction of the Project has been suspended; and

**WHEREAS**, Resolution No. 2007-0087 passed on December 18, 2007, authorized an amendment to the DDA that would have extended the Project completion date under certain conditions; and

**WHEREAS**, Olson declined to enter into that DDA amendment authorized by the 2007 Resolution; and

**WHEREAS**, Olson has again requested an extension of the DDA Project development and completion dates; and

**WHEREAS**, Olson has requested the option to operate the Project as a rental project; and

**WHEREAS**, Olson has requested changes to the profit-sharing provisions of the DDA; and

**WHEREAS**, Olson is seeking to transfer the Project to DCA City Walk, L.P., a new limited partnership set up by Simpson Housing Corporation, or another developer, and seeks Agency consent to such transfer pursuant to the DDA; and

**WHEREAS**, Olson has agreed to accept local employment obligations for the remainder of the Project; now, therefore, be it

**RESOLVED:** That Resolution No. 2007-0087 is hereby rescinded; and be it further

**RESOLVED:** That the Redevelopment Agency hereby authorizes the Agency Administrator or his or her designee to negotiate and execute an amendment to the DDA with Olson for the City Center T-10 Residential Project (A) to permit the Project to be developed and operated as a rental housing project, (B) to extend the completion of Project deadline from December 31, 2007, to December 31, 2010, and extend other Project development deadlines, (C) to add local employment requirements for the remainder of Project construction, and (D) to modify the profit-sharing provisions to reduce development costs by the amount received by Olson from construction bond proceeds, to allow for a cost-of-living escalation of development costs, and to make other changes; and be it further

**RESOLVED:** That the Redevelopment Agency hereby authorizes the Agency Administrator to consent to the transfer of the Project and the Property to DCA City Walk L.P. or to another qualified developer approved by the Agency Administrator in his or her discretion without returning to the Agency, if the Agency Administrator

determines that the transferee meets the developer criteria set forth in the staff report accompanying this Resolution; and be it further

**RESOLVED:** That execution of the DDA amendment shall be conditioned on payment of all outstanding building permit fees; and be it further

**RESOLVED:** That all documents related to this transaction shall be reviewed and approved by Agency Counsel prior to execution, and copies will be placed on file with the Agency Secretary; and be it further

**RESOLVED:** That the Agency Administrator or his or her designee is hereby authorized to take any necessary and appropriate actions with respect to the amendment of the DDA consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2009

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND CHAIRPERSON BRUNNER

NOES-

ABSENT-


ABSTENTION-

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
Secretary of the Redevelopment Agency  
of the City of Oakland

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2009 JAN 15 PM 12: 52

APPROVED AS TO FORM AND LEGALITY:

  
Deputy City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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A RESOLUTION APPROVING AN AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND OLSON 737 – OAKLAND 1, LLC, FOR THE CITY CENTER T-10 RESIDENTIAL PROJECT AT 14TH STREET, 13TH STREET PEDESTRIAN WALK, JEFFERSON STREET AND MARTIN LUTHER KING, JR. WAY, (A) TO PERMIT THE PROJECT TO BE A RENTAL PROJECT, (B) TO EXTEND THE DATES FOR PROJECT DEVELOPMENT AND COMPLETION, (C) TO AUTHORIZE TRANSFER OF THE PROJECT AND PROPERTY TO DCA CITY WALK, L.P., OR TO ANOTHER QUALIFIED ENTITY, (D) TO ADD LOCAL CONSTRUCTION EMPLOYMENT REQUIREMENTS, AND (E) TO MODIFY THE PROFIT-SHARING PROVISION

**WHEREAS**, per Health and Safety Code Section 33433, the City Council approved a Disposition and Development Agreement ("DDA") between the Redevelopment Agency of the City of Oakland (the "Agency") and Olson 737 – Oakland I, LLC ("Olson") for the sale of certain property located on the block bounded by 14<sup>th</sup> Street, the 13<sup>th</sup> Street pedestrian walk, Jefferson Street, and Martin Luther King, Jr., Way (the "Property") to Olson, and the development of the City Center T-10 Residential Project, 252 residential condominium units, and approximately 3,000 square feet of retail space (the "Project") on the Property; and

**WHEREAS**, on September 26, 2004, Olson purchased the Property from the Agency in order to develop the Project; and

**WHEREAS**, the DDA requires that Olson complete the Project by December 31, 2007; and

**WHEREAS**, construction of the Project has been suspended; and



**WHEREAS**, Olson has requested an extension of the DDA Project development and completion dates; and

**WHEREAS**, Olson has requested the option to operate the Project as a rental project; and

**WHEREAS**, Olson has requested changes to the profit-sharing provisions of the DDA; and

**WHEREAS**, Olson is seeking to transfer the Project to DCA City Walk, L.P., a new limited partnership set up by Simpson Housing Corporation, or another developer; and

**WHEREAS**, Olson has agreed to accept local employment obligations for the remainder of the Project; and

**WHEREAS**, the Agency is considering entering into an amendment to the DDA to provide for these changes; now, therefore, be it

**RESOLVED:** That the City Council hereby approves an amendment to the DDA with Olson for the City Center T-10 Residential Project (A) to permit the Project to be developed and operated as a rental housing project, (B) to extend the completion of Project deadline from December 31, 2007, to December 31, 2010, and extend other Project development deadlines, (C) to add local employment requirements for the remainder of Project construction, (D) to modify the profit-sharing provisions to reduce development costs by the amount received by Olson from construction bond proceeds, to allow for a cost-of-living escalation of development costs, and to make other changes, and (E) to authorize the transfer of the Project and the Property to DCA City Walk L.P. or to another qualified developer approved by the Agency Administrator in his or her discretion.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2009

**PASSED BY THE FOLLOWING VOTE:**

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

NOES-

ABSENT-

ABSTENTION-

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