

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

# CITY OF OAKLAND

## AGENDA REPORT

2011 JUN 30 PM 12: 25

**TO:** Office of the City Administrator  
**ATTN:** P. Lamont Ewell, Interim City Administrator  
**FROM:** Community and Economic Development Agency  
**DATE:** July 12, 2011

**RE:** A Public Hearing And Upon Conclusion, Adoption Of A Resolution Consenting To A Non-Affiliate Transfer Of Site C (Located At 10 Clay Street) Relating To The Development Agreement (DA) Between The City Of Oakland, Jack London Square Partners LLC, And CEP-JLS I LLC, Dated July 6, 2004 (DA) To 10 Clay Street LLC Pursuant To The DA And Planning Code Section 17.138.080 (Development Agreement Procedure)

---

### SUMMARY

Ellis Farmers LLC, on behalf of Jack London Square Partners LLC and CEP-JLS I LLC (the developer), requests City Council consent to a non-affiliate transfer of interest in Jack London District Site C (located at 10 Clay Street) to 10 Clay Street LLC. Site C is subject to the Development Agreement (DA) between the City of Oakland, Jack London Square Partners LLC, and CEP-JLS I LLC, dated July 6, 2004 (DA). The DA requires written consent by the City Council for non-affiliate transfers of interest.

### FISCAL IMPACT

The proposed project is the transfer of interests owned by and under Port of Oakland jurisdiction from a party to the DA to a non-affiliate. The project would not have any direct fiscal impact on the City of Oakland.

### BACKGROUND

The City of Oakland approved a nine-site, multi-phased development project known as "Jack London Square" in 2004. The project is located on sites throughout the Jack London District of Oakland, south of Interstate 880, and generally owned by the Port of Oakland. The project was subject to an Environmental Impact Report, Preliminary and Final Development Permits (and appeal), Major Conditional Use Permit (and appeal), Major Variance, Rezone, and DA (and appeal), with final approvals for the land use entitlements granted by the Oakland City Council on June 15, 2004.

Item: \_\_\_\_\_  
CED Committee  
July 12, 2011

The Jack London Square Development Project Site C, located at 10 Clay Street, south of Embarcadero and the Port of Oakland administrative offices. Adjacent uses include the Oakland/Alameda ferry terminal and Port of Oakland shipping terminals to the west, Port of Oakland administrative offices to the north, Jack London Square to the east, and an existing surface parking lot and the Oakland Estuary to the south. The surrounding area is generally characterized as a destination retail and entertainment district.

The Site C land improvements include 32,000 square feet of retail and 16,000 square feet of office space in a two-story building facing the Oakland Estuary, constructed in 2007.

## KEY ISSUES AND IMPACTS

Staff has identified the following issues for discussion related to this request for a transfer to a non-affiliate for Jack London District Site C:

### *Compliance with the Development Agreement*

The DA Article X includes limitations on the developer's right to transfer (see *Attachment A: DA Article X*). Specifically, Section 10.3.2 requires written consent of the City Council for a Non-Affiliate transfer. In addition, Section 10.2.3 requires that the applicant demonstrate that the transferee has the "(i)... financial capacity and business reputation to fulfill the obligations to be assumed by such Transferee..., and (ii) has the ability and intent to implement a concept that is consistent with the Esmarby Policy Plan objectives of promoting a development that complements and enlivens the world-class, destination waterfront environment in the Project vicinity and that emphasizes high quality... uses... as envisioned by, the Project Approvals." The DA further provides that this information and documentation shall be reviewed at a properly noticed public meeting of the City Council. Section 10.3.2 of the DA provides that the City Council has the right to request such additional information as may be reasonably necessary for the Council to render its decision, but the Council's consent to such Transfer "shall be limited solely to the proposed Transferee's qualifications and financial capacity as specified in Section 10.2.3" of the DA.

Consistent with the requirements of the DA, the developer has identified 10 Clay Street LLC (transferee), an entity owned and controlled by T. Gary and Kathleen Rogers, as the non-affiliate transferee. In addition, the developer has submitted information indicating that the transferee is committed to the growth and development of Oakland (as evidenced by its' extensive Oakland-based philanthropic efforts), and is financially prepared to fulfill the terms of the DA (as evidenced by \$15 million in net assets). See *Attachment B: Ellis Partners LLC letter dated June 10, 2011* for complete details of transferee qualifications.

### *Compliance with the Oakland Planning Code*

The Oakland Planning Code Chapter 17.138 Development Agreement Procedure includes requirements for transfers of interest by the developer (see *Attachment C: Planning Code Chapter 17.138 Development Agreement Procedure*) for complete regulations regarding DAs. Specifically, Section 17.148.080 Adherence to development agreement, and amendment or cancellation by mutual consent states that “the interests of the applicant may not be transferred or assigned to a new person without the written consent of the city.” The applicant is in compliance with this requirement by having submitted a request for City Council consideration of the proposed transfer.

### *Environmental Review*

The City of Oakland Planning Commission certified the Jack London Square Redevelopment Environmental Impact Report (EIR) on March 17, 2004. Under the California Environmental Quality Act (CEQA) Section 15162, no subsequent environmental review is required unless the project has changed substantially, the circumstances under which the project would occur have changed substantially, or new information demonstrates that any potential environmental impacts would be substantially more severe than previously demonstrated. In reviewing the currently proposed transfer of interests, staff has determined that none of the circumstances necessitating further environmental review are present. The reasons for this determination include, among others, the following: (1) the currently proposed transfer of interest does not affect development envelope previously reviewed in the EIR and is not a change in the project that involves any new significant effects or a substantial increase in the severity of previously identified significant effects; (2) circumstances under which the project is undertaken have not occurred that will involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) no new information has come to light that would involve new or substantially more severe effects or feasible alternatives or mitigation measures. Accordingly, no further environmental review is required for this project at this time. The EIR identifies impacts and requires mitigation measures, and the proposed project will continue to be required to incorporate the mitigation measures. The EIR is available for review at 250 Frank Ogawa Plaza, Suite 3315, Oakland, CA 94612 during normal business hours.

### PROJECT DESCRIPTION

The proposed project is a transfer of interest in Jack London District Site C from the developer to a non-affiliate transferee.

Site C is a two-story building, located west of the Port office building and adjacent to the ferry dock, and includes 32,000 square feet of ground-floor retail uses, 16,000 square feet of upper story office uses, and a public waterfront observation deck.

Item: \_\_\_\_\_  
CED Committee  
July 12, 2011

The transferee, 10 Clay Street LLC, is wholly owned and controlled by T. Gary and Kathleen Rogers. The Rogers Family Office is the primary tenant of Site C, and has occupied the building since February 2008. As demonstrated above (see Key Issues and Impacts section), the Rogers family has a long history of philanthropy in Oakland, and has adequate net assets to fully undertake the responsibilities of carrying out the vision of the DA as applied to Site C.

## EVALUATION OF PAST PERFORMANCE

The project is subject to the DA. City staff most recently performed a DA Compliance review in September 2010 and found the project to be in compliance with the terms of the DA at that time.

## SUSTAINABLE OPPORTUNITIES

**Economic:** The proposed transfer of interests would allow a financially sound transferee to take on the responsibility of fulfilling the vision of the Estuary Plan and DA as applies to Site C. The transfer would potentially allow occupation of the ground-floor retail space, further contributing to and concentrating the retail destination ambiance of the surrounding area, thereby supporting economic vitality in the area.

**Environmental:** The project would not in any way change the physical characteristics of Site C nor would it change the planned land uses. There would be no environmental effects as a result of the proposed transfer of interests.

**Social Equity:** The proposed transfer of interests would potentially allow occupation of the ground-floor retail space, further contributing to and concentrating the retail destination ambiance of the surrounding area, thereby supporting the “destination” quality of and enhancing safety in the area.

## DISABILITY AND SENIOR CITIZEN ACCESS

Site C is fully accessible. The proposed transfer of interests would not affect accessibility in any way.

## RECOMMENDATION(S) AND RATIONALE

Staff believes that the proposed transfer of interests complies with applicable regulations and would potentially benefit achievement of the objectives of the DA and the Estuary Plan for Site

Item: \_\_\_\_\_  
CED Committee  
July 12, 2011

C. Staff recommends consenting to the transfer of interests in Site C from the developer to the transferee.

### ACTION REQUESTED OF THE CITY COUNCIL

Based on the analysis contained within this and the previously prepared reports and elsewhere within the administrative record, staff believes that the proposed transfer of interest will benefit development of the PUD and DA for the Jack London District. The proposed project will further the overall objectives of the General Plan. Thus, staff recommends that the City Council:

- 1) Find that, in accordance with CEQA Section 15162, none of the circumstances requiring preparation of a subsequent or supplemental EIR are present, as set forth above;
- 2) Consent to a non-affiliate transfer of interest in Jack London District Site C (located at 10 Clay Street) from Jack London Square Partners LLC and CEP-JLS I LLC to 10 Clay Street LLC.
- 3) Authorize the City Administrator to provide written consent to the proposed transfer and take such other steps as may be necessary and appropriate for the transfer to be completed.

Respectfully submitted,

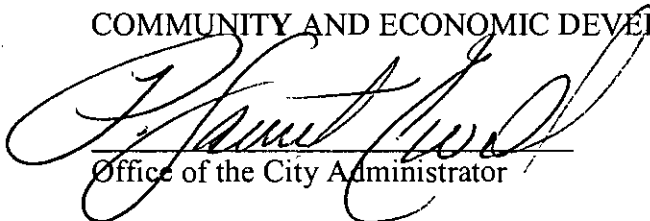


Walter S. Cohen, Director  
Community and Economic Development Agency

Reviewed by:  
Eric Angstadt, Deputy Director

Prepared by:  
Catherine Payne, Planner III  
Planning and Zoning Division

APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



Office of the City Administrator

- Attachment A: DA Article X  
Attachment B: Ellis Partners LLC letter dated June 10, 2011  
Attachment C: Planning Code Chapter 17.138 Development Agreement Procedure

Item: \_\_\_\_\_  
CED Committee  
July 12, 2011

**Attachment A:  
DA Article X**

provisions of a Development Parcel Ground Lease, shall at all times remain subject and subordinate to the Lessor's interest under the Development Parcel Ground Lease.

#### ARTICLE X

##### TRANSFERS AND ASSIGNMENTS; DEVELOPER CURE RIGHTS, ALLOCATION OF DEVELOPER RIGHTS, DUTIES AND OBLIGATIONS

###### 10.1. Limitations on Developer's Right to Transfer.

Developer acknowledges that the qualifications of Developer are of particular importance to City for, among others, the following reasons: (i) the importance of development of the Project Site to the Jack London Square area and to the general welfare of City, with particular reference to City's objectives as reflected in the Estuary Policy Plan and other applicable provisions of the General Plan; (ii) City's reliance upon the qualifications and ability of Developer to serve as the catalyst for development of the Project and to assure the quality of the use, operation and maintenance in the development of the Project; and that (iii) such qualifications and identity are material considerations inducing City to enter into this Agreement with Developer. In recognition of these factors, Developer's rights to Transfer any right or interest under this Agreement shall be governed strictly in accordance with the provisions of this Article X, and no voluntary or involuntary successor-in-interest of Developer shall

acquire any rights or powers under this Agreement except as expressly set forth in this Article X.

10.2. Conditions Precedent to Developer Right to Transfer. Except as otherwise provided in this Article X, Developer shall only have the right to effect a Transfer subject to and upon fulfillment of the following conditions precedent:

10.2.1. No Event of Default. No Event of Default by Developer shall be outstanding and uncured as of the effective date of the proposed Transfer, or in the event of a Transfer by Developer of its rights, duties and obligations with respect to a Development Parcel, no Event of Default by Developer (or a Transferee) shall be outstanding and uncured as to such Development Parcel as of the effective date of the proposed Transfer, unless City Council has received adequate assurances satisfactory to City Council in its sole discretion that such Event of Default shall be cured in a timely manner either by Developer or the Transferee under the Transfer.

10.2.2. Assumption Agreement. At least forty-five (45) days prior to the effective date of the proposed Transfer, Developer or the proposed Transferee has delivered to City an executed and acknowledged assumption agreement in recordable form. Such assumption agreement shall include provisions regarding (i) the portion or portions or interest in one or more Development Parcels proposed to be Transferred and the concomitant rights of Developer necessary to ensure that the



proposed Transferee will have the ability to perform all of the obligations of Developer the Transferee is to assume, (ii) the obligations of Developer under this Agreement that the proposed Transferee will assume, and (iii) the proposed Transferee's acknowledgment that such Transferee has reviewed and agrees to be bound by this Agreement and all applicable City Approvals. The assumption agreement shall also include the name, form of entity, and address of the proposed Transferee, and shall provide that the Transferee assumes the obligations of Developer to be assumed by the Transferee in connection with the proposed Transfer. The assumption agreement shall be recorded in the Official Records of the County of Alameda concurrently with the consummation of the Transfer, and a copy thereof, certified by the County Recorder as a duplicate copy of the approved assumption agreement with recording information, shall be delivered to City within three (3) days after consummation of the Transfer.

10.2.3. Qualifications of Transferee. Unless the proposed Transferee is an Affiliate, at least forty-five (45) days prior to the effective date of the proposed Transfer, Developer or the proposed Transferee has delivered to City Council, and City Council has approved, reasonably sufficient information and documentation (such as financial statements) evidencing that the Transferee (either directly or indirectly through the owner of one or more of its beneficial interests in the Transferee) (i) has the financial capacity and business

reputation to fulfill the obligations to be assumed by such Transferee under this Agreement, and (ii) has the ability and intent to implement a concept that is consistent with the Estuary Policy Plan objectives of promoting a development that complements and enlivens the world-class, destination waterfront environment in the Project vicinity and that emphasizes high quality, well-designed, diversified retail and entertainment uses, consistent with, and as envisioned by, the Project Approvals.

10.3. Limitations and Exceptions on Developer Right to Transfer. Developer's right to Transfer any right or interest under this Agreement shall be subject solely to the following limitations and exceptions:

10.3.1. Transfer to Affiliate. Developer shall have the right to Transfer all of its rights, duties and obligations under this Agreement to an Affiliate, and/or to effectuate a Development Parcel Transfer to an Affiliate. Such Affiliate shall become a Transferee upon (i) the acquisition by such Affiliate of the affected interest of Developer under this Agreement, and (ii) delivery to City of an assumption agreement pursuant to Section 10.2.2 above assuming, from and after the date such Affiliate so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement. By virtue of its demonstrated status as an Affiliate of Developer and recognizing that Transfers to Affiliates will facilitate

Developer's ability to develop the Project consistent with the Project Approvals, including this Agreement, City hereby consents to the Transfer to an Affiliate in accordance with this Section 10.3.1 and Section 17.138.080 of the Development Agreement Ordinance, and no further consent of City shall be required for any Transfer by Developer to an Affiliate pursuant to this Section 10.3.1.

10.3.2. Transfer to Non-Affiliate. Developer shall have the right to Transfer all of its rights, duties and obligations under this Agreement to a Transferee which is not an Affiliate of Developer, and/or effectuate a Development Parcel Transfer to a Transferee which is not an Affiliate of Developer, only with the prior written consent of City Council pursuant to Section 17.138.080 of the Development Agreement Ordinance and subject to this Article X. No such Transfer can be effectuated without prior written consent of the City Council notwithstanding City's failure to strictly comply with any of the provisions herein. If Developer intends to effect a Transfer pursuant to this Section 10.3.2, Developer shall so notify City and provide to City, with such notice, the assumption agreement required by Section 10.2.2 above, and the information and documentation required by Section 10.2.3 above, which information and documentation shall include the identity of the proposed Transferee, the qualifications of the proposed Transferee which will enable it to perform Developer's rights, duties and

obligations under this Agreement to be Transferred to such Transferee, and financial information regarding the proposed Transferee demonstrating that it has the financial capacity to perform Developer's obligations to be Transferred to such Transferee under this Agreement. Within 45 days of receiving such information and documentation, City shall (subject to the requirements of the Ralph M. Brown Act, the City's Sunshine Ordinance and all other applicable legal noticing requirements then in effect) cause the proposed Transfer to be placed on the City Council agenda for consideration. At such City Council meeting, (as it may be reasonably continued by the Council) the City Council shall review such information and documentation and render a decision regarding its consent to the Transfer. City shall have the right to request such additional information regarding the proposed Transferee as may be reasonably necessary in order to enable City Council to render its decision hereunder.

City Council's consent to such Transfer shall be limited solely to the proposed Transferee's qualifications and financial capacity as specified in Section 10.2.3 above. The proposed Transferee shall become a Transferee upon (i) the receipt of City Council's written consent; (ii) the acquisition by such Transferee of the interest of Developer under this Agreement to be Transferred to such Transferee; and (iii) delivery to City of the assumption agreement pursuant to Section 10.2.2 above assuming, from and after the date such Transferee so acquires

such interest of Developer, the applicable rights, duties and obligations of Developer under this Agreement.

10.3.3. Mortgagee as Transferee. No Mortgage (including the execution and delivery thereof to the Mortgagee) shall constitute a Transfer. A Mortgagee shall be a Transferee only upon (i) the acquisition by such Mortgagee of the affected interest of Developer encumbered by such Mortgagee's Mortgage; and (ii) delivery to City of an assumption agreement pursuant to Section 10.2.2 above assuming, from and after the date such Mortgagee so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement. City hereby consents to the Transfer to a Mortgagee in accordance with this Section 10.3.3. No further consent of City shall be required for any such Transfer pursuant to this Section 10.3.3 or Section 17.138.080 of the Development Agreement Ordinance.

10.4. Effect of Transfer. Except for the limitations and exceptions specified in Sections 10.3 above, a Transferee shall become a Party to this Agreement only with respect to the interest Transferred to it under the Transfer and then only to the extent set forth in the assumption agreement delivered under Section 10.2.2 above. When and if, and only when and if, Developer Transfers all of its rights, duties and obligations under this Agreement in accordance with this Article X, Developer (or a Transferee, as the case may be) shall be released from any and all obligations accruing after the date of

the Transfer with respect to the rights, duties and obligations of Developer under this Agreement which the Transferee assumes. If Developer (or a Transferee, as the case may be) effectuates a Developer Parcel Transfer, Developer (or such Transferee) shall not be released from any of its obligations accruing before, during or after the date of the Transfer with respect to the rights, duties and obligations of Developer under this Agreement which the Transferee of the Development Parcel Transfer assumes, unless City has provided its prior written agreement to a release of such obligations in connection with such Development Parcel Transfer.

10.5. Right of Developer to Cure. If Developer completes a Development Parcel Transfer, then City shall deliver to Developer (or to Developer's Transferee if Developer has effectuated a Transfer of all of its rights, duties and obligations under this Agreement pursuant to Section 10.3.1 or 10.3.2 above), concurrently with service thereon to the Transferee under the Development Parcel Transfer, any notice given with respect to any claim by City that such Transferee has committed an Event of Default, including noncompliance with the Applicable Conditions of Approval for such Development Parcel Transfer. If City makes a determination of noncompliance under Article VI above, City shall likewise serve to Developer notice of such Transferee's noncompliance. Developer (or its Transferee) shall have the right to cure or remedy, or to

commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice within the applicable time periods for cure specified in this Agreement. If, however, the Event of Default or such noncompliance is of a nature which can only be remedied or cured by Developer (or its Transferee) upon obtaining possession of the affected Development Parcel, Developer (or its Transferee) shall seek to obtain possession with diligence and continuity, and shall thereafter remedy or cure the Event of Default or noncompliance as soon as reasonably possible after obtaining possession. So long as Developer (or its Transferee) demonstrates to the satisfaction of City that it is diligently pursuing cure of the Event of Default or noncompliance in conformance with the requirements of this Section 10.5, City shall not exercise any right or remedy under this Agreement on account of such Event of Default or noncompliance; however, nothing herein shall prevent the City from seeking any right or remedy under this Agreement if it determines in its sole discretion that the Developer (or its Transferee) has failed to make such a showing. Except with respect to the requirements of Section 4.3 of this Agreement (Terms and Conditions for Development of Minimum Project), no Event of Default or finding of noncompliance under Article VI with respect to a Development Parcel shall affect the rights, duties and obligations of Developer, or its Transferees, under this Agreement with respect to Development Parcels not affected

by such Event of Default or finding of noncompliance under Article VI, and all such rights, duties and obligations shall continue in full force and effect in accordance with their terms.

10.6. Allocation of Rights, Duties and Obligations of Developer. The provisions of this Section 10.6 are intended to provide City with a designated Person to represent Developer in accordance with the provisions of this Section 10.6, and nothing in this Section 10.6 shall limit City's rights and remedies with respect to any Developer, Affiliate of Developer or a Transferee, as applicable, under this Agreement, nor limit the performance by Developer of any of its obligations under this Agreement. Unless and until JLSP Transfers all of its rights, duties and obligations under this Agreement (including as a result of effectuating Development Parcel Transfers), JLSP shall have the sole and exclusive power to exercise all of the rights and remedies of Developer under this Agreement, and shall have the sole and exclusive responsibility to perform all of Developer's duties and obligations under this Agreement. From and after the date JLSP Transfers all of its rights, duties and obligations under this Agreement, then the Persons holding at least 51% of the legal and equitable interests as Lessees in the Development Parcels shall designate by written notice to City one of such Persons to act on behalf of Developer in the place and stead of JLSP pursuant this Section 10.6. On behalf of itself and its successors and assigns, CEP-JLS hereby consents to the



foregoing grant of authority to JLSP and such successor Person, and for itself and its successors and assigns hereby assigns to JLSP and such successor Person the foregoing rights and obligations. CEP-JLS, on behalf of itself and its successor and assigns, hereby constitutes and appoints JLSP and such successor Person as the true and lawful attorney-in-fact of CEP-JLS, and such successors and assigns, to exercise all rights and remedies of Developer under this Agreement and to perform all duties and obligations of Developer under this Agreement in accordance with the provisions of this Section 10.6. The power-of-attorney granted hereunder is irrevocable and continuing, shall survive the insolvency or dissolution of CEP-JLS, or any successors or assigns of CEP-JLS, and any Transfer, until Termination of this Agreement. Any document or instrument executed by JLSP or such successor Person pursuant to the foregoing grant of power-of-attorney shall be binding and enforceable on all Persons then comprising Developer.

## ARTICLE XI

### AMENDMENT AND TERMINATION

11.1. Amendment or Cancellation. Except as expressly provided in this Agreement, this Agreement may be Terminated, modified or amended only by the consent of the Parties made in writing, and then only in the manner provided for in Section 65868 of the Development Agreement Legislation. Neither this Agreement nor any term, covenant, condition or

**Attachment B:**  
**Ellis Partners LLC letter dated June 10, 2011**

# ELLIS PARTNERS LLC

June 10, 2011

VIA EMAIL AND FEDERAL EXPRESS

Ms. Heather Lee  
Supervising Deputy City Attorney  
Land Use/Development  
Office of the City Attorney  
City of Oakland  
1 Frank Ogawa Plaza, 6th Floor  
Oakland, CA 94612

Re: Jack London Square

Dear Heather:

The purpose of this letter is to request consent by the City of Oakland of a Non-Affiliate Transfer of Site C relating to the Development Agreement between the City of Oakland ("City"), Jack London Square Partners, LLC ("JLSP"), and CEP-JLS I LLC ("CEP I") dated July 6, 2004, ("Development Agreement"). Capitalized terms used in this letter shall have the meaning given such terms in the Development Agreement unless otherwise defined herein.

As you are aware, the Development Agreement, as it relates to the following parcels, was transferred on December 17, 2010 to Jack London Square Ventures LLC.

66 Franklin  
70 Washington Street  
Water Street I  
Pavilion I (98 Broadway)  
Site C (10 Clay)  
Site F-1  
Site G  
Site Pavilion 2

As you also are aware, the Development Agreement, related to Sites D and F2, was transferred on May 10, 2011 to JLSV Land LLC. Site F3 remains under the control of CEP-JLS II LLC, per the Affiliate Transfer on May 1, 2005.

This letter is requesting consent of the transfer of Site C (10 Clay Street) to a Non-Affiliate, 10 Clay Street LLC. 10 Clay Street LLC is an entity that is wholly owned and controlled by T. Gary and Kathleen Rogers. The Rogers Family Office is the primary tenant of 10 Clay Street, and has occupied the building since February 2008. T. Gary Rogers is the former CEO of Dreyer's and the Rogers family has been an important donor and supporter of many key Oakland institutions for several decades. The Rogers family is firmly committed to the growth and success of City of Oakland and strongly supports the full execution of the Jack London Square Development.

111 SUTTER STREET, SUITE 800 • SAN FRANCISCO, CA 94104

TEL: 415-391-9800 FAX: 415-391-4711

[www.ellispartners.com](http://www.ellispartners.com)

Qualifications of Transferee. As noted in Section 10.2.3 of the Development Agreement, the proposed Transferee must provide sufficient evidence that the Transferee "... has the financial capacity and

business reputation to fulfill the obligations to be assumed by Transferee...and the ability and intent to implement a concept that is consistent with the Estuary Policy Plan objectives...".

Documentation of Qualifications. The following documents are enclosed with this letter to document the qualifications of the Transferee:

- Curriculum Vitae of T. Gary Rogers
- Summary of Business Experience of T. Gary Rogers
- 10 Clay Street LLC Proforma Balance Sheet & Bank Statement
- Letter from Northern Trust Bank

As it pertains to daily use, operations, and maintenance of the property, Transferee intends to contract with the same vendors currently responsible for these activities on the property. If at any point changes are made in the selection of vendors, the Transferee commits to selecting alternate vendors of at least the same quality and expertise at the current vendors. The Transferee is firmly committed to maintain the property in a manner that is consistent with the goals of the Development Agreement.

In terms of leasing of the remaining vacancy at the property, the Transferee has contracted with Ellis Partners LLC, the firm that has been managing Jack London Square and its redevelopment for over a decade. If at any point changes are made in the selection of leasing representative, the Transferee commits to selecting a representative of at least the same quality and expertise as Ellis Partners LLC. The Transferee is wholly committed to leasing the property in a manner that is consistent with the goals of the Development Agreement and the leasing objectives of the Jack London Square Development.

The Transferee is committed to full compliance with the following sections of the Development Agreement:

Section 4.5: Small Local Business, Prevailing Wage and Living Wage Requirements  
Section 4.7 Local Hiring Provisions

Conditions Precedent to Developer Right to Transfer. Pursuant to Section 10.2.1 of the Development Agreement, enclosed is the letter from the City of Oakland, dated September 17, 2010 demonstrating the Developer's compliance with the Development Agreement.

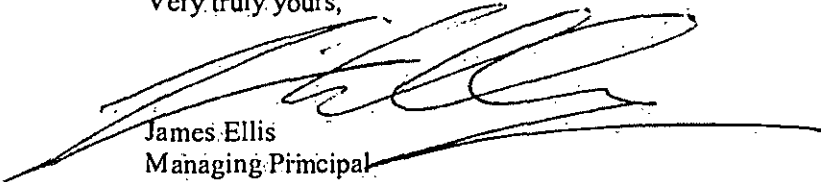
Assignment and Assumption Agreement. As outlined in Section 10.2.2 of the Development Agreement, enclosed is a draft Assignment and Assumption Agreement that is intended to be executed to effect this Transfer. Please review this document and provide any comments that may be applicable.

The Port of Oakland is expected to approve this transfer at the Board of Port Commissioners meeting on July 7, 2011. A staff report for this meeting will be provided when it is available. All parties are eager to complete this transaction in the shortest possible timeframe. We appreciate your assistance in this effort.

Ms. Heather Lee  
June 10, 2011  
Page 3

We trust that the foregoing and the enclosed documents satisfy the requirements of Section 10.2 and 10.3 with the Development Agreement related to a Non-Affiliate Transfer. If you require additional information or have questions on the attached, please call Dean Rubinson at 415-373-7706.

Very truly yours,



James Ellis  
Managing Principal

JFE:djr

cc: Mr. Walter Cohen (via email)  
Mr. Eric Angstadt (via email)  
Ms. Catherine Payne (via email and originals via Federal Express)  
Mr. Matthew Semansky, Rogers Family Office (via email)  
Mr. James Falaschi (via email)

## CURRICULUM VITAE - T. GARY ROGERS

T. Gary Rogers  
6301 Bullard Drive  
Oakland, CA 94611

Married to Kathleen Tuck Rogers  
Four Sons  
Seven Grandchildren

### CURRENT DIRECTORSHIPS:

- Safeway, Inc. – food and drug retailer
- Shorenstein Company, L.P. – owner and operator of office properties nationwide
- Stanislaus Food Products – leading processor and marketer of fresh packed tomato products nationally
- U.S. Rowing High Performance Committee of the U.S. Olympic Committee
- University of California San Francisco Medical Center Executive Council
- Chairman of Oakland Chief Executive Officer's Council – public policy organization concerned with East Bay issues (Chairman)
- Chairman of Oakland Dialogue – discussion group for East Bay leaders (Founder and Chairman)
- Friends of California Crew

### RECENT PUBLIC SERVICE:

- Entrepreneur in Residence at the Harvard Business School
- Member of the Board of Dean's Advisors of the Harvard Business School
- Member of Chancellor's Executive Advisory Council of the University of California, Berkeley
- Chairman and member of the Executive Committee of the Bay Area Council
- Sponsor of Rogers Family Foundation – major supporter of the University of California, education and activities for youth in Oakland and the East Bay, Bay Area Hospitals, and medical research and innovation
- Chairman of fundraising committee for Oakland Public Schools Redesign (Expect Success!)
- Primary benefactor of Lighthouse Charter School – a K-12 charter school serving Oakland youth
- Chairman of Oakland Partnership – a public-private collaborative economic development program
- Primary benefactor of University of California Cal Crew Forever Endowment Fund, the new T. Gary Rogers Rowing Center, and the California Rowing Club for elite post-graduate oarsmen

### RECENT HONORS AND AWARDS:

- Member of the Bay Area Business Hall of Fame
- Harvard Business School Business Leader of the Year
- Wharton Business School Joseph Wharton Award
- Dairy Industry Executive of the Year
- Honorary Doctor of Humane Letters Degree from Holy Names University
- Washington State University Executive in Residence
- University of California Bear of the Year Award
- Oakland Chamber of Commerce Business Person of the Year
- Marcus Foster Institute Community Partner of the Year
- Junior Achievement Spirit of Achievement Award
- Distinguished Eagle Scout Award
- Good Scout Award from New York Boy Scout Council

## **BUSINESS EXPERIENCE:**

### **Dreyer's Grand Ice Cream, Inc. (1977 – 2007)**

Chairman of the Board and Chief Executive Officer of Dreyer's Grand Ice Cream, Inc. - manufacturer and marketer of a broad range of ice cream products. Built Dreyer's into the largest ice cream company in the United States and sold it to Nestlé in 2005.

### **Vintage Management Company (1972 - 1977)**

Founder and president of a restaurant company operating "Vintage House Restaurants" in California and Texas.

### **McKinsey & Co. (1968 - 1972)**

Associate in San Francisco office of international management consulting firm. Specialized in corporate development and financial issues and worked primarily with clients in the forest products, oil and banking industries.

## **PRIOR DIRECTORSHIPS:**

- Chairman of the Board of the Federal Reserve Bank of San Francisco
- Chairman of the Board of Levi Strauss & Co. – manufacturer and marketer of branded jeans and casual sportswear.
- Foster Farms – nation's largest fresh poultry company
- Wine Group – marketer of Franzia, nation's best-selling wine brand
- GardenAmerica – garden implement and chemical company; took public and later sold to Black and Decker
- Il Fornaio – Italian restaurant and bakery company; took public and later sold to a private equity company
- Marathon Meat – leading supplier of hot dogs, hamburger patties, and processed meat in New York City; sold to private buyer
- University of California San Francisco Foundation
- Alta Bates Hospital

## **EDUCATION:**

### **MBA - Harvard Business School (1968)**

Graduated as a George F. Baker Scholar (fifth in class of 730)

### **BS - University of California at Berkeley (1963)**

Graduated in top 20 percent of class with a degree in Mechanical Engineering. Awarded several leadership and academic honors and scholarships. Named All University Athlete in 1963. Rowed in U.S. Olympic Trials in 1964.

### **MILITARY SERVICE (1964 - 1966):**

Two-year tour of active duty as Lieutenant in Air Defense Artillery, U.S. Army

### **Business Experience of Assignee and its Principals**

10 Clay Street LLC is a newly formed entity established for the purpose of acquiring and operating the building at Site C, also known as 10 Clay Street. The entity is wholly owned by T. Gary and Kathleen Rogers who will be owner occupants of 10 Clay Street, as their family office and foundations are located there.

T. Gary Rogers has an extensive and successful business career, as detailed in the attached Curriculum Vitae. In particular, Mr. Rogers is a long time resident and leader in the Oakland business community. Most prominently, Mr. Rogers purchased Dreyers Grand Ice Cream in Oakland in 1977 and grew it to be the largest ice cream company in the country. He has served as the founder and chairman of the Oakland Dialogue for 12 years. Mr. Rogers has a long track record of success across many businesses.

More recently, through his family office, Mr. Rogers has become an active and direct investor in real estate. Mr. Rogers serves on the advisory board of the Shorenstein Company in San Francisco and is an investor in Shorenstein funds. He has been an investor with Hal Ellis, and Ellis Partners, since the early 1990's. Mr. Rogers, and his family, own and operate over 450 residential rental units in Portland, Oregon, where he maintains greater than 98% occupancy and low turnover. Mr. Rogers and his family office team believe that a well maintained and well managed property leads to satisfied tenants, higher rents, and profitable operations.



**10 Clay St. LLC**  
**Pro Forma Balance Sheet**  
As of July 31, 2011

	<u>July 31, 11</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
FRB Checking x3290	725,000.00
<b>Total Checking/Savings</b>	<u>725,000.00</u>
<b>Other Current Assets</b>	
Ground Lease Security Deposits	25,000.00
<b>Total Other Current Assets</b>	<u>25,000.00</u>
<b>Total Current Assets</b>	750,000.00
<b>Fixed Assets</b>	
Building	4,600,000.00
<b>Total Fixed Assets</b>	4,600,000.00
<b>TOTAL ASSETS</b>	<u><u>5,350,000.00</u></u>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Equity</b>	
Members Contributions	5,350,000.00
<b>Total Equity</b>	<u>5,350,000.00</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>5,350,000.00</u></u>

# ACCOUNT STATEMENT



**FIRST REPUBLIC BANK**  
It's a privilege to serve you®

2100 095

ID CLAY STREET LLC  
ATTN MATTHEW SEMAHSKY  
ID CLAY STREET STE 20D  
OAKLAND, CA 94607

800-0079-3290

PAGE 1 OF 1  
STATEMENT PERIOD  
FROM 05/10/11  
THRU 05/31/11

ENCLOSURES 2

----- BUSINESS ANALYZED CHECKING -----

ACCOUNT NBR DD	800-0079-3290	BEGINNING BALANCE	\$ .00
AVG BALANCE	\$376,479.99	DEPOSITS/CREDITS	\$5,400,000.00
MINIMUM BAL	\$137,152.23	INTEREST PAID	\$ .00
		CHECKS/DEBITS	\$266,047.77-
		SERVICE CHARGES	\$ .00
		ENDING BALANCE	\$5,133,952.23
		# DEPOSITS/CREDITS	3
		# CHECKS/DEBITS	4

CHECK REGISTER

CHECK#	DATE	AMOUNT	CHECK#	DATE	AMOUNT
1001	05/31	3,200.00	1002	05/27	12,847.77

\* INDICATES NON-CONSECUTIVE CHECK NUMBER(S)

DEPOSITS AND CREDITS

DATE	DESCRIPTION	AMOUNT
05/10	DEPOSIT-WIRED FUNDS ROGERS REVOCABLE TRUST P	200,000.00
05/25	DEPOSIT-WIRED FUNDS ROGERS REVOCABLE TRUST P	200,000.00
05/31	DEPOSIT-WIRED FUNDS ROGERS REVOCABLE TRUST P	5,000,000.00
TOTAL	ITEMS 3	\$5,400,000.00

WITHDRAWALS AND DEBITS

DATE	DESCRIPTION	AMOUNT
05/11	DOMESTIC WIRE FUNDS-DEBIT FIRST AMERICAN TITLE INSURANCE CO	50,000.00-
05/25	DOMESTIC WIRE FUNDS-DEBIT FIRST AMERICAN TITLE INSURANCE CO	200,000.00-
TOTAL	ITEMS 2	\$250,000.00-

111 PINE STREET, SAN FRANCISCO, CALIFORNIA 94111, TEL (415) 392-1400 OR 1-800-392-1400

24 HOUR AUTOMATED BANKING SYSTEM 1-800-392-1407  
www.firstrepublic.com • MEMBER FDIC

The Wealth Management Group  
50 South LaSalle Street  
Chicago, Illinois 60603  
(312) 444-3274



**Northern Trust**

CONFIDENTIAL

May 26, 2011

To Whom It May Concern:

Mr. and Mrs. Rogers have been clients of the Northern Trust Company for over 6 years. They have accounts in their name at Northern Trust with net assets in excess of \$15 million.

Sincerely,

Jennifer Diacup

Second Vice President

The Northern Trust Company

Chicago, IL

312-444-4072



# CITY OF OAKLAND

Community and Economic Development Agency, Planning & Zoning Services Division  
250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, 94612-2032

September 17, 2010

Dean J. Rubinson, Development Manager  
111 Sutter Street, Suite 800  
San Francisco, CA 94104

**RE: Jack London District Development Agreement N0. 2005380062 (related to case file ER030004)**

Dear Mr. Rubinson:

The purpose of this letter is to notify you that the City of Oakland has found the Jack London Square Development Project to be in compliance with the Jack London Square Development Project Development Agreement (DA) through July 2010.

If you have any questions or need further assistance, please contact the case planner, Catherine Payne, at (510) 238-6168 or at [cpayne@oaklandnet.com](mailto:cpayne@oaklandnet.com).

Very Truly Yours,

ERIC ANGSTADT, Deputy Director  
Planning and Zoning

cc: Scott Miller, CEDA; Ray Derania, CEDA; Bill Quesada, Inspection Services;  
Catherine Payne, CEDA; Don Smith, CEDA; Heather Lee, CAO

WHEN RECORDED MAIL TO:

Stein & Lubin LLP  
600 Montgomery Street, 14<sup>th</sup> Floor  
San Francisco, California 94111  
Attention: Richard Caine, Esq.

---

(Space above this line is for recorder's use)

ASSIGNMENT AND ASSUMPTION AGREEMENT

(Development Agreement)  
(JLSV to 10 Clay Street LLC)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2011 ("Effective Date"), by and between Jack London Square Ventures LLC, a Delaware limited liability company ("Assignor"), and 10 Clay Street LLC, a California limited liability company ("Assignee"). Capitalized terms not defined in this Agreement are defined in the Development Agreement (as defined below), unless otherwise indicated herein.

RECITALS

A. The City of Oakland ("City"), CEP-JLS II LLC, a Delaware limited liability company and Assignor, via assignment, are parties to that certain Development Agreement dated July 6, 2004, and recorded in the Official Records of Alameda County on September 2, 2005, as Instrument No. 20055380062 ("Development Agreement"), with respect to certain land located in the Jack London Square area of the City of Oakland, as more particularly described in the Development Agreement.

B. The property subject to the Development Agreement includes that parcel of land commonly referred to as "Parcel C," as more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

C. Concurrent herewith, Assignor is assigning all of its right, title and interest in and to the Parcel C to Assignee.

D. Assignor has agreed to assign its rights under the Development Agreement with respect to Parcel C to Assignee and Assignee has agreed to accept such assignment and to assume Assignor's obligations under the Development Agreement, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and adequacy of which are hereby mutually acknowledged, the parties agree as follows.

## AGREEMENT

### 1. Assignment and Assumption of Development Agreement

1.1 Assignment. Assignor hereby assigns and transfers to Assignee as of the Effective Date all of Assignor's rights, privileges, obligations, title and interest in and to the Development Agreement relating to Parcel C and associated project approvals, including the Planned Unit Development and Environmental Impact Reports, which Development Agreement shall continue in full force and effect.

1.2 Assumption. Assignee hereby accepts the foregoing assignment and hereby assumes and agrees to perform all of the obligations of Assignor under the Development Agreement and other Project Approvals (as defined in the Development Agreement) as they relate to Parcel C. Assignee agrees to be bound by all of the terms, provisions and conditions of the Development Agreement relating to Parcel C and associated project approvals, including the Planned Unit Development and Environmental Impact Reports and agrees to assume all of the obligations and liabilities of Assignor under the Development Agreement, whether arising before or after the Effective Date, relating to Parcel C. Assignee also hereby agrees to be bound by the terms of all City Approvals (as defined in the Development Agreement) applicable to Parcel C.

1.3 Acknowledgement. Assignee hereby acknowledges that it has received and reviewed a copy of the Development Agreement and the City Approvals.

1.4 Address of Assignee. Assignee's address is:

10 Clay Street LLC  
10 Clay Street, Suite 200  
Oakland, California 94607  
Attn: Matthew Semansky  
Telephone No.: 510-899-7919  
Facsimile No.: 510-899-7915  
Email: msemansky@rogersoffice.com

1.5 Indemnities. Assignee agrees to indemnify, defend and hold Assignor harmless from and against any costs, (including, without limitation, reasonable attorneys' fees and costs) claims, damages or causes of action arising out of or resulting from the failure of Assignee to comply with or perform the covenants, agreements, duties and obligations of the Assignee under the Development Agreement as they relate to Parcel C from and after the Effective Date. Assignor agrees to indemnify, defend and hold Assignee harmless from and against any costs, (including, without limitation, reasonable attorneys' fee and costs) claims, damages or causes of action arising out of or resulting from the failure of Assignor to comply with or perform the covenants, agreements, duties and obligations of the Assignor under the Development Agreement as they relate to Parcel C prior to the Effective Date.

1.6 This assignment is made by Assignor "as-is" without warranties, express or implied, except for the representations and warranties set forth in this Agreement, or in any

purchase and sale agreement between Assignor and Assignee relating to the assignment of the ground leases for the Property.

1.7 For purposes of this Agreement, the foregoing assignment and assumption shall be effective as of the date of this Agreement ("Effective Date").

## 2. Representations.

2.1 Status. Assignee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California and is in good standing therein. Assignor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and authorized to do business in the State of California and is in good standing therein.

2.2 Authority. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of each of the parties hereto. Assignor and Assignee each represent and warrant that the person signing this Agreement on behalf of such party has full power and authority to sign this Agreement on such party's behalf

## 3. Miscellaneous.

3.1 Further Assurances. Each party hereby covenants that such party will, at any time, and from time to time, upon written request therefor, execute and deliver to the other parties such documents as the requesting party may reasonably request in order to fully satisfy and execute this Agreement.

3.2 Governing Law. This Agreement shall be governed by and construed in accordance with California law, without regard to conflict of law principles.

3.3 Counterparts. This Agreement may be signed in multiple counterparts which, when duly delivered and taken together, shall constitute a binding agreement between all parties.

*(signatures on following pages)*

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

**ASSIGNOR:** JACK LONDON SQUARE VENTURES LLC,  
a Delaware limited liability company

By: Ellis Partners LLC, a California  
limited liability company  
Its Administrative Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Managing Member

**ASSIGNEE:** 10 CLAY STREET LLC,  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**Exhibit A to Assignment and Assumption Agreement  
(Development Agreement)**

**Legal Description**

The land referred to herein is situated in the City of Oakland, County of Alameda, State of California, and is described as follows:

**Parcel C (10 Clay):**

**PARCEL ONE:**

A PORTION OF THE LANDS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED FEBRUARY 10, 1912, IN BOOK 2016 OF DEEDS AT PAGE 200, ALAMEDA COUNTY RECORDS;

AND A PORTION OF THE PARCEL OF LAND DESCRIBED IN THE DEED RECORDED AUGUST 18, 1941, IN BOOK 4082 OF OFFICIAL RECORDS AT PAGE 419, ALAMEDA COUNTY RECORDS;

ALL OF WHICH ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A PORT OF OAKLAND MONUMENT H016, A BRASS DISK MONUMENT IN A CAST IRON WELL LOCATED AT THE INTERSECTION OF EMBARCADERO (FORMERLY FIRST STREET) AND WEBSTER STREET, AS SHOWN ON RECORD OF SURVEY NO. 990, FILED JULY 19, 1994 IN BOOK 18 OF RECORDS OF SURVEY AT PAGES 50 THROUGH 60, OFFICIAL RECORDS OF ALAMEDA COUNTY;

THENCE NORTH 62° 35'34" WEST 808.85 FEET TO A CITY OF OAKLAND PIN MONUMENT IN A CAST IRON WELL LOCATED IN THE INTERSECTION OF EMBARCADERO AND BROADWAY;

THENCE SOUTH 79° 25'35" WEST 494.17 FEET TO A POINT ON THE NORTHWEST LINE OF WASHINGTON STREET, VACATED BY CITY OF OAKLAND ORDINANCE NO. 10936 C.M.S., RECORDED MARCH 30, 1988 IN THE OFFICIAL RECORDS OF ALAMEDA COUNTY AS DOCUMENT NO. 88-077009, SAID POINT BEING 248.09 FEET DISTANT SOUTHWESTERLY FROM THE SOUTHWEST LINE OF EMBARCADERO, 99 FEET WIDE, AS MEASURED ALONG SAID NORTHWEST LINE OF WASHINGTON STREET, AND BEING THE POINT OF BEGINNING;

THENCE ALONG SAID NORTHWEST LINE OF WASHINGTON STREET VACATED BY SAID ORDINANCE NO. 10936, AND ALONG THE NORTHWEST LINE OF WASHINGTON STREET VACATED BY CITY OF OAKLAND ORDINANCE NO. 6631 C.M.S., RECORDED AUGUST 17, 1982 IN THE OFFICIAL RECORDS OF ALAMEDA COUNTY ON REEL 657 AT IMAGE 902, SOUTH 27° 24'37" WEST, 167.18 FEET TO A POINT ON THE APPROXIMATE TOP OF BANK OF THE OAKLAND INNER HARBOR;

THENCE ALONG SAID APPROXIMATE TOP OF BANK THE FOLLOWING THREE COURSES:

1) NORTH 62° 46'22" WEST, 79.92 FEET;

2) NORTH 62° 54'09" WEST, 102.48 FEET;

3) NORTH 61° 24'58" WEST, 97.74 FEET TO A POINT ON A LINE PARALLEL WITH AND 20.00 FEET DISTANT SOUTHEASTERLY FROM THE SOUTHEAST LINE OF CLAY STREET VACATED BY CITY OF OAKLAND ORDINANCE NO. 10173 C.M.S., RECORDED MAY 18, 1982 IN THE OFFICIAL RECORDS OF ALAMEDA COUNTY AS DOCUMENT NO. 82-073044;

THENCE ALONG SAID PARALLEL LINE NORTH 27° 24'37" EAST, 195.73 FEET;

THENCE SOUTH 62° 35'23" EAST, 250.37 FEET;

THENCE SOUTH 17° 35'23" EAST, 42.06 FEET THE POINT OF BEGINNING.

BEARINGS AND DISTANCES CALLED FOR IN THIS DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 3, NORTH AMERICAN DATUM OF 1983 (NAD83), 1984 ADJUSTMENT, PUBLISHED IN 1986, AS SHOWN ON SAID RECORD OF SURVEY NO. 990 (18 R/S 50). ALL DISTANCES IN THIS DESCRIPTION ARE GRID DISTANCES. MULTIPLY GRID DISTANCES BY 1.0000705 TO OBTAIN GROUND DISTANCES.

PARCEL TWO:

THE RIGHTS TITLE AND INTEREST IF ANY CONTAINED IN THAT CERTAIN DOCUMENT ENTITLED OPERATING AGREEMENT BETWEEN THE CITY OF OAKLAND, A MUNICIPAL CORPORATION ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS AND CEP-JLS I LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED MARCH 29, 2002 AS INSTRUMENT NO. 2002141789, AND AMENDED BY DOCUMENT RECORDED MAY 3, 2007 AS INSTRUMENT NO. 2007172754 OFFICIAL RECORDS, ALAMEDA COUNTY.  
APN: 0000-0410-001-005 (Portion)

**Attachment C:  
Planning Code Chapter 17.138 Development Agreement  
Procedure**

## Chapter 17.138

DEVELOPMENT AGREEMENT  
PROCEDURE

## Sections:

- 17.138.010 Title, purposes, and applicability.
- 17.138.020 Application.
- 17.138.030 Planning Commission action.
- 17.138.040 Council action.
- 17.138.050 Criterion.
- 17.138.060 Factors for consideration.
- 17.138.070 Recordation.
- 17.138.080 Adherence to development agreement, and amendment or cancellation by mutual consent.
- 17.138.090 Periodic review and revocation.
- 17.138.100 Development agreement related to other special zoning approval or subdivision.

## 17.138.010 Title, purposes, and applicability.

The provisions of this chapter shall be known as the development agreement procedure. The purposes of these provisions are to prescribe the procedure for consideration of development agreements and, by encouraging appropriate projects, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development. This procedure shall apply to all proposals for development agreements as authorized by Section 17.102.310. (Prior planning code § 9350)

## 17.138.020 Application.

Application for a development agreement shall be made by a person, or the authorized agent of a person, having a legal or equitable interest in the affected property. Application shall be made on a form prescribed by the City Planning Department and shall be filed with such Department. The application shall be accompanied by the fee prescribed in the fee schedule in Chapter 17.150 and by the proposed development agreement and any suppon-

ing material which, between them, shall include the following:

A. An identification of the affected property and the proposed parties to the agreement;

B. A description of the development project, indicating the proposed kinds of uses, floor-area ratio or density, and building height and size, and such additional information as may be required to allow the applicable criterion and factors to be applied to the proposal. Such information may include, but is not limited to, site and building plans, elevations, relationships to adjacent properties, and operational data. Where appropriate the description may distinguish between elements of the project which are proposed to be fixed under the agreement and those which may vary;

C. An identification of any subsisting planned urban development permit or other special zoning approval which has already been obtained for the development project;

D. The special conditions, if any, to be imposed pursuant to Section 17.102.310;

E. The proposed duration of the agreement and timing of the development project;

F. A program for periodic review under Section 17.138.090. (Prior planning code § 9351).

## 17.138.030 Planning Commission action.

An application for a development agreement shall be considered by the City Planning Commission which shall hold a public hearing on the application. Notice of the hearing shall be given by posting notices thereof within three hundred (300) feet of the property involved in the application; a substantially enlarged notice shall also be posted on the premises of the subject property. Notice of the hearing shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property within three hundred (300) feet of the property involved. All such notices shall be given not less than ten days prior to the date set for the hearing. If, however, the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement these procedures. The

Commission shall determine whether the proposal conforms to the criterion set forth in Section 17.138.050, and may recommend approval or disapproval of the application, or recommend its approval subject to changes in the development agreement or conditions of approval, giving consideration to the factors set forth in Section 17.138.060. Should a decision not be rendered within sixty (60) days after the filing, the application shall be deemed approved except when, pursuant to the California Environmental Quality Act, an environmental document is required prior to decision, in which case should a decision not be rendered within sixty (60) days after final action on the environmental document, the application shall be deemed approved. In any case, however, the date by which a decision must be rendered may be extended by agreement between the Director of City Planning or the City Planning Commission and the applicant. The Commission shall, within ten days of its decision, forward its recommendations to the City Council. (Prior planning code § 9352)

#### 17.138.040 Council action.

After a recommendation has been rendered by the Commission, the City Council shall set the date for consideration of the matter. After setting the hearing date, the Council, prior to hearing the appeal, may refer the matter back to the Planning Commission for further consideration and advice. Appeals referred to the Planning Commission shall be considered by the Commission at its next available meeting. Any such referral shall be only for the purpose of issue clarification and advice. In all cases, the City Council shall retain jurisdiction and, after receiving the advice of the Planning Commission, shall hold a hearing on and decide the appeal.

The City Clerk shall notify the Secretary of the City Planning Commission of the date set for consideration thereof; and said Secretary shall give notice of the hearing by mail or delivery to the applicant, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than ten days prior to the date set for the

hearing. The Council shall review the recommendation of the Commission and shall determine whether the proposal conforms to the criterion set forth in Section 17.138.050, and may approve or disapprove the proposed development agreement, or approve it subject to changes therein or conditions of approval, giving consideration to the factors set forth in Section 17.138.060. If the Council approves the development agreement or approves it subject to changes or conditions, it shall do so by ordinance and the agreement shall be effective upon the effective date of the ordinance. In any case, the decision of the Council shall be final. (Prior planning code § 9353)

#### 17.138.050 Criterion.

A development agreement may be approved only if it is found that the proposal is consistent with the Oakland Comprehensive Plan and with any applicable district plan or development control map which has been adopted by the City Council, as said plans or map currently exist. (Prior planning code § 9354)

#### 17.138.060 Factors for consideration.

In reviewing an application for a development agreement, the City Planning Commission and the City Council shall give consideration to the status and adequacy of pertinent plans; any uncertainty or issues about the affected area which may suggest the retention of flexibility; the traffic, parking, public service, visual, and other impacts of the proposed development project upon abutting properties and the surrounding area; the provisions included, if any, for reservation, dedication, or improvement of land for public purposes or accessible to the public; the type and magnitude of the project's economic benefits to Oakland, and of its contribution if any toward a meeting of housing needs; and to any other comparable, relevant factor. (Prior planning code § 9355)

#### 17.138.070 Recordation.

Within ten days after the effective date of the development agreement, the City Clerk shall record with the County Recorder a copy of the agreement. If the agreement is amended, canceled, or revoked

pmsuant to Section 17.138.080 or 17.138.090, the City Clerk shall record notice of such action with the recorder. (Prior planning code § 9356)

**17.138.080 Adherence to development agreement, and amendment or cancellation by mutual consent.**

A subsisting development agreement shall be enforceable by any party thereto. The interests of the applicant may not be transferred or assigned to a new person without the written consent of the city. In any case, the burdens of such agreement shall also bind, and its benefits shall also inure to, all successors in interest. A development agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. Such amendments and cancellations shall be processed in the same manner as an original application and shall be subject to the same procedural requirements. (Prior planning code § 9357)

**17.138.090 Periodic review and revocation.**

A. Periodic Review. Each development agreement shall be reviewed at least once every twelve (12) months, and the review period shall be specified in the agreement. Application for periodic review shall be made on a form prescribed by the City Planning Department and shall be filed with such department. The application shall be accompanied by the fee prescribed in the fee schedule in Chapter 17.150. Failure to file for such review within the time limits specified in the agreement shall render the agreement null and void. The applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the agreement. If the Director of City Planning finds that such compliance has been deficient, he or she shall forward this finding and his or her recommendation to the City Council, for consideration in accordance with subsection B of this section.

B. Revocation. At any time the Council may, at a public hearing, consider whether there are grounds for revocation of any development agreement. Notice of the hearing shall be given by posting notices

thereof within three hundred (300) feet of the property involved. Notice of the hearing shall also be given by mail or delivery to the holder of the development agreement, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than ten days prior to the date set for the hearing. At the hearing, the applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the agreement. If as a result of such review, the Council finds and determines, on the basis of substantial evidence, that the applicant or successor thereto has not complied in good faith with the terms or conditions of the agreement, the Council may revoke or modify the agreement in whole or in part. (Ord. 12237 § 4 (part), 2000: prior planning code § 9358)

**17.138.100 Development agreement related to other special zoning approval or subdivision.**

Whenever a development agreement is proposed for a project which requires additional planned unit development or other special zoning approval, or subdivision approval, the application for the development agreement may be substituted with the application for said approval, but shall nonetheless be subject to all the separate procedure, and criterion and factors, pertaining to review of development agreements. (Prior planning code § 9359)

*Hee*  
City Attorney

**OAKLAND CITY COUNCIL**

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

Introduced by Councilmember \_\_\_\_\_

**RESOLUTION CONSENTING TO A NON-AFFILIATE TRANSFER OF SITE C (LOCATED AT 10 CLAY STREET) RELATING TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND, JACK LONDON SQUARE PARTNERS LLC, AND CEP-JLS I LLC, DATED JULY 6, 2004 (DA) TO 10 CLAY STREET LLC PURSUANT TO THE DEVELOPMENT AGREEMENT AND PLANNING CODE SECTION 17.138.080 (DEVELOPMENT AGREEMENT PROCEDURE)**

**WHEREAS,** the City of Oakland Planning Commission certified the Jack London Square Redevelopment Environmental Impact Report (EIR) on March 17, 2004; and

**WHEREAS,** the City of Oakland Planning Commission, on March 17, 2004, recommended approval of the Jack London District Preliminary Development Plan; Final Development Plans for Sites C, D, Pavilion 2, 66 Franklin, F1, F2, F3 and G; Major Variance for Fast Food Restaurant Commercial Activities; Major Conditional Use Permit for the hotel use on Site F-3, the two pedestrian bridges and a reduction in parking due to the shared parking provisions; Development Agreement; and Re-zoning for the Project on Site G (M-20 to C-45) and Sites F-2 and F-3 (R-80 to C-45); and

**WHEREAS,** the Oakland City Council, on June 15, 2004, approved the Jack London District: Preliminary Development Plan; Final Development Plans for Sites C, D, Pavilion 2, 66 Franklin, F1, F2, F3 and G; Major Variance for Fast Food Restaurant Commercial Activities; and Major Conditional Use Permit for the hotel use on Site F-3, the two pedestrian bridges and a reduction in parking due to the shared parking provisions; and

**WHEREAS,** the Oakland City Council, on July 6, 2004, adopted the "Development Agreement Between the City of Oakland, Jack London Square Partners LLC, and CEP-JLS I LLC (the developer)" (DA) (Ordinance No. 12613 CMS) and Re-zoned the Project on Site G (M-20 to C-45) and Sites F-2 and F-3 (R-80 to C-45) (Ordinance No. 12612 CMS);; and

**WHEREAS,** the DA and Planning Code require City Council consent to Non-Affiliate transfers of interest, as defined in the DA; and

**WHEREAS,** Ellis Partners, on behalf of the developer, submitted a letter to the City of Oakland on June 10, 2011, requesting consent to a Non-Affiliate transfer of interest in Jack London District Site C; and

**WHEREAS,** under the California Environmental Quality Act (CEQA) Guidelines Section

15162, no subsequent environmental review is required unless the project has changed substantially, the circumstances under which the project would occur have changed substantially, or new information demonstrates that any potential environmental impacts would be substantially more severe than previously demonstrated; and

**WHEREAS,** In reviewing the currently proposed transfer of interests, staff has determined that none of the circumstances necessitating further environmental review under CEQA Guidelines Section 15162 are present. The reasons for this determination include, among others, the following: (1) the currently proposed transfer of interest does not affect development envelope previously reviewed in the EIR and is not a change in the project that involves any new significant effects or a substantial increase in the severity of previously identified significant effects; (2) circumstances under which the project is undertaken have not occurred that will involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) no new information has come to light that would involve new or substantially more severe effects or feasible alternatives or mitigation measures; and

**WHEREAS,** the matter came before the Community & Economic Development Committee on July 12, 2011, which recommended approval of the Project; and

**WHEREAS,** the matter came before the City Council at a duly noticed public hearing on July 19, 2011; now, therefore be it

**RESOLVED:** That the City Council, having independently heard, considered and weighed all the evidence in the record and being fully informed of the Applications and the Planning Commission's decision on the Project, hereby finds that, in accordance with CEQA Section 15162, none of the circumstances requiring preparation of a subsequent or supplemental EIR are present and consents to the transfer of interest from the Developer to the Transferee; and be it

**FURTHER RESOLVED:** That the City Council authorizes the City Administrator to provide written consent to the proposed transfer and take such other steps as may be necessary and appropriate for the transfer to be completed; and be it

**FURTHER RESOLVED:** That the decision is based, in part, on the July 12, 2011 CEDC Report and 2004 certified EIR, which are all hereby incorporated by reference as if fully set forth herein, and be it

**FURTHER RESOLVED:** That the City Council independently finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies; and be it

**FURTHER RESOLVED:** That the record before this Council relating to the Project Applications includes, without limitation, the following:

1. the Project Applications, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. all staff reports, decision letters and other documentation and information produced by or on behalf of the City, including without limitation the EIR and supporting technical



- studies, all related and/or supporting materials, and all notices relating to the Project Applications and attendant hearings;
4. all oral and written evidence received by the City staff, the Planning commission, and the city Council before and during the public hearings on the Project Applications; and
  5. all matters of common knowledge and all official enactments and acts of the city, such as (a) the General Plan; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations and Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

**FURTHER RESOLVED:** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively; (a) Community and Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> Floor, Oakland, California, and be it

**FURTHER RESOLVED:** That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
 LaTonda Simmons  
 City Clerk and Clerk of the Council  
 of the City of Oakland, California