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RECORDING REQUESTED BY:

City of Oakland

WHEN RECORDED, MAIL TO:

City of Oakland
Economic and Workforce Development Department
Public/Private Development Division
250 Frank Ogawa Plaza, 5th Floor
Oakland, California 94612
Attention: Director

**SECOND AMENDMENT
TO
T-5/T6 HOTEL AND RESIDENTIAL PROJECT
DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO T-5/T-6 HOTEL AND RESIDENTIAL PROJECT DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Second Amendment**”) is effective as of November 6, 2022 (the “**Second Amendment Effective Date**”), by and between the City of Oakland, a municipal corporation (the “**City**”), and Strada T5, LLC, a California limited liability company (“**Strada**” or “**Developer**”).

RECITALS

This Second Amendment is entered into upon the basis of the following facts, understandings and intentions of City and Developer:

A. Developer, and the City entered into that certain Disposition and Development Agreement for the T-5/T-6 Hotel and Residential Project dated as of November 6, 2015 (the “**Original DDA**”) for the development of land located in downtown Oakland, California, that is within the block bounded by Broadway, 11th Street, 12th Street and Clay Street, commonly known as T-5/T-6, as more particularly described in the Original DDA (the “**Property**”). The Original DDA, together with the 2016 Assumption, 2016 Assignment, 2018 Assignment, First Amendment (each as defined below), and letters dated September 22, 2020, January 29, 2021, August 16, 2021, and July 29, 2022, is referred to herein collectively as the “**Existing DDA**”). The Original DDA was recorded on March 12, 2018 in the Official Records of Alameda County, California (“**Official Records**”) as Instrument No. 2018050055.

B. Capitalized terms used but not otherwise defined in this Second Amendment shall have the meaning provided in the Existing DDA.

C. The Property is comprised of two lots, Lot 1 and Lot 2, referred to as “**Site A**” and “**Site B**” and the Existing DDA provides for two separate phases of development for the Property, consisting of a “**Phase 1**” on Site A, and a “**Phase 2**” for Site B. Site B is more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

D. Pursuant to that certain unrecorded Assumption of Obligations and Acknowledgement and Consent dated as of December 20, 2016 (the “**2016 Assumption**”), 1100 Clay Venture, LLC (“**1100 Clay Venture**”), a joint venture comprised of 1100 Clay Venture Holdings, LLC, and Strada, assumed all the rights and obligations of the Developer under the Original DDA with respect to development of Phase 1 on Site A.

E. In connection with the 2016 Assumption, Strada and 1100 Clay Venture entered into that certain unrecorded Assignment and Assumption Agreement dated December 20, 2016 (the “**2016 Assignment**”), pursuant to which Strada assigned to 1100 Clay Venture all of its right title and interest in the Existing DDA with respect to Phase 1 and Site A.

F. Pursuant to that certain Assignment and Assumption Agreement effective as of February 6, 2018, by and between 1100 Clay Venture and an Affiliate of Strada, 1100 Clay (Oakland) Owner, LLC (“**1100 Clay (Oakland) Owner**”, the “Developer” with respect to Phase 1 of the Project), recorded on March 12, 2018, in the Official Records as Instrument No. 2018050056 (the “**2018 Assignment**”), 1100 Clay Venture assigned to 1100 Clay (Oakland) Owner all of its right, title and interest in Phase 1 and Site A under the Existing DDA.

G. The City conveyed Site A to 1100 Clay (Oakland) Owner pursuant to that certain Grant Deed recorded on March 12, 2018, in the Official Records as Instrument No. 2018050057.

H. The Original DDA was amended by that certain unrecorded First Amendment to T-5/T-6 Hotel and Residential Project Disposition and Development Agreement dated as of February 4, 2020, by and between the City and Developer (the “**First Amendment**”).

I. Construction of the Phase 1 project on Site A was completed and the City recorded that certain Certificate of Completion (T-5/T-6 Project – Phase 1) on August 23, 2022, in the Official Records as Instrument No. 2022146810 pursuant to the Existing DDA.

J. The Original DDA contemplated development of Site B as the Hotel Project, however, the First Amendment provided that, if the City determined the Hotel Project was not feasible, Developer could propose as an alternative use, development of Site B as a higher education institution. The City subsequently determined the Hotel Project is not feasible and so notified Developer on May 20, 2020.

K. Developer elected to seek a conditional use permit and CEQA Clearance for development of Site B as a university campus for Samuel Merritt University, a California nonprofit public benefit corporation (“SMU”), for university use, which may include, without limitation, offices, classrooms, teaching labs, common spaces, parking and possible health services facilities, and related uses (collectively, the “**University Use**”) no later than the Entitlement Date.

L. On November 9, 2022, the City Council adopted Ordinance No. 13707 C.M.S., which among other things authorized the Term Sheet for this Second Amendment and the Ground Lease Term Sheet (T5-T6) (the “**Ground Lease Term Sheet**”).

M. Site B will be ground leased to SMU, rather than conveyed in fee as contemplated under the Existing DDA.

N. The City and Developer now desire to amend the Existing DDA on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions and promises set forth herein, the City and Developer agree as follows:

1. New Title of Agreement. The title of the Existing DDA, as amended hereby, shall be changed such that it is consistent with the changed deal structure from a sale to a lease of Site B, and, as of the Second Amendment Effective Date, shall be “Lease Disposition and Development Agreement (T-5/T-6)” and shall be referred to as the “**LDDA**” or “**Agreement**”.

2. Amended Section 1 (Definitions).

2.1 The following definitions are hereby added to Section 1.1:

“**Assignment and Assumption Agreement**” is defined in Section 9.4.2.2.

“**Closing Representations**” is defined in Section 9.4.2.1.

“**Commencement Date**” means the date of Closing.

“**Convey**”, “**Conveyance**”, “**Conveyed**” or “**Convey**” as used herein, whether capitalized or not, mean and include disposition by the Ground Lease of Site B, in addition to the conveyance in fee of Site A.

“**Development Manager**” means a Qualified Developer that oversees and manages the development and construction of the Phase 2 project through Completion, pursuant to a contract with SMU.

“**Financial Closing**” (“**Rent Commencement Date**” pursuant to the Ground Lease) means the date of either: (a) the close of escrow of the Project Financing if such

financing will be secured by a leasehold deed(s) of trust; or (b) written evidence of the procurement by the Developer of the Project Financing if such financing will be unsecured, which Developer shall promptly provide to the City following such procurement.

“Ground Lease” means the ground lease of Site B to be entered into by and between the City and SMU, on the terms and conditions of the LDDA and in the Ground Lease Term Sheet, and as otherwise negotiated by the parties prior to the Closing.

“Project Financing” means all financing required by the Financial Plan for Phase 2 of the Project approved by the City pursuant to Section 2.1.2 of the LDDA.

“Project Labor Agreement” is defined in Section 9.4.2.2.

“Qualified Developer” means Strada or an Affiliate of Strada as of the Second Amendment Effective Date, or another developer with (a) a demonstrated successful track record in developing at least three (3) large, complex projects of size and scope as the Phase 2 project, and (b) experience with complex projects that included identifying and securing all necessary Government Approvals and managing the construction process.

“Rent Commencement Date” (see Financial Closing definition above).

2.2 The following definitions provided in Section 1.1 are hereby deleted and replaced in their entirety:

“Bona Fide Institutional Lender/Bond Trustee” means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for one or more Persons none of which need to be Bona Fide Institutional Lender/Bond Trustees and who is not an Affiliate of Tenant: (a) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a government sponsored enterprise, a real estate investment trust, a religious, educational or charitable institution, an employees’ welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other Person or group of Persons which, at the time of a Mortgage is recorded in favor of such Person or Persons, has (or is Specially Controlled by a Person having) assets of at least Five Hundred Million Dollars (\$500,000,000) in the aggregate (or the equivalent in foreign currency), as Indexed, and in the case of any Person or group of Persons none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged in the financial services business, (b) any special account, managed fund, department, agency or Special Affiliate of any of the foregoing; (c) any person acting in a fiduciary capacity for any of the foregoing; or (d) any financial institution with trustee powers acting as a bond trustee for the California Municipal Finance Authority revenue bonds or other bond issuances to finance or refinance any portion of the Project. For purposes hereof: (i) acting in a “fiduciary capacity” shall be deemed to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document; (ii) a lender, even if not a Bona Fide Institutional Lender/Bond Trustee,

shall be deemed to be a Bona Fide Institutional Lender/Bond Trustee if promptly after such loan is consummated the note(s) or other evidence of indebtedness or the collateral securing the same are assigned to one or more persons then qualifying as a Bona Fide Institutional Lender/Bond Trustee; (iii) "Special Affiliate" means any Person directly or indirectly Specially Controlling, Specially Controlled by, or under common Special Control, through one or more other persons, with the person in question; and (iv) "Special Control" means the power to direct the affairs or management of another Person, whether by contract, operation of Law or otherwise (and Specially Controlling and Specially Controlled shall have correlative meanings).

The term, "Bona Fide Institutional Lender," is used in the LDDA, shall be replaced with the term, "Bona Fide Institutional Lender/Bond Trustee".

"**Closing**" means the date of close of escrow for the recordation of the Ground Lease or Memorandum thereof, together with the Assignment and Assumption Agreement.

"**Project**" means collectively, the Phase 1 project that was constructed on Site A and the Phase 2 project to be developed on Site B consisting of a university campus.

3. Amended Section 2 (Pre-Conveyance Requirements).

3.1 Amended Section 2 (Pre-Conveyance Requirements). The following is hereby added at the beginning of Section 2:

Notwithstanding anything to the contrary in the First Amendment including Section 1 thereof, the conditions precedent to conveyance of Site B in Section 2.1 of the Existing LDDA will apply as conditions precedent to the Ground Lease of Site B. The City and Developer have elected to proceed to Closing on or before December 22, 2022, prior to all of the conditions precedent to Closing having been satisfied and therefore the following shall apply:

A. The unsatisfied conditions precedent will be deferred.

B. The Ground Lease will include the following provisions:

i. This Ground Lease shall be effective upon the Commencement Date and Landlord shall not deliver possession of the Premises to Tenant until the occurrence of the Rent Commencement Date. Prior to the Rent Commencement Date, Landlord shall retain possession of the Premises and Tenant shall have no possessory or other rights to the Premises, except as otherwise set forth in the right of entry provided to Tenant pursuant to Section 4 of this LDDA.

ii. If the Rent Commencement Date does not occur by the Phase 2 Outside Date (as defined below), Tenant shall, at the request of Landlord, execute and record a termination of the Ground Lease, substantially in the form attached as Exhibit D to the Ground Lease (the “**Termination of Ground Lease**”).

3.2 Amended Section 2.1.4.2. (Environmentally Sustainable Project). The following sentences are hereby added to the end of Section 2.1.4.2:

Developer and its design consultants shall meet or exceed the requirements of the City’s Green Building Ordinance as it pertains to the Project. Developer shall make a good faith effort to show conformance with the applicable sections of the current draft of the City’s Energy Climate Action Plan.

3.3 Amended Section 2.1.6 (Completion Guaranty). Section 2.1.6 is hereby amended to add the following at the end:

Notwithstanding anything to the contrary in the foregoing, SMU (rather than a third party) may provide the Completion Guaranty required by this Section 2.1.6 of the LDDA, which shall guaranty completion of the Phase 2 project by the Development Manager pursuant to the LDDA, provided that (a) in addition to the Net Worth covenant in the form of the Completion Guaranty attached to the LDDA as Exhibit B, until Completion of Phase 2 of the Project SMU shall maintain liquidity of at least fifty percent (50%) of the remaining unspent Phase 2 project costs and provide reasonable documentation of such liquidity upon the City’s request, and (b) SMU will waive and agree to not assert any defense that may exist by reason of SMU’s status as the Developer under the LDDA, including any claim that the Development Manager is acting as SMU’s agent in the performance of the guaranteed obligations.

3.4 Amended Section 2.1.8 (Easements). The requirements of Section 2.1.8 of the Original DDA were satisfied, therefore Section 2.1.8 is hereby deleted in its entirety and replaced with the following:

2.1.8. Easement. Developer will grant to the City a no-build easement against the ground leasehold interest in a portion of Site B substantially as described in that certain Grant Deed between STG City Square, LLC, as grantor, and the City, as grantee, recorded on January 25, 2018 in the Official Records as Instrument No. 2018014706 as more particularly described in a

surveyed legal description provided by Developer, or its Development Manager, which will be recorded prior to Commencement of Construction of the Phase 2 project.

3.5 Section 2 Provisions No Longer Applicable. The following provisions of the Existing DDA have been satisfied and shall not be applicable to the Phase 2 project and Site B: Section 2.3. (Phase 2 Financial Feasibility Determination); Section 2.4. (Affordable Housing Trust Fund Contribution); Section 2.5. (Apprenticeship Funding); and Section 2.6. (Plaza Access and Maintenance Agreement).

4. Amended Section 3 (Disposition of Property).

4.1 Amended Section 3.1 (Purchase Price). Section 3.1.2. is hereby deleted in its entirety and replaced with the following: "3.1.2. [Intentionally Deleted]".

4.2. Amended Section 3.2 (Payment of Purchase Price). The title is hereby replaced with the following: "3.2. Good Faith Deposit; Closing." In addition, the initial phrase, "The Purchase Price shall be paid as follows:", is hereby deleted and the following amendments are hereby made to Section 3.2.1. (Good Faith Deposit) and Section 3.2.2. (Funding Due at Closing):

4.2.1 The second sentence of Section 3.2.1 is hereby deleted in its entirety and replaced with the following: "The Assignment and Assumption Agreement shall include an assignment of the Good Faith Deposit by Strada to SMU, which shall be credited against Construction Rent and/or Minimum Rent (each as defined in the Ground Lease), as applicable, first coming due after the Rent Commencement Date."

4.2.2 Section 3.2.2 is hereby deleted in its entirety and replaced with the following:

3.2.2. Funds Due at Closing: Prior to Closing for Site B, the Developer shall deliver into Escrow the Base Rent (as defined in the Ground Lease) in the amount of Ninety-Nine Dollars (\$99) in cash or other immediately available funds, which shall be paid to the City at the Closing if the Ground Lease transaction contemplated for Phase 2 is consummated.

4.3. Section 3.4 is hereby amended as follows: (a) the reference to the City's optional rights to repurchase the Property in Section 3.4.1 is deleted; (b) Section 3.4.2 is deleted in its entirety and replaced with "3.4.2. [Intentionally Deleted]"; and (c) the phrase in Section 3.4.5, "recording of the Grant Deed," is deleted and replaced with the word, "Closing".

4.4. Amended Section 3.6 (Time of Disposition; Contingencies; Escrow). Section 3.6 is hereby deleted in its entirety and replaced with the following:

3.6. Time of Disposition; Contingencies; Escrow.

3.6.1. Closing. Pursuant to Section 2 as amended hereunder, the City and Developer have elected to proceed to Closing on or before December 22, 2022, prior to all of the conditions precedent to Closing having been satisfied, which will be deferred. The City's obligation to enter into the Ground Lease is contingent on the following pre-conveyance conditions:

(a) The City and Developer have executed this Second Amendment and deposited it into an escrow established with the Title Company through which the Closing shall occur (the "**Escrow**"), together with the fully executed and notarized original First Amendment;

(b) Developer's representations and warranties contained herein or otherwise made to the City are true and correct as of the Closing;

(c) SMU and Strada have executed and deposited the Closing Representations into Escrow;

(d) SMU and Strada have executed and deposited the Assignment and Assumption Agreement into Escrow.

(e) SMU has executed the Ground Lease and delivered two (2) executed originals to the City for completion of blanks in the Ground Lease related to the Closing;

(f) SMU and the City have executed the Memorandum of Ground Lease in substantially the form attached to the Ground Lease as Exhibit G into Escrow;

(g) SMU has deposited the Base Rent and all other funds necessary for the Closing into Escrow;

(h) The City, SMU and Strada have provided supplemental escrow instructions, which may be joint escrow instructions, and

(i) Developer is not in default under this Agreement.

3.6.2. Extensions.

3.6.2.1. Developer has exercised the first Extension Term and the second Extension Term under the First Amendment with payment to the City of an extension payment of Twenty Thousand Dollars (\$20,000) for each extension, to extend the Expiration Date to November 6, 2022, and such extension is reflected in the Phase 2 Schedule attached to this Second Amendment as Exhibit C.

3.6.2.2. The LDDA shall (a) be extended for up to an additional fifteen (15) months to February 6, 2024 (the “**Phase 2 Outside Date**”), with monthly nonrefundable extension payments of Six Thousand Dollars (\$6,000), and (b) provide Developer the right, at its option, to two (2) six (6)-month administrative extensions of the Phase 2 Outside Date (which also shall extend the Phase 2 Outside Date and all outstanding milestones in the Schedule, including any deferred milestones that are conditions to the occurrence of the Phase 2 Outside Date), with nonrefundable extension payments of Forty Thousand Dollars (\$40,000) for each six (6)-month extension. The monthly extensions may be accomplished by letters, however, the sixth (6th), twelfth (12th), and fifteenth (15th) such amendments shall be done by recordable administrative amendments memorializing each such prior monthly extension.

3.6.2.3. Pursuant to a letter dated November 4, 2022, Developer requested the first thirty (30) day extension and paid the related Six Thousand Dollar (\$6,000) extension fee, therefore the Expiration Date is hereby extended to December 6, 2022.

3.6.2.4. If the Financial Closing does not occur on or before the Phase 2 Outside Date, then this LDDA shall automatically terminate.

3.6.2.5. Notwithstanding the foregoing, the Phase 2 Outside Date may be extended in writing by mutual agreement of the City and the Developer, subject to City Council approval by adoption of appropriate resolution or ordinance, each in its sole and absolute discretion, and shall be extended for enforced delay pursuant to Section 12.8.

3.6.3 Financial Closing. If the conditions precedent deferred at the Closing have not been satisfied prior to the Financial Closing, Developer shall use best efforts to diligently

satisfy such conditions to facilitate Commencement of Construction as soon thereafter as practicable.

4.5. Amended Section 3.7 (Conveyance). Section 3.7 is hereby deleted in its entirety and replaced with the following:

3.7. Conveyance. At the Closing of Phase 1, the City conveyed Site A by a grant deed in substantially the form set forth in Exhibit F attached hereto (the "**Grant Deed**") in accordance with Section 3.7 as set forth in the Original DDA. At the Closing of Phase 2, the City will convey Site B pursuant to the Ground Lease. Pursuant to Section 2 above and the Ground Lease Term Sheet, Landlord shall retain possession of Site B at the Closing.

4.6. Modified Section 3.8 (Reversionary Grant Deed). Section 3.8 is hereby modified to apply only to Phase 1 and Site A.

5. Amended Section 5.5 (Limited Reimbursement of Environmental Remediation Costs). Section 5.5 is hereby deleted in its entirety and replaced with the following:

5.5. Limited Reimbursement of Environmental Remediation Costs for Site B.

5.5.1. The City and Developer acknowledge the Remediation Work Escrow provided for Site A in Section 5.5 of the Existing DDA has been fully disbursed to the City and/or Developer, as applicable.

5.5.2. Developer will assume responsibility for Remediation Work for Site B, which Development Manager may perform or cause to be performed on behalf and at the direction of Developer. A credit in the amount approved by the City for the Remediation Work will be applied to future Minimum Rent (the "**Remediation Rent Credit**") due under the Ground Lease, until the earlier of: (a) the Remediation Rent Credit amount is exhausted; or (b) the 10th anniversary of the Rent Commencement Date under the Ground Lease.

5.5.3. The cost of the Remediation Work (the "**Remediation Work Cost**") will be determined as follows:

5.5.3.1. First, prior to the Phase 2 Outside Date, a Phase II environmental analysis ("**Phase II Report**") commissioned by Developer and reasonably approved by the City

will provide a preliminary estimate of the cost of the Remediation Work.

5.3.2. Second, prior to implementation of Remediation Work, Developer shall provide the City, for its prior review and approval, the scope of work and cost estimates for all environmental analysis and other Remediation Work to be performed by a third-party(ies). The City shall review the scope of work and cost estimates and approve and determine the final cost of the Remediation Work (the "**Remediation Work Cost**"), which may be higher or lower than the preliminary estimate of the cost of Remediation Work provided by the Phase II Report, which determination shall not be unreasonably withheld, conditioned or delayed.

5.3.2.1. The Remediation Work Cost shall include **only** costs for Remediation Work over and above the normal costs for excavation and materials disposal in connection with the Phase 2 project construction **and** shall be provided to the City for its reasonable review and approval.

5.3.2.2. Remediation Work Cost can include third-party costs related to preparation of a Phase II Report (provided the City reviews and approves the Developer's selection of consultant to prepare the Phase II Report, which approval shall not be unreasonably withheld), compliance, and on-site testing of soil or ground water for hazardous materials.

5.3.2.3. Remediation Work cost shall **not** include any of the following:

(a) the cost of excavation and construction of the Project improvements, including, without limitation, shoring and excavation, any required archeological mitigation, soil removal and de-watering as necessary to develop such improvements **except** to the extent required **primarily** for Remediation Work;

(b) legal costs, whether for in-house or outside counsel, that are not directly related to the Remediation Work and/or related regulatory reporting and/or satisfaction of other regulatory requirements; and

(c) Developer overhead, administrative or staff costs.

5.5.4. The amount of the Remediation Work Cost to be applied as the Remediation Rent Credit for Site B shall be limited as follows:

5.5.4.1. The amount of the Remediation Rent Credit shall not exceed \$500,000 (the “**Maximum Credit**”) of the Remediation Work Cost. Developer shall be responsible, at its sole cost and expense, for any Remediation Work exceeding the Maximum Credit.

5.5.4.2. Only Remediation Work performed **prior** to the “**Site B Remediation Work Outside Date**”, which is the **earlier of**: (a) Developer’s completion of excavation work for Phase 2 of the Project, or (b) twenty-four (24) months after the Phase 2 Outside Closing Date.

5.5.4.3. Only the Remediation Work Cost incurred by Developer that can be evidenced by invoices or receipts.

Developer shall promptly submit to the City invoices, receipts, or other documentation (as reasonably requested by the City) as evidence of the Remediation Work Cost incurred. City shall review, approve, and determine, in its reasonable discretion within fifteen (15) business days of receipt of complete documentation, if such invoices or receipts wholly or partially qualify as Remediation Rent Credit pursuant to this Section 5.5.

6. Amended Section 6.11. (Parking License Agreements).

6.1 Section 6.11 is hereby deleted in its entirety and replaced with the following:

6.11. Parking License Agreements.

6.11.1. The City and 1100 Clay (Oakland) Owner entered into that certain Parking License Agreement (T5 – Residential Parking – Site A) dated August 3, 2022, which allocated up to 200 parking spaces to Site A (the “**Site A Parking License**”), which provides that five (5) years after the effective date thereof (the “**Parking Determination Date**”) the number of parking spaces will be limited to the lesser of (a) 200 parking spaces, or (b) the highest number of parking spaces actually licensed or subleased to Residents, the homeowners association (if formed), and Retail Operators, as such terms are defined in the Site A Parking License (the “**Final Number of Parking Spaces**”).

6.11.2. Sixty (60) days before the expected Completion of Construction of Phase 2, Developer shall execute and deliver to the City a parking license agreement for the benefit of the tenant of Site B at the City Center West Garage in substantially the form attached as Exhibit J to the LDDA, for up to 50 parking spaces at the Prevailing Market Rate (as defined in Exhibit J) (the “**Site B Parking License**”). The Site B Parking License is anticipated to be effective prior to the Parking Determination Date.

6.11.3. If on the Parking Determination Date the Final Number of Parking Spaces is less than 150 parking spaces, then the Site B Parking License will be amended to increase the parking spaces allocated thereunder by an amount equal to the difference between 150 and the Final Number of Parking Spaces.

6.11.3.1. For example, if the Final Number of Parking Spaces equals 140 spaces, then sixty (60) spaces will be allocated to Site B (50 initially, plus 10 additional spaces after the Parking Determination Date). In this case, the Site B Parking License will be amended to increase the total number of parking spaces from 50 to 60 spaces.

6.11.3.2. However, if for example, the Final Number of Parking Spaces equals 180, then only the initial fifty (50) spaces will be allocated to Site B and no amendment to the Site B Parking License will be required.

Simultaneously with issuance of a Certificate of Completion for Phase 2 pursuant to Section 6.10, the City shall execute and deliver to the Developer the Site B Parking License previously signed and delivered to the City by the Developer for the initial 50 spaces as set forth herein.

6.2 Amended Section 6.12 (Project Labor Agreement). Section 6.12 is hereby amended to add the following at the end: “The Project Labor Agreement entered into pursuant to Section 6.12 of the Existing DDA shall continue to apply to employment for construction of the Phase 2 project.”

7. Amended Section 7.1 (City Employment and Contracting Requirements Prior to Issuance of Certificate of Completion). Section 7.1 is hereby deleted in its entirety and replaced with the following: “7.1. [Intentionally Deleted]”.

Notwithstanding anything in the foregoing to the contrary, all workers performing construction work for Phase 2 employed by Developer and by any of its contractors and

subcontractors shall be compensated in an amount not less than the general prevailing rate of per diem wages as determined by the California Department of Industrial Relations under California Labor Code Sections 1770, et seq., if required to do so by California Labor Code requirements.

8. Amendments to Section 8 (Pre- and Post-Construction Requirements and Covenants). The following amendments are hereby made to Section 8:

8.1.1 Section 8.1.1 (Use Restrictions). The second sentence of Section 8.1.1 is hereby deleted and replaced with the following:

Use of Site B shall be for University Use and other Permitted Uses (as defined, and as more particularly described, in the Ground Lease).

8.1.2 Section 8.1.2 (Maintenance of Property). The second sentence of Section 8.1.2 is hereby amended to replace the phrase “upscale hotel project” with the phrase “university or other educational facility, or such other Permitted Use as defined, and as more particularly described, in the Ground Lease”.

8.2 Section 8.2 (Living Wage) and Section 8.3 (Local 2850 Agreement) are each hereby deleted in their entirety and replaced with the following, respectively:

“8.2. [Intentionally Deleted]” and “8.3. [Intentionally Deleted]”.

9. Amended Section 9.4 (Permitted Transfers). Section 9.4 is hereby deleted in its entirety and replaced with the following:

9.4. Permitted Transfers.

9.4.1. The following Transfers shall be permitted with respect to each Site and Phase, or the Property in its entirety, as applicable, and shall require thirty (30)-day prior written notice to the City, but shall not require the City’s consent:

9.4.1.1. With respect to each Site, before Completion of Construction of the applicable Phase, or with respect to the entire Property, before Completion of Construction for either Phase:

(a) The granting of easements or permits to facilitate the development of the applicable Phase(s);

(b) The granting of any security interest in the applicable Site, if such security interest is granted to secure financing for the construction of the initial improvements for the applicable Phase and is consistent with the Financial Plan previously approved by the City;

- (c) An Affiliate Transfer;
- (d) The sale or lease of, or agreement to sell or lease, Project residential units to individual homebuyers or renters;
- (e) The transfer of common areas within the Project to the owner's association formed for the Project;
- (f) The sale or lease of individual retail spaces within the Project; or
- (g) The addition of any non-managing equity members to the Developer.

9.4.2. The following Transfers shall be permitted with respect to Site B and Phase 2:

9.4.2.1. Subject to execution by Strada and SMU of the closing representations in the form attached to the LDDA as Exhibit M ("**Closing Representations**"), at the Closing, Strada shall Transfer all of its rights and obligations as "Developer" under the LDDA with respect to Site B and Phase 2 of the Project (including without limitation the Good Faith Deposit) to SMU or its Affiliate without further City consent, conditioned upon Strada or its Affiliate as of the Second Amendment Effective Date, or thereafter if not Strada or its Affiliate, another Qualified Developer approved by the City, continuing to act as Development Manager through Completion, pursuant to a contract with SMU. It shall be a default under the LDDA and Ground Lease if Strada or its Affiliate, or another Qualified Developer approved by City, no longer acts as Development Manager at any time prior to Completion of Phase 2.

9.4.2.2. Upon SMU's (or its Affiliate's) assumption of the obligations of Strada under the LDDA, Strada will be released of obligations as Developer of Phase 2 on Site B pursuant to the LDDA. The assignment and assumption provided in Sections 9.4.2.1. and 9.4.2.2. shall be pursuant to a written assignment and assumption agreement in a form approved by the City, which shall be effective as of the Closing (as approved, the "**Assignment and Assumption Agreement**"). The Assignment and Assumption Agreement will include an assignment of Strada's rights and obligations with respect to Site B and Phase 2 of the Project under that certain Project Stabilization Agreement for the T-5/T-6 Project--Oakland, entered into April 26, 2016 executed by the Alameda County Building & Construction Trades Council ("**Council**") and Strada (the "**Project Labor Agreement**") pursuant to Section 17.1 of the Project

Labor Agreement, and Developer will provide notice to the Council of such assignment as required by Section 17.1.

9.4.3. After Closing and prior to Completion of Construction, SMU shall not have the right to Transfer all or any portion of its rights and obligations under the LDDA without the prior written consent of the City, in the City's sole and absolute discretion, other than Permitted Transfers pursuant to Section 9.4.

9.4.4. After Completion of Construction of Phase 2: Subject to the use and other ongoing restrictions set forth herein and in the Ground Lease, any Transfer with respect to Phase 2 shall be permitted.

10. Amended Section 10 (Termination and Remedies). The following amendments are hereby made to Section 10:

10.1 Amended Section 10.1.1. Section 10.1.1. is hereby amended to insert "or ground lease" immediately after the word "sell".

10.2 Amended Section 10.4.1. Section 10.4.1. is hereby amended to replace the word "both" with the phrase "each of the".

10.3 Amended Section 10.4.3. Section 10.4.3. of the Original DDA is no longer applicable to Phase 1 and Site A, therefore it is deleted in its entirety and replaced by the following:

10.4.3. If Site B has been conveyed by the Ground Lease to the Developer, the City may exercise its right to terminate the Ground Lease pursuant to the terms of the Ground Lease.

10.4 Amended Section 10.5.3. Section 10.5.3 of the Original DDA is no longer applicable to Phase 1 and Site A, therefore it is deleted in its entirety and replaced by the following:

10.5.3. In lieu of exercising its rights and remedies under either the Completion Guaranty or for specific performance set forth in Section 10.5.2 above, the City may exercise its right to terminate the Ground Lease pursuant to the terms of the Ground Lease.

10.5 Amended Section 10.7. Section 10.7 of the Original DDA is no longer applicable to Phase 1 and Site A, therefore it is deleted in its entirety and replaced with the following: "10.7. [Intentionally Deleted]".

10.6 Amended Section 10.8. Section 10.8 of the Original DDA is no longer applicable to Phase 1 and Site A, therefore it is hereby deleted in its entirety and replaced with the following:

10.8. Assignment of Termination Rights. The City may assign any of its rights to terminate the Ground Lease to any other entity in its sole and absolute discretion.

10.7 Amended Section 10.9. Section 10.9 of the Original DDA is no longer applicable to Phase 1 and Site A, therefore it is hereby deleted in its entirety and replaced with the following:

10.9 Priority of City Option. The City' right to terminate the Ground Lease upon Developer default shall be senior in priority to any private liens, leases, mortgages, or encumbrances on Site B entered into by the Developer after the Closing, including, without limitation, any deeds of trust or other instruments securing any leasehold acquisition, construction or permanent financing for Phase 2, but subject to the mortgagee protections set forth in Article 11 hereof, including any right to notice or cure hereunder. Upon exercise of the right to terminate the Ground Lease, the Developer shall deliver title to Site B to the City free and clear of any such liens, leases, mortgages, or encumbrances, except those liens, leases, mortgages, or encumbrances approved by the City to survive such termination.

11. Section 11 (Rights of Mortgage Holders). The following amendments are hereby made to Section 11:

11.1 Section 11 shall be amended to (a) amend the definition of "Mortgage" and references to deeds of trust to include leasehold deeds of trust, (b) amend all references to a Holder acquiring the Property or title to the Property to include a Holder acquiring the leasehold interest of the Tenant under a ground lease such as the Ground Lease, and (c) amend all references to fee title or fee interest to include leasehold title or leasehold interest, as applicable.

11.2 The fourth sentence of Section 11.1 (Encumbrances for Development Purposes) is hereby deleted in its entirety.

11.3 The following new provision is hereby added to Section 11:

11.15. Interest Covered by Mortgage. No Mortgage may encumber the City's fee simple interest in the Property or any portion thereof, or City's interest as a landlord under a ground lease (including as Landlord under the Ground Lease) in connection with any financing permitted hereunder, or otherwise, nor shall the City subordinate such interests.

12. Section 12 (General Provisions). The following amendments are hereby made to Section 12:

12.1 Amended Section 12.1.3 (Addresses for Notices). The addresses listed in Section 12.1.3 of the Original DDA are hereby deleted and replaced with the following:

DEVELOPER: Strada T5 LLC
c/o Strada Investment Group
201 Spear Street, Suite 1650
San Francisco, CA 94105
Attention: Michael Cohen

Copy to: Shartsis Frieze LLP
One Maritime Plaza, 19th Floor
San Francisco, CA 94111
Attention: Jodi Fedor

CITY: City of Oakland
Economic & Workforce Development Department
Public/Private Development Division
250 Frank H. Ogawa Plaza, 5th Floor
Oakland, CA 94612
Attention: Director

Copy to: Office of the City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attention: Supervising City Attorney for Real Estate

12.2 Amended Section 12.8 (Enforced Delay). The following amendments are hereby made to Section 12.8:

12.2.1. Pursuant to the letters dated September 22, 2020, and January 29, 2021 referenced in the Recitals above, Developer received the enforced delay extensions for one (1) year, which was the maximum permitted under Section 12.8 of the Existing DDA. The City has agreed to permit an additional one (1) year extension, and as a result, Section 12.8 is hereby amended to add the phrase “after the Second Amendment Effective Date” immediately after the phrase “more than one year”.

12.2.2. In addition, Section 12.8 is hereby revised as follows: The phrase “acts or omissions of the other party” is hereby deleted and the following is hereby added to the end of Section 12.8:

Since COVID-19 and its variants is an existing condition as of the Second Amendment Effective Date, it cannot be used for enforced delay pursuant to this LDDA as it is known and foreseeable. However, if a delay is caused by COVID-19 or its variants, Developer shall provide written notice to the City of the

specific delay and the specific cause, and the City and Developer shall meet and confer in good faith to mutually agree to extension related to the particular delay on a case-by-case basis.

13. Amended Exhibit C (Schedule). Exhibit C of the Existing DDA is hereby deleted in its entirety and replaced with Exhibit C attached hereto.

14. Added Exhibit M (Form of Closing Representations). The attached Exhibit M (Form of Closing Representations) is hereby added to the LDDA.

15. Authority. The persons signing below represent that they have the authority to bind their respective party, and all necessary board of director's, shareholders', partners', members', City or other approvals have been obtained.

16. Ratification of Agreement. The Existing DDA, as modified by this Second Amendment, remains in full force and effect, and the parties hereby ratify the same.

17. Execution and Counterparts. This Second Amendment may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

[Remainder of Page Intentionally Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned parties have executed this Second Amendment as of the Second Amendment Effective Date.

CITY:

CITY OF OAKLAND,
a municipal corporation

By:



Edward D. Reiskin
City Administrator

Approved as to form and legality:

By:



JoAnne Dunec
Deputy City Attorney

[Signatures Continue on Following Pages]

SIGNATURE PAGE TO 2ND AMENDMENT TO LDDA

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

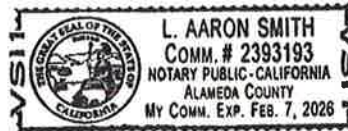
On 11/14/22, before me, L. AARON SMITH, a Notary Public, personally appeared EDWARD DAVID REISKIN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

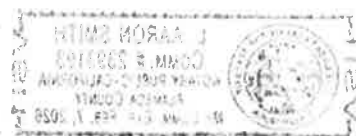
WITNESS my hand and official seal.

Signature: L. ASH

(Seal)



SIGNATURE PAGE TO 2ND AMENDMENT TO LDDA



DEVELOPER:

STRADA T5, LLC,
a California limited liability company

By: [Signature]

Name: Michael Cohen

Title: Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF San Francisco)

On November 14, 2022, before me, Gary Hirsch, a Notary Public, personally appeared Michael Cohen, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature] (Seal)



SIGNATURE PAGE TO 2ND AMENDMENT TO LDDA

EXHIBIT A

Site B Legal Description

Real Property in the City of Oakland, County of Alameda, State of California, described as follows:

LOT 2, AS SHOWN ON PARCEL MAP 10430, FILED MARCH 06, 2018 IN MAP BOOK 338, PAGES 65-67, ALAMEDA COUNTY RECORDS.

EXCEPTING THEREFROM THOSE PORTIONS OF THE ELEVATIONS BELONGING TO STG CITY SQUARE, LLC, A DELAWARE LIMITED LIABILITY COMPANY AS SET FORTH IN PLAT ATTACHED TO GRANT DEED RECORDED JANUARY 25, 2018 AS INSTRUMENT NO. 2018014706 OF OFFICIAL RECORDS.

APN: 002-0097-039 and 002-0097-040

Exhibit C
(T5/T6)

Schedule

All terms not defined herein shall have the meaning ascribed to them in the Lease Disposition and Development Agreement to which this Exhibit C is attached to and made a part thereof.

Phase 2 Schedule

#	MILESTONE	DATE
1	Completion of CEQA and Planning Approvals	7/20/2022
2	Completion of DDA Amendment Negotiation/Term Sheet and Ground Lease Term Sheet	8/19/2022
3	City Council	11/9/2022
4	Closing	12/22/2022
5	Development Manager Submits Design Development Plans	12/31/2022
6	Development Manager Submits Construction Plans and Completes Applications for Building Permits	6/30/2023
7	Developer Submits Financial Plan	6/30/2023
8	Developer Submits Final Financing Documents	11/30/2023
9	Development Manager Submits Final Construction Contract	11/30/2023
10	Development Manager Secures all necessary Governmental Approvals to Commence Construction	12/31/2023
11	Developer provides Completion Guaranty and Payment and Performance Bonds (if required)	12/31/2023
12	Phase 2 Outside Date	2/6/2024
13	Commence Construction	4/6/2024
14	Complete Construction	4/6/2027

Exhibit M
(T5/T6)

Form of Closing Representations

CLOSING REPRESENTATIONS
(T5-T6)

Reference is made to that certain Disposition and Development Agreement dated effective November 6, 2015 by and between the City of Oakland, a municipal corporation ("**City**") and Strada T5 LLC, a California limited liability company ("**Strada**"), as amended by that certain First Amendment dated as of February 4, 2020 (the "**First Amendment**") and as amended and converted to a Lease Disposition and Development Agreement by that certain Second Amendment dated as of November 6, 2022 (the "**LDDA**"). All defined terms used herein but not defined herein have the meaning given to that term in the LDDA. These closing representations are being delivered pursuant to Section 9.4.2.1 of the LDDA.

At the Closing, Strada intends to assign all of its interest in the LDDA as Developer of the Phase 2 project to Samuel Merritt University, a California nonprofit public benefit corporation, or its Affiliate ("**SMU**"), and SMU, as Tenant, intends to enter into a Ground Lease with the City, as Landlord, of Site B.

Strada and SMU hereby represent and warrant to the City that, to the best of Strada's and SMU's knowledge:

- (a) Strada or its Affiliate and SMU have entered into a contract pursuant to which Strada or its Affiliate will act as the "Development Manager" (overseeing and managing the development and construction of Phase 2) through Completion (the "**Development Manager Contract**");
- (b) the Development Manager Contract is in full force and effect;
- (c) there is currently no event of default existing under the Development Management Contract, nor is any event presently occurring which, with the passage of time or the giving of notice, would become an event of default under the Development Management Contract;
- (d) Strada and SMU have executed this Closing Representations with the knowledge and agreement that each will be bound by the statements contained herein; and
- (e) Each of the undersigned persons has the requisite authority to execute this Closing Representations on behalf of Strada and SMU.

The foregoing representations are true and correct as of the Closing under the LDDA. This Closing Representations may be executed in multiple counterparts, and all so executed shall constitute one agreement, binding on all parties thereto.

[Signatures on following page.]
Exhibit M - Page 1

