

NO FEE DOCUMENT
Government Code Section 27383

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

(Space above this line for Recorder's use)

ASSIGNMENT AND ASSUMPTION AGREEMENT
(T5/T6 – LDDA Phase 2)

This Assignment and Assumption Agreement (T5/T6 – LDDA Phase 2) (this “**Assignment**”) is entered into to be effective as of November____, 2022 (“**Effective Date**”), by and between STRADA T5 LLC, a California limited liability company (“**Strada**” “**Assignor**”), and SAMUEL MERRITT UNIVERSITY, a California nonprofit public benefit corporation (“**SMU**” or “**Assignee**”).

RECITALS

This Assignment is entered into upon the basis of the following facts, understandings and intentions of Strada and SMU:

A. Strada and the City of Oakland, a municipal corporation (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, and 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. The Property is comprised of two lots, Lot 1 and Lot 2, referred to as “**Site A**” and “**Site B**” and the DDA provides for two separate phases of development for the Property, consisting

of a “**Phase 1**” on Site A, and a “**Phase 2**” on Site B. Site B is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

C. 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.

D. 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 Original DDA with respect to Phase 1 and Site A.

E. 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 Original DDA.

F. 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.

G. 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 Strada (the “**First Amendment**”).

H. 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.

I. 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, Strada 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 Strada on May 20, 2020.

J. Strada elected to seek a conditional use permit and CEQA Clearance for development of Site B as a university campus for SMU, for University Use, no later than the Entitlement Date.

K. The City and Strada further amended the Original DDA by that certain Second Amendment to T-5/T-6 Hotel and Residential Project Disposition and Development Agreement dated as of November 6, 2022, by and between the City and Strada, recorded on _____, 2022 in the Official Records as Instrument No. _____ (the “**Second Amendment**”),

pursuant to which, among other things, (i) the Existing DDA was amended to provide that Site B will be ground leased to SMU, rather than conveyed in fee as contemplated under the Existing DDA, (ii) the title of the Existing DDA was changed such that it is consistent with the changed deal structure from a sale to a lease of Site B, to "Lease Disposition and Development Agreement (T5/T6), and (iii) the City consented to the Transfer by Strada to SMU of all of Strada's rights and obligations as "Developer" under the LDDA with respect to Site B and Phase 2 of the Project (the "**Phase 2 LDDA Rights and Obligations**").

L. The Existing DDA, as amended by the Second Amendment, shall be referred to herein as the "**LDDA**".

M. Pursuant to this Assignment, Assignor intends to Transfer to Assignee, not only the Phase 2 LDDA Rights and Obligations, but also certain additional rights and obligations with respect to Site B, and Assignee intends to assume all such rights and obligations on the terms and conditions hereinafter set forth.

N. Capitalized terms used but not otherwise defined in this Assignment shall have the meaning provided in the LDDA.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and the foregoing recitals, which are incorporated herein by reference and made a part of this Assignment, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows.

1. Assignment and Assumption. Assignor hereby Transfers of all of its Phase 2 LDDA Rights and Obligations to Assignee, and Assignee accepts and assumes all such Phase 2 LDDA Rights and Obligations. Assignee hereby agrees, expressly for the benefit of City, to comply with, perform and execute all of the Phase 2 LDDA Rights and Obligations of "Developer" arising from, or accruing, on and after the Effective Date and to be bound by the terms and conditions of the LDDA with respect to Phase 2.

2. Release. Assignee acknowledges and agrees that, as of the Effective Date, Assignor is hereby fully and forever relieved and released from any and all duties and obligations under, pursuant to, or in connection with, the Phase 2 LDDA Rights and Obligations which arise or accrue, on or after the Effective Date.

3. Deposit. Assignor hereby assigns and transfers all of its right, title and interest in and to the Good Faith Deposit to Assignee.

4. Project Labor Agreement. Assignor hereby assigns and transfers all of its 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 (the "**Council**") and Assignor (the "**Project Labor Agreement**") pursuant to Section 17.1 of the Project Labor Agreement, and Assignee hereby agrees to comply with, perform and execute all of the rights and obligations of

the Assignor under the Project Labor Agreement that are applicable to Phase 2, including without limitation the successorship provision in Article 17 of the Project Labor Agreement. Assignor shall provide the Council with notice in writing of such assignment and assumption as required by Section 17.1 of the Project Labor Agreement.

5. Closing Representations. Pursuant to the LDDA, and in satisfaction of the condition to the City's approval, without further consent, of this Assignment, simultaneously with this Assignment each of Assignor and Assignee shall execute and deliver to the City the Closing Representations in the form attached to the Second Amendment as Exhibit M.

6. Addresses for Notices. Pursuant to Section 12.1.3 of the LDDA, all notices to the Developer shall be delivered to the following addresses:

To Developer: Samuel Merritt University
3100 Telegraph Avenue
Oakland, CA 94609
Attention: Executive Vice President and Treasurer

Copy to: Strada T5/T6 Manager, LLC
c/o Strada Investment Group
201 Spear Street, Suite 1650
San Francisco, CA 94105
Attention: Jesse Blout and General Counsel

7. Development Management Agreement. This Assignment shall not limit, modify or otherwise affect the respective rights, obligations and agreements of the parties to that certain Development Management Agreement, dated as of February 9, 2022, by and between Strada's Affiliate, Strada T5/T6 Manager, LLC and SMU (the "**Development Management Agreement**"), and shall not amend or modify the terms and conditions of the Development Management Agreement.

8. Binding Effect and Authority. Assignor and Assignee each hereby represents and warrants to the other that such party has full right and authority to enter into this Assignment. This Assignment is binding on the parties hereto and the respective successors and assigns.

9. Further Assurances. Each party hereto agrees, upon the reasonable request of another party hereto, to perform any further acts and to execute and deliver such further documents which may be reasonably necessary to carry out the terms of this Assignment.

10. Severability. If any term, provision, covenant or condition of this Assignment is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remaining terms, provisions, covenants and conditions of this Assignment, and those terms, provisions, covenants and conditions shall continue in full force and effect.

11. Amendments. No amendment, supplement or other modification to this Assignment shall be effective or enforceable against the parties hereto unless such amendment, supplement or other modification is in writing and executed by all of the parties hereto.

12. Governing Law. This Assignment shall be construed and enforced in accordance with and be governed by the laws of the State of California.

13. Counterparts. This Assignment may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same Assignment.

14. Headings: Interpretation. The headings to sections of this Assignment are for reference only and shall not be used in interpreting this Assignment. It is hereby acknowledged that each party hereto has contributed materially to the preparation of this Assignment; accordingly, this Assignment shall not be construed more strictly against one party merely by virtue of the fact that counsel for such party may have prepared this Assignment.

15. Waiver. No waiver by any of the parties hereto of any of the terms or conditions of this Assignment or any of their rights under this Assignment shall be effective unless such waiver is in writing and signed by the waiving party.

16. Attorneys' Fees. In the event any action, suit or other proceeding is instituted to remedy, prevent or obtain relief with respect to the subject matter or enforcement of this Assignment, or pertaining to a declaration of rights under this Assignment, the prevailing party hereto shall recover all of such party's reasonable attorneys' fees and costs, including expert witness fees, incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions therefrom.

17. Time of the Essence. Time is of the essence of this Assignment and any amendments hereto that may be entered into by the parties hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the Effective Date.

ASSIGNOR: STRADA T5 LLC,
a Delaware 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)



[SIGNATURES CONTINUED ON NEXT PAGE]

SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION OF LDDA

ASSIGNEE: SAMUEL MERRITT UNIVERSITY,
a California nonprofit public benefit corporation

By: _____
Name: Ching-Hua Wang
Title: President

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.

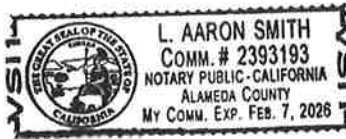
STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On 11/14/22, before me, L. AARON SMITH, a Notary Public, personally appeared CHING-HUA WANG, 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:  (Seal)



SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION OF 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

