CITY OF OAKLAND

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2012 MAY 31 PM 4:34

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: Oakland Army Base Development

DATE: May 30, 2012

City Administrator Approval Deanna J. Santana Date 5/31/12

COUNCIL DISTRICT: #3

RECOMMENDATION

Staff recommends that the City Council conduct a Public Hearing and upon conclusion adopt the following legislation:

1) **A Resolution Approving Amendments to the (Former) Oakland Army Base Final Reuse Plan Relating to a Revised Conceptual Land Use Strategy Emphasizing Warehousing/Logistics, and Authorizing City Staff To Make Any and All Necessary Conforming Changes Without Returning to the City Council**

2) **A Resolution Authorizing the City Administrator to Negotiate and Execute a Memorandum of Agreement with the East Bay Municipal Utility District and CCIG Oakland Global, LLC, a California Limited Liability Company and/or Oakland Bulk Oversized Terminal, LLC, a California Limited Liability Company (or Their Related or Affiliated Entities) Relating to Mutual Cooperation in the Development of the Former Oakland Army Base in a Form and Content Substantially in Conformance with the Attached Documents, Without Returning to the City Council**

3) **A Resolution Authorizing the City Administrator to Negotiate and Execute an Amended and Restated Cost Sharing Agreement with the Port of Oakland Pertaining to Infrastructure Improvements at the Former Oakland Army Base; to Reflect the Transfer of the Property from the Oakland Redevelopment Agency to the City of Oakland; to Acknowledge an Amendment to the Trade Corridor Improvement Fund (TCIF) Baseline Agreement; to Establish Respective Roles and Responsibilities Between the Port and City as to Grant Funding; to Identify the Funding Sources to Match the TCIF Grant; and to Commit an Additional $22.5 Million, Resulting in a Total Commitment of $54.5 Million, in City Funds to Match the TCIF Grant, in a Form and Content Substantially in Conformance with the Attached Documents, Without Returning to the City Council**

Item: _____
CED Committee
June 12, 2012

4) **An Ordinance: (1) Authorizing the City Administrator to Negotiate and Execute a Lease Disposition and Development Agreement and Billboard Franchise and Lease Agreement, Ground Leases, Site Management Pass-Through Lease, and Related Documents (Collectively "LDDA") Between the City of Oakland, and Prologis CCIG Oakland Global, LLC, a Delaware Limited Liability Company (or Their Related Entities or Affiliates), for the Development of a Mixed-Use Industrial (Warehousing and Logistics), Commercial, Including Billboard, Maritime, and Open Space Project on Approximately 130 Acres in the Central, East and West Gateway Areas of the Former Oakland Army Base ("Project"); (2) Amending in Part the City's Employment and Contracting Programs for the Army Base Project; and (3) Waiving the Advertising and Request for Proposal Process for a Design-Build Contract for the Construction of Public Improvements As Described in the LDDA ("Public Improvements") and Authorizing the City Administrator to Enter into a Contract for the Design-Build of the Public Improvements with CCIG, Inc., in an Amount to be Determined Pursuant to the Terms of the LDDA; All of the Forgoing Documents to be in a Form and Content Substantially in Conformance with the Attached Documents, Without Returning to the City Council**

5) **A Resolution Authorizing the City Administrator to Negotiate and Execute a Cooperation Agreement Between the City of Oakland and a Coalition of Community Groups Relating to the Application of Specified Job, Contracting and Environmental Community Benefits Regarding the Development of the Former Oakland Army Base, in a Form and Content Substantially in Conformance with the Attached Documents, Without Returning to the City Council**

6) **A Resolution Authorizing the City Administrator to Negotiate and Execute an Environmental Review Funding and Indemnity Agreement with Prologis Property, LP, a Delaware Limited Partnership And CCIG Oakland Global, LLC, a California Limited Liability Company (or Their Related Or Affiliated Entities) (Collectively "Developer") Regarding the Proposed Mixed-Use Project on the Former Oakland Army Base ("Project") with Respect to: (1) Allocating Responsibility for Environmental Review Costs Between the City and the Developer and (2) Defining the Procedure for Defending and Indemnifying the City of Oakland for the Initial Project Approvals in a Form and Content Substantially in Conformance with the Attached Documents, Without Returning To City Council**

EXECUTIVE SUMMARY

After several years of negotiations among the City, the Developer ("Prologis/CCIG"), the Port, and the major community stakeholders, the Oakland Army Base ("OARB") redevelopment is in

a position to proceed. A master plan for the development of site-wide infrastructure and a mixed use, commercial, including billboards, maritime, rail, and open space project ("OARB Project" or "Project") has been prepared; the necessary California Environmental Quality Act ("CEQA") review has been completed; terms for a Lease Disposition and Development Agreement ("LDDA") and its associated agreements, including the Billboard Franchise and Lease Agreement, Site Management Pass-Through Lease, Design-Build Contract, and Ground Leases have been negotiated; a package of Community Benefits, primarily jobs oriented, has been mostly defined; and the necessary public funds needed to rebuild the infrastructure has been identified.

Staff believes that the parties have reached agreement on most major financial terms and issues, subject to approval by Prologis' attorneys and Investment Committee as described later in this report.

Staff, the City Attorney's Office and outside counsel have been negotiating and drafting the major agreements which are attached to the LDDA ordinance (the "Transactional Documents") with the Developer team around-the-clock in an attempt to finalize the documentation. While the parties have made substantial progress, the Transactional Documents are current as of the Agenda Report but remain a work in progress.

In the interest of providing the Committee with the most up-to-date information, the parties continued to draft up to the deadline for filing the Agenda Report. Accordingly, staff, the City Attorney's Office and outside counsel have not yet had an opportunity to review the latest versions of the Transactional Documents in a comprehensive/global fashion but intend to do so before the CED Committee meeting.

The parties intend to diligently continue discussions and staff will present an oral report at the CED Committee regarding progress reached in finalizing the documents. Staff also will be prepared to respond to Committee members' requests for additional information in a supplemental report on the then-current status of the parties' discussions and documentation.

With respect to the necessary public funds, the California Transportation Commission ("CTC") has put the OARB on a watch list for its public improvements grant funding because of prior delays. The CTC wants assurance by June 19, 2012 that the OARB Project proposed by the City and the Port of Oakland is far enough along to warrant hs retention of a $242.1 million Trade Corridor Improvement Fund ("TCIF") allocation. For CTC, the agency administering the TCIF program, the primary indicator of progress is the project's environmental clearance. City staff worked with Port staff to prepare an Initial Study/Addendum which evaluated all of the proposed project's potentially significant environmental effects and concluded that the project would not result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report (EIR) and thus no further CEQA review is required. The City

Council's approval of the amended *Final Reuse Plan for Oakland Army Base* ("*Final Reuse Plan*") and the LLDA would provide CTC with the necessary evidence of the project's environmental clearance and demonstrate the City's capability to bring private investment to match the TCIF funds and to meet the TCIF December 2013 start of construction deadline.

As additional proof of the project's progress, CTC also wants to see the Amended and Restated Cost Sharing Agreement ("CSA") between the City and the Port. The amendment, which must be approved by both the City Council and the Port Board by June 19th, clarifies for CTC the agencies' roles and responsibilities regarding their use of TCIF funding, and concretely identifies the funding sources that will match TCIF. The City Council approved the Term Sheet for the Amended and Restated CSA on May 15th, and the final document presented in this report is in substantial conformance with that Term Sheet. The Port Board approved that Term Sheet on May 11th.

In addition to the Amended and Restated CSA, certain other agreements separate from the LDDA are necessary to support implementation of the LDDA. The Memorandum of Agreement with East Bay Municipal Utility District ("EBMUD") and CCIG Oakland Global, LLC and/or Oakland Bulk Oversized Terminal, LLC, specifies the terms for mutual cooperation for developing the former OARB and secures EBMUD's acceptance of the land uses and configurations proposed for the former OARB. The Cooperation Agreement between the City and specified community/labor groups ("Coalition") would memorialize the City's commitment include a Construction Jobs Policy as a material term of any contract that the City awards for work to be performed on the Project Site and a Operations Jobs Policy as a material term of certain leases or service contracts that the City enters into with any entity that may employ workers on the Project Site as well as obtain the Coalition's release of claims regarding the Project. The Indemnity Agreement ensures that Prologis/CCIG and the City have in place an agreement providing for the joint defense or indemnification of the City in the event of any suits arising from the proposed project, either through the City's approval of the project or in the course of its implementation.

OUTCOME

After fifteen years of start and stop planning, the OARB has found its appropriate use, as a revitalized "Working Waterfront." Positioned between rail and the marine terminals, it is the right use and will be a major generator of jobs and increased maritime trade and logistics activity. This is the City and Port's last chance to preserve the $242.1 million TCIF allocation for the OARB. Although there is no guarantee that CTC will hold the TCIF funding for the OARB Project if the City Council adopts the proposed legislation, CTC will certainly reprogram the funds to other projects in California without evidence of substantial progress on the OARB Project. In any event, the OARB approvals will put in place a master plan and agreements with the Developer, the Port, and the Community Groups, that will finally set the OARB on the

course to its revitalization as a trade and logistics industrial Working Waterfront, with all the jobs and other economic benefits that its construction and operations will entail.

BACKGROUND

Oakland Army Base Final Reuse Plan

The *Final Reuse Plan for Oakland Army Base* is a planning document, which represents the preferred reuse vision for the OARB. It is based on an extensive community planning process, regulatory requirements of the San Francisco Bay Conservation and Development Commission ("BCDC"), State Lands Commission and other government entities having legislative or regulatory authority over future use of OARB property, and the development needs of the City of Oakland and the Port of Oakland.

On July 31, 2002, the Oakland Base Reuse Authority ("OBRA"), the designated Local Reuse Authority charged under the federal Base Reuse and Closure Laws ("BRAC") law with planning and implementing the conversion of the closed military bases in Oakland, California, adopted the *Final Reuse Plan* for the Oakland Army Base. The *Final Reuse Plan* put forth a "Conceptual Reuse Strategy" that identified a menu of intended land uses for future reuse of the former OARB or "Gateway Development Area" under the concept of what was called the "Flexible Alternative." The preferred menu of land uses envisioned a mixed-use waterfront commercial development containing a variety of land uses ranging from light industrial, research and development, flex-office, retail, and possibly a high-end hotel complex; and marine terminal uses in the area to be developed by the Port, including wharves, container yards, and railroad facilities. The Conceptual Reuse Strategy and Flexible Alternative were predicated on the notion that actual development with the Gateway Development Area could change over time to reflect the prevalent market conditions and demands, in order to achieve the broader goals and objectives of the *Final Reuse Plan* and *OARB Area Redevelopment Plan* (the Plan that was prepared for the larger 1,800-acre Redevelopment Area that included the former OARB). An illustration of the land use strategy of the *Final Reuse Plan* adopted in 2002 is included in this report as ***Exhibit A to the Resolution Adopting Amendments to the Final Reuse Plan for the OA***RB.

In 2006 the Redevelopment Agency of the City of Oakland ("Agency"), which assumed responsibility for redeveloping the OARB, amended the *Final Reuse Plan* to add as a conceptual strategy: (a) locating an auto mall within the North Gateway Area; and (b) relocating Ancillary Maritime Support ("AMS") uses to the East and/or Central Gateway Areas. In authorizing the amendment, the City certified a Supplemental Environmental Impact Report ("SEIR"), which identified the environmental impacts associated with the auto mall development and AMS relocation actions. In 2007 the Agency amended the *Final Reuse Plan* again to include a revised layout of the auto mall. An Addendum to the 2006 SEIR ("2007 Addendum") analyzed the

impact of the proposed change in layout and concluded that there would be no new significant impact or substantial increase in the severity of a previously identified impact as a result of changes to the project.

In 2009, per Court order following a suit brought by EBMUD, the City rescinded the 2007 Amendment to the *Final Reuse Plan*, and certification of the SEIR and the 2007 Addendum only to the extent that they applied to the auto mall project and/or provided environmental clearance for discharges from OARB development to an existing 15-inch sewer line or the relocation of Wake Avenue.

In 2010, the Agency entered into an Exclusive Negotiating Agreement ("ENA") with AMB/CCG (reorganized as Prologis/CCIG) for the development of a portion of the OARB. To have a basis for CEQA analysis and LDDA negotiations, Prologis/CCIG, working with the City and the Port pursuant to a Second Amendment to the ENA, developed a master plan for the entire OARB, which determined, among other things, land uses, densities, prototypical building placements and massings, necessary infrastructure and other site improvements. The master plan covers the area addressed in the *Final Reuse Plan* plus an approximately 14-acre area along 7th and Maritime Streets.

The master plan is characterized as rebuilding Oakland's "Working Waterfronf' and includes restored and expanded rail services and a deep water commodities export-oriented maritime terminal on the West Gateway portion of the development. The master plan proposes more warehousing and logistics uses than was specifically noted in the *Final Reuse Plan* or its amendments. However, proposed uses in the master plan would be consistent with the intent of the Conceptual Reuse Strategy and Flexible Alternative set forth in the *Final Reuse Plan.* As noted above, the intent of the Flexible Alternative was to establish a broad envelope of probable land uses/market activities that could change over time in order to reflect market and economic conditions. An illustration of the proposed 2012 OARB Conceptual Land Use Strategy and a comparison of its land uses and those that were studied as part of the 2002 OARB EIR based on the 2002 *Final Reuse Plan* is included in this report as ***Exhibit B to the Resolution Adopting Amendments to the Final Reuse Plan for the OARB.***

Staff is requesting the City Council to adopt a resolution approving the proposed amendments to the *Final Reuse Plan* to reflect the currently proposed master plan Conceptual Land Use Strategy emphasizing warehousing/logistics and to make all necessary conforming changes, including but not limited to, updating information to reflect actions undertaken since 2002 to implement the *Final Reuse Plan* and correcting out-of-date information, without returning to City Council.

EBMUD MOA

EBMUD's main wastewater treatment plant ("MWWTP") is located immediately north of the North Gateway Area of the OARB. Wake Avenue, a public street that crosses the North

Gateway, is the only way to access the main gate of the MWWTP, although there is other access to the MWWTP. EBMUD has consistently maintained that any development of the North Gateway must allow EBMUD to have safe and reliable access to the MWWTP. EBMUD previously challenged the City's plans for the North Gateway Area over this access issue.

To avoid future disputes, in 2009 City and EBMUD staff agreed to meet regularly to coordinate development plans. The discussions were largely conceptual in nature until the City initiated the master planning process for the OARB. Then in 2011 EBMUD began meeting with Prologis/CCIG as well as the City to discuss the elements of the master plan and related impacts to EBMUD. Prologis/CCIG proposes to intensify the usage of the rail lines located between the North Gateway and the MWWTP. The City has also entered into an exclusive negotiating agreement to sell two parcels within the North Gateway to two recyclers, California Waste Solutions and Custom Alloy Scrap Sales, both of whom are currently located in West Oakland. Wake Avenue must be realigned to accommodate both recyclers on the site effectively.

The City's preferred land use option calls for the relocation and realignment of Wake Avenue, which currently provides access to the main gate of the MWWTP. Thus, the City must work with EBMUD to maintain access to the MWWTP. The EBMUD MOA ensures that the OARB project is properly integrated with its neighbor EBMUD and that EBMUD's concerns have been addressed. Without the assurances and rights granted in the MOA, EBMUD may once again challenge the project.

EBMUD expressed the following concerns:

- Increased rail activity could block access to the MWWTP several times a day
- A shortened and realigned Wake Avenue would increase the distance to the primary entrance to the MWWTP, and the existing Engineers Road is not designed to handle the resulting traffic flow
- Locating recycling facilities east of the new Wake Avenue alignment and truck parking facilities west of the new Wake Avenue alignment would increase traffic

To address these concerns, City, CCIG Oakland Global, LLC and/or Oakland Bulk Oversized Terminal and EBMUD staff negotiated a Memorandum of Agreement, which includes, among other items:

- The City will widen the relocated Wake Avenue from two to four lanes;
- The City will facilitate relocating the new and existing rail lines 20 feet south; thereby enabling the widening of EBMUD-owned Engineers Road to accommodate traffic flows by providing, at no cost, some of its property (about .7 acres) to EBMUD;
- The City will install a rail crossing that meets applicable California Public Utilities Commission code and safety requirements at the proposed Wake Avenue and Engineers Road intersection;

- The City will facilitate connecting Engineers Road to Burma Road to provide an additional access point (to alleviate traffic-related blockages along Wake Avenue and potential blockages to the proposed new crossing at Engineers Road) either by subleasing at no cost a Caltrans lease (about .3 acres) or working with Caltrans to identify an alternate access route;
- The City will reimburse EBMUD its cost to construct necessary safety improvements at the intersection of the newly aligned Wake Avenue and Engineers Road and pay to extend Engineers Road east to their main entrance, while EBMUD will pay all costs associated with extending Engineers Road west to connect with Burma Road;
- CCIG Oakland Global, LLC and/or Oakland Bulk Oversized Terminal, LLC and rail operator agree to time and frequency restrictions of the rail line crossing directly in front of the MWWTP on the Developer and rail operator so as not to inconvenience EBMUD operations and also to pay liquidated damages for violation of such.

If the City cannot accomplish the successful relocation of Wake Avenue, then Wake Avenue will remain in its current location, but the rail restrictions would still apply. In any event, the Memorandum of Agreement states that EBMUD agrees not to challenge the OARB Project. The negotiated MOA is attached as ***Exhibit A to the Resolution Authorizing the Memorandum of Agreement with the East Bay Municipal Utility District and CCIG Oakland Global, LLC, etc.***

Amended and Restated Cost Sharing Agreement

In 2008, the Port was given two allocations totaling $285 million in Proposition IB Trade Corridor Improvement Funds ("TCIF")—$110 million to fund the Oakland Outer Harbor Inter-Modal Terminal ("OHIT") and $175 million to fund the 7th Street Grade Separation Project. The TCIF funds require 1:1 matching funds from either private or other public sources. In 2009, the TCIF total funding allocation was amended to $242.2 million, $131.9 million for the OHIT and $110.3 million for the 7th Street Grade Separation Project. Since that time the Port has been trying to secure the necessary matching funds.

In May of 2011, the Port and City entered into the CSA that committed the City to $32 million in City funds as match to TCIF, in exchange for the Port requesting amendments to the TCIF allocations that would permit as much as $62 million of the TCIF to be used to improve the City's OARB land. The Port was supposed to have accomplished the TCIF Baseline Agreement Amendment no later than December 2011, but did not due to ongoing negotiations with CTC regarding the sources of additional required matching funds.

As a result of meetings in early 2012 with CTC, the Port and the City agreed that the best strategy for preserving the TCIF funding would be to shift the emphasis of the project from the Port's OARB land to the City's OARB land, because only the City has the potential private partners and investments that could leverage TCIF funds. It is assumed that the City's entire

portion of the OARB would be eligible for TCIF funding because it will be all trade and logistics oriented, including the restoration of the West Gateway Marine Terminal as a commodities/break bulk facility. TCIF fumding was initially limited to public improvements within the East and Central Gateway Areas of the City's OARB land. On March 30th, the Port submitted a proposed amendment to hs TCIF Baseline Agreement to CTC to reallocate all of its TCIF allocation from the 7th Street project to the OHIT project; to amend the TCIF project scope to include all necessary infrastructure improvements on the City's portion of the OARB and Phase 1 of the Port's rail terminal; and to add the City as an additional Project Sponsor/Lead Agency. CTC told the Port and City that it will consider the Port's application in late June 2012.

On May 15th, the City Council approved the proposed TCIF Baseline Amendment, consistent with the Port's March 30th submittal to CTC. The City Council also approved the Term Sheet for the Amended and Restated CSA on May 15th, the Port approved that Term Sheet on May 11th, and the final document presented in this report is in substantial conformance with that Term Sheet and is included in this report as ***Exhibit A to the Resolution Authorizing the Amended and Restated CSA***. The Amended and Restated CSA reflects the funding plan, schedule, and sources of matching funds required to implement the TCIF Baseline Amendment, and provides for the continued cooperation between the Port and City. It commits the City to $54.5 million in City funds to match TCIF funds. $36.5 million of the $54.5 million City commitment is fimding currently in hand and already required, per the Economic Development Conveyance Agreement with the Army, to be expended towards the economic development of the OARB. The additional $18 million required to fully meet the City commitment is the amount to be received by the City from the land sales to the recyclers and Caltrans, projects that are under negotiation to be sold, subject to Council approval.

The Amended and Restated CSA also has provisions regarding which entity, the City or the Port, will be responsible for designing and constructing the various infiastructure improvements. The City, working through the Developer, will design and construct the entire backbone infrastructure, roads, and site preparation/soils improvements, and the Port will design and construct the Port rail terminal.

Because the City's OARB project is a maritime-oriented, rail-oriented logistics center, the Port's construction of the new rail terminal is crucial to the City's development. The Amended and Restated CSA provides necessary assurances that the City's developments, in particular the West Gateway Marine Terminal, will have adequate rail access. It provides the City with at least 50% exclusive use of the Port Rail Terminal for 20 years and rights of access and use for an additional 46 years. This ensures that the City's tenants, most of whom will be relying on rail service, the access they will require.

LDDA/Ground Leases/Billboard Franchise and Lease/Site Management Pass-Through Lease/Design-Build Contract for the Public Improvements

In 2008, the City issued a Request for Qualifications to identify potential development teams for redevelopment of a portion of the City-owned Gateway Development Area (the "Project Site"). The City selected the Developer consisting of (Prologis Property, L.P. ("Prologis") (successor-in-interest to AMB Property, L.P., a Delaware limited partnership), and CCIG Oakland Global, LLC ("CCIG"), a California limited liability company (successor-in-interest to California Capital Group, a California general partnership)) to negotiate with regarding development of the Project Site. The Project Site consists of approximately 130 acres of the City's 170 acre portion of the OARB, including the entire East, Central, and West Gateways, and the rail right of ways necessary to connect them to the Port Rail Terminal, as illustrated in this report as ***Attachment A.*** The City and Developer entered into an ENA on January 22, 2010, a first amendment on August 10, 2010 and a second amendment on April 11, 2011. A third amendment is pending execution, which is expected prior to June 12, 2012.

Pursuant to the Second Amendment to the ENA, the City entered into a Professional Services Agreement with CCG (predecessor to CCIG), to design the Public Improvements. Also during the ENA period, the City and the Developer evaluated the design and financial feasibility of the proposed project, which includes a mixed-use industrial (warehousing and logistics), commercial, including billboards, maritime, rail, and open space project on the Project Site. Having assessed the project's feasibility, the Developer proposes to lease the Project Site for development of approved uses ("Private Improvements") through a Billboard Franchise and Lease Agreement and for mixed use development in three phases: the West Gateway, Central Gateway, and East Gateway.

Staff and the Developer have negotiated the terms of an LDDA, including Ground Leases for the lease of the Project Site for development of the Private Improvements, a Billboard Franchise and Lease Agreement, a Site Management Pass-Through Lease to allow for management of the Project Site during the Public Improvement work, a Design-Build Contract for construction of the Public Improvements, and related documents which set forth the terms and conditions of the development of the Project and the use of the Property by the Developer and any successors to the Property. The LDDA and its attachments are included in this report as ***Exhibit C to the Ordinance Authorizing the Lease Disposition and Development Agreement/Billboard Franchise Agreement/Ground Leases/Pass-Through Lease and Related Documents***. While the Billboard Franchise and Lease Agreement can be implemented independently of the other LDDA components, execution of the LDDA and associated contracts is necessary to begin takedown and improvement of the Project Site within the timeframe set by CTC for TCIF funding.

The LDDA spells out the financial terms of the Ground Leases and the Billboard Franchise and Lease Agreement. These terms are still subject to the Prologis Investment Committee's review

and approval. It is anticipated that the initial approval will be secured before June 12th and the final approval before the July 3rd second reading of the Prologis/CCIG LDDA.

- For the Central and East Gateways, the term of the Ground Lease is 66 years. The Initial Rent is $0.0267 per month per square foot of land, subject to annual increases based on the CPI but limited to no more than 3% nor less than 2% per year. Rent is held steady for the first 10 years and in year 11 it is increased by the accumulated and compounded CPI increases of the first 10 years. The rent is similarly held steady and then increased every 5 years. On years 20 and 40 there will be a Fair Market Valuation (FMV) adjustment based on the then currently permitted uses and set at 95% of the appraised value in lieu of trying to appraise the value of the various community benefits. Under no circumstances can the FMV Rent go down. Increases in Rent in Years 20 and 40 are subject to cap of the initial rent increased at 5% compounded years 1-19 and 4% compounded years 20-39. The total area of the East Gateway is approximately 31 acres and the total area of the Central Gateway is approximately 57 acres, of which approximately 10 acres are set-aside for the Truck Ancillary Maritime Support facility.

- For the West Gateway, the term of the Ground Lease is 66 years. The Initial Rent is $0.04 per month per square foot of land, subject to the same stepped annual CPI increases and FMV adjustments as the Central and East Gateways. Assuming the West Gateway is developed as a Marine Terminal, the City will also receive a Participation Rent that will be 10% of the Total Gross Tariffs assessed on all goods, commodities, and services imported and exported from the facilities. If the West Gateway is developed as Research and Development and/or Office, the Initial Rent is $0.04 per month per square foot of land, subject to the same stepped annual CPI increases and FMV adjustments as the Central and East Gateways. The total area of the West Gateway is approximately 27 acres.

- For the Rail Right of Ways, which areas are located outside of the West and Central Gateway properties but necessary to connect those properties to the Port Rail Terminal and the Union Pacific Railroad mainline and which rent will be associated with and the terms added to the Ground Lease for the first phase, the term will be 66 years and Initial Rent will be $0.03 per month per square foot, subject to the same stepped annual CPI increases and FMV adjustment increases as the Central and East Gateways. The total area of Rail right of ways is approximately 10 acres.

- Each Gateway area must be taken down in its entirety when the public infrastructure is in place to enable the building of the private trade and logistics facilities. The private developments will be implemented in several stages within each of the leasehold properties. The private development must be completed according to a schedule that will have an outside completion date of 2020.

- The Billboard Franchise and Lease Agreement is an aspect of the development that can get underway without completed public infrastructure and it is anticipated that planning and implementation of this agreement will begin immediately upon approval of the LDDA and Billboard Franchise and Lease Agreement. There are proposed to be five billboards on the City's land including two along the Bay Bridge Tollway on land the City is in the process of selling. It is the City's intent to retain ownership of the land required for those two billboard sites when it transfers the property to Caltrans for their construction of a new Bridge Maintenance Facility. The terms of the Franchise Agreement are that the City and Developer get 40% of the Gross Advertising Revenues, while Foster Company, the builder and operator of the billboards, receives 60%. The 40% share of revenues will be split 75% City and 25% Developer. The City and Developer will have discretion on how to use hs earnings but both parties recognize it as an early source of revenues to address our respective Community Benefits obligations, particularly given the time-sensitivity of getting the West Oakland Jobs Center up and running in time for the commencement of horizontal construction.

The LDDA enables the construction of the public infrastructure improvements, which for the City portion of the OARB (which includes road and utility backbone infrastructure on the Port's portion of the OARB) and related necessary off-site intersection improvements is estimated to cost approximately $247.2 million. This work will be accomplished through the Site Management Pass-Though Lease and a Design-Build Contract. The Site Management Pass-Though Lease will initially grant CCIG a mobilization fee of $100,000 and a right of entry to prepare the site for the Public Improvements and then grant management of the existing leases, including the requirement to pass the revenues earned back to the City. The first step under the Site Management Pass-Through Lease is to establish a materials handling site. Discussions are underway with several sources of major amounts of soils that are critical for the public infrastructure project. Rather than having to pay to secure this soil, other parties would pay tipping fees for the right to deliver, by barge, and deposit the soils on the Project Site. Those tipping fees would get "passed through" to the City, both saving money by not having to purchase and barge in soil and creating funds to address other infrastructure costs. Also, pursuant to the Site Management Pass-Through Lease, the Developer will take control of the entire site to manage the termination of the existing leases and ready the buildings for demolition. Construction in terms of demolition and major grading and utilities should get underway summer 2013 and the work will be conducted pursuant to the Design-Build Contract.

The Public Improvements construction is to be performed through a design/build construction contract entered into between a construction general contractor and CCIG as Developer, pursuant to terms in the LDDA. The Design/ Build management terms will be very similar to the terms under which the infrastructure design work is being performed under the Second Amendment to the ENA; under which CCIG entered into contracts with the team of engineering design consultants that were identified in its response to the RFQ and RFP. This design team has demonstrated a thorough and efficient approach to designing the site, having spent less than $5

million of the budgeted $14.1 million to be used for the design of the public infrastructure. The LDDA establishes that CCIG shall earn a fee of 4% of the total costs of design and construction for its role as developer, executing the contracts and managing the on-going design/build process.

The next stage of the design/buiid process is to complete the infrastructure design document to the approximately 35% level, at which point the scope of work can be accurately priced and a Gross Maximum Price (GMP) Contract awarded to a design/build general contractor. This design/build general contractor may be one of the contractors already on the CCIG team, such as Turner Construction or one of the other contractors on the team. This GMP contract is key to getting the TCIF funds allocated. There simply is not enough time to accomplish a more traditional 100% design/bid/build process and be assured to be under construction by the end of 2013. While a portion of the initial award of the design/build contract may be self performed, negotiated and not entail competitive bidding, as much as 75% of the construction contracting will be competitively bid, with at least three valid bids associated with every subcontract. This work will be managed in a manner to maximize the City's goals for Local Business Enterprise (LBE) and Small Local Business Enterprise (SLBE) contracts and will place a particular emphasis on West Oakland contractor opportunities. The experience of the CCIG/Tumer team assures that every means and method will be used to secure high LBE/SLBE participation.

The Private Improvements will be constructed by the Developer after the Project Site has been remediated and backbone infrastructure installed. To effectuate the uses anticipated in this LDDA, the LDDA anticipates that a Planned Unit Development and Development Agreement (PUD/DA) process will follow this LDDA, which will amend the zoning code and provide for a plan review process and an assessment and assignment of Standard Conditions of Approval ("SCA") and Mitigation Measures and allocation of those costs.

Community Benefits and the Cooperation Agreement

The ENA with the Master Developer Prologis/CCIG contains a Community Benefits Exhibit, which outlined the topics for further discussion and consideration for inclusion as a term in the final LDDA. The topics centered on three broad categories: environmental/green development issues, contracting, and jobs.

The workshops led by Vice Mayor Nadel focused on environmental issues and contracting issues, which have been long-standing concerns of the West Oakland community. Specific recommendations that came out of the workshops convened by Vice Mayor Nadel with respect to environmental and green development practices were presented to Council on May 15, 2012. These environmental recommendations will be addressed through the City's SCA, which are imposed on all development projects, and through CEQA Mitigation Measures and/or other measures in the LDDA.

Specifically, in addition to compliance with required environmental rules, regulations and mitigations, the City is committed to implement an ongoing West Oakland air quality monitoring program and is in consultation with the BAAQMD, Alameda County Public Health, and the West Oakland community about how best to implement such a program. The LDDA makes the developer responsible to cooperate with and fund a portion of the Air Quality Monitoring program. The applicable provisions of the SCA and Mhigation Measures and/or other measures will be passed on as performance requirements of ail the developers on the City's OARB lands. Additionally, the LDDA honors the long standing commitment to a West Oakland Community Fund. The Developer will pay, upon taking possession, approximately $16,000 per acre (its fair share of the per acreage cost) towards the West Oakland Community Fund. The contracting issues for the public infrastructure will be addressed by the City's existing 50/25 percent LBE/SLBE Ordinance, modified to capture the goal of maximizing West Oakland's business opportunities and requiring a capacity study to determine feasibility in full.

In November 2010, then Council President Jane Brunner and former Mayor Dellums' office assumed the lead role in convening large, inclusive groups of OARB stakeholders in focus sessions that resulted in consensus on a broad range of elements related to jobs. Oakland WORKS, a West Oakland based, city-wide advocacy alliance, became very involved in this process along with Revive Oakland!, the Alameda Labor Council, the Building and Construcfion Trades Council of Alameda County, the Construction Employers Association, and many other individuals and groups (together "Community Groups"). This expanded body was called the Army Base Jobs Working Group. Recommendations of the Army Base Jobs Working Group provided the framework for the negotiation of the Construction Jobs Policy and Operations Jobs Policy. All of the City's policies developed for local hire, disadvantaged workers, and the Jobs Center provide the baseline policies for the Jobs Policies, including the hiring goals of 50% local and 25% disadvantaged workers. The Construction and Operations Jobs Policies are referenced in the LDDA, the Cooperation Agreement, and separate Project Labor Agreements.

The Cooperation Agreement, which is between the City, specified Community and Labor Groups, the Alameda County Building and Construction Trades Council, and the Alameda County Central Labor Council, establishes the commitments of these parties to each other with respect to the development of the OARB Project, and requires the City to monitor and enforce the terms of the Cooperation Agreement, which would include ensuring that the Developer complies with the Construction and Operation Jobs Policies per the terms of the LDDA. The Cooperation Agreement is included in this report as ***Exhibit A to the Resolution Authorizing the Cooperation Agreement***.

The City is currently negotiating a Project Labor Agreement ("PLA") with the Building Trades. This agreement will focus on construction jobs generated by the build out of Public Improvements on the OARB. Policies for the PLA will be aligned and consistent with the terms and conditions of the Cooperation Agreement, including local hiring. Once negotiation of the PLA has been completed, staff will submit it to the City Council for review. CCIG has already

negotiated and entered into its own PLA with the Trades, and Prologis may also enter into a PLA for vertical construction. Staff is encouraging the City's other development partners on the OARB to enter into a PLA as well.

Key aspects of the Cooperation Agreement and the Community Benefits Agreement are still under negotiation. With regard to the Cooperation Agreement, the developer has expressed strong concern about the inability of the City to unilaterally amend the community jobs policy should elements of it prove to be commercially nonviable. With reference to the Community Benefits agreement, key elements of the community jobs policy are still being negotiated. Specially, we have not yet reached agreement on ban the box provisions, use of temporary agencies, credit for off-site employment of Oakland residents, and local hire on vertical construction. We are also well into PLA negotiations related to the horizontal infrastructure aspects of the project. The PLA will be consistent with and facilitate the goals of the Community Jobs Policies. We anticipate resolution of these issues in time for the three-day supplemental report.

CEQA Indemnity and Funding Agreement

In July 2010, the Redevelopment Agency entered into a First Amendment to the ENA with the Developer that in part addressed CEQA costs. The Agency, wishing to expedite obtaining CEQA and NEPA clearance to advance infrastructure development of the OARB, amended the ENA to provide for the Agency contracting with a consultant to prepare the necessary CEQA and NEPA documentation. The City Council authorized a contract with LSA Associates, Inc. to perform the CEQA/NEPA review for an amount not to exceed $360,000. The Agency's contribution to the contract was capped at $240,000 with the Developer responsible for costs exceeding the City's cap. The LSA costs have exceeded the agreed upon maximum cost of $360,000. The final amount of City-paid CEQA-related third party costs has not yet been determined, but is estimated to be approximately $503,000.

Under the terms of the proposed CEQA Indemnity and Funding Agreement, due to the public-private nature of the Project, the City and the Developer will share CEQA costs. Specifically, the Developer's obligation towards the costs of preparing the CEQA document is limited to third party costs paid by the City. The City and Developer will share equally all third party costs paid by the City up to $503,000. The City will only be reimbursed by the Developer if the LDDA is approved. This means that the City will be responsible for all third party costs charged to the City in excess of $503,000 and all CEQA-related City staff costs (estimated to be about $140,000), which are paid for by developers for a typical project. However, this is not a typical project; the property is owned by the City and the Port; and the Developer's interests represent approximately 40% of the project studied in the CEQA Addendum; the Developer derives no benefit from the CEQA clearance if it does not enter into an LDDA.

In this Agreement, the City and Developer agree that other developers that benefit from the CEQA clearance (such as Custom Alloy Scrap Sales, California Waste Solutions, and OMSS) should also pay towards the cost of the Addendum and the proceeds of their contribution be split prorated among the parties. The Developer will be responsible for any future environmental review required as it goes through the planning and development process, including all City staff costs, and all third party CEQA and NEPA costs.

The indemnity portion of this Agreement assures that should there be a CEQA challenge and after meeting and conferring, if the Developer elects to opt out of the defense, the City can terminate the Developer under the LDDA and proceed with the defense. If the Developer elects to proceed and the City opts out, the Developer will indemnify the City. The City and Developer may also potentially agree to share costs and defend jointiy. In such a circumstance, Developer will contribute to the costs of defense on a prorata basis, as calculated by the acreage of the Ground Lease properties as compared to the acreage of the Project as a whole. This Agreement is required to be separate from the LDDA, because if a CEQA challenge is upheld, the indemnity provisions in an LDDA are no longer valid.

ANALYSIS

The Project as plaimed relies on TCIF funding, which is not assured. Southern Califomia and the Metropolitan Transportation Commission have been lobbying CTC to release the $242.1 million allocated to the Port of Oakland for other uses, and CTC itself questions the readiness of the project to receive TCIF funds. To persuade CTC not to reprogram the TCIF fimding, the City and the Port need to demonstrate that (1) there is a clearly defined project; (2) the project has environmental clearance (see CEQA Review section below); (3) there is an unambiguous program for the use of TCIF funding, including the roles and responsibilities of the City and the Port in carrying out the program; (4) there are real funding sources that will match TCIF; and (5) the City and Port will be able to obligate the TCIF funds and begin construction before December 2013. The legislation proposed by staff are interrelated and must be adopted together to demonstrate the Project's progress to CTC's satisfaction.

The EBMUD MOA ensures that the OARB project is properly integrated with its neighbor EBMUD and that any impacts the OARB project may have are mitigated. Without the assurances and rights granted in the MOA, EBMUD may once again challenge the project.

The Amended and Restated CSA spells out for CTC the roles and responsibilities of the City and Port in implementing the OARB Project. Not only is it important with regard to CTC, the Amended and Restated CSA attached to this report is beneficial to the City in that it reallocates all of the Port's TCIF allocation from the 7th Street project to the OHIT project, which will enable the City to complete development of the backbone infrastructure for the OARB.

The LDDA approval enables the Developer to move forward with the project. The LDDA authorizes the Developer to begin improvement of the Project Site within the timeframe set by CTC for TCIF funding. As important, it gives the Developer the contractual basis for investing in the design development and marketing of the OARB's Private Improvements; and the Developer's investment in the property will also provide a portion of the private match for the CTC grant.

PUBLIC OUTREACH/INTEREST

There have three means of public outreach, each of which generated considerable interest and consensus building.

- With respect to jobs, staff met with the Army Base Jobs Working Group, which included community-based organizations, Alameda Labor Council, Oakland ACORN, East Bay Alliance for Sustainable Economy, Building and Construction Trades Council of Alameda County, Construction Employers Association, Oakland WORKS, Revive Oakland!, Oakland Workforce Investment Board, and City of Oakland Contract Compliance and Employment Services, and in a few instances the Developer. The Army Base Jobs Working Group meetings were open to anyone wishing to weigh in on developing a comprehensive set of goals, conditions and implementation processes regarding local hiring for the construction and operations phases of the OARB project. Upwards of 50 people participated in this process. While the group discussed each item at length, and voted on each item, Councilmember Jane Brunner and her staff recorded the recommendations offered by meeting participants.

With respect to environmental and contract opportunity concerns, Vice Mayor Nancy Nadel convened several West Oakland Community Benefits Workshops out of which emerged a matrix of environmental, green development, and contract opportunity consensus recommendations. All of which will be implemented through existing CEQA requirements or as specific requirements in the LDDA. In addition, staff has an ongoing dialog with the Alameda County Public Health Department ("ACPHD") in collaboration with West Oakland community groups, and intends to continue working with them on the critical issues of environmental health, including implementation of an additional air monitoring program.

The third aspect of community outreach has been at the initiative of the Developer. There have been scores of meetings with neighborhood and civic organizations. Upon the completion of the master plan in February, the Developer has been presenting the plan to community forums in several different parts of the City. The ensuing dialog has been helpful in informing the community about the "Working Waterfront" character of the development and the schedule for the project, particularly in terms of construction contracting and employment.

COORDINATION

For the CEQA process, staff from the Office of Neighborhood Investment worked as a team with the Port, the Planning Department, and the Office of the City Attorney. In addition, staff consulted with the Transportation Services and Environmental Services Divisions of the Public Works Agency. Concurrent with the CEQA process, the same team sought input from the Gateway Park Working Group, EBMUD, and Caltrans in developing the master plan. In the preparation of this report, staff conferred with all the aforementioned as well as the Budget Office.

COST SUMMARY/IMPLICATIONS

Staff costs for the LDDA are still being calculated. CEQA related costs are addressed in the CEQA Indemnity and Funding Agreement. For the development itself, developer fees would cover the cost of Public Works staff for the Private Improvements portion of the Project. Staff costs to oversee the public infrastructure improvements, however, would come from City funds and potentially funding from the Alameda County Transportation Commission's Proposition B3 half cent sales tax measure, should that ballot measure be approved in November 2012.

The CSA framework with the Port will commit the City to increase its commitment to the OARB from $32 million to $54.5 million. The availability of that amount of funds is dependent upon consummating the $18 million in OARB land sales, to the recyclers and Caltrans, and preserving the existing $9 million in redevelopment funds associated with the OARB.

The costs for the Community Benefits Program are also still being calculated. Cost categories include the following:

1. Facilitating the creation and operation of the West Oakland Jobs Center
2. Ongoing compliance monitoring for community benefits commitments, including a) local hiring, b) local contracting, and c) environmental compliance mitigation measures, including addhional air quality monitoring and reporting.
3. Possible staffing of an Oversight Committee or Commission.

Potential sources of revenue to fund the Community Benefits Program activities include:

a) Oakland Workforce Investment Board for the Jobs Center
b) Advance on West Oakland Community Fund
c) Billboard revenue
d) Commercially viable conmiunity fee on tenants
e) Possessory interest (property taxes) targeted to support Army Base Community Benefits Program

f) Business License Tax revenue targeted to support Army Base Community Benefits Program
g) Private contributions

To ensure that the Developer's cost obligations are met, the LDDA includes both security deposit requirements and a Guaranty.

A security for the LLDA itself is $500,000 and separate security deposits will be required for each Ground Lease. With respect to the Guaranty, two Guarantees are similarly required – one for the LDDA, then once each Ground Lease is taken down, the Guaranty in that Ground Lease will prevail as those obligations. The Developer entity that will execute the LDDA and other agreements is a special purpose entity created for the purpose of developing this particular OARB Project. This entity has limited financial assets. The City/Agency has customarily required project developers to provide a financially strong guarantor entity to execute a Completion Guaranty that guarantees completion of construction of the project. If the developer retains other payment obligations, the City customarily requires a guarantee or other security to reduce the risk to the City's General Fund if the developer becomes unable to honor those other payment obligations.

In this case, staff continues to negotiate with the Developer what form of Completion Guaranty it will provide for completion of the OARB Project, and what type of security will be available to cover other potential Developer payment obligations such as, but not limited to, liability to pay any liquidated damages to EBMUD, the Developer's share of CEQA/NEPA costs and indemnity obligations under the Indemnity Agreement, any fines assessed for failure to adhere to the Contracting and Operations Jobs Policies, and environmental indemnity obligations. The LDDA provides that Prologis shall provide the guaranty with respect to the completion of the vertical improvements within the Central and East Gateway Areas at the time of lease execution, unless the Developer is able to show that the Ground Lease party has sufficient funds to guaranty the obligations thereunder and the City's consent to such demonstration of financial capacity shall be in the City's reasonable discretion. Further, the Ground Lease Guaranty may be assigned in parts as individual buildings are sold, so long as the assignee is able to show sufficient funds to guaranty the assigned obligations and the City has provided its consent as to financial capacity.

State Clawback Consideration

In March 2011, the City Council and the Agency approved a Funding Agreement that included funding for the development of the OARB. In addition, pursuant to a March 3, 2011 Purchase and Sale Agreement, the Agency sold and conveyed the Agency-owned portions of the OARB to the City by grant deed recorded January 31, 2012, excepting one approximately 16.7 acre parcel, which is subject to the public trust and transferred to the City as successor agency when the

Agency dissolved on February 2, 2012.[1] Section 34167.5 of the California Health and Safety Code addresses agreements between redevelopment agencies and their host jurisdictions to transfer assets. It reads as follows:

> Commencing on the effective date of the act adding this part, the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency. If such an asset transfer did occur during that period and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned to the redevelopment agency or, on or after October 1, 2011, to the successor agency, if a successor agency is established pursuant to Part 1.85 (commencing with Section 34170). Upon receiving such an order from the Controller, an affected local agency shall, as soon as practicable, reverse the transfer and return the applicable assets to the redevelopment agency or, on or after October 1, 2011, to the successor agency, if a successor agency is established pursuant to Part 1.85 (commencing with Section 34170). The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in the furtherance of the Community Redevelopment Law and is thereby unauthorized.

This language suggests that the transfer of the funds and property for the agreements related to the development of the OARB Project may be subject to review by the State for potential "clawback," since the funds and property were transferred after January 1, 2011, unless an exemption applies. In fact, on April 24, 2012, the State notified the City that the City should reverse any transfer and return applicable assets to the successor agency (here the City, as successor agency) that occurred after January 1, 2011 between the City and the Agency.

Since the funds and land to implement the EBMUD MOA, the Amended and Restated CSA, and the LDDA and related agreements might be subject to an attempt by the State to return the funds and land to the successor agency, there could be risks to the City's General Purpose Fund if money is expended for the agreements and the State later deems the expenditures invalid.

[1] The City is in the process of seeking approval from the Army for the transfer of the Army Base land from the Agency to the City.

SUSTAINABLE OPPORTUNITIES

Economic: The development of the former OARB has the potential to create thousands of construction and permanent jobs for Oakland residents and multi-million dollar contracting opportunities for local businesses. The project will generate millions of dollars in new tax revenue to the City's General Purpose Fund.

Environmental: The project will use, to the greatest extent possible, best management practices that not only reduce health and safety impacts to local residents, but also aim towards improving air quality, safe pedestrian and bike access , reduce water usage, and use alternative energy options to the extent they are commercially viable to reduce green-house gas emissions.

Social Equity: The comprehensive package of Community Benefits addresses the City's commitment to social equity by way of jobs for local residents, contracts for local businesses, and quality of life improvements for West Oakland residents.

CEQA

As previously stated, City staff worked with Port staff to prepare an Initial Study/Addendum which evaluated all of the proposed project's potentially significant environmental effects and concluded that the project would not result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in prior CEQA reviews conducted for the OARB. Specifically, the Initial Study/Addendum found (1) there are no substantial changes to the OARB Project which would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report, which was a "project level" EIR pursuant to CEQA Guidelines section 15180(b) ("2002 EIR"), the 2006 OARB Auto Mall Supplemental EIR and 2007 Addendum, the 2009 Addendum for the Central Gateway Aggregate Recycling and Fill Project, and the Port's 2006 Maritime Street Addendum (collectively called "Previous CEQA Documents); (2) there are no substantial changes in circumstances that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the Previous CEQA Documents; and (3) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Previous CEQA Documents were certified, which is expected to result in (a) new significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the Previous CEQA Documents or (b) mitigation measures which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the Previous CEQA Documents, and which would substantially reduce significant effects of the OARB Project, but the City declines to adopt them. Thus, in considering approval of the OARB Project, the City can rely on the Previous CEQA

Documents and the 2012 Addendum. A summary of the IS/Addendum and CEQA Findings are provided in ***Attachments B and C***, respectively.

The IS/Addendum and its appendices, as well as the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, were previously provided to the City Council under separate cover and are located in the Office of the City Clerk, the Planning, Building and Neighborhood Preservation Department, and on the Web at:

http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157

For questions regarding this report, please contact Pat Cashman, Project Manager, at 510.238.6281.

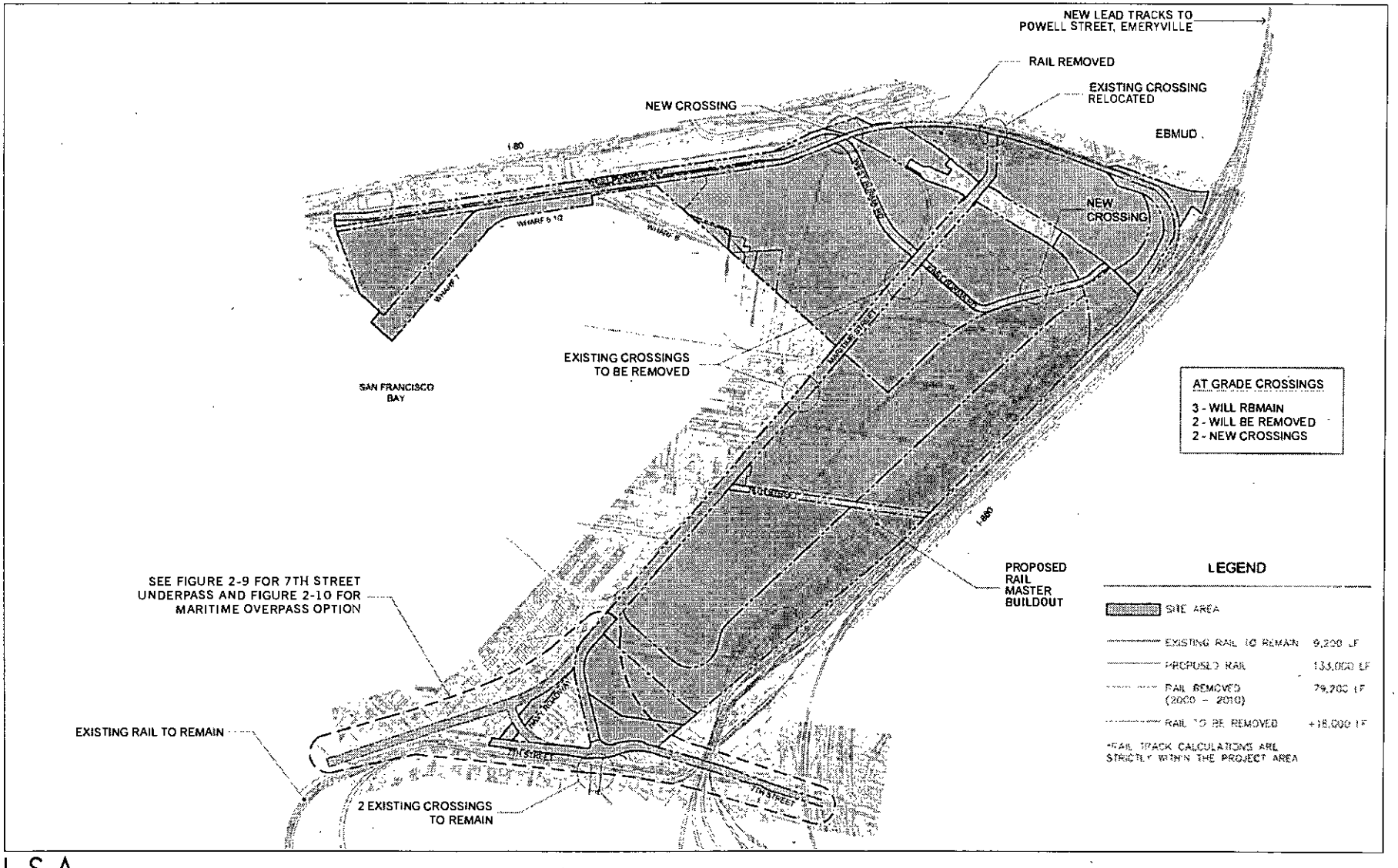
Respectfully submitted,

FRED BLACKWELL
Assistant City Administrator

Reviewed by:
Gregory Hunter, Neighborhood Investment Officer

Prepared by:
Pat Cashman, Project Manager
Office of Neighborhood Investment

Attachment A – Project Site and Rail Right of Ways
Attachment B – Summary of the Initial Study/Addendum
Attachment C – CEQA Findings



LSA

N

0 600 1200
FEET

SOURCE: ARCHITECTURAL DIMENSIONS, 2011.

2012 Oakland Army Base Project
Existing and Proposed Rail Network

Attachment A - Railroad Right of Ways

SUMMARY OF THE 2012 OAR*B* PROJECT INITIAL STUDY/ADDENDUM

A. Overview

This Initial Study/Addendum assesses the extent to which significant new information, changes in circumstances, or changes in the project (from what was evaluated in the 2002 *OARB Redevelopment Plan Area EIR* as compared to what is proposed as part of the 2012 OARB Project) may result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the previous CEQA documents approved by the City.[1]

The *OARB Redevelopment Plan* incorporated the program for the former Army Base set forth in the 2002 *Final Reuse Plan for the OARB ("Final Reuse Plan").* The *Final Reuse Plan* put forth a "Conceptual Reuse Strategy" that identified a menu of intended land uses for future reuse of the former OARB or "Gateway Development Area" under the concept of what was called the "Flexible Alternative." The preferred menu of land uses envisioned a mixed-use waterfront commercial development in the former OARB containing a variety of land uses ranging from light industrial, research and development, flex-office, retail, and possibly a high-end hotel complex; and marine terminal uses in the area to be developed by the Port, including wharves, container yards, railroad facilities and street improvements.

While there are some differences between the 2012 Project and what was proposed for the same geographic location in the 2002 Project, as noted in Section 1.0 Introduction and Section 2.0 Project Description of the 2012 Oakland Army Base Project Initial Study/Addendum (hereafter the "IS/Addendum"), the proposed uses would be consistent with the Conceptual Reuse Strategy and Flexible Alternative set forth in the *Final Reuse Plan.* The intent of the Flexible Alternative was to establish a broad envelope of probable land uses/market activities that could change over time in order to reflect market and economic conditions. Figures 1-1 and 1-2 of the IS/Addendum show the Conceptual Land Use Strategy of the 2002 Project and the 2012 Project, respectively.

The primary difference between the 2012 Project and what was proposed for the same geographic location in the 2002 Project is a shift from office/R&D to a greater amount of warehouse/distribution and maritime-related logistics uses as the predominant use. The 2012 Project proposes up to approximately 2.5 million square feet of warehouse/distribution and maritime-related logistics uses and 175,000 square feet of office/R&D, as compared to 300,000 square feet of warehouse/distribution and approximately 1.5 million square feet of office/R&D identified for the 2002 Project.

Additional components of the 2002 Project and the 2012 Project are summarized in Table 1-1 of the iS/Addendum and listed below:[2]

---

[1] The IS/Addendum and its appendices, as well as the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program are available at the Office of the City Clerk, the Planning, Building and Neighborhood Preservation Department, and on the Web at: http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157.

[2] The areas proposed by the 2002 Project for Gateway Park and new Berth 21 are not part of the 2012 Project.

- Approximately 22 to 24 acres north of Grand Avenue for 407,160 square feet of indoor recycling facilities are proposed to be located in the North Gateway, as compared to 494,000 square feet proposed for light industrial uses in the 2002 Project.
- Both the 2002 Project and the 2012 Project include the BCDC-required acreage for Ancillary Maritime Services (AMS) for the City and Port. However, in the 2012 Project, the 15-acres of BCDC-required AMS in the City-owned portion of the OARB is now being provided in three different locations within the project area. As part of the proposed truck parking facilities, there would be fueling services, which would include biodiesel. The BCDC-required fifteen (15) acres of AMS for the Port are now being provided in the 2012 Project as truck parking.
- A commemorative area is proposed within the Central Gateway, in the vicinity of the intersection of Maritime Street and Burma Road, to memorialize the contributions of civilians and the military in the Bay Area to World War II, and Korean and Vietnam Wars.
- Demolition, site preparation, and remediation are generally the same in both the 2002 and 2012 Projects.
- Up to nine billboards are proposed to the north of West Burma Road, along Grand Avenue and along I-880 (Figure 2-6) as part of the 2012 Project; no billboards were proposed as part of the 2002 Project.
- The Port-owned Joint Intermodal Terminal (JIT) will remain in operation as a rail yard.
- Berth/Wharf 7 will remain in operation as a bulk terminal.
- The railroad intermodal terminal in the OARB sub-district Port Development Area and associated right-of-way to support maritime uses that were proposed in the 2002 Project will be constructed as part of the 2012 Project, but will be smaller (approximately 61 acres).
- Maritime Street is proposed to be improved with intersection controls, bicycle and pedestrian paths, repaving and landscaping, and includes a minor reconfiguration. The street will not be relocated 400-600 feet to the east as was proposed in the 2002 Project (see Port's 2006 Addendum that looked at the impacts of not relocating Maritime Street to the east onto OARB property). Roadway improvements also include options to improve Burma Road, Engineers Road and relocated Wake Avenue, and to rebuild and grade separate 7th Street west of I-880.
- Installation of new utility systems that meet current standards, such as water distribution (both domestic and reclaimed water), wastewater collection, stormwater collection/discharge, gas distribution, electrical systems, security, telecommunication and similar systems.[3]
- Port container cargo throughput totaling 4.05 million twenty-foot equivalent units (TEUs) was analyzed and cleared through the 2002 OARB EIR, and is considered a cumulative project.

In addition to being consistent with the Final Base Reuse Plan and the 2002 Oakland Redevelopment Plan Area EIR, the IS/Addendum found that the 2012 OARB Project is

[3] No new connections will be made to EBMUD's existing 15" sewer line. Please see Chapter 2, Project Description, and Section 3.17, Utilities and Service Systems, for additional descriptions.

consistent with the General Plan (including the Land Use and Transportation Element (LUTE) of the General Plan, for which an EIR was certified in March 1998, and the Historic Preservation Element, for which an EIR was certified in 1998, among other General Plan Elements).

The IS/Addendum analyzes the project and cumulative effects of the following 17 environmental topics of the 2012 OARB Project against existing physical conditions[4]: Aesthetics; Agriculture and Forest Resources; Air Quality; Biological Resources; Cultural Resources; Geology and Soils; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use and Planning; Mineral Resources; Noise; Population and Housing; Public Services; Recreation; Transportafion/ Traffic; Utilities and Service Systems. In addition, the IS/Addendum compares the effects of the 2012 Project with those effects identified in the 2002 EIR.

The Initial Study/Addendum found (1) there are no substantial changes to the 2012 OARB Project which would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report, which was a "project level" EIR pursuant to CEQA Guidelines section 15180(b) ("2002 EIR"), the 2006 OARB Auto Mall Supplemental EIR and 2007 Addendum, the 2009 Addendum for the Central Gateway Aggregate Recycling and Fill Project, and the Port's 2006 Maritime Street Addendum (collectively called "Previous CEQA Documents"); (2) there are no substantial changes in circumstances that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the Previous CEQA Documents; and (3) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Previous CEQA Documents were certified, which is expected to result in (a) new significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the Previous CEQA Documents or (b) mitigation measures which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the Previous CEQA Documents, and which would substantially reduce significant effects of the 2012 OARB Project, but the City declines to adopt them. Thus, in considering approval of the 2012 OARB Project, the City can rely on the Previous CEQA Documents and the 2012 Initial Study/Addendum. A summary of the key issues of the IS/Addendum is provided below.

B. Summary of Key Issues

Out of the 17 environmental topic areas evaluated in the IS/Addendum, eight topic areas, aesthetics, air quality, biology, cultural resources, greenhouse gas emissions, land use and planning, noise and traffic and transportation are highlighted and discussed.

1. Aesthetics. As described in more detail in Section 2.0 Project Description of the IS/Addendum, the 2012 Project would result in the redevelopment of the OARB sub-

[4] The 2002 EIR utilized an "Alternative Baseline" (pursuant to CEQA Guidelines section 15229 and Public Resources Code section 21083.8.1) assessing impacts against physical conditions existing at time of the military base closure (1995) rather than existing at the time of the commencement of CEQA review (2001) for the following environmental topics: traffic, water consumption, wastewater, energy consumption, noise, air quality, schools, and population/employment. This Addendum also utilizes the Alternative Baseline.

district's Gateway Development Area and Port Development Area with single to multi-story buildings, roadways, parking areas, a rail terminal, associated rail right-of-way, road improvements, a road/rail grade separation, and varying amounts of public access/open space. The 2012 Project would also include a type of development not previously contemplated in the 2002 Project consisting of the construction of up to nine billboards in locations near the I-80 Toll Plaza, and along I-880 at West Grand Avenue, 12th, 13th, and 15th Streets.

The IS/Addendum included an analysis of photos of existing viewpoints and photo simulations with the proposed billboards; it found that the proposed billboards would not have a substantial adverse effect on a scenic vista or substantially degrade the existing visual character or quality of the Project site or surroundings because the views are toward the industrialized portion of the San Francisco Bay and do not constitute important views or scenic vistas; or, they would only partially obstruct panoramic views of mountains, hills, Bay waters, and city skylines, and only for several seconds at a time; specifically, billboards 6, 7, 8 and 9 (Figures 3.1-n and 3.1-o in the IS/Addendum) and billboards 3, 4, and 5 (Figures 3.1-f, 3.1-i and 3.1-h in the IS/Addendum), taken together constitute a series of billboards that would intermittently block views towards the hills for several seconds at a time. Moreover, the City has a billboard amortization program that has removed in excess of about 148 billboards over the past 12 years. The amortization program is ongoing and is anticipated to remove more billboards in the future. In addition, about 70 billboards have been removed through billboard relocation agreements over the same time period.

The IS/Addendum found that the 2012 OARB Project would not result in any new or substantial increase in impacts regarding new sources of substantial light and glare affecting daytime or nighttime views in the area because the project site is located in a highly industrialized area and, when viewed from a distance during daytime and nighttime, increased lighting on the site would generally blend with existing development. Particularly, daytime lighting would generally blend with existing light industrial uses within the project area, and nighttime hghting would blend with existing maritime operation lighting visible along the shoreline, as well as highway safety and roadway lighting and vehicle headlights visible along Maritime Street, the elevated portion of West Grand Avenue, and the I-880 and I-80 corridors. Although the proposed billboards along the eastern edge of the project site (billboards 7, 8, and 9) may create a new source of light in the residential area of West Oakland in proximity to the project site, these billboards would be separated from the residential areas by I-880, and existing buildings, fences and vegetation (including street trees), would reduce potential impacts associated with the new source of light. Certain residents currently have views over I-880 and are therefore likely to be able to see the billboards from their homes. However, these residents already have a substantial amount of ambient light from existing port-related activities in views toward the north in which the billboards would be visible. Therefore the billboards will not likely create a substantial new source of light in these areas. Furthermore, the 2012 would be subject to Mitigation Measure 4.11-1which would require new lighting to be designed to minimize off-site "spillage" and prohibit "stadium-style" lighting, and to SCA AES-1 and the Port's Exterior Lighting Policy.

Implementation of previously imposed mitigation measures (Mitigation Measures 4.11-1 through 4.11-6), SCA AES-1, compliance with the Port of Oakland Exterior Lighting

Policy, Caltrans permitting, the State's OAA, and the City's design review would ensure the 2012 Project would not make a significant cumulative contribution to aesthetics. Thus, the IS/Addendum found that the 2012 OARB Project would not result in significant new aesthetics impacts or a substantial increase in the severity of previously identified significant aesthetics impacts compared to the 2002 EIR. Therefore, impacts would be similar to those addressed in the 2002 EIR, and would continue to have no impact or be less than significant or less than significant with applicable City Standard Conditions of Approval (SCAs) or previously identified mitigation measures, except for demolition of historic resources (which is found to be significant and unavoidable in both 2002 and 2012 Projects; see Cultural Resources, below, for more information on historical resources.)

2. Air Quality. As noted in the IS/Addendum, since information on air quality issues was known, or could have been known when the 2002 EIR was being prepared, it is not legally "new information" as specifically defined under CEQA. However, an analysis of the proposed 2012 Project relying on the previously recommended May 2011 revision of the BAAQMD *CEQA Guidelines* and the 2011 significance Thresholds[5] was nevertheless conducted in order to provide more information to the public and decision makers, and in the interest of being conservative. Although the analysis in the IS/Addendum evaluates air quality using both the 2002 EIR thresholds (based upon BAAQMD 1999 *CEQA Thresholds*) and the BAAQMD May 2011 *CEQA Guidelines* and Thresholds, significance determinations are solely based on the 1999 thresholds from the 2002 EIR. Nevertheless, the City will impose its Standard Conditions of Approval, previously approved mitigation measures from the 2002 EIR (revised and clarified as applicable) and other Recommended Measures (that are not legally required mitigation measures), as detailed below.

   a. Construction Criteria Pollutant Emissions. For both the 2002 Project and the 2012 Project, construction criteria pollutant emissions would be mitigated to less-than-significant levels. Construction emissions were not quantitatively evaluated in the 2002 EIR because the1999 BAAQMD Guidelines do not contain quantitative construction thresholds; under the 1999 Guidelines, BAAQMD considers construction-related dust emissions from all construction projects to be potentially significant, but mitigated to a less-than-significant level if BAAQMD-recommended dust controls are implemented. Thus, in the 2002 EIR, the Project would be mitigated to a less-than-significant level with implementation of Mifigafion Measures 4.4-1 and 4.4-2 which required contractors to implement all BAAQMD "basic" and "optional" control measures at all sites and "enhanced" control measures for sites greater than four (4) acres, as well as exhaust control measures.

      For the 2012 Project, implementation of the City's SCA AIR-1 and SCA AIR-2 supersede 2002 EIR Mitigation Measures 4.4-1 and 4.4-2, as they are generally

[5] On March 5, 2012, the Alameda County Superior Court issued a Judgment invahdating the May 2011 BAAQMD Thresholds and BAAQMD recommends that the Thresholds not be used. Nevertheless, in the absence of further technical guidance, the City is generally continuing to use the May 2011 BAAQMD Guidelines in its CEQA review.

Table 1. 2002 and 2012 Project Construction Criteria Pollutant Average Daily Emissions [lbs/day][a]

	Reactive Organic Gases (ROG)[b]	Carbon Monoxide (CO)	Nitrogen Oxides (NOx)	Exhaust $PM_{2.5}$	Fugitive Dust $PM_{2.5}$	Total $PM_{2.5}$[c]	Exhaust PM_{10}	Fugitive Dust PM_{10}	Total PM_{10}[c]
2002 Project	66.2	245.7	616.9	25.9	NA	26.6	28.1	NA	29.8
2012 Project	23.9	107.1	298.8	8.8	NA	9.5	9.4	NA	11.2
1999 BAAQMD Significance Threshold	BMP	BMP	BMP	BMP	BMP	BMP	BMP	BMP	BMP
2011 BAAQMD Significance Thresholds	54.0	NA	54.0	54.0	BMP	NA	82.0	BMP	NA

[a] Average daily emissions are defined as total emissions over entire period of construction (e.g. 2002 - 2010 or Jul 2012 - Dec 2019 for the 2002 Project and the 2012 Project, respectively) divided by the number of days within this period.

[b] ROG emissions include exhaust ROG from all sources and evaporative running loss ROG from employee commute vehicles (modeled as light-duty cars).

[c] Total PM_{10} and $PM_{2.5}$ include exhaust PM from all sources and tire wear and brake wear from on-road vehicles; road dust and fugitive dust are not evaluated and not included in the total.

Table 2. 2002 and 2012 Project Operational Regional Emissions

	ROG	NOx	PM_{10}	$PM_{2.5}$
2002 EIR Operational Emissions (tons/year)[a]	101	167	12	12
2012 Project Operational Emissions (tons/year)				
With Variant A – Working Waterfront[b]	-3.1	146.5	0.8	0.7
With Variant B – R&D and Open Space[b]	-4.7	106	0.3	0.6
1999 BAAQMD Significance Threshold	10	10	10	NA
2011 BAAQMD Significance Threshold	10	10	15	10

[a] Emissions are based on the calculations prepared for the 2002 EIR prepared by URS for the geographic area representing the proposed project.

[b] Alternative Baseline Emissions were calculated in 2001 using emission factors from mobile sources current at the time. 2012 Project emissions were calculated for opening year of the Project (2020) using current emission factors which account for emission reductions due to increased regulatory requirements for mobile sources. Therefore, as shown in this table, total Project operational emissions result in no net increase in reactive organic gas emissions.

Source: Environ, 2012 and LSA Associates, Inc.

similar but the SCAs are considered more up-to-date and more stringent than those recommended in the 1999 Guidelines. For the purposes of comparison, construction emission levels for both the 2002 Project and 2012 Project were quantitatively assessed in the IS/Addendum. As shown in Table 1 above, the 2012 Project would result in much lower construction emissions of criteria pollutants than the 2002 Project.

b. **Operational Regional Emissions.** Similar to the 2002 Project, the 2012 Project would result in a significant and unavoidable impact with respect to operational emissions even with the implementation of required mitigation measures and

Standard Conditions of Approval, although the 2012 Project would not result in any new or substantial increase in the severity of such impacts. The IS/Addendum imposes the City's SCA AIR-2 and four mitigation measures previously identified from the 2002 EIR (Mitigation Measures 4.4-3, 4.4-4, 4.4-5 and 4.4-6) on the 2012 Project. The 2012 Project would generate less ROG, NOx, PM_{10}, and $PM_{2.5}$ emissions than identified in 2002 as shown in Table 2 above.

As noted in the IS/Addendum, according to 1999 and 2011 guidance from the BAAQMD, regional air pollution is largely a cumulative impact. No single project is sufficient in size to, by itself, result in nonattainment of ambient air quality standards. Thus, if the project region is in nonattainment under applicable federal or State ambient air quality standards, then a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. Therefore, similar to the 2002 Project, the 2012 Project would also contribute to any cumulatively significant air pollution impact since it would exceed the significance thresholds at the individual level for NOx; however, there would be no new impact and no substantial increase in severity of the previously identified impact from the 2012 Project.

c. Project Construction Health Risk. Similar to the 2002 Project, the 2012 Project would result in a significant and unavoidable impact with respect to construction diesel emissions and health risk even with the implementation of required mitigation measures and Standard Conditions of Approval, although the 2012 Project would not result in any new significant impact or substantial increase in the severity of previously identified significant impacts. At the time of the 2002 EIR, the BAAQMD had not identified a numeric toxic air contaminant (TAC) risk threshold for construction emissions; using emission rates from the 2002 Project and 2012 Project construction operations, air dispersion modeling was conducted to determine the health risk associated with construction of both the 2002 and 2012 Projects. As identified in the 2002 EIR and as confirmed in this recreation of the 2002 analysis, construction of the 2002 Project would result in a substantial increase in diesel emissions which would expose persons to substantial levels of TACs. As shown in Table 3 below, construction of the 2012 Project would result in substantially lower risk than would have been anticipated under the 2002 Project. The 2012 Project is subject to today's more stringent on-road and off-road diesel equipment emission regulations which reduce health risk impacts substantially over those that would have occurred in 2002. Nevertheless, this impact would remain significant and unavoidable.

Table 3. Project Construction Health Risk Assessment Results (Source: ENVIRON, 2012)

	Population	Excess Lifetime Cancer Risk In a million	Chronic Health Index	Acute Health Index	Annual $PM_{2.5}$ Concentration $\mu g/m^3$
2002 Project	Resident Child	107	0.077	12	0.35
	Resident Adult	12			
2012 Project	Resident Child	42	0.030	4	0.14
	Resident Adult	4			
1999 BAAQMD Threshold		None	None	None	None
2011 BAAQMD Threshold		10	1	1	0.3

Table 4: Operational Health Risk Assessment Results (Cancer Cases in 1 Million)

	2002 Project	2012 Project	Increment
Maximum Cancer Risk 2002 Approach	84	31	-53
Maximum Cancer Risk 2012 Approach	278	96	-182
1999 BAAQMD Thresholds	10	10	
2011 BAAQMD Thresholds	10	10	

Source: ENVIRON, 2012.

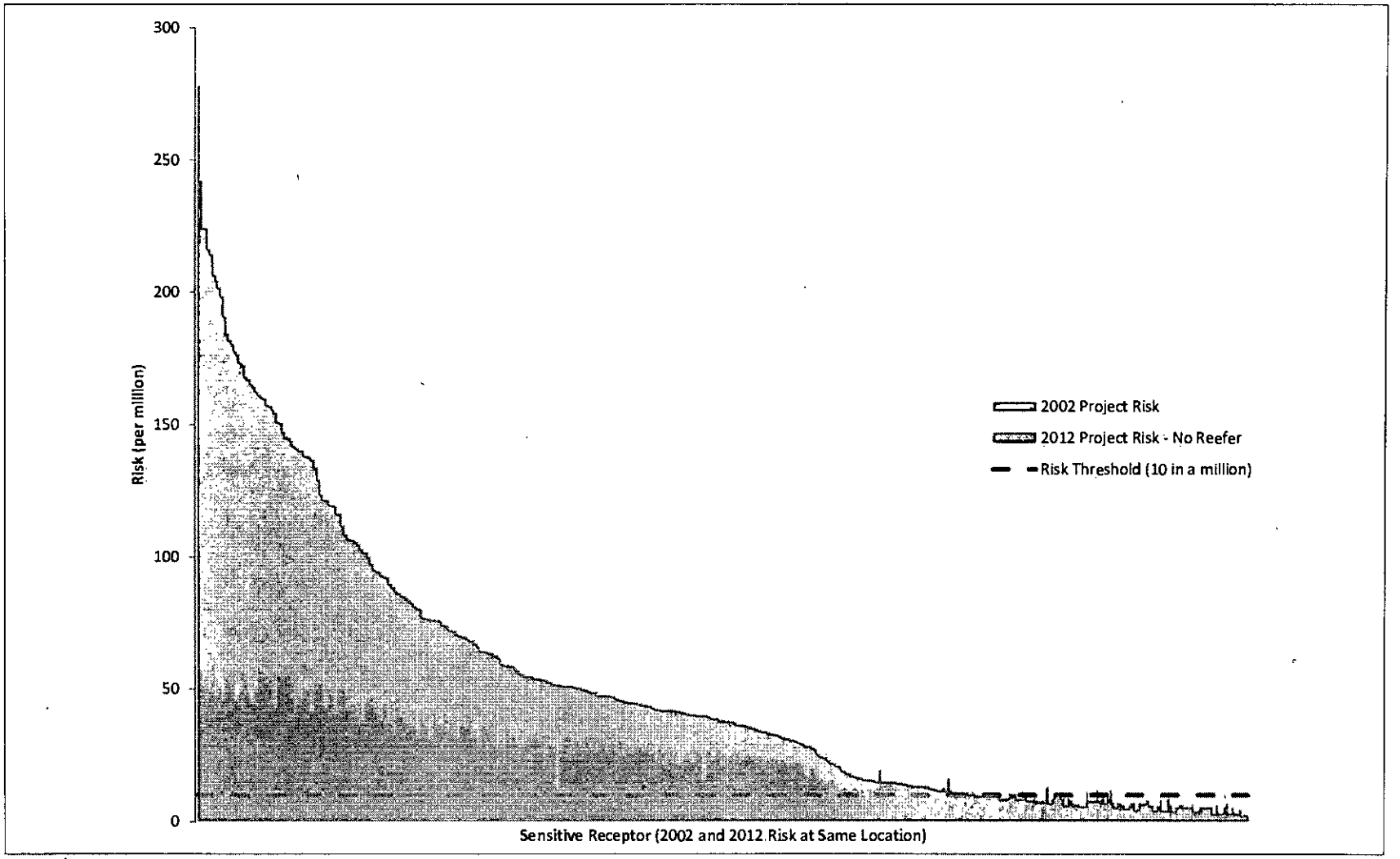
d. Project Operational Health Risk. Similar to the 2002 Project, the 2012 Project would result in a significant and unavoidable impact with respect to operational diesel emissions and health risk even with the implementation of required mitigation measures and Standard Conditions of Approval, although the 2012 Project would not resuh in any new or substantial increase in the severity of such impacts.

The 2002 EIR concluded that, even after mitigation, the operational health risk impact of the 2002 Project would be significant and unavoidable. The operational health risk assessment prepared in the 2002 Final EIR estimated excess lifetime cancer risks of 80 in one million at the project boundary and 10 in one million in West Oakland.

Results of the 2012 Project operational health risk assessment are shown in Table 4 above. As explained in the methodology section below, the assessment was conducted for two scenarios using both the methodology standard to the 2002 project analysis and the methodology presented in the 2011 BAAQMD guidance documents. Results indicate that the maximum excess lifetime cancer risk estimated for the proposed project would be less than the maximum risk levels for the 2002 project under both the 2002 analysis standards and the 2012 analysis standards. At most receptor locations, incremental model results of the 2012 Project are equal to or less than the results of the 2002 Project. However, this is not the case at all modeled locations, as described below.

As shown in Table 4 above, with the 2012 Project, the Maximally Exposed Individual (MEI) would have a lower estimated excess lifetime cancer risk when compared with the impacts of the 2002 Project. However, even with implementation of mitigation measures and the City's Standard Conditions of Approval, implementation of the 2012 Project would have a significant and unavoidable impact related to the exposure of sensitive receptors to substantial toxic air contaminants.

Estimated excess lifetime cancer risks for the 2002 and 2012 Projects were compared by rank ordering the off-site sensitive receptor locations according to the calculated 2002 Project cancer risk and comparing them to the 2012 Project cancer risk at the same location as shown in Figure 1 below. For purposes of this comparison, cancer risks from the 2012 Project were calculated exclusive of refrigerated cargo container generator set (reefer genset) emissions since reefer genset emissions were not included in 2002 Project cancer risk calculations. Reefer gensets contribute between 10 percent (at locations further from the Project in West Oakland and Emeryville) and 30 percent (at locations close to the Project in West Oakland) to total 2012 Project cancer risk and reefer genset activity is expected to be in approximately the same location for the 2012 Project as the 2002 Project. Estimated excess lifetime cancer risks from the 2012 Project are substantially less than estimated risks from the 2002



LSA

Figure 1

2012 Oakland Army Base Project
Comparison of Excess Lifetime Cancer Risk

SOURCE: ENVIRON, 2012.

I:\CO01001 Oakland Gateway\figures\Fig_3.3-1.ai (5/24/12)

infeasible for the proposed warehouse and rail oriented logistics facilities contemplated for the 2012 Project.[6]

One of the mitigation measures previously identified in the 2002 EIR, Mitigation Measure 4.6-14 is modified in the IS/Addendum; instead of the mitigation requirement for demolishing/deconstructing buildings being subject to a specific building permit, Mitigation Measure 4.6-14 is modified as follows for the City:

> No demolition or deconstrucfion of contributing structures to the OARB Historic District shall occur until a master plan and/or Lease Disposition and Development Agreement has been approved by the City, and demolition or deconstruction of a building is required to realize the master infrastructure development plan necessary for approved redevelopment activities, in conformity with apphcable General Plan Historic Preservation Element and City of Oakland Planning requirements.

The reason for this is that the 2002 EIR mitigation measure, which specifies that no City demolition or deconstruction may occur until a building permit is obtained, is not feasible. Geological studies prepared during the master planning process for the project area have determined that the entire OARB site requires significant and time consuming grading work. As noted in Section 2, Project Description, every site needs to be dynamically compacted, surcharged with as much as 8 feet of soil, wicked of its water content, and then regraded to a new grade which will raise the sites from 2 to 3 feet above the current elevation. This is only feasible if done on a large scale, such as all of the Central Gateway or at least one third of the East Gateway. This activity cannot be performed around the existing buildings. All buildings must be taken down in advance of the required grading. All buildings must be relocated pursuant to SCA CULT-4 or deconstructed pursuant Mitigation Measure 4.6-9 in advance of the required grading.

The original mitigation measure 3.6-14 states that the Port shall not demolish or deconstruct structures until it has approved a final development plan for the relevant new facility or facilities. This requirement shall continue to apply to the Port in the absence of a Lease Disposition and Development Agreement.

5. **Greenhouse Gases (GHG).** Climate change and greenhouse gas emissions were not expressly addressed in the 2002 EIR. However, since information on climate change and greenhouse gas emissions was known, or could have been known in 2002, it is not legally "new information" as specifically defined under CEQA and thus is not legally required to be analyzed as part of the IS/Addendum. However, an analysis of the proposed 2012 Project, using the previously recommended May 2011 BAAQMD CEQA Guidelines and Thresholds, was conducted in order to provide more information to the public and decision-makers, and in the interest of being conservative.

   The IS/Addendum analysis concludes that the 2012 OARB Project would result in the generation of greenhouse gas emissions from construction as well as operations (passenger vehicles, ships, trains, tugs, trucks and operation of buildings on-site), as

[6] Appendix L: Feasibility Study for Adaptive Reuse of the Existing Oakland Army Base Warehouses.

would the 2002 Project. Total emissions resulting from the 2002 and 2012 Projects are shown below in Table **5**.

Table **5.** **Project Greenhouse Gas Emissions in Metric Tons Per Year**

	Total Annual CO_2e Emissions
2002 Project	171,292
2012 Project	17,869

Source: ENVIRON and LSA, Associates, Inc., 2012.

However, as noted above, the analysis evaluating climate change and greenhouse gas emissions provided in the IS/Addendum is for informational purposes only, there is no resulting significant CEQA impact.[7] Moreover, the 2012 Project generates substantially less greenhouse gases than the 2002 Project. Nevertheless, the City will impose a modified version of its Standard Condition of Approval requiring the Project Applicant to submit a Greenhouse Gas Reduction Plan to the City for review and approval (as part of the Planned Unit Development process and ongoing as specified) that has a goal to increase energy efficiency and reduce greenhouse gas emissions by at least 20 percent, and a goal of 36 percent below the project's "adjusted" baseline GHG emissions to help achieve the City's goal of reducing GHG emissions. The IS/Addendum also includes a "Recommended Measure" (not required by CEQA) relating to climate change (included in Section 3.9 Hydrology and Water Quality of the IS/Addendum that the Project Applicant submit a Sea Level Rise Adaptation Plan for the 2012 Project to the City of Oakland for review and approval as part of the Planned Unit Development process.

6. **Land Use and Planning.** The 2002 EIR identified three impacts with respect to policy inconsistencies would result from the 2002 Project. Two of these impacts, and their associated mitigation measures, are not applicable to the 2012 Project (Impacts 4.1-1, 4.1-2 and 4.1-3; Mitigation Measures 4.2-1 and 4.2-3). The 2002 and 2012 Project would result in the same significant and unavoidable impact with respect to the loss of all structures contributing to a historic district; however, the 2012 Project would not result in any new or substantial increase in previously identified significant impacts. The 2012 Project is consistent with the intent of key plans and policies, as discussed below:

   - San **F**rancisco **B**ay Plan: Redevelopment of the Gateway and Port development areas of the OAR**B** as proposed by the 2012 Project would be consistent with the intent of **B**ay Plan policies regarding water-related industry, ports, and public access.
   - San **F**rancisco **B**ay Area Seaport Plan: Redevelopment of the Port development area as proposed by the 2012 Project would be consistent with the intent of Seaport Plan policies regarding cargo forecasts, Port priority use areas, and specific policies designated for the Port of Oakland.

[7] On March 5, 2012, the Alameda County Superior Court issued a Judgment invalidating the May 2011 BAAQMD Thresholds and BAAQMD recommends that the Thresholds not be used. Nevertheless, in the absence of further technical guidance, the City is generally continuing to use the May 2011 BAAQMD Guidelines in its CEQA review.

- San Francisco Bay Trail Plan: Redevelopment of the project site as proposed by the 2012 Project would be consistent with the intent of Bay Trail Plan policies regarding trail alignment and transportation access.
- State Lands Commission (SLC) Tidelands Trust Exchange Agreement: As shown in Figure 2-5b of the IS/A, the Project proposes permanent vehicular, bicycle and pedestrian access within OARB Sub-district Gateway Development Area and to the adjoining future Gateway Regional Park to the west of the project area. Per letter dated May 18, 2012, the SLC has approved that the 2012 Project satisfies the requirement stipulated by the Exchange Agreement (This letter is included in Appendix D of the IS/Addendum).
- Long Term Management Strategy (LTMS) Program: No dredging would be required for the continued operation of the wharf, beyond the occasional maintenance that already occurs. The 2012 Project would conform to the LTMS Program.
- City of Oakland General Plan:
    - Land Use and Transportation Element (LUTE). The 2012 Project would be consistent with the objectives and associated policies of the LUTE regarding the following: expansion and retention of the Oakland job base and economic strength; provision of adequate infrastructure; reduction of truck effects on local neighborhoods; encouragement of waterfront access; creation of a high-quality natural and built waterfront environment; promotion of the Port of Oakland; provision of commercial areas; and reduction or elimination of hazardous wastes. Although the proposed project is not expected to require new hazardous waste storage, treatment, or disposal facilities in the area, any such facilities shall comply with applicable requirements.

      Nine billboards are proposed as part of the 2012 Project. LUTE Policy I/C4.3, which encourages but does not require billboard removal in commercial and residential zones, does not apply here because the project site is located in industrial zones. Moreover, the City has a billboard amortization program which has removed in excess of 148 billboards over the past 12 years. The amortization program is ongoing and is anticipated to remove more billboards in the future. In addition, about 70 billboards have been removed through billboard relocation agreements over the same time period.
    - Bicycle and Pedestrian Master Plans. The 2012 Project would be consistent with the Bicycle and Pedestrian Master Plans, as it proposes to enhance bicyclist and pedestrian safety by providing designated bicycle facilities and sidewalks (where none currently exist) on Maritime Street and Burma Road, as discussed in detail in Section 3.16 Transportation/Traffic of the IS/Addendum.
    - Open Space, Conservation and Recreation Element (OSCAR). The 2012 Project would be consistent with objectives and associated policies of the OSCAR regarding the improving physical and visual access to the shoreline, including the Bay Trail and protecting and promoting the beneficial use of nearshore waters, as discussed further in Sections 3.1 Aesthetics, 3.15 Recreation , and 3.16 Transportation and Traffic of the IS/Addendum.

- Noise Element. As noted in the noise analysis provided in Section 3.12 Noise of the IS/Addendum, the increased noise resulting from the 2012 Project (traffic related, construction and operational) would result in a less-than-significant impact and mitigation is not warranted. Moreover, consistent with the City's Noise Ordinance and the Oakland Noise Element, the relevant SCA that would be required would further ensure that any potential impacts would be reduced to a less-than-significant level.
- Safety Element. The 2012 Project would not conflict with any of the above Safety Element policies. The project's specific effects regarding subjecting people and property to hazardous conditions are addressed in Sections 3.8 Hazards and Hazardous Materials and 3.9 Hydrology and Water Quality of the IS/Addendum), all of which are less than significant or reduced to a less-than-significant level after implementation of mitigation measures or SCA.
- Historic Preservation Element (HPE). The policies from the Historic Preservation Element generally encourage, but do not mandate, the preservation of Oakland's historic resources, within the context of and consistent with other General Plan goals, objectives, and policies. There was one impact found to be potentially significant. Despite the imposition of a number of mitigation measures and SCA, it was still found to be significant and unavoidable, as it was for the project evaluated in the 2002 EIR. A more detailed discussion can be found in Section 3.5 Cultural Resources of the IS/Addendum.
- Scenic Highways Element. The 2012 Project site is located within the MacArthur Freeway Scenic Corridor. As concluded in the 2002 EIR, development of the 2012 Project would eliminate visual evidence of a specific period in the history of West Oakland military transportation, and this impact would be considered significant and unavoidable. The 2012 Project would not result in any new or more significant impacts related to scenic resources than were described in the 2002 EIR, as discussed in detail in Section 3.1 Aesthetics.

  Scenic Highways Element Policies 1-4: a) discourage new billboards or other obstructions within Scenic Corridors; b) provide that interesting views should not be "obliterated"; and c) new construction within the Scenic Corridor should have architectural merit and be harmonious with the surrounding landscape. None of these policies are fundamental, mandatory policies, but are directive in nature; and, as such, must be balanced against other policies that may compete with them (such as economic development and reuse of former military bases). Although views will be somewhat obscured, no interesting views will be obliterated. Moreover, the surrounding area is mostly devoid of any landscaping and is industrial in nature. The billboards will be constructed of quality materials and will have architectural merit. As such, the proposed billboards do not fundamentally conflict with the General Plan.

- City of Oakland OARB Redevelopment Plan and Final Reuse Plan for the Oakland Army Base. The *OARB Redevelopment Plan* incorporated the program for the former Army Base set forth in the *Final Reuse Plan for the OARB*. While there are some differences between the 2012 Project and what was proposed for the same

geographic location in the 2002 Project, as noted in Section 1.0 Introduction and Section 2.0 Project Description of the IS/Addendum, the proposed uses would be consistent with the Conceptual Reuse Strategy and Flexible Altemative set forth in the *Final Reuse Plan*. As noted above, the intent of the Flexible Altemative was to establish a broad envelope of probable land uses/market activities that could change over time in order to reflect market and economic conditions.

7. Noise. Similar to the 2002 EIR, the only significant noise impact identified for the 2012 Project would occur from construction activities associated with build out of the project. However, implementation of the applicable Standard Conditions of Approval (SCA NOI 1, 2, 3, 4 and 6) would ensure that construction noise impacts associated with build out of the project would be reduced to less-than-significant levels for all receiving land uses in the project vicinity. SCA NOI-1, limiting days/hours and construction operation, required on an on-going basis throughout demolition, grading and/or construction was modified for the 2012 Project to allow for construction between 7:00 a.m. to 7:00 p.m. Monday through Saturday, except for the barging and unloading of soil, which shall be allowed 24 hours per day, seven days per week for about 15 months; typically, only limited construction activities are permitted on Saturdays, however, given the location of the Project (distance to existing residences, the closest of which are about 750 feet away to construction activities, separated by a freeway) and existing noise conditions, Saturday construction, as well as barging, is appropriate. Also, the developer can request to operate outside of the above mentioned hours if an air quality report is submitted (since the air quality analysis assumed a 7am-11pm, Monday –Saturday construction period).

8. Traffic. The IS/Addendum concluded that the 2012 OARB Project would not result in significant new transportation impacts or a substantial increase in the severity of previously identified significant impacts compared to the 2002 EIR. The 2002 EIR project included substantial amount of research and development facilities and offices in the project site, which generate higher number of employee trips; while the 2012 project proposed a higher amount of port-supporting land uses that would complement existing and proposed adjacent uses in the project area.

   Construction and/or remediation would generate haul, delivery and employee trips, which would involve large transport trucks and movement of hazardous materials or hazardous waste through city streets. Furthermore, the construction of the proposed 7th Street grade separation and related improvements may require closure of 7th Street during construction, which would result in the need to divert traffic onto other roadways. As partial implementation of the City's Transportation SCA TRANS-2, an analysis was conducted to determine the impacts of closing 7th Street during construction (see Appendix K: Technical Memorandum – Draft 7th Street Grade Separation Traffic Analysis for Detour). This study indicates that improvements at Adeline Street/5th Street and Adeline/3rd Streets would maintain existing traffic service levels. The study and the improvements are partial implementation of SCA TRANS-2, which will require further development of a detailed traffic management plan prior to issuance of the first construction-related permit (grading, demolition) and consultation and coordination with other public agencies (such as the Port, EBMUD and Caltrans). The Project would be

constructed over a multi-year period and in a number of construction phases; the timing, amount and route of truck and vehicle movements are not currently known. Although construction activities could result in traffic disruptions and potential level of service degradation on area roadways, implementation of SCA TRANS-2 would mitigate any construction traffic impacts to a less-than-significant level. In addition, a Transportation Demand Management Plan is required for both construction (prior to the issuance of the first permit related to construction) and operations (prior to issuance of a final building permit) as part of implementation of SCA TRANS-1. The Community Benefits Program being considered also includes a provision to provide public or private transit connection for construction workers (connecting to BART and at least two West Oakland locations).

Different intersections would be impacted in the 2002 and the 2012 Projects. For the 2012 Project: a total of five intersections would be impacted when the Project comes online and would require signal optimization to mitigate potentially significant impacts to less than significant levels; another 12 intersections would require signal optimization later, in the next 10 to 20 years; and one intersection would require geometric changes, in addition to signal optimization, in the next 10-20 years. Both the 2002 and the 2012 Projects would result in significant and unavoidable impacts to freeway segments of the Congestion Management Program (CMP) as a result of the project and in the cumulative plus project conditions, however, far fewer freeway segments would be impacted as a result of the 2012 Project. Moreover, the 2012 OARB Project would generate over 6,800 fewer daily trips than the 2002 EIR project including 1,400 fewer trips in the AM peak hour and 1,200 fewer trips in the PM peak hour. Thus, impacts would be substantially reduced or similar to those addressed in the 2002 EIR.

As identified in the 2002 EIR, adequate emergency access would be a potentially significant impact for the 2012 Project; the 2002 EIR Mitigation Measure 4.3-8 to provide an emergency service program and emergency evacuation plan using waterborne vessels would still be applicable for the 2012 Project. In addition, the 2012 Project includes new mitigations requiring an emergency response plan be developed and coordinated with adjacent property owners, including EBMUD and Caltrans, and a requirement that West Burma Road be designed with appropriate turnouts and turnarounds, as determined by the City of Oakland Fire Department, in order to ensure adequate ingress and egress for emergency vehicles.

C. Conclusions

In considering approval of the 2012 OARB Project, the City can rely on the Previous CEQA Documents and the 2012 IS/Addendum.

2012 OAKLAND ARMY BASE PROJECT

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) Findings

Addendum Findings

The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further California Environmental Quality Act ("CEQA") review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, are present in that (1) there are no substantial changes to the 2012 Oakland Army Base Project as described in the Initial Study/Addendum ("2012 OARB Project") that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report, which was a "project level" EIR pursuant to CEQA Guidelines section 15180(b) ("2002 EIR"), the 2006 OARB Auto Mall Supplemental EIR and 2007 Addendum, the 2009 Addendum for the Central Gateway Aggregate Recycling and Fill Project, and the Port's 2006 Maritime Street Addendum (collectively called "Previous CEQA Documents); (2) there are no substantial changes in circumstances that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the Previous CEQA Documents; and (3) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Previous CEQA Documents were certified, which is expected to result in (a) new significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the Previous CEQA Documents or (b) mitigation measures which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the Previous CEQA Documents, and which would substantially reduce significant effects of the 2012 OARB Project, but the City declines to adopt them. Thus, in considering approval of the 2012 OARB Project, the City can rely on the Previous CEQA Documents and the 2012 Addendum.

Public Resources Code section 21083.3 and Guidelines Section 15183 Findings

Although the City Council can rely on the Previous CEQA Documents for the reasons stated above, and thus an Addendum is the appropriate CEQA document for the 2012 OARB Project, as an alternative, separate, and independent basis, the City Council also hereby makes the following findings:

As a separate and independent basis for providing CEQA clearance, pursuant to Public Resources Code section 21083.3 and Guidelines section 15183, the City Council finds: (a) the 2012 OARB Project is consistent with Land Use and Transportation Element (LUTE) of the General Plan, for which an EIR was certified in March 1998, and the Historic Preservation Element, for which an EIR was certified in 1998; (b) feasible mitigation measures identified in the LUTE and Historic Preservation Element EIRs were adopted and have been, or will be, undertaken; (c) Previous CEQA Documents and the 2012 Addendum, evaluated impacts peculiar to the 2012 OARB Project and/or Project site, as well as off site and cumulative impacts; (d) uniformly applied development policies and/or standards (hereafter called "Standard Conditions of Approval") have previously been adopted (by the City Council on November 3, 2008, via Ordinance No. 12899 C.M.S., which was not legally challenged, and was later revised by City Staff) and found to, that when applied to future projects, substantially mitigate impacts, and to the extent that no such findings were previously made,

the City hereby finds and determines that the Standard Conditions of Approval substantially mitigate environmental impacts of the 2012 OARB Project; and (e) no substantial new information exists to show that the Standard Conditions of Approval will not substantially mitigate 2012 OARB Project and cumulative impacts.

Other CEQA Findings

a. The monitoring and reporting of CEQA mitigation measures in connection with the 2012 OARB Project will be conducted in accordance with the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program. Adoption of this Program will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in Section 21081.6 of CEQA. All proposed mitigation measures are capable of being fully implemented by the efforts of the City of Oakland or other identified public agencies of responsibility.

b. That the record before the City Council includes, without limitation, the following for the 2012 OARB Project:

   1. the Final Master Plan, including all accompanying maps and papers, submitted to the City;

   2. all final plans and reports submitted by the Master Developer and his/her representatives to the City;

   3. all final staff reports, decision letters, and other documentation and information produced by or on behalf of the City.

   4. all oral and written evidence received by the City staff, before and during the public hearings on the 2012 OARB Project;

   5. the Previous CEQA Documents and related materials, including the Redevelopment Plan and Base Reuse Plan; and

   6. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations; (c) Oakland Fire Code; (d) Oakland Planning Code; (e) other applicable City policies and regulations; and, (f) all applicable state and federal laws, rules and regulations.

c. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council decision on the 2012 OARB Project is based is the Office of Planning, Building & Neighborhood Preservation, 250 Frank H. Ogawa Plaza, Suite 3115, Oakland, CA. 94612 and the Office of the City Clerk, One Frank H. Ogawa Plaza, First Floor, Oakland, CA. 94612.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 MAY 31 PM 1:31

Approved as to form and legality

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO._____C.M.S.

A RESOLUTION APPROVING AMENDMENTS TO THE (FORMER) OAKLAND ARMY BASE FINAL REUSE PLAN RELATING TO A REVISED CONCEPTUAL LAND USE STRATEGY EMPHASIZING WAREHOUSING/ LOGISTICS, AND AUTHORIZING CITY STAFF TO MAKE ANY AND ALL NECESSARY CONFORMING CHANGES WITHOUT RETURNING TO CITY COUNCIL

WHEREAS, the Oakland Army Base (OARB) was identified for closure in 1995 by the Defense Base Closure and Realignment Commission and approved for closure by the President of the United States pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 Public Law 150206 and the Defense Base Closure and Realignment Act of 1990 Public Law 150101 Acts as amended; and

WHEREAS, on July 31, 2002 the Oakland City Planning Commission certified the Oakland Army Base Redevelopment Plan EIR, which analyzed the environmental impacts associated with the development of 1,800-acre OARB Redevelopment Plan area ,and adopted all appropriate Califomia Environmental Quality Act (CEQA) findings; and

WHEREAS, on July 31, 2002 the Oakland Base Reuse Authority (OBRA) passed Resolution No 21002-17 adopting the Final Reuse Plan for the Oakland Army Base ("Final Reuse Plan") and thereby endorsing a conceptual reuse scenario entitled "Flexible Altemative" which included a mix of land uses for the area including waterfront light industrial maritime support research and development, "flex-office," selected retail and possibly a hotel, as shown in ***Exhibit A***; and

WHEREAS, the Oakland City Council certified, by Resolution No. 80301 C.M.S., on December 5, 2006, the Supplemental Environmental hnpact Report for the Oakland Army Base Auto Mall Project, which analyzed the environmental impacts associated with development of an auto mall and relocation of ancillary maritime support services, and certified by Resolution No. 81004 C.M.S. on December 18, 2007 the First Addendum to the SEIR, and adopted all appropriate CEQA findings and amended the Final Reuse Plan; and

WHEREAS, the Automall CEQA documents were legally challenged by EBMUD and in 2009 the trial court ruled they could not be used as it relates to discharges from new development into an existing 15-inch sewer line and vacation/relocation of Wake Avenue, but were valid in all other respects; and

WHEREAS, in 2010, an Exclusive Negotiating Agreement (ENA) was executed with Prologis/CCIG as the master developer to lead the master planning effort for the former Oakland Army Base (OARB), and; subsequently, the City and the master developer entered into a Second Amendment to the ENA, whereby the City agreed to fund up to $14.1 million towards the necessary planning and engineering studies to create a master plan for the OARB, and to

subsequently proceed to construction documents, with a goal of being under construction in June 2013, and;

WHEREAS, the master plan for the former OARB, which includes City- and Port-owned areas, and an approximately 14-acre Port-owned area around 7th and Maritime Streets proposes a revised Conceptual Land Use Strategy emphasizing warehousing/logistics (known as "the 2012 OARB Project"), as shown in ***Exhibit B***; and

WHEREAS, while the 2012 OARB Project proposes more warehousing and logistics uses than was specifically noted in the 2002 Final Reuse Plan (and studied as part of the 2002 OARB Redevelopment Plan Area EIR), it is still consistent with the intent of the Final Reuse Plan, which was to establish a broad envelope of probable land uses/market activities that could change over time in order to reflect market and economic conditions; and

WHEREAS, the City Council wishes to further amend the Final Reuse Plan in order to reflect the 2012 OARB Project master plan developed by CCIG/Prologis in consultation with the City and the Port; and

WHEREAS, the City previously prepared and certified/adopted the 2002 Oakland Army Base ("OARB") Redevelopment Plan Environmental Impact Report, which was a "project level" EIR pursuant to California Environmental Quality Act ("CEQA") Guidelines section 15180(b); the 2006 OARB Auto Mall Supplemental EIR and 2007 Addendum; and the 2009 Addendum for the Central Gateway Aggregate Recycling and Fill Project; while the Port prepared and adopted the Port's 2006 Maritime Street Addendum (collectively called "Previous CEQA Documents); and

WHEREAS, the development of the 2012 OARB Project is partially dependent on funding through the Trade Corridor Improvement Fund (TCIF) program, which is administered by the California Transportation Commission (CTC); now therefore be it

RESOLVED: That the Final Reuse Plan for the Oakland Army Base is further amended to reflect the 2012 OARB Project, as set forth in ***Exhibit B*** attached hereto and incorporated herein by reference; and be it

FURTHER RESOLVED: That the City Council authorizes City staff to make any and all necessary conforming changes to the Final Reuse Plan to reflect the revised 2012 OARB Project Conceptual Land Use Strategy and update information as set forth in ***Exhibit B*** attached hereto and incorporated herein by reference without returning to City Council; and be it

FURTHER RESOLVED: That, the City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present. Thus, prior to amending the Final Base Reuse Plan to reflect the 2012 OARB Project, the City has relied upon on the Previous CEQA Documents and the 2012 OARB Initial Study/Addendum; and be it

FURTHER RESOLVED: That, specifically, the City Council affirms and adopts as hs own findings and determinations the June 12, 2012, City Council Agenda Report, including without limitation the discussion, findings, conclusions, specified conditions of approval (including the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program ("SCA/MMRP")), and the CEQA findings contained in ***Attachment C*** of the Agenda Report,

each of which is hereby separately and independentiy adopted by this Council in full, as if fully set forth herein; and be it

FURTHER RESOLVED: The City Council finds and determines that this action 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: The record before this Council relating to this action, includes without limitation those items listed in ***Attachment C*** of the Agenda Report, as if fully set forth herein, which are available at the locations listed said Exhibit; and be it

FURTHER RESOLVED: That the City Council authorizes City staff to make any changes to the Final Reuse Plan required by the CTC that will preserve TCIF funds for the development of the 2012 OARB Project without retuming to City Council; 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 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 -

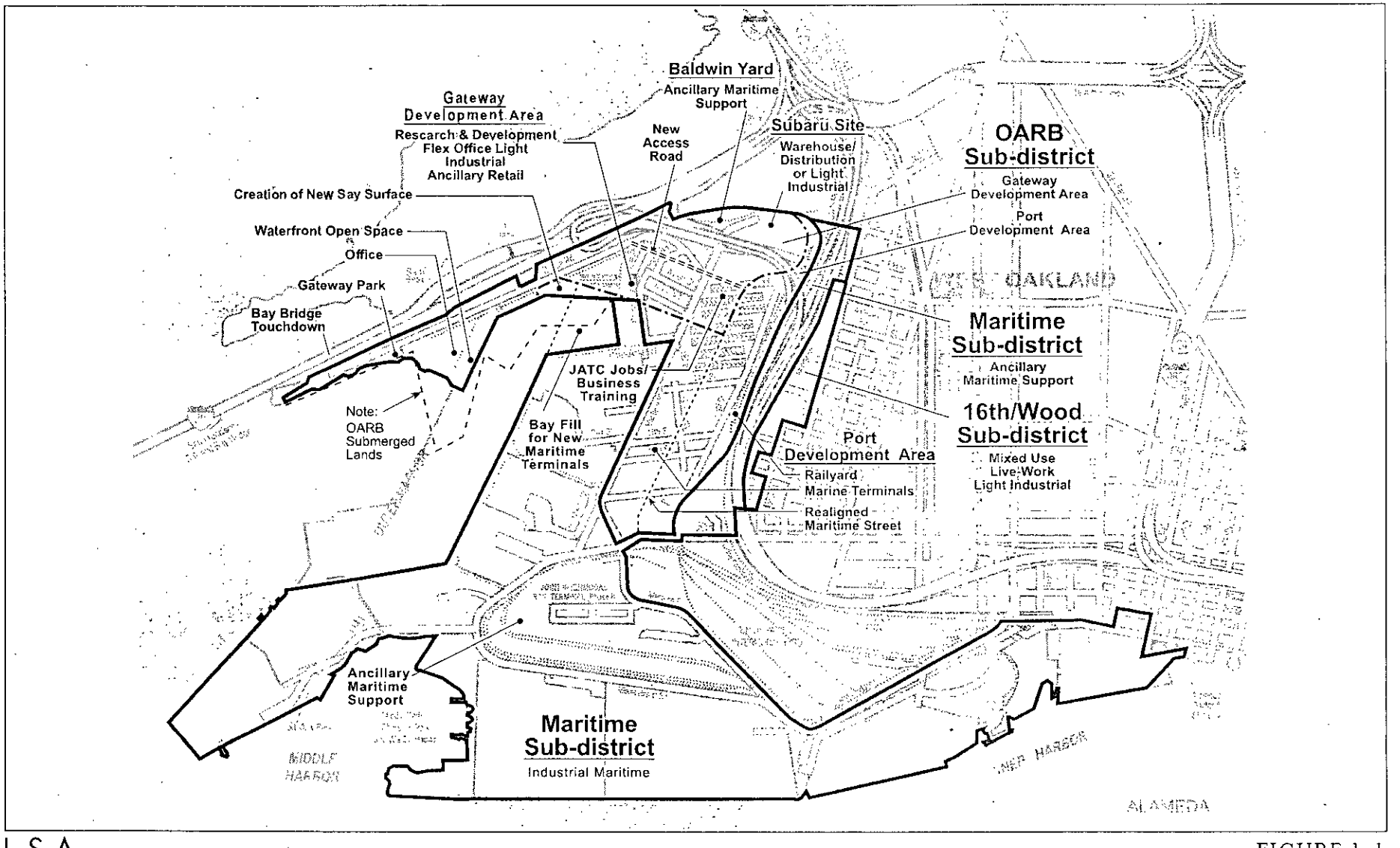
ATTEST:_____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

EXHIBIT A

Flexible Alternative Land Use Strategy

(2002 EIR/Base Reuse Plan)



LSA

FIGURE 1-1

N

0 .5 1

MILES

SOURCE: G. BORCHARD & ASSOCIATES, APRIL 2002.

2012 Oakland Army Base Project

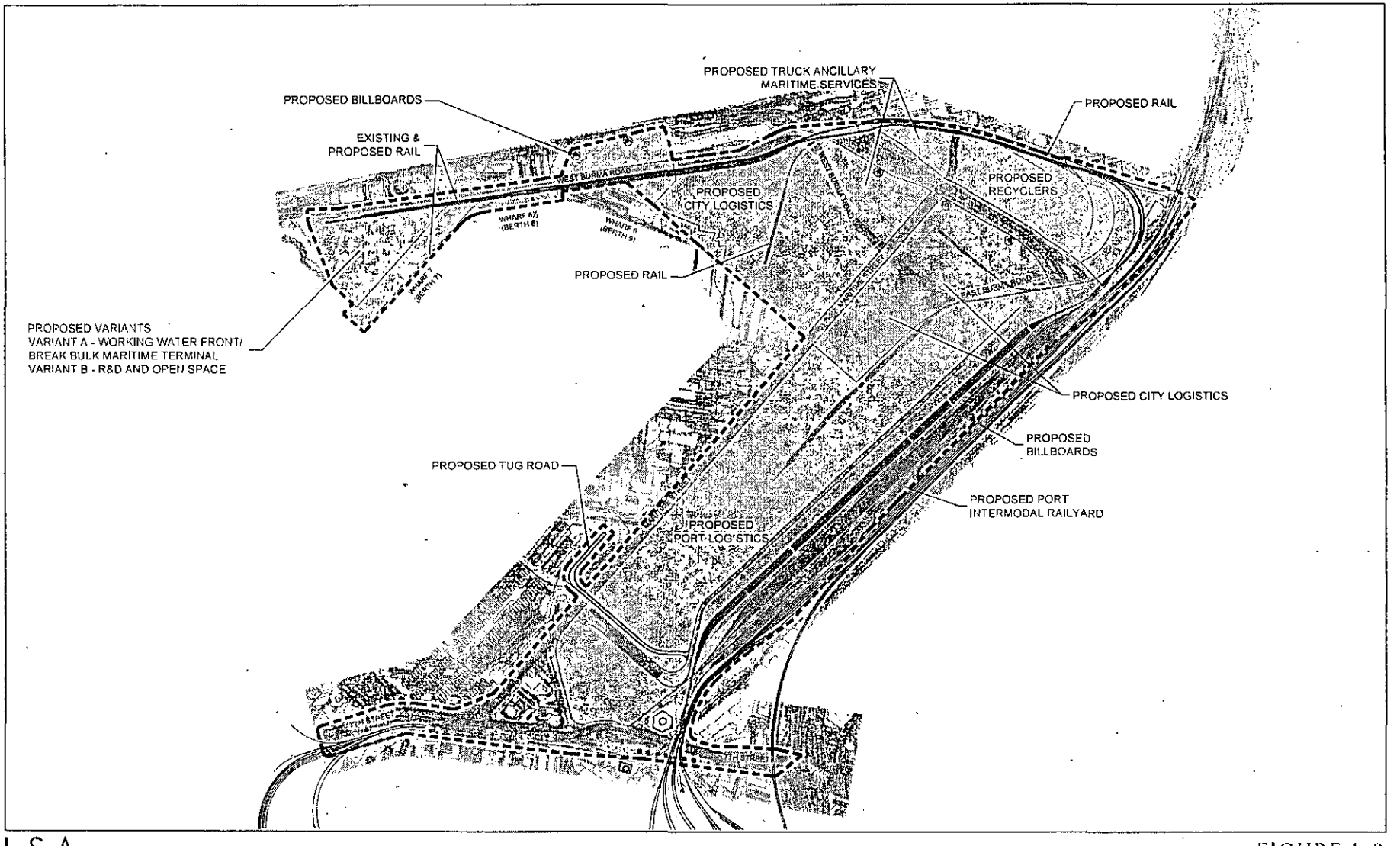
2002 Project Conceptual Redevelopment Strategy

EXHIBIT A - 2002 Conceptual Land Use Strategy: Flexible Alternative

EXHIBIT B

Revised Conceptual Land Use Strategy

(2012 OARB Project)



LSA

FIGURE 1-2

SOURCE: ARCHITECTURAL DIMENSIONS, MAY 23, 2012.

2012 Oakland Army Base Project

2012 Project Conceptual Redevelopment Strategy

EXHIBIT B - 2012 Conceptual Land Use Strategy: 2012 OARB Project

Table 1-1: Comparison of 2002 Project and 2012 Project

OARB Sub-District	Land Use	2002 Project[1]		2012 Project			
				Variant A Working Waterfront		Variant B R&D/Open Space	
		Square Feet	Acres[2]	Square Feet	Acres	Square Feet	Acres
Gateway Development Area (GDA)	Light Industry	494,000		-	-	Same as Variant A	
	Recycling Facilities	-	-	379,605	25		
	Retail	25,000		-	-		
	Ancillary Maritime Services[3]	n/a	15	37,673	15		
	Office, R&D	1,528,000		-	-	175,000	11
	Warehouse/Distribution	300,000		1,089,223	94	942,763	82
	Five (5) Billboards	-	-	n/a	Included	Same as Variant A	
	Building Development Subtotal	2,347,000	183	1,506,501	133	1,535,041	133
	Roadways[4]	n/a	Included	864,450	20	Same as Variant A	
	Rail Right-of-Way	-	-	124,200	3		
	Utilities	n/a	Included	n/a	Included		
	Wharf Reuse/Repair[5]	n/a	Included	504,600	13.1	91,100	2.1
	Infrastructure Subtotal[6]	-	-	124,200	23	124,200	23
	Public Access or Park[7]	n/a	10	n/a	3	n/a	12
	GDA Subtotal[6]	2,347,000	193	1,506,501	159	1,535,041	168
Port Development Area	Warehouse/Distribution	-	-	882,88	97	Same as Variant A	
	Ancillary Maritime Services	n/a	2	n/a	Included		
	Four (4) Billboards	-	-	n/a	Included		
	Building Development Subtotal	-	2	882,8S1	97	882,881	97
	Port Rail Terminal[9]	n/a	130	2,664,400	61	Same as Variant A	
	Roadways[4]	n/a	Included	657,550	15		
	Utilities	n/a	Included	n/a	Included		
	Marine Terminals and Cargo Throughput[8]	n/a	55	Not included as part of this project			
	Infrastructure Subtotal[6]	n/a	185	2,664,400	76	2,664,400	76
	Port Development Area Subtotal[6]	n/a	187	3,547,281	173	3,547,281	173
TOTAL		2,347,000	380	2,389,382	332	2,417,922	341

Note: All property and building measurements are approximate.

[1] The approximately 360-acre 2012 Project is almost entirely on the Oakland Army Base portion of the Oakland Army Base Redevelopment Area. What is shown under the 2002 Project only includes the development that was proposed in the same geographic area of the 2012 Project.

[2] Acres refers to total land area occupied by this use, not proposed building square footage.

[3] Ancillary Maritime Services (AMS) uses may include a variety of port-related transportation supporting facilities, including and not limited to: truck parking; cargo storage and other maritime support services. The 2012 Project does not include a change in AMS uses but does include a change in location.

Table notes continued on next page.

[4] Includes the following changes: 1) Maritime Street will not be relocated and will be improved in same general location through the Gateway Development Area to the Gateway Peninsula; Burma Road (West Burma) will be relocated south of its current alignmnent in the Central Gateway, and connect to a new Access Roadway (East Burma) east of Maritime; 2) Under the highway there will be no change from what was studied in the 2002 EIR; 3) changes proposed to Grand Avenue at-grade were required mitigation as part of the 2002 EIR at Grand Avenue/Maritime Street; 4) two variants for 7th Street grade separation are included.

[5] As noted in Footnote 17 (p.3-29 of the 2002 EIR), Wharf 7 and the majority of Wharf 6 ½ would remain and be reused.

[6] Wharf repair/reuse and roadways are not included in the calculations for any of the building or infrastructure subtotals or total development.

[7] The 2002 EIR included 29 acres of park/public access which consisted of 10 acres of shoreline access and 19 acres for a Gateway Park to be developed by EBRPD. The 2012 Project area does not include the 19-acre Gateway Park. Gateway Park is in the eariy planning stages being led by EBRPD and a consortium of agencies.

[8] The new marine terminal in the OARB Sub-district and the Maritime Sub-district ("New Berth 21") studied in the 2002 EIR continue to be part of the Port's development plan. However, these improvements will not be constructed as part of the 2012 Project but are considered a cumulative project. 4.05 million twenty-foot equivalent units (TEU) of container cargo throughout was cleared through the 2002 OARB EIR.

[9] The Port's Joint Intermodal Terminal, which is not located on the OARB property, will be retained; the 2002 EIR considered demolishing that rail yard.

Source: City of Oakland, Port of Oakland, CCIG, 2012.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 MAY 31 PM 4:36

Approved as to form and legality

Mark P. Wald
Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO._____C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A MEMORANDUM OF AGREEMENT WITH THE EAST BAY MUNICIPAL UTILITY DISTRICT AND CCIG OAKLAND GLOBAL, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY AND/OR OAKLAND BULK OVERSIZED TERMINAL, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (OR THEIR RELATED ENTITIES OR AFFILIATES) RELATING TO MUTUAL COOPERATION IN THE DEVELOPMENT OF THE FORMER OAKLAND ARMY BASE IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED DOCUMENTS, WITHOUT RETURNING TO THE CITY COUNCIL

WHEREAS, EBMUD's Main Wastewater Treatment Plant ("MWWTP") is located at 2020 Wake Avenue in Oakland, Califomia, and the only way to access the main gate of the MWWTP is via Wake Avenue, although there are other locations with access to the MWWTP, they provide more limited access than the Wake Avenue gate; and

WHEREAS, between 2000 and 2002, the Oakland Base Reuse Authority, the City of Oakland Redevelopment Agency, and the City adopted a Redevelopment Plan and a Base Reuse Plan for the Oakland Army Base Redevelopment Area; and

WHEREAS, to further implement the Redevelopment Plan and the Base Reuse Plan, the City (1) entered into an Exclusive Negotiating Agreement with Prologis Property, L.P. (as successor by merger to AMB Property, L.P.)/Califomia Capital Group ("Master Developer") to develop a portion of the former Army Base and to develop a Master Plan for certain City-owned and Port-owned properties, including portions of the former Army Base that is further described in the Califomia Environmental Quality Act (CEQA) Addendum as the 2012 Army Base Project ("2012 Army Base Project"); and (2) plans to redevelop the North Gateway Area of the former Oakland Army Base, adjacent to the MWWTP, for two recycling facilities, which is a component of the 2012 Army Base Project; and

WHEREAS, the City previously prepared and certified/adopted the 2002 Oakland Army Base ("OARB") Redevelopment Plan Environmental Impact Report, which was a "project level" EIR pursuant to CEQA Guidelines section 15180(b); the 2006 OARB Auto Mall Supplemental EIR and 2007 Addendum; and the 2009 Addendum for the Central Gateway Aggregate Recycling and Fill Project; while the Port prepared and adopted the Port's 2006 Maritime Street Addendum (collectively called "Previous CEQA Documents); and

WHEREAS, the redevelopment plans for the North Gateway Area requires realigning

Wake Avenue and intensifying the usage of the rail lines between the MWWTP and the North Gateway Area; and

WHEREAS, CCIG Oakland Global, LLC and/or Oakland Bulk Oversized Terminal, LLC will be the developer of the break bulk marine terminal in the West Gateway Area of the OARB and the primary user of the rail lines between the MWWTP and the North Gateway Area; and

WHEREAS, EBMUD has expressed concerns regarding the impact that the realignment of Wake Avenue and intensified rail usage may have on access to the MWWTP; and

WHEREAS, EBMUD successfully challenged the City's 2006 Supplemental EIR and 2007 Addendum for an Auto Mall project which included the realignment of Wake Avenue; and

WHEREAS, the City, CCIG Oakland Global, LLC and/or Oakland Bulk Oversized Terminal, LLC, and EBMUD wish to ensure that the 2012 Army Base Project is successfully developed and that EBMUD's concerns are adequately addressed; and

WHEREAS, the City, CCIG Oakland Global, LLC and/or Oakland Bulk Oversized Terminal, LLC, and EBMUD have negotiated a Memorandum of Agreement to address EBMUD's concerns and assure that the 2012 Army Base Project's roadway and rail line improvements in the North Gateway Area will be constructed in accordance with generally acceptable engineering standards, meeting applicable design criteria, and mitigate impacts to EBMUD by providing EBMUD with safe and reasonable access to the MWWTP; and

WHEREAS, if the City cannot accomplish the successful relocation of Wake Avenue, then Wake Avenue will remain in its current location, but the negotiated rail restrictions would still apply, and in turn, EBMUD agrees not to challenge the 2012 OARB Project; now, therefore be it

RESOLVED: That the City Administrator is authorized to negotiate and execute a Memorandum of Agreement with CCIG Oakland Global, LLC and/or Oakland Bulk Oversized Terminal, LLC (or their related entities or affiliates) and the East Bay Municipal Utility District for the development of the 2012 OARB Project in a form and content substantially in conformance with Exhibit A, attached hereto and incorporated herein by reference without returning to City Council; and be it

FURTHER RESOLVED: That, the City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating preparation of additional CEQA are present. Thus, prior to approving the 2012 OARB Project and the Memorandum of Agreement , the City can rely on the Previous CEQA Documents and the 2012 OARB Initial Study/Addendum; and be it

FURTHER RESOLVED: That, specifically, the City Council affirms and adopts as its own findings and determinations the June 12, 2012, City Council Agenda Report, including without limitation the discussion, findings, conclusions, specified conditions of approval (including the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program

("SCA/MMRP")), and the CEQA findings contained in ***Attachment C*** of the Agenda Report, each of which is hereby separately and independently adopted by this Council in full, as if fully set forth herein; and be it

FURTHER RESOLVED: The City Council finds and determines that this action 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: The record before this Council relating to this action, includes without limitation those items listed in ***Attachment C*** of the Agenda Report, as if fully set forth herein, which are available at the locations listed said Exhibit.

FURTHER RESOLVED: That the Environmental Review Officer shall cause to be filed appropriate Notices of Exemption/Determination; and be it

FURTHER RESOLVED: That the City Administrator and his or her designee is authorized to take whatever action is necessary with respect to negotiating and executing the Memorandum of Agreement consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

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

DATE OF ATTESTATION: _____

EXHIBIT A

Proposed Memorandum of Agreement with
East Bay Municipal Utility District

MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF OAKLAND, THE EAST BAY MUNICIPAL UTILITY DISTRICT AND CCIG OAKLAND GLOBAL, LLC

This Memorandum of Agreement ("Agreement") is entered into this ___ day of _____, 2012 (the "Execution Date") between the City of Oakland, a California Charter City (the "City"), and the East Bay Municipal Utility District, a Municipal Utility District created pursuant to Municipal Utility District Act ("EBMUD"), together called the "Parties." CCIG Oakland Global, LLC ("CCIG"), the developer for the West Gateway area, as defined below, is also a party to this Agreement solely with respect to Section 1.e, "Limitations on Rail Traffic," and Section 8, Miscellaneous.

RECITALS

A. EBMUD's Main Wastewater Treatment Plant ("MWWTP") is located at 2020 Wake Avenue in Oakland, California. The only way to access the main gate to the MWWTP is via Wake Avenue, a public street that crosses real property owned by the City and an easement owned by Burlington Northern Santa Fe ("BNSF"), although there are other locations with more limited access to the MWWTP.

B. Between 2000 and 2002, the Oakland Base Reuse Authority, the City of Oakland Redevelopment Agency, and the City adopted a Redevelopment Plan for the Oakland Army Base Redevelopment Area ("Redevelopment Plan"), adopted a Final Army Base Reuse Plan ("Reuse Plan") and certified an Environmental Impact Report for the Redevelopment Plan and Reuse Plan. Subsequently, the City and Port of Oakland have taken numerous steps to implement the Redevelopment Plan and Reuse Plan.

C. To further implement the Redevelopment Plan, the City (1) will enter into a Lease Disposition and Development Agreement (the "LDDA") with Prologis and CCIG Oakland Global, LLC ("Master Developer") to develop a portion of the former Army Base and to develop a Master Plan for certain City-owned and Port-owned properties, including portions of the former Army Base that is further described in the CEQA Addendum as the 2012 Army Base Project ("2012 Army Base Project"), (2) has performed further California Environmental Quality Act (CEQA) review of the 2012 Army Base Project, and (3) plans to redevelop the North Gateway Area of the former Oakland Army Base, adjacent to the MWWTP, for two recycling facilities (CASS and CWS; hereafter "Recycling Facilities" or "Recyclers"), which is a component of the 2012 Army Base Project. CCIG will develop the West Gateway area and the new Oakland Bulk Oversized Terminal. The Oakland Bulk Oversized Terminal, LLC ("OBOT") is an affiliate of Master Developer and, upon the satisfaction of certain conditions precedent set forth in the LDDA, intends to enter into a ground lease for the West Gateway area as further set forth in the LDDA.

D. The Parties wish to ensure that:

1. The designs for the 2012 Army Base Project's roadway and rail line improvements in the North Gateway Area will be constructed in accordance with generally acceptable engineering standards, meeting applicable design criteria, and mitigate impacts to EBMUD by providing EBMUD with safe and reasonable access to the MWWTP; and

2. The 2012 Army Base Project (as shown in Exhibit A, attached hereto and incorporated herein by reference) is successfully developed.

TERMS

NOW, THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. Access to EBMUD's Main Wastewater Treatment Plant

The Parties shall implement the following measures (as shown in Exhibits B-1 and B-2, attached hereto and incorporated herein by reference).

a. Realignment of Wake Avenue

(1) Realignment. The City shall realign Wake Avenue and widen the realigned Wake Avenue from two to four lanes. The City shall obtain EBMUD's approval that the detailed design for the realigned Wake Avenue is consistent with the conceptual site plan solely with respect to access and safety-related issues. EBMUD shall have ten (10) Business Days after receiving the detailed design to provide written comments or approve such detailed design, which approval shall not be unreasonably withheld, conditioned or delayed. Failure to either approve the detailed design or provide written comments by the specified date means the documents are deemed approved, unless EBMUD notifies the City in writing within the 10-day review period that EBMUD requires an additional 10 Business Days for review. If EBMUD requests the extended review period, EBMUD's failure to provide written comments prior to the expiration of the extended period means the documents are deemed approved. The City shall review EBMUD's comments and incorporate such comments with which it agrees into a revised detailed design and provide EBMUD ten (10) Business Days for review and comment on the revised detailed design, or to approve the revised detailed design, which approval shall not be unreasonably withheld, conditioned or delayed. If City and EBMUD cannot agree on the final detailed design within ten (10) Business Days, then the Dispute Resolution Process contained in Section 8.1 shall be followed.

(2) Right of Way. The new Wake Avenue alignment shall be a public street, which EBMUD, like all members of the public, would be entitled to use.

(3) Quitclaim of Access Easement. EBMUD shall, within 30 days of written notice from the City of the complefion of the realignment of Wake Avenue pursuant to Section 1.a.(1), relocation of the existing rail hne pursuant to Section 1.c.(1), execution of the rail traffic agreement pursuant to Section 1.e, and transfer of property rights for the Burma Road to Engineers Road connection pursuant to Section 1.f, execute and record a quitclaim deed quitclaiming to the City or its successor(s) any and all of its rights and interest in the access easement recorded as Document No. 2004-513852 in a form substantially similar to that shown in Exhibit XXX attached hereto and incorporated herein by reference.

b. Provision of a New Railroad Crossing.

The City shall design a new four-lane railroad crossing compliant with applicable Califomia Public Utilities Commission and Class 1 Rail regulations and design safety requirements, at the proposed intersection between the realigned Wake Avenue and Engineers Road, as generally shown in Exhibit B. The City shall obtain EBMUD's approval that the detailed design for new railroad crossing is acceptable with respect to access and safety-related issues. EBMUD shall have ten (10) Business Days after receiving the detailed design to provide written comments or approve such detailed design, which approval shall not be unreasonably withheld, conditioned or delayed. Failure to either approve the detailed design or provide written comments by the specified date means the documents are deemed approved, unless EBMUD notifies the City in writing within the 10-day review period that EBMUD requires an additional 10 Business Days for review. If EBMUD requests the extended review period, EBMUD's failure to provide written comments prior to the expiration of the extended period means the documents are deemed approved. The City shall review EBMUD's comments and incorporate such comments with which it agrees into a revised detailed design and provide EBMUD ten (10) Business Days for review and comment on the revised detailed design, or to approve the revised detailed design, which approval shall not be unreasonably withheld, conditioned or delayed. If City and EBMUD cannot agree on the final detailed design within ten (10) Business Days, then the Dispute Resolution Process contained in Section 8.1 shall be followed.

The City shall submit the design as required for CPUC approval. EBMUD shall be copied on all communications to the CPUC regarding the design approval, and shall be provided with copies of all communications from the CPUC regarding the design approval. EBMUD shall also be given notice of any in-person or telephonic meetings with the CPUC regarding the design approval, and shall be given the opportunity to attend those meetings.

If CPUC rejects the design, the City shall design a crossing that addresses the specific reasons for rejection set forth by the CPUC. The City shall obtain EBMUD's approval that the detailed design for new railroad crossing is acceptable with respect to access and safety-related issues. EBMUD shall have ten (10) Business Days after receiving the detailed design to provide written comments or approve such detailed design, which approval shall not be unreasonably withheld, conditioned or delayed.

Failure to either approve the detailed design or provide written comments by the specified date means the documents are deemed approved. The City shall constmct the crossing according to the final approved design.

The intent of this provision is to ensure that EBMUD will have safe and reasonable access to meet its operational needs by providing EBMUD with the widest railroad crossing that will be approved by the CPUC, not to exceed four lanes.

c. Widening of Engineers Road

(1) Relocation of existing rail line. The City, or its designee, shall obtain an agreement from Union Pacific, BNSF and Oakland Terminal Rail (OTR) or their successors (collectively called "Rail Entities") for an easement to relocate the existing rail line twenty (20) feet south of the existing alignment along the length of Engineers Road to enable the widening of Engineers Road to 40 feet southward as measured from the current northern boundary of Engineers Road, in a form substantially similar to that shown in Exhibit XXX attached hereto and incorporated herein by reference. The design of the relocated rail line will involve a built up ballast rock stmcture which slopes toward the new northern property line (with the toe of the slope at the property line). The City, or its designee, shall relocate the existing railroad maintenance easement so as to overlay the relocated rail line property. No part of this relocated maintenance easement shall be on EBMUD's property.

(2) No stormwater impacts. The City shall incorporate and implement design provisions for the relocated rail lines that will prevent any negative stormwater impacts to EBMUD along Engineers Road caused by the relocated rail lines.

(3) Construction of safety improvements. EBMUD shall provide the property necessary for, and shall design and constmct, improvements at the intersection of Engineers Road and the new rail crossing that are necessary to mitigate impacts to safety posed by requiring tmcks to tum across the relocated rail line at a right or acute angle that is too close to the rail lines, as shown on Exhibit B.

EBMUD shall obtain the City's approval of the detailed design, schedule and budget ("Document Submittals") for these safety improvements. City shall have ten (10) Business Days after receiving the Document Submittals to provide written comments or approve such, which approval shall not be unreasonably withheld, conditioned or delayed. Failure to either approve the Document Submittals or provide written comments by the specified date means the Document Submittals are deemed approved, unless City notifies EBMUD in writing within the 10-day review period that City requires an additional 10 Business Days for review. If City requests the extended review period, City's failure to provide written comments prior to the expiration of the extended period means the Document Submittals are deemed approved. EBMUD shall review

City's comments and incorporate such comments with which it agrees into a revised Document Submittals and provide City (10) Business Days for review and comment on the revised Document Submittals, or to approve the revised Document Submittals, which approval shall not be unreasonably withheld, conditioned or delayed. If City and EBMUD cannot agree on the final Document Submittals within ten (10) Business Days; then the Dispute Resolution Process contained in Section 8.1 shall be followed.

(4) Construction of Engineers Road. In conjunction with the safety improvements set forth in Section 1.c.(3), above, EBMUD shall design and construct the improvements necessary for the widening of Engineers Road.

EBMUD shall obtain the City's approval of the detailed design, schedule and budget ("Document Submittals") for these improvements. City shall have ten (10) Business Days after receiving the Document Submittals to provide written comments or approve such, which approval shall not be unreasonably withheld, conditioned or delayed. Failure to either approve the Document Submittals or provide written comments by the specified date means the Document Submittals are deemed approved, unless City notifies EBMUD in writing within the 10-day review period that City requires an additional 10 Business Days for review. If City requests the extended review period, City's failure to provide written comments prior to the expiration of the extended period means the Document Submittals are deemed approved. EBMUD shall review City's comments and incorporate such comments with which it agrees into a revised Document Submittals and provide City (10) Business Days for review and comment on the revised Document Submittals, or to approve the revised Document Submittals, which approval shall not be unreasonably withheld, conditioned or delayed. If City and EBMUD cannot agree on the final Document Submittals within ten (10) Business Days, then the Dispute Resolution Process contained in Section 8.1 shall be followed.

The City shall construct a new fence along the new property line along the length of Engineers Road to provide for safe traffic flow. The City shall relocate the existing rail line with a safe offset distance from fence and property line.

The City shall obtain EBMUD's approval that the detailed design for safety-related fence is acceptable with respect to aesthetics, access, and safety-related issues. EBMUD shall have ten (10) Business Days after receiving the detailed design to provide written comments or approve such detailed design, which approval shall not be unreasonably withheld, conditioned or delayed. Failure to either approve the detailed design or provide written comments by the specified date means the documents are deemed approved, unless EBMUD notifies the City in writing within the 10-day review period that EBMUD requires an additional 10 Business Days for review. If EBMUD requests the extended review period, EBMUD's failure to provide written comments prior to the expiration of the extended period means the documents are deemed approved. The City shall

review EBMUD's comments and incorporate such comments with which it agrees into a revised detailed design and provide EBMUD ten (10) Business Days for review and comment on the revised detailed design, or to approve the revised detailed design, which approval shall not be unreasonably withheld, conditioned or delayed. If City and EBMUD cannot agree on the final detailed design within ten (10) Business Days, then the Dispute Resolution Process contained in Section 8.1 shall be followed.

(5) Timing of Construction. EBMUD shall complete constmction of the safety improvements set forth in Section 1.c.(3) and the widening of Engineers Road under Section 1.c.(4) in coordination with the City's completion of the constmction associated with the realignment of Wake Avenue and completion of a new rail crossing under Sections 1.a.(1) and 1.b, above. Construction by EBMUD shall be timely completed so as not to cause any delay in the City's constmction of the 2012 Army Base Project, nor use of the constmcted infrastmcture. Notwithstanding anything to the contrary in this Agreement, provided that the City has provided EBMUD with at least 180 (one hundred eighty) days prior notice of the City's intent to vacate existing Wake Avenue and use realigned Wake Avenue, EBMUD's failure to comply with this Section 1.c.(5) shall not delay the vacation of existing Wake Avenue and the commencement of use of the realigned Wake Avenue.

(6) Property Rights. Following the relocation of the existing rail line pursuant to Section 1.c.(1), and the extinguishment of any existing encroachments and easements on the current rail line site, the City shall execute and record a quitclaim deed quitclaiming to EBMUD its interests for the property area south of existing Engineers Road necessary to widen the entire length of Engineers Road to 40 feet from the existing northern boundary of Engineers Road at no cost to EBMUD, in a form substantially similar to that shown in Exhibit xxx attached hereto and incorporated herein by reference.

d. No Changes to Wake Avenue

The City agrees that the realigned Wake Avenue shall not be used and the existing Wake Avenue shall not be vacated under Section 1.a.(1) above unless and until the following occurs:

- Execution of the rail traffic agreement pursuant to Section 1.e;
- Relocation of the existing rail line pursuant to Section 1.c.(1);
- Quitclaim of City property pursuant to Section 1.c.(6);
- Constmction of a new rail crossing pursuant to Section 1.b;
- Widening of Wake Avenue pursuant to Section 1.a.(1);
- Transfer of the Burma Road property rights pursuant to Section 1.f

Should Wake Avenue not be realigned, (i) the City's rights and obligations under this Agreement are limited to Sections 1.e (Limitations on Rail Traffic), 3 (Disconnection

of Old Laterals), 6 (EBMUD Access During Construction), and 9 (Miscellaneous); and (ii) the Parties shall, if requested by the City, continue to negotiate in good faith to reach an agreement on an altemative site plan regarding access different from the existing Wake Avenue entrance.

e. Limitations on Rail Traffic

(1) For the purposes of this Section 1.e:

(a) The term "Crossing" shall mean the time when the safety arms at the railroad crossing at the MWWTP's main gate are down and preventing through traffic on Wake Avenue, during which time one train or Unit Train or two trains or Unit Trains may be making the crossing concurrently. The duration of a Crossing shall not exceed 540 seconds (9 minutes).

(b) The term "Rail Operator" shall mean CCIG, the ground lessee of the West Gateway area (OBOT), or any entity, successor or assign that has control over the operation of rail traffic on the rail lines crossing EBMUD's main gate to the MWWTP. At the time of execution of this Agreement the Rail Operator is CCIG.

(2) The Rail Operator shall prevent trains from parking, stopping and/or unreasonably blocking access to EBMUD's main gate to the MWWTP via the railroad crossing at the existing or realigned Wake Avenue in accordance with the following terms:

(a) Rail traffic for "Unit Trains" (defined as any train including more than 10 cars (excluding the locomotive(s)) shall be limited as follows:

(i) a maximum of six total Crossings, in either direction, between the hours of 6:00 a.m. and 6:00 p.m.;

(ii) a maximum of 12 total Crossings (in either direction) each 24-hour day;

(iii)prohibited from using the Wake Avenue crossing from 7:30 a.m. until 9:30 a.m. and from 2:30 p.m. until 4:30 p.m.;

(iv)there shall be a minimum 30-minute interval between the end of one crossing and the beginning of the next Crossing; and

(v) shall operate at speeds between 5 miles per hour and 10 miles per hour when using the Wake Avenue crossing.

(b) Rail traffic for all other trains shall be limited as follows:

(i) shall be a minimum 20-minute interval between the end of one Crossing of Wake Avenue and the beginning of the next Crossing during the hours from 7:30 a.m. until 9:30 a.m. and from 2:30 p.m. until 4:30 p.m.; and

(ii) shall operate at speeds between 5 miles per hour and 10 miles per hour when using the Wake Avenue crossing.

(c) A Response Plan for addressing stalled trains that block access to the MWWTP shall be developed and implemented, and shall include (but not be limited to) the following items:

(i) All Unit Trains shall include two locomotives with one serving as a backup should the primary locomotive stall.

(ii) Backup locomotives shall be available within reasonable proximity to clear the Wake Avenue crossing if both locomotives fail.

(d) The Rail Operator shall suspend rail operations during emergencies declared by EBMUD's Emergency Operations Team Incident Commander. An "emergency" for the purposes of this section shall include the actual or threatened existence of conditions of disaster or extreme peril to critical EBMUD functions and/or the health and safety of EBMUD staff or the public. Examples of what may cause such conditions include earthquakes, power outages, tsunami, sanitary sewer overflows, explosions, chemical spills, digester spills, or security incidents that necessitates the suspension of rail operations. EBMUD shall use best efforts to abate the emergency and enable expeditious renewal of rail operations. The Rail Operator and EBMUD shall work together cooperatively and with emergency response teams as appropriate.

(e) The Rail Operator shall comply with the rail traffic limitation terms of this Agreement, including the payment of the specified liquidated damages related to the failure to comply with these terms and the implementation of any required corrective measures.

(i) EBMUD shall provide the Rail Operator (with a copy to the City) of any alleged violation of this Section and request a written response setting forth actions taken to address each violation within fifteen (15) Business Days of the receipt of notice from EBMUD.

(ii) If repeated violations (greater than five violations in any 30-day period) of the above terms occur, then:

1. EBMUD shall notify the Rail Operator and the City of this condition in writing.

2. In response, the Rail Operator shall develop a Corrective Action Plan addressing the specific Agreement term(s) violated.

3. This Action Plan shall be submitted to EBMUD within fifteen (15) Business Days from receipt of EBMUD's notice. EBMUD shall review the Corrective Action Plan and provide comments to the Rail

Operator within five (5) Business Days. The Rail Operator shall then work to provide a revised Corrective Action Plan to EBMUD within ten (10) Business Days.

4. If the Rail Operator fails to provide the required original or revised (incorporating EBMUD's comments) Corrective Action Plan, the Rail Operator shall pay a liquidated damages penalty to EBMUD in the amount of ten thousand dollars ($10,000.00) for each occurrence documented in EBMUD's written notification within 60 days of receipt of original written notification from EBMUD as compensation for access condition impacts at the EBMUD MWWTP.

(iii) If, after development and implementation of the Corrective Action Plan, three additional violations of a specific Agreement term previously violated and included in the Corrective Action Plan occur within any 30-day period, EBMUD shall notify the Rail Operator (with a copy to the City) of this condition in writing. In response, the Rail Operator shall pay liquidated damages to EBMUD in the amount of ten thousand dollars ($10,000.00) for each of the three occurrences documented by EBMUD and any subsequent occurrences (up to a total of ten violations) within 60 days of receipt of written notification from EBMUD.

(iv) If the total number of documented violations of a specific Agreement term exceeds ten violations in a calendar year, the Rail Operator shall pay a liquidated damages penalty to EBMUD in the amount of twenty thousand dollars ($20,000.00) for each additional occurrence above the first ten violations within the calendar year within 60 days of receipt of written notification from EBMUD.

(v) If the total number of documented violations of a specific Agreement term exceeds twenty violations in a calendar year, the Rail Operator shall pay a liquidated damages penalty to EBMUD in the amount of forty thousand dollars ($40,000.00) for each additional occurrence above the first twenty violations within the calendar year within 60 days of receipt of written notification from EBMUD.

(vi) At the start of each calendar year, the liquidated damages penalty amount shall reset to ten thousand dollars ($10,000.00) per occurrence and be applied to any additional violations of this Agreement (up to a total of ten violations in a calendar year); the escalated damages penalty of twenty thousand dollars ($20,000.00) for each additional occurrence thereafter; and then forty thousand dollars ($40,000.00) for each occurrence above twenty occurrences during the calendar year.

(f) The terms of this Agreement shall be binding on all successors and assigns of the ground lease for the West Gateway area. A Rail Operator shall have the

right to assign its rights and obligations under Section 1.e of this Agreement to the ground lessee of the West Gateway area.

(g) The terms of this Section 1.e shall be incorporated into any lease or other document that anticipates the use of the rail line by any Rail Operator. The intent of this provision is to ensure that the City or City's lessee or other designee will maintain EBMUD's rights under Section 1.e in perpetuity, subject to the provisions of Section 1.e.(4). In the absence of a ground lease, the City will be responsible for the adherence of any Rail Operator to the limitations set forth in Section 1.e, and shall be responsible for the liquidated damages provisions of this Section 1.e should the City fail to include the terms of Section 1.e in any lease or other document that dictates the parameters of rail operations for any Rail Operator.

(3) Emergency Vehicle Access and Emergency Response Plan.

(a) The City shall make reasonable good faith efforts to explore the feasibility of, and if determined feasible, obtain/secure altemate Emergency Vehicle Access to the MWWTP that would not be impacted by the 2012 Army Base rail traffic. The City shall coordinate its efforts with EBMUD.

(b) The City shall develop, in consultation and coordination with adjacent property owners, including EBMUD, an Emergency Response Plan for the 2012 Army Base Project, which addresses emergency ingress/egress.

(4) If requested by the City, the Rail Operator and/or EBMUD, the Parties shall meet and confer in good faith to explore potential amendments to this Agreement relating to this provision on Limitations on Rail Traffic.

(5) The Rail Operator and EBMUD shall meet at reasonable intervals to discuss any mutual concems relating to rail operations and access to the MWWTP.

f. Provision of West Burma Road to Engineers Road Connection

(1) If Wake Avenue is realigned, prior to the abandonment of Wake Avenue the City (or Caltrans if Caltrans requires the use of its under freeway property) shall lease a 40-foot wide easement at no cost to EBMUD to allow constmction of an extension of Engineers Road under the freeway overpass area along West Grand Avenue to the immediate vicinity of Burma Road, as generally shown in Exhibit B. Said lease is subject to approval by Caltrans and Federal Highway Administration as detailed in the City's under-freeway easement recorded in the Alameda County Recorder's Office as document # 2005-171016. The lease area shall avoid all existing column supports for the existing freeway overpass and provide for constmction of a safe extension of Engineers Road.

(2) If Wake Avenue is realigned, prior to the abandonment of Wake Avenue the City shall execute and record a quitclaim deed quitclaiming to EBMUD its interests at

no cost to EBMUD to allow construction of a new 40-foot wide extension of Engineers Road to the proposed realigned (or existing) Burma Road, immediately west of the freeway overpass area along West Grand Avenue, as generally shown in Exhibit B.

(3) **D**esign and Construction of **EBMUD** Improvements. EBMUD shall obtain the City's approval, and that of Caltrans if required, of the detailed design for the West Burma Road/Engineers Road intersection with respect to access and safety-related issues only. The City shall have ten (10) Business Days after receiving the detailed design to provide written comments or approve such documents, which approval shall not be unreasonably withheld. Failure to either approve the documents or provide written comments by the specified date means the document is deemed approved. EBMUD shall review the City's comments and incorporate such comments with which it agrees into a revised document and provide the City ten (10) Business Days for review and comment on the revised document, or to approve the revised document, which approval shall not be unreasonably withheld, conditioned or delayed. If City and EBMUD cannot agree on the final document within ten (10) Business Days, then the Dispute Resolution Process contained in Section 8.1 shall be followed.

g. Temporary **E**asement. EBMUD shall grant a temporary ingress and egress easement over the existing Engineers Road [LOCATION TBD] for use by regular and construction traffic for a duration reasonably necessary to install the rail and West Burma Road improvements for the 2012 Army Base Project, but such temporary easement shall not unreasonably interfere with EBMUD's use of Engineers Road.

2. **U**tility **E**asements and Surveys

a. The City shall quitclaim any rights and obligations it has to the portions of 34th Street within the EBMUD MWWTP property to EBMUD in a form substantially similar to that shown in Exhibit B.

b. EBMUD shall quitclaim any and all of its rights contained in the overhead electrical easement recorded as Document 96-066993 to the City in a form substantially similar to that shown in Exhibit XXX attached hereto and incorporated herein by reference.

3. **D**isconnection of **O**ld **L**ateral **L**ines

As they are discovered during the course of construction of the 2012 Army Base Project, the City shall, to the maximum feasible extent, identify, disconnect or plug in place (as determined by the City in its sole and absolute discretion), old lateral lines from vacant parcels, buildings, and/or areas in the former City-owned portions of the **O**akland Army Base to reduce inflow and infiltration flows to the existing EBMUD 15-inch sewer line that runs along Engineers Road.

4. Funding of Improvements

a. The City shall fund all of the capital costs including, but not limited to, planning, design, engineering, permits, project management, constmction, constmction management, design services during constmction, and traffic control for the following:

(1) Realignment/Expansion of Wake Avenue, as described in Section 1.a;

(2) Relocation of the existing rail line to the south, as described in Section 1.c;

(3) Provision of new railroad crossing at realigned Wake Avenue, as described in Section 1.b.

(4) Widening of that portion of Engineers Road to the east of the new Wake Avenue entrance to Engineers Road as described in Section 1.c(4); and

(5) Improvements at the intersection of Engineers Road and the rail crossing, as described in Section I.e.(3);

b. EBMUD shall fund all of the capital costs including, but not limited to, planning, design, engineering, permits, project management, constmction, constmction management, design services during constmction, and traffic control for the following:

(1) Constmction of the connection of Engineers Road to Burma Road, as described in Section 1.f; and

(2) Widening of that portion of Engineers Road to the west of the new Wake Avenue entrance to Engineers Road as described in Section 1.c.(4);

5. EBMUD Access During Construction

The City shall stage constmction of the roadways and improvements serving the 2012 Army Base Project in such a manner that allows vehicles to reasonably access the MWWTP via the existing EBMUD entrance at the EBMUD security kiosk. The City acknowledges that such reasonable access may require the City to install temporary pavement in some areas to accommodate the turning movements of the vehicles or develop some other temporary improvements. The City shall keep EBMUD informed of modified traffic patterns and routes during construction and shall provide adequate traffic control. The City shall provide EBMUD with proposed traffic routes at least five (5) Business Days in advance of any modification and shall allow EBMUD to provide input into any such modifications within said five (5) Business Days.

6. Responsibility for Maintenance, Repair and Improvements

EBMUD shall maintain, repair, improve at its own cost and expense all of the roadway improvements, walls, fences, and landscaping on EBMUD property. The City shall be responsible for maintenance of new, realigned Wake Avenue, West Burma Road, and the new rail crossing.

7. Agreement not to Litigate

EBMUD acknowledges that the terms of this Agreement adequately address EBMUD's concems regarding environmental and access impacts of the 2012 Army Base Project. Therefore, EBMUD agrees that EBMUD and its representatives, employees, agents, and contractors ("EBMUD-related Groups") shall not, on behalf of EBMUD, publicly or privately oppose, or legally challenge the City's approval of the 2012 Army Base Project, in any way, including, but not limited to, file an administrative appeal/challenge/objection, lawsuit, action, cause of action and/or claim based on any government approvals, permits and/or actions necessary for adoption of the Addendum and the approval of the 2012 Army Base Project, nor implementation of such; nor shall EBMUD-related Groups assist or encourage others to do so.

EBMUD understands that there may be certain unknown or unstated claims relating to this Agreement Not to Litigate provision and EBMUD nevertheless expressly waives any rights or benefits available to it under section 1542 of the Civil Code of Califomia which provides:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

This waiver expressly excludes concems of EBMUD that could arise in its service delivery area that are unrelated to the 2012 Army Base Project, such as new sub-basin allocations. It also expressly excludes any right that EBMUD may have to compensation for damages directly caused by constmction activities related to the project, such as damages caused to EBMUD facilities.

8. Miscellaneous

a. Amendments

Subject to applicable law, this Agreement may be amended only by an instrument in writing signed by authorized representatives of the party against whom enforcement is sought.

b. Remedies

The Parties recognize that certain obligations under this Agreement are special, unique and of extraordinary character, and if any party fails to comply with the obligations and restrictions imposed upon it under this Agreement, the other parties will not have an adequate remedy at law. Under such circumstances, any party, in

addition to any other rights which it may have, will be entitled to injunctive relief to enforce any such restrictions and obligations, and in the event any actual proceedings are brought in equity to enforce any such provision, no party will raise as a defense that there is an adequate remedy at law. Nothing in this Agreement will be construed to prohibit any party from pursuing any other available remedies for any breach or threatened breach, including recovery of damages. However, prior to commencing any legal action to enforce any rights, restrictions and/or obligations under this Agreement, the Parties must first undertake and complete the Dispute Resolution process in Section 8.1.

c. Severability

If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term, or provision of this Agreement, or the apphcation of any term or provision of this Agreement to a particular situation, is finally found to be void, invalid, illegal, or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision will remain in force and effect to the extent allowed by such ruhng and all other terms and provisions of this Agreement or the application of this Agreement to other situations will remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invahd, illegal, or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

d. Counterparts

This Agreement may be executed in two or more counterparts, and in facsimile and/or electronic form, all of which will be deemed an original, but each of which will constitute one and the same agreement. Signature pages may be detached from the counterparts and attached to a single copy of the Agreement to physically form one document.

e. Entire Agreement

This Agreement, and the Exhibits (xxx – xxx) to it, constitute the entire agreement between the Parties pertaining to its subject matter, and supersede all prior and contemporaneous agreements and understandings of the Parties in connection with the same. If there is any inconsistency between the body of this Agreement and the Exhibits, the body of this Agreement shall govem.

f. Participation of All Parties; Legal Review

All Parties agree that they have participated in the formation of this Agreement, and that the rule of construction which provides that any ambiguity will be construed

against the drafter of an instmment will not apply to the interpretation of this Agreement. Each Party acknowledges that he, she, or it has had an opportunity to have, and did have, this Agreement reviewed by an attorney.

g. No Waiver

No failure by any party to insist on the strict performance of any obligation of another party under this Agreement or to exercise any right, power, or remedy arising out of a breach hereof, will constitute a waiver of such breach or of the enforcing party's right to demand strict compliance with any terms of this Agreement. No acts or admissions by any party or its employees, agents or contractors, will waive any or all of the enforcing party's rights under this Agreement.

h. Headings

The headings in this Agreement are for reference and convenience of the Parties and do not represent substantive provisions of this Agreement.

i. Notices

Any notice given pursuant to this Agreement will be given in writing, via facsimile or email, and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

To CCIG/Rail Operator

Mr. Phil Tagami
CCIG Oakland Global, LLC
c/o Califomia_Capital & Investment Group, Inc.
300 Frank H. Ogawa Plaza, Suite 340
Oakland, CA 94612

To EBMUD:

Mr. David R. Williams
Director of Wastewater Department
East Bay Municipal Utility District
375 Eleventh St.
Oakland, CA 94607

To City:

Mr. Fred Blackwell
Assistant City Administrator
City of Oakland
One Frank H. Ogawa Plaza, 3rd floor
Oakland, CA 94612

And

Mr. Mark P. Wald
Deputy City Attomey
City of Oakland
One Frank H. Ogawa Plaza, 6th floor
Oakland, CA 94612

Any Party to this Agreement may change the name or address of representatives for purpose of this Notice section by providing written notice to all other Parties ten (10) Business Days before the change is effective. Notices shall be deemed effective upon receipt; provided, however, that any such notice or other communication is not received or cannot be dehvered due to a change in the address of the receiving Party of which notice was not previously given to the sending Party or due to a refusal to accept by the receiving Party, such notice or other communication shall be effective on the date delivery is attempted.

j. Authorization

Each party to this Agreement represents and warrants that the execution, delivery and performance of this Agreement by it have been duly authorized by its governing body.

k. No **Requirement** to Build; **Termination; Void** Agreement

(1) This agreement will be void if subsequent to a legal challenge or later business decision by the City, the City elects not to commence the 2012 Army Base Project, or portions of the Project relating to realignment of Wake Avenue and increased rail activity in the North Gateway area.

(2) Notwithstanding anything in this Agreement to the contrary, the City shall have no responsibility to constmct any of the improvements described herein or pay for any expenses until and unless it has approved, in its sole and absolute discretion, and executed binding agreements for the 2012 Army Base Project, including without limitation, the Transportation Corridor Improvement Funding Agreement with the Califomia Transportation Commission, the Cost Sharing Agreement with the Port of Oakland, Lease Disposition and Development Agreement with the Master Developer, and Disposition and Development Agreements with the **Recyclers.**

(3) This Agreement is not intended to, nor does, commit the City to approving the 2012 Army Base Project.

(4) This Agreement shall terminate upon termination of the ground lease in the West Gateway area. Upon termination of the ground lease, the terms of Section 1.e of this Agreement shall be incorporated into any document that anticipates the use of the rail line by any Rail Operator, as defined in Section 1.e.(a). The intent of this provision is to ensure that the City or City's lessee or other designee will maintain EBMUD's rights under Section 1.e in perpetuity, subject to the provisions of Section 1.e.(4). In the absence of a ground lease, the City will be responsible for the adherence of any Rail Operator to the limitations set forth in Section 1.e.

I. Dispute Resolution

(1) It is the intent of the City, EBMUD and the Rail Operator that conflicts regarding satisfaction of the Parties' rights and obligations under this Agreement be resolved through a dispute resolution method so that such Mediation Issues may be resolved as quickly as possible and at the lowest level possible so as not to adversely impact the Project schedule or course of work. Each utilization of this dispute resolution process shall involve the necessary parties to the dispute.

(2) The necessary Parties to a dispute shall each designate senior-level representatives ("Senior Representatives") to meet and confer to address specific concems and/or complaints as they arise. The meeting shall take place within 72 hours after determining that a concern/complaint raised by a Party, could not be resolved, after the concern/complaint is received by the other Party or Parties.

(3) If the issues cannot be resolved by the senior-level representatives within five (5) Business Days, then the issue shall be forwarded to a Senior Management Committee comprised of – as necessary – the EBMUD Director of Wastewater Department, the Assistant City Administrator (or his/her designees) and/or a Senior Manager as designated by the Rail Operator.

(4) If the issues cannot be resolved by the Senior Management Committee within five (5) Business Days, then the issue shall be forwarded to an Executive Steering Committee comprised of – as necessary – the City Administrator (or his/her designees), the EBMUD General Manager (or his/her designees) and/or an executive of the Rail Operator.

(5) If any of the Parties believe the resolution of a recurring or significant problem is time sensitive, such that the Project schedule and/or course of work may be significantly adversely affected by a lack of resolution of the issue, then it may designate the issue to be a significant matter, whereby the time responses for each step (b) and (c) shall be shortened to 48 hours.

(6) In addition to the provisions above, a mediation of disputes can occur at the written notice/election of one of the Parties if the issue is not resolved after good-faith consultation with the Executive Steering Committee as provided above:

1. The written notice invoking mediation shall contain a statement setting forth the nature of the dispute, the key issues to be resolved in the mediation, the amount of money involved, if any, third parties, if any, necessary for resolution, and the remedy sought.

2. The mediator shall be appointed upon the mutual agreement of the Parties. In the event the Parties cannot agree on a person to act as the mediator within five (5) calendar days after the initiation of mediation process, then each Party will provide a list of 10 names of persons with at least five (5) years of experience in resolving disputes. The Parties shall select a mediator from this list, or altemate in striking names from the lists until one name remains. The Party initiating the striking of names will be chosen by random chance, such as a flipping of a coin.

3. The fees and expenses of the mediator shall be shared equally among the Parties.

4. The rules and procedures for the mediation shall be those set forth herein plus any supplemental rules and procedures established by the mediator that are not inconsistent with the rules and procedures set forth herein.

5. All matter submitted to mediation and the results thereof shall be confidential, except if otherwise prohibited by law, or upon agreement of the Parties, or to the extent disclosure is necessary to carry out the terms of any resolution reached in mediation.

6. The mediator shall schedule an initial meeting with the Parties on a mutually acceptable date within ten (10) calendar days after he or she has been appointed. At this meeting, the Parties shall discuss the dispute with the mediator in a good faith attempt to resolve the issues and reach a settlement. If the mediator believes the discussions are productive, the mediator may continue them for a period of time not to exceed fifteen (15) calendar days from the date of the initial meeting. If the dispute has not been resolved through an agreement in principle among the Parties within such fifteen (15) calendar day period, the mediation will cease, unless otherwise mutually agreed to by the Parties.

7. Each Party agrees to provide as participants in the discussions one or more representatives with decision making and settlement authority sufficient to resolve the particular dispute, subject to approval of the Party's Goveming Body, where required.

8. The mediator shall have the authority to request any information at any time from any Party as he or she shall deem reasonably necessary for resolution, excluding attorney-client or other privileged information.

   (i) Each Party may provide to the mediator any information the Party deems reasonably necessary for resolution of the dispute, at any time.

   (ii) The mediator shall be authorized to engage in ex parte contacts with any Party or other person with information relevant to dispute at any time until termination of discussions among the Parties and the mediator. All ex parte contacts shall remain confidential to the mediator, to the extent permitted by applicable law or unless otherwise agreed to by the Parties.

   (iii) The mediation shall be held in such time and place within the City of Oakland as may be selected by the mediator, subject to the consent of the Parties, which consent shall not be unreasonably withheld.

(7) Any applicable statute of limitations shall be tolled during the period of this dispute resolution process.

m. **Effective Date**

This Agreement is effective on the date indicated on page one, as the date the Parties entered into this Agreement, subject to Section 8.1.

n. **Governing Law**

This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of Catifomia.

o. **Binding Effect**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

p. **No Third Party Obligations**

Except as expressly set forth herein, nothing in this Agreement is intended to nor does create duties, obligations or rights in third parties not Parties to this Agreement.

q. **Cooperation**

The Parties will work together in the spirit of good faith and cooperation to successfully implement this Agreement, including without limitation any negotiations with third parties. Where the City is required to obtain property rights from the Rail Entities or other third parties, the City shall diligentiy pursue negotiations with those third parties in good faith. To the extent there are any disagreements among the

Parties, including alleged violations of the Agreement, the Parties will immediately raise those disagreements. Prior to initiating any legal action, the Parties will meet in good faith to attempt to resolve the disagreement, as provided in Section 8.1. However, any and all legal actions may be brought only if the preceding dispute resolution process has been completed.

r. **Recitals**

The recitals are true and correct and are an integral part of this Agreement.

In witness thereof, the Parties subscribed below have entered into this Memorandum of Agreement on the date first written above:

CITY OF OAKLAND:

By_____ _____
Deanna Santana, City Administrator Date

Recommended for Approval:

By_____
Fred Blackwell, Assistant City Administrator

Approved as to form and legality:

_____ _____
Mark P. Wald, Deputy City Attomey Date

EAST BAY MUNICIPAL UTILITY DISTRICT:

By_____ _____
Alexander R. Coate, General Manager Date

Approved as to form and legality:

_____ _____
Craig Spencer, Assistant General Counsel Date

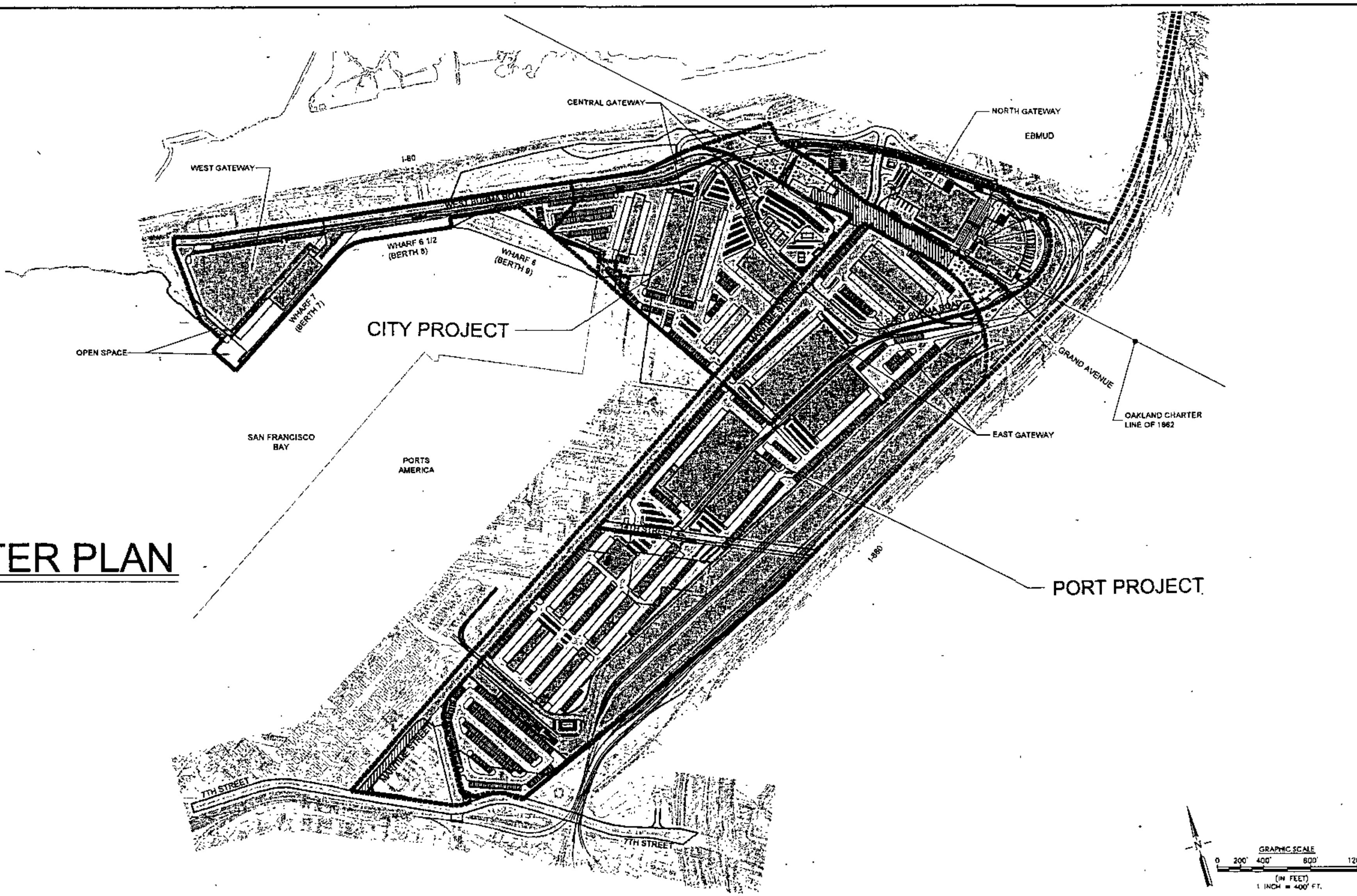
CCIG OAKLAND GLOBAL, LLC (For Sections 1.e and 8 only):

By_____ _____
Phil Tagami Date

Approved as to form and legality:

_____ _____
Marc Stice, Esq. Date

MASTER PLAN



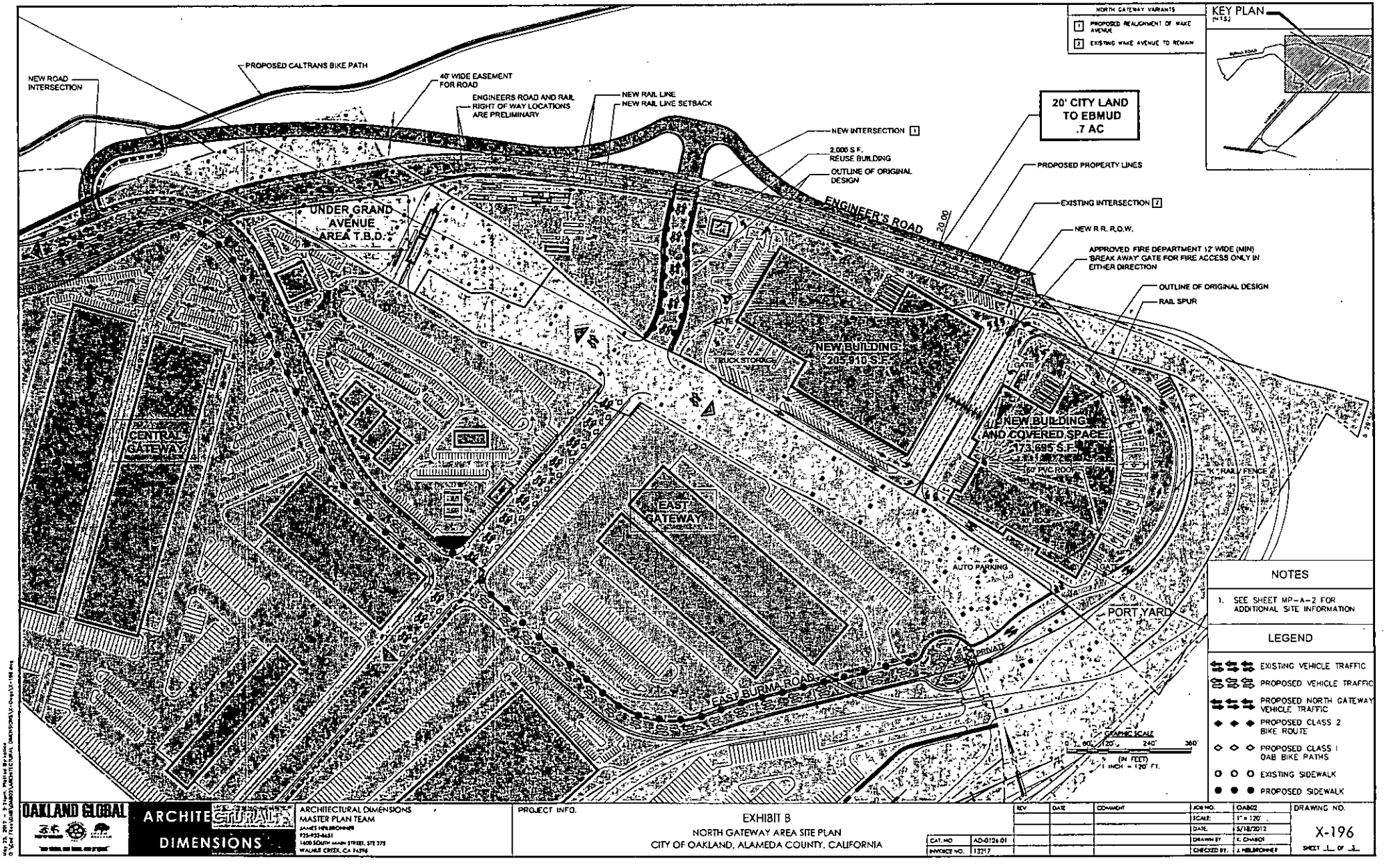
OAKLAND GLOBAL	ARCHITECTURAL DIMENSIONS	ARCHITECTURAL DIMENSIONS MASTER PLAN TEAM JAMES HEILBRONNER 925-932-8651 1600 SOUTH MAIN STREET, STE 275 WALNUT CREEK, CA 94596	PROJECT INFO.	EXHIBIT A BUILDING PLAN CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

CAT NO	AD-0130.02
INVOICE NO.	13277

REV	DATE	COMMENT

JOB NO.	OAB02
SCALE	1" = 400'
DATE:	5/29/2012
DRAWN BY	K. CHABOT
CHECKED BY:	J. HEILBRONNER

DRAWING NO.
X-201
SHEET 1 OF 1



OAKLAND GLOBAL

ARCHITECTURAL DIMENSIONS

ARCHITECTURAL DIMENSIONS
MASTER PLAN TEAM
JAMES HELBRONNER
925-933-4651
1600 SOUTH MAIN STREET, STE 275
WALNUT CREEK, CA 94596

PROJECT INFO.

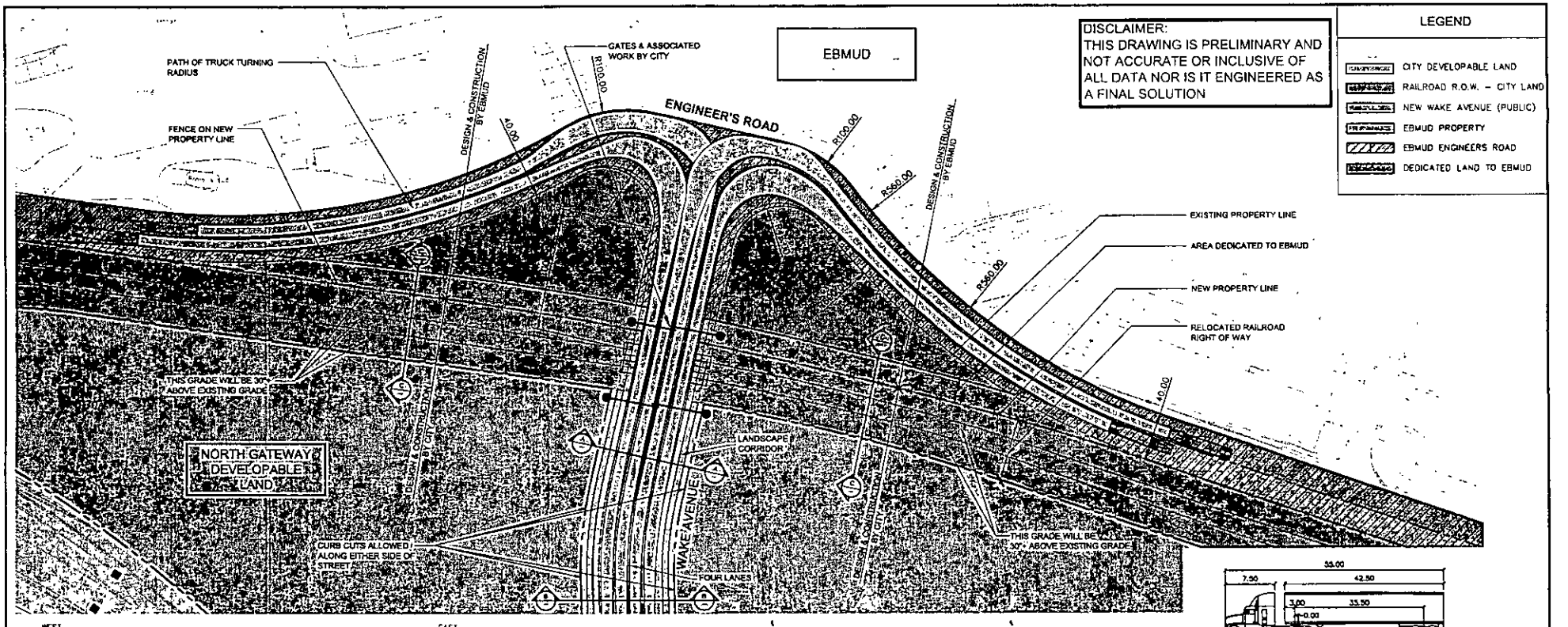
EXHIBIT B
NORTH GATEWAY AREA SITE PLAN
CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

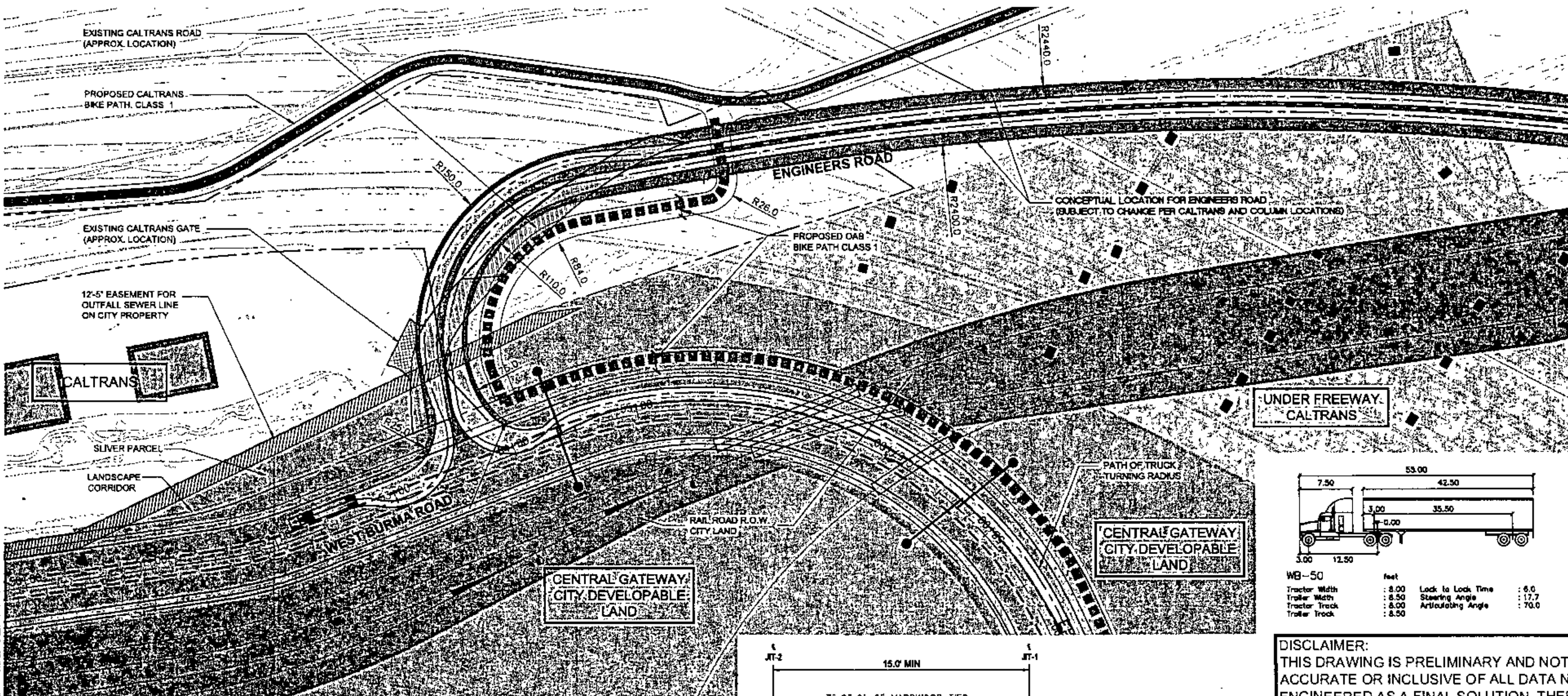
CAT. NO. AD-0126.01
INVOICE NO. 13217

REV	DATE	COMMENT

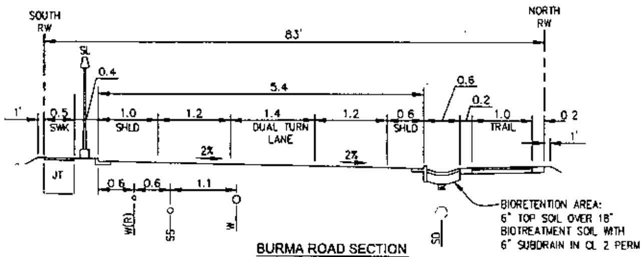
JOB NO. OAB02
SCALE: 1" = 120'
DATE: 5/18/2012
DRAWN BY: K. CHABOT
CHECKED BY: J. HELBRONNER

DRAWING NO. X-196
SHEET 1 OF 3

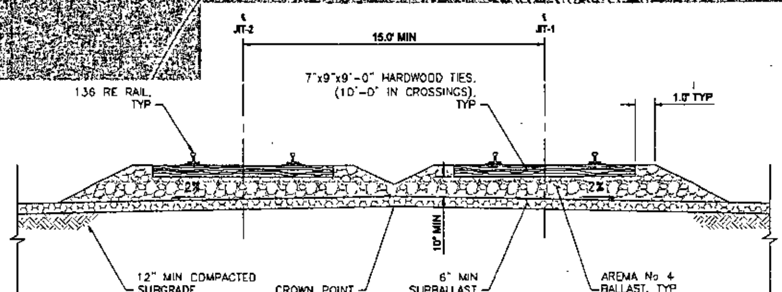

EBMUD
DISCLAIMER:
THIS DRAWING IS PRELIMINARY AND NOT ACCURATE OR INCLUSIVE OF ALL DATA NOR IS IT ENGINEERED AS A FINAL SOLUTION
LEGEND
CITY DEVELOPABLE LAND
RAILROAD R.O.W. – CITY LAND
NEW WAKE AVENUE (PUBLIC)
EBMUD PROPERTY
EBMUD ENGINEERS ROAD
DEDICATED LAND TO EBMUD
PATH OF TRUCK TURNING RADIUS
FENCE ON NEW PROPERTY LINE
GATES & ASSOCIATED WORK BY CITY
DESIGN & CONSTRUCTION BY EBMUD
ENGINEER'S ROAD
R100.00
R560.00
R1000.00
40.00
EXISTING PROPERTY LINE
AREA DEDICATED TO EBMUD
NEW PROPERTY LINE
RELOCATED RAILROAD RIGHT OF WAY
THIS GRADE WILL BE 30'± ABOVE EXISTING GRADE
NORTH GATEWAY DEVELOPABLE LAND
LANDSCAPE CORRIDOR
WAKE AVENUE
CURB CUTS ALLOWED ALONG EITHER SIDE OF STREET
FOUR LANES
THIS GRADE WILL BE 30'± ABOVE EXISTING GRADE
WEST RW
SL
3.00' MEDIAN
81.00'
CL
EAST RW
5.00' SWK
5.00' SHLD
12.00'
5.00' PSE
A-A PROPOSED NEW WAKE AVENUE
SCALE: N.T.S.
78.00'
B-B PROPOSED NEW WAKE AVENUE
SCALE: N.T.S.
JT-2
JT-1
18.0' MIN
136 RE RAIL, TYP
7"x9"x9'-0" HARDWOOD TIES, (10'-0" IN CROSSINGS), TYP
SOUTH PROP LINE
NORTH PROP LINE
1.0' TYP
FENCE
2%
10" MIN
12" MIN COMPACTED SUBGRADE
CROWN POINT
6" MIN SUBBALLAST
AREMA No 4 BALLAST, TYP
C-C PROPOSED RAILROAD SECTION
SCALE: N.T.S
NOTES:
1. TIE SPACING SHALL BE 19½".
2. PROFILE GRADE LINE IS SET FROM TOP OF LOW RAIL.
33.00
7.00
42.50
3.00
33.50
0.00
3.00
12.50
WB-50
feet
Tractor Width : 8.00
Trailer Width : 8.50
Tractor Track : 8.00
Trailer Track : 8.50
Lock to Lock Time : 6.0
Steering Angle : 17.7
Articulating Angle : 70.0
KEY PLAN
(N.T.S.)
GRAPHIC SCALE
0 20' 40' 60' 120'
(IN FEET)
1 INCH = 40' FT.
OAKLAND GLOBAL
BKF
BKF ENGINEERS
MASTER PLAN TEAM
DAVE RICHWOOD
408-467-9116
4670 WILLOW ROAD, SUITE 230
PLEASANTON, CA 94588
PROJECT INFO.
EXHIBIT B-1
NEW WAKE AVENUE AND ENGINEERS ROAD INTERSECTION
CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA
CAL NO BKF-0016.01
INVOICE NO 13723
REV
DATE
COMMENT
JOB NO. 20087116-10
SCALE 1" = 40'
DATE 5/24/2012
DRAWN BY E WEINERMAN
CHECKED BY C REBOUT
DRAWING NO. X-193
SHEET 3 OF 3



DISCLAIMER:
THIS DRAWING IS PRELIMINARY AND NOT ACCURATE OR INCLUSIVE OF ALL DATA NOR IS IT ENGINEERED AS A FINAL SOLUTION. THERE ARE A NUMBER OF ISSUES WITH THE LOCATION OF ENGINEERS ROAD UNDER THE FREEWAY THAT WILL NEED TO BE WORKED OUT WITH CALTRANS.



BURMA ROAD SECTION
SCALE: N.T.S.



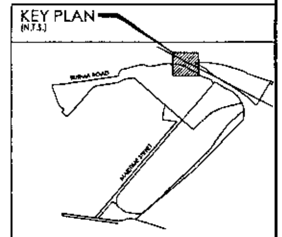
NOTES:

1. TIE SPACING SHALL BE 19½".
2. PROFILE GRADE LINE IS SET FROM TOP OF LOW RAIL.

PROPOSED RAILROAD SECTION
SCALE: N.T.S.

GRAPHIC SCALE
0 20' 40' 80' 120'
(IN FEET)
1 INCH = 40' FT

KEY PLAN
(N.T.S.)



OAKLAND GLOBAL

"one vision, one team, one project"

BKF

BKF ENGINEERS
MASTER PLAN TEAM
DAVE RICHWOOD
408-467-9116
4670 WILLOW ROAD, SUITE 250
PLEASANTON, CA 94588

PROJECT INFO.

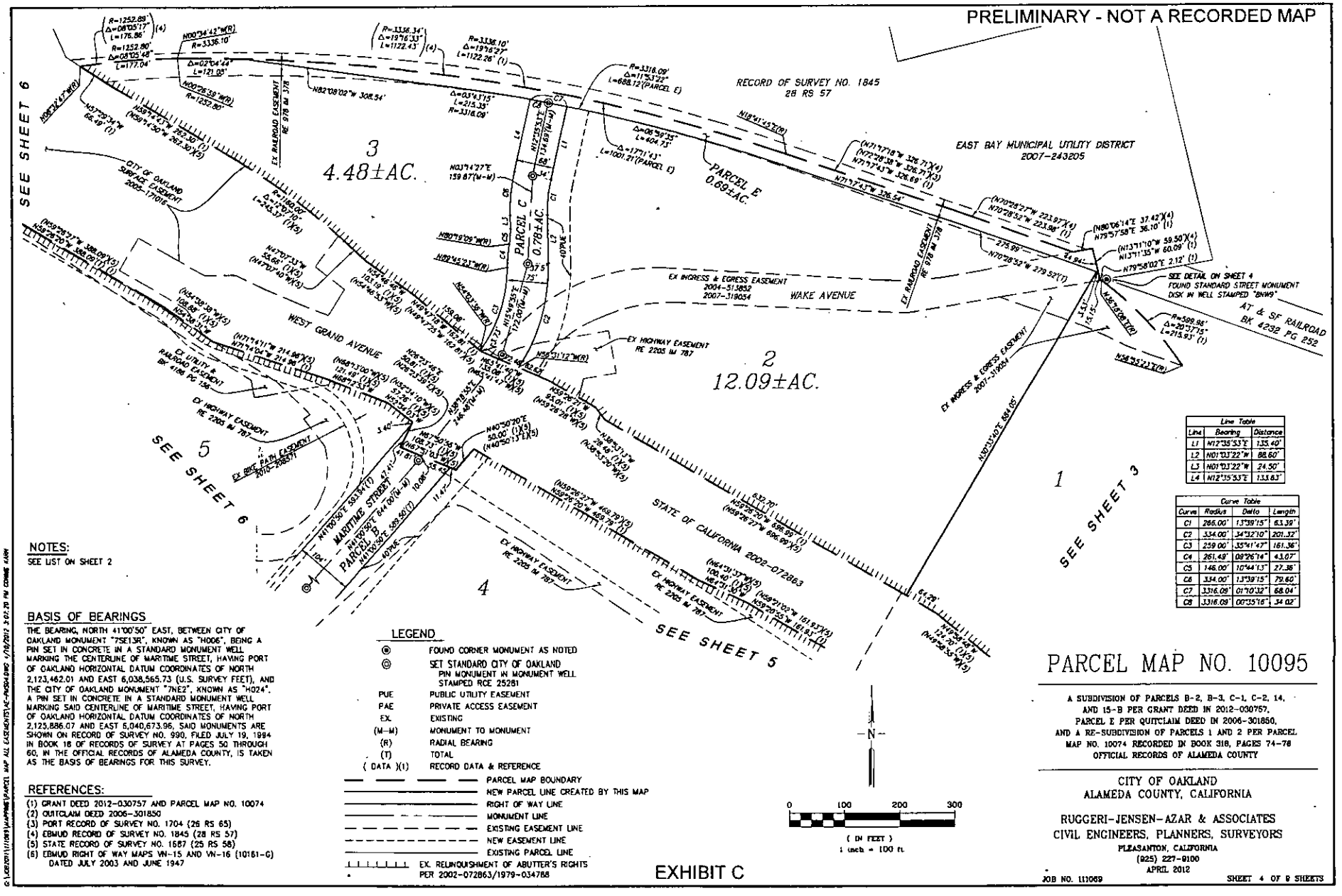
EXHIBIT B-2
NEW ENGINEERS ROAD AND BURMA ROAD INTERSECTION
CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

CAT. NO	BKF-00' 6.02
INVOICE NO.	13224

REV	DATE	COMMENT

JOB NO	20087116-10
SCALE	1" = 40
DATE	5/24/2012
DRAWN BY.	E. WISNIEWSKI
CHECKED BY.	C. RIDEOUT

DRAWING NO.
X-192
SHEET 2 OF 3



Line Table		
Line	Bearing	Distance
L1	N12°35'53"E	135.49'
L2	N01°03'22"W	88.60'
L3	N01°03'22"W	24.50'
L4	N12°35'53"E	133.63'

Curve Table			
Curve	Radius	Delta	Length
C1	286.00'	13°39'15"	63.39'
C2	334.00'	34°32'10"	201.32'
C3	259.00'	35°41'47"	161.36'
C4	261.49'	09°26'14"	43.07'
C5	146.00'	10°44'13"	27.36'
C6	334.00'	13°39'15"	79.60'
C7	3316.09'	01°10'32"	68.04'
C8	3316.09'	00°35'16"	34.02'

NOTES:
SEE LIST ON SHEET 2

BASIS OF BEARINGS

THE BEARING, NORTH 41°00'50" EAST, BETWEEN CITY OF OAKLAND MONUMENT "7SE13R", KNOWN AS "H006", BEING A PIN SET IN CONCRETE IN A STANDARD MONUMENT WELL MARKING THE CENTERLINE OF MARITIME STREET, HAVING PORT OF OAKLAND HORIZONTAL DATUM COORDINATES OF NORTH 2,123,462.01 AND EAST 6,038,565.73 (U.S. SURVEY FEET), AND THE CITY OF OAKLAND MONUMENT "7NE2", KNOWN AS "H024", A PIN SET IN CONCRETE IN A STANDARD MONUMENT WELL MARKING SAID CENTERLINE OF MARITIME STREET, HAVING PORT OF OAKLAND HORIZONTAL DATUM COORDINATES OF NORTH 2,125,886.07 AND EAST 6,040,673.96, SAID MONUMENTS ARE SHOWN ON RECORD OF SURVEY NO. 990, FILED JULY 19, 1984 IN BOOK 18 OF RECORDS OF SURVEY AT PAGES 50 THROUGH 60, IN THE OFFICIAL RECORDS OF ALAMEDA COUNTY, IS TAKEN AS THE BASIS OF BEARINGS FOR THIS SURVEY.

REFERENCES:

(1) GRANT DEED 2012-030757 AND PARCEL MAP NO. 10074
(2) QUITCLAIM DEED 2006-301850
(3) PORT RECORD OF SURVEY NO. 1704 (26 RS 65)
(4) EBMUD RECORD OF SURVEY NO. 1845 (28 RS 57)
(5) STATE RECORD OF SURVEY NO. 1687 (25 RS 58)
(6) EBMUD RIGHT OF WAY MAPS VN-15 AND VN-16 (10161-G) DATED JULY 2003 AND JUNE 1947

LEGEND

◉	FOUND CORNER MONUMENT AS NOTED
◎	SET STANDARD CITY OF OAKLAND PIN MONUMENT IN MONUMENT WELL STAMPED RCE 25281
PUE	PUBLIC UTILITY EASEMENT
PAE	PRIVATE ACCESS EASEMENT
EX.	EXISTING
(M-M)	MONUMENT TO MONUMENT
(R)	RADIAL BEARING
(T)	TOTAL
(DATA)(1)	RECORD DATA & REFERENCE
	PARCEL MAP BOUNDARY
	NEW PARCEL LINE CREATED BY THIS MAP
	RIGHT OF WAY LINE
	MONUMENT LINE
	EXISTING EASEMENT LINE
	NEW EASEMENT LINE
	EXISTING PARCEL LINE
	EX. RELINQUISHMENT OF ABUTTER'S RIGHTS PER 2002-072863/1979-034788

EXHIBIT C

PARCEL MAP NO. 10095

A SUBDIVISION OF PARCELS B-2, B-3, C-1, C-2, 14, AND 15-B PER GRANT DEED IN 2012-030757, PARCEL E PER QUITCLAIM DEED IN 2006-301850, AND A RE-SUBDIVISION OF PARCELS 1 AND 2 PER PARCEL MAP NO. 10074 RECORDED IN BOOK 318, PAGES 74-76 OFFICIAL RECORDS OF ALAMEDA COUNTY

CITY OF OAKLAND
ALAMEDA COUNTY, CALIFORNIA

RUGGERI-JENSEN-AZAR & ASSOCIATES
CIVIL ENGINEERS, PLANNERS, SURVEYORS
PLEASANTON, CALIFORNIA
(925) 227-9100

APRIL 2012

JOB NO. 111069

SHEET 4 OF 9 SHEETS

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 MAY 31 PM 4:38

Approved as to Form and Legality

Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO._____C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AMENDED AND RESTATED COST SHARING AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND (AGENCY) AND THE PORT OF OAKLAND PERTAINING TO INFRASTRUCTURE IMPROVEMENTS AT THE FORMER OAKLAND ARMY BASE, TO REFLECT THE TRANSFER OF THE PROPERTY FROM THE AGENCY TO THE CITY OF OAKLAND, TO ACKNOWLEDGE AN AMENDMENT TO THE TRADE CORRIDOR IMPROVEMENT FUNDS (TCIF) BASELINE AGREEMENT, TO ESTABLISH RESPECTIVE ROLES AND RESPONSIBILITIES BETWEEN THE PORT AND CITY AS TO GRANT FUNDING; TO IDENTIFY THE FUNDING SOURCES TO MATCH THE TCIF GRANT; AND TO COMMIT AN ADDITIONAL $22.5 MILLION IN CITY FUNDS TO MATCH THE TCIF GRANT, IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED AGREEMENT, WITHOUT RETURNING TO THE CITY COUNCIL

WHEREAS, the City of Oakland (City) and the Port of Oakland (Port) own respective parcels of the former Oakland Army Base; and

WHEREAS, the real property at the former Oakland Army Base, have transferred from the Redevelopment Agency of the City of Oakland (Agency) to the City as of January 31, 2012; and

WHEREAS, the City previously prepared and certified/adopted the 2002 Oakland Army Base ("OARB") Redevelopment Plan Environmental Impact Report, which was a "project level" EIR pursuant to California Environmental Quality Act ("CEQA") Guidelines section 15180(b); the 2006 OARB Auto Mall Supplemental EIR and 2007 Addendum; and the 2009 Addendum for the Central Gateway Aggregate Recycling and Fill Project; while the Port prepared and adopted the Port's 2006 Maritime Street Addendum (collectively called "Previous CEQA Documents); and

WHEREAS, the Oakland Army Base Reuse Plan and 2002 Environmental hnpact Report document the need to install all new public utilities and streets to serve new development of the former Oakland Army Base; and

WHEREAS, the cost for new rail and street systems, utilities, streets, open space, and safe public access is estimated at $500 million; and

WHEREAS, the Port is in discussions with the Califomia Transportation Commission (CTC) for an allocation of more than $242 million in Trade Corridor Improvement Funds (TCIF) to be used for the constmction of infrastructure improvements within the East and Central Areas of the former Oakland Army Base; and

WHEREAS, the Port, the California Department of Transportation (Caltrans), and CTC entered into the TCIF Baseline Agreement as of December 10, 2009; and

WHEREAS, on or about July 27, 2011, the Port of Oakland, the Redevelopment Agency of the City of Oakland, and the City of Oakland entered into a Cost Sharing Agreement for the Oakland Army Base (CSA) to support each agency's economic development goals for their respective portions of the former Oakland Army Base; and

WHEREAS, the CSA provided for the terms under which the City and/or the Redevelopment Agency would contribute toward the matching funds required for the Port of Oakland's TCIF grant; and

WHEREAS, the parties to the TCIF Baseline Agreement intend to amend that agreement to add the City as a grant recipient, to expand the scope and areas where the TCIF funds can be extended, to establish a new performance schedule, and to identify the funding sources to match the TCIF funds, and the City Council authorized such amendment at its meeting of May 15, 2012; and

WHEREAS, the parties to the CSA wish to amend and restate the CSA to reflect the changes to the TCIF Baseline Agreement, to commit an additional $22.5 million in City funds to match the TCIF grant, and to establish the respective roles and responsibilities between the Port and City, in a form and content substantially in conformance with the agreement attached hereto as Exhibit A; and

WHEREAS, the City has identified that the $22.5 million in funding will come from a combination of $18 million in scheduled land sales and $4.5 million in Fund Balances from OBRA Leasing and Utility Fund (5671) and Oakland Army Base Reuse Authority Fund (5670); and

WHEREAS, the parties to the CSA wish to amend and restate the CSA to acknowledge that the Agency's interests in the former Oakland Army Base have transferred to the City; now, therefore be it

RESOLVED: That the City Administrator is hereby authorized to negotiate and execute an Amended and Restated Cost Sharing Agreement with the Port of Oakland for the development of infrastructure and other improvements on the former Oakland Army Base that

will: (1) acknowledge that the Oakland Redevelopment Agency's interests in the former Oakland Army Base have transferred to the City; (2) commit an additional Twenty-Two Million Five Hundred Thousand dollars ($22,500,000) of City funds to match the Trade Corridor Improvement Fund (TCIF) grant made by the California Transportation Commission; and (3) establish the respective roles and responsibilities between the Port and the City, in a form and content substantially in conformance with the agreement attached hereto as **Exhibit A**, without returning to the City Council; and be it

FURTHER RESOLVED: That the City Administrator is authorized to appropriate and allocate $22.5 million in funding from a combination of scheduled land sales and Fund Balances from OBRA Leasing and Utility Fund (5671) and Oakland Army Base Reuse Authority Fund (5670) to the Joint Infrastructure Development Fund (5672) into Projects to be established for specific obligations, such as the design and construction of Burma Road, the development of infrastructure and public improvements on the former Oakland Army Base, and other projects as needed for the planning, design, and construction of the City's Army Base property; and be it

FURTHER RESOLVED: That the City is authorized by way of the Amended and Restated Cost Sharing Agreement and the amended TCIF Baseline Agreement to accept up to $176.3 million in Trade Corridor Improvement Funds over the course of the agreements for the construction of infrastructure and other site preparation projects within all areas of the City's Army Base property; and be it

FURTHER RESOLVED: That City Council authorizes City staff to amend without returning to City Council the terms of the Cost Sharing Agreement as required by CTC, if the amendments will preserve TCIF funding for the construction of infrastructure and other site preparations within the City's Army Base property; and be it

FURTHER RESOLVED: That, the City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating preparation of additional CEQA are present. Thus, prior to approving the 2012 OARB Project and the Amended and Restated Cost Sharing Agreement, the City can rely on the Previous CEQA Documents and the 2012 OARB Initial Study/Addendum; and be it

FURTHER RESOLVED: That, specifically, the City Council affirms and adopts as its own findings and determinations the June 12, 2012, City Council Agenda Report, including without limitation the discussion, findings, conclusions, specified conditions of approval (including the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program ("SCA/MMRP")), and the CEQA findings contained in ***Attachment C***, each of which is hereby separately and independently adopted by this Council in full, as if fully set forth herein; and be it

FURTHER RESOLVED: The City Council finds and determines that this action 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: The record before this Council relating to this action, includes without limitation those items listed in ***Attachment C***, as if fully set forth herein, which are available at the locations listed said Exhibit.

FURTHER RESOLVED: That the City Administrator and his or her designee is authorized to take whatever action is necessary with respect to negotiating and executing the amendment contemplated herein in support of the development of pubhc improvements on the former Oakland Army Base consistent with this Resolution and its basic purposes.

IN SESSION, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

EXHIBIT A

Proposed Amended and Restated Cost Sharing Agreement

AMENDED AND RESTATED
COST SHARING AGREEMENT
(FORMER OAKLAND ARMY BASE)

THIS AMENDED AND RESTATED COST SHARING AGREEMENT ("Restated Agreement") dated for reference purposes only as of June __, 2012, is between the CITY OF OAKLAND, a municipal corporation, acting by and through its City Council (hereafter referred to herein as the "City"), and the CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners (hereafter referred to herein as the "Port") (together, the "Parties" and each individually, a "Party"). The City and the Port hereby agree as follows:

1.0 Background Facts. The City and the Port are entering into this Restated Agreement based upon the facts set forth in this Section 1.0.

1.01 The City, the Redevelopment Agency of the City of Oakland, a community redevelopment agency organized and existing pursuant to the Community Redevelopment Law of the State of Califomia (hereafter referred to herein as the "Agency"), and the Port are parties to that certain Cost Sharing Agreement dated June 11, 2011 (the "Initial Agreement"). All recitals stated in the Initial Agreement are hereby incorporated herein by reference.

1.02 The purposes of the Initial Agreement were to: (i) set forth terms and conditions by which the Agency would expend up to $32,000,000 towards environmental remediation, planning and design of the improvements contemplated by the TCIF Projects, and other development activities to be agreed upon in writing between the Agency and the Port; (ii) set forth the terms and conditions under which the Port will, subject to CTC's prior approval pursuant to the TCIF program, provide the City and the Agency with the right to use TCIF funds for the redevelopment of certain portions of the OAB owned by the Agency; and (iii) place conditions upon how such TCIF funds will be used and managed.

1.03 Pursuant to a Grant Deed recorded in the official records of the Alameda County Recorder's Office on January 31, 2012 as Document Number 2012030757, the Agency transferred the Army Base property (excluding Parcel E, as described in that certain Patent from the State of California, acting by and through the State Lands Commission to the Redevelopment Agency of the City of Oakland dated _____, 2006 and recorded in the official records of the Alameda County Recorder's Office on _____, 2006 as Document Number _____ and hereafter referred to as "Parcel E") to the City. Concurrently with such transfer, the Agency assigned its rights and obligations under the Initial Agreement with respect to the property so transferred to the City.

1.04 The Oakland City Council adopted Resolution No. 83679 CMS on January 10, 2012, electing to become the successor agency to the Agency pursuant to Califomia Health & Safety Code Sections 34171(j) and 34173 upon the Agency's dissolution. In executing and performing under this Restated Agreement, the City is acting in its own capacity and as the successor agency to the Agency.

1.05 On or about February 1, 2012, the Agency dissolved pursuant to Assembly Bill 1X26 passed by the Califomia legislature in 2011. Pursuant to Assembly Bill 1X26, Parcel E and the Agency's rights and obligations under the Initial Agreement with respect to Parcel E were transferred to the City as the successor agency to the Agency.

1.06 To preserve TCIF funds, the City and the Port have agreed to submit proposed modifications to the TCIF Projects that (i) would eliminate 7th Street from TCIF funding, (ii) expand the OHIT Project to include both the City Lands and portions of the Port Lands, and (iii) consolidate all TCIF funding for both OHIT and 7th Street into the OHIT Project.

1.07 The consolidated OHIT Project is more particularly described in Section 5.02(a) below and is sometimes referred to herein as the "Revised OHIT Project."

2.0 Purpose of Restated Agreement: The purpose of this Restated Agreement is to set forth the terms and conditions by which (i) the Parties will seek the reallocation of TCIF funds to use the entire $242 million TCIF funds granted to the Port for the development of the Revised OHIT Project, (ii) the Parties will obtain the matching funds required by the TCIF program for the Revised OHIT Project; (iii) the TCIF funds and the Port, City and third party matching funds will be used to support certain elements of the redevelopment of both the City Lands and a portion of the Port Lands, and (iv) contingent upon the reallocation of the TCIF Funds and such funds being available for the development of the Revised OHIT Project, the Parties reaffirm the City's and the Port's support of each other in pursuing other sources of funding for the Port's intermodal rail yard and the 7th Street improvements. Unless otherwise defined herein, all capitalized terms used in this Restated Agreement shall have the meaning given in Exhibit F, attached hereto and made a part hereof.

3.0 CEQA/NEPA Review of the OAB Project.

3.01 Lead Agency. The Port and the City have agreed that the City will be the lead agency under CEQA, and the Port will be a responsible agency under CEQA for the redevelopment of Port Lands. The Project Description (the "Project Description") as stated in the proposed 2012 Oakland Army Base Project Initial Study/Addendum to the 2002 EIR (the "Addendum") has been agreed to by the Parties as the intended development of the City Lands and the Port Lands in accordance with the terms and conditions of this Restated Agreement. The Addendum, including the Project Description, is the basis on which the City Council for the City acting as the lead agency under CEQA and the Board of Port Commissioners (the "Board") for the Port acting as a responsible agency under CEQA have made or will make certain findings and determinations as to CEQA compliance. Such Project Description incorporates each of the Development Elements described in Section 5.02a below. The Parties further agree that, unless otherwise agreed by the Parties, the Port shall be the lead agency under the National Environmental Protection Act ("NEPA") for any other work on Port Lands, including, without limitation, the Port Rail Terminal (as defined herein), and the City shall be the lead agency under NEPA for any work requiring NEPA compliance on City Lands.

3.02 In furtherance of the purpose of this Restated Agreement, the City and the Port hereby acknowledge and agree that:

a. Most of the activities covered under this Restated Agreement have already been evaluated by the 2002 EIR (e.g., hazardous materials remediation);
b. Certain activities under this Restated Agreement are statutorily exempt from environmental review under CEQA, such as planning and feasibility studies, including detailed design and engineering efforts pursuant to Section 15262 of the CEQA Guidelines;
c. The funding mechanisms contemplated under this Restated Agreement are not subject to environmental review pursuant to Section 15378(b)(4) of the CEQA Guidelines; and

d. Because this Restated Agreement only sets forth the terms and conditions for the City's funding of certain design work associated with the TCIF Projects, it can be seen with certainty that there is no possibility that the Restated Agreement may have a significant effect on the environment and is therefore exempt under Section 15061(b)(3) of the CEQA Guidelines.

3.03 The City and the Port further acknowledge and agree that this Restated Agreement does not constitute an approval of the Revised OHIT Project by either the City or the Port, and the subsequent approval of any specific projects by either the City Council or the Port Board are subject to CEQA, where applicable. If the Revised OHIT Project requires any additional environmental analysis pursuant to CEQA, then after completion of any such additional environmental analyses, those portions of the Revised OHIT Project which are to be developed on City Lands shall return to the City Council and those portions of the Revised OHIT Project which are to be developed on Port Lands shall return to the Port Board for their respective consideration for adoption and approval. Except as otherwise stated in this Restated Agreement, the City and the Port each reserves all of their respective rights and duties under CEQA with respect to the redevelopment of the OAB, including without limitation, the authority to do any and all of the following:

a. Prepare an environmental study evaluating the impacts of the proposed project, feasible alternatives to the Revised OHIT Project, and feasible mitigation measures;
b. Adopt any feasible alternatives and/or feasible mitigation measures to lessen any significant environmental impacts resulting from the proposed Revised OHIT Project;
c. Determine that any significant environmental impacts of the proposed Revised OHIT Project that cannot be mitigated are acceptable due to project benefits overriding any significant unavoidable impacts; and/or
d. Decide to modify or deny its approval of the proposed Revised OHIT Project, and not to proceed with the Revised OHIT Project, due to the results/findings of the CEQA process.

4.0 Master Infrastructure Development Planning: The City and the Port agree that the *Oakland Army Base Master Plan Design Set* dated April 2, 2012 prepared by Architectural Dimensions Master Design Team represents the master infrastructure development plan for the OAB (the "Master Plan") that the Parties have agreed upon in concept subject to comments previously provided by the Port being adequately addressed. Once such Port comments have been satisfactorily addressed, as determined by the Port, the Master Plan will serve as the basis for detailed design and construction activities needed to build out each of the Development Elements (defined below) for the Revised OHIT Project. The Master Plan consists of the following elements: (i) a conceptual design of the necessary infrastructure up to rough grading; (ii) a circulation and street use traffic plan, including the 7th Street Project; (iii) a conceptual rail terminal plan; (iv) a site utility relocation, vacation, and construction plan; (v) preliminary cost estimates for design and construction; (vi) a geotechnical analysis and soil stabilization plan; (vii) value engineering recommendations; and (viii) a green and sustainable development plan. If any subsequently agreed upon changes to the Master Plan result in corresponding changes to the project documents or information (e.g., baseline budgets, TCIF funds, matching funds, plans, etc.) the parties shall cooperate to make applicable changes.

5.0 Proposed Amendments to TCIF Baseline Agreements.

5.01 Port Proposal for Amendment to OHIT Baseline Agreement: The Port has applied to CTC for permission to amend the Port's Baseline Agreements to (i) remove the 7th Street Project

from TCIF fimding, (ii) add the $110 million in TCIF funds from the 7th Street Project to OHIT, (iii) revise the OHIT project description to specifically include improvements to Burma Road, a new bulk terminal at Berth 7, a new recycling center at the North Gateway site and other trade and logistics improvements on the City's side of the OAB, and (iv) add the City as a co-signatory to the amended OHIT Baseline Agreement. The estimated total TCIF funding for the revised OHIT project will be $242.1 million, and the proposed amendment to the OHIT Baseline Agreement will reflect that the City and the Port will provide TCIF matching funds by a combination of pubhc and private investments as shown in Table 1 below, for a total project cost of approximately $484.2 milhon.

5.02 Proposed Amendment to OHIT Project Scope: The OHIT Baseline Agreement Amendment request will include:

a. A revised TCIF project description for the proposed amendment to the OHIT Baseline Agreement and the Revised OHIT Project that includes the following development elements (which is further described in the site layout plan detailed project description attached hereto as Exhibit A):

   i. New Maritime Street improvements, Burma Road relocation and extension, Wake Avenue realignment and a "backbone" utility infrastructure to serve both the Port Lands and the City Lands (the "Backbone Infrastructure");
   ii. Environmental remediation on the Port Lands and the City Lands necessary to complete the RAP and, in conjunction with the other work, the RMP (respectively, the "Port Environmental Work" and the "City Environmental Work");
   iii. Demohtion/de-construction, earthwork, and other site preparation on the Port Lands and the City Lands as necessary to construct the other development elements described in this Section 5.02a ("Site Prep Work");
   iv. A new rail yard (as further defined in Exhibit F) located on the eastern portion of the Port Lands including any utility relocation or protection required to vacate that portion of 14th Street within the Port Lands ("Port Rail Terminal");
   v. Trade and logistics facilities located on the City Lands, including rail spurs (the "City Trade & Logistics Facilities");
   vi. West Gateway Break Bulk Terminal and rail spur located on the City Lands (the "Oakland Bulk and Oversized Terminal"); and
   vii. Recycling facilities located on the City Lands (the "Recycling Facilities").

   Each of the development elements set forth in this Section 5.02a.i through 5.02a.viii above together with the 7th Street Project (as defined in the Initial Agreement) are collectively referred to herein as the "Development Elements" and individually as a "Development Element." However, if the Baseline Agreement Amendment is approved, the Parties hereby acknowledge and agree that the 7th Street Project shall not be a Development Element that will be funded by TCIF funds.

b. The Project Delivery Schedule for City Lead Improvements (defined below) is attached hereto as Exhibit B and Project Delivery Schedule for the Port Rail Terminal is attached hereto as Exhibit C.

5.03 Financial Plan: The proposed amendment to the OHIT Baseline Agreement will include the following proposed sources and uses set forth in Table 1 below, showing each source of funds needed to develop the Revised OHIT Project and satisfy the TCIF matching funds. The numbers represent millions of dollars, e.g., "10" means "$10 million."

Table 1*

Development Elements	Total Cost	Port	City	City Private Match	TCIF
Remediation	11.4	5.7	5.7	-	-
Port Rail Terminal	79.6	10	3.8	-	65.8
Site Prep on City Lands/Backbone Infrastructure	247.2	-	45.0	25.9 -	176.30
Recycling Facilities	46.6	-	-	46.6 -	-
City Logistics & Oakland Bulk and Oversized Terminal	99.4	-	-	99.4	-
TOTAL	484.2	15.7	54.5	171.9	242.1

* Sources shown in top horizontal row to the right of "Total Cost," and Uses are shown in the column under Development Elements.

5.04 Amendment to OHIT Baseline Agreement: The Parties acknowledge and agree that on or about March 30, 2012, the Port submitted to the Executive Director of the CTC a proposed amendment to the OHIT Baseline Agreement as set forth and described in Section 5.01 above of this Restated Agreement. The parties further agree to use good faith and commercially reasonable efforts to encourage the CTC to approve the proposed amendment to the OHIT Baseline Agreement substantially as proposed by the Port on March 30, 2012.

a. If the CTC approves the proposed amendment to the OHIT Baseline Agreement substantially as proposed, the City and the Port agree that the TCIF funds shall be allocated and used for each Development Element in accordance with the uses of TCIF funds shown on Table 1 above. If the OHIT Baseline Agreement is amended as stated herein, the City and the Port each agree to (i) strictiy comply with any and all rules and regulations of the CTC and/or CalTrans in connection with the use, expenditure, or accounting of TCIF funds in the design, development, or delivery of the City Lands (including, without limitation, the streets and roadways adjacent to the City Lands) and the Port Lands, as the case may be, and (ii) subject to the TCIF funds actually being available, to use and develop the City Lands and the Port Lands in substantial conformance with the Master Plan (as defined in Section 4.0 of this Restated Agreement) and only for purposes that are consistent with and in furtherance of the amended OHIT Baseline Agreement and the Proposition IB Goods Movement Program, as the same may be modified or amended from time to time.

b. If the CTC dechnes to approve an amendment to the OHIT Baseline Agreement substantially as proposed by the Port on March 30, 2012 (including, without limitation, with respect to the cash flow model proposed therein), the Parties shall meet and confer until December 1, 2012, to attempt to respond to or resolve the issues that are the basis for CTC's refusal to approve the proposed amendment or determine a replacement source of funding for the TCIF grant funds. If the parties are unable to agree upon a course of action as a result

of the meet and confer or if the CTC initially approves the proposed amendment and subsequently refuses to fund the TCIF grant under the amended OHIT Baseline Agreement, either Party shall have the right to terminate this Restated Agreement by giving written notice to the other at least 30 days prior to the intended date of termination. If this Restated Agreement is terminated pursuant to this Section 5.04b, the parties' rights under Section 1,2, 3, 4, 12, 13, 15, 16, 17 and 18 shall survive and the parties rights and obligations under Sections 5, 6, 7, 8, 9, 10, 11, and 14 shall terminate.

6.0 Design and Construction of the Development Elements.

6.01 Lead Entity for Development and Delivery of Development Elements: Subject to the *force majeure* provisions set forth in Section 16.0 below and the self-help rights set forth in Section 6.06 below, the Port shall be responsible for the design and construction of the Port Rail Terminal, Port Environmental Work and related Site Prep Work on the Port Lands (the "Port Lead Improvements") and, subject to the availability of the 2012 ACTC Funds, the Port shall be responsible for the design and construction of the 7th Street Project. Subject to *force majeure* and the self-help rights set forth in Section 6.06 below, the City shall be responsible for the design and construction of the Backbone Infrastructure, City Environmental Work, City Trade & Logistics Facilities, Oakland Bulk and Oversized Terminal, Recycling Facilities and related Site Prep Work (collectively, the "City Lead Improvements") each pursuant to the delivery schedule set forth in Exhibit C.

6.02 Delivery Schedules; Milestone Dates: The delivery schedules set forth in Exhibits C and D (each, a "Delivery Schedule")include identified milestones for certain contracting, design and construction activities that are necessary to be met to meet the deadlines set forth in the proposed Baseline Agreement Amendment (each, a "Milestone Date").

6.03 Budget for Development Elements: The City and the Port hereby agree that the baseline budget for each Development Element is as shown in the "Total Cost" column of Table 1. Such baseline budget includes an agreed-upon percentage of total contract costs allocated for contingency approvals. The Party that takes the lead in the development and delivery of each such Development Element shall be solely responsible (as between the City and the Port) for any construction costs that exceed such baseline budget. Notwithstanding the foregoing to the contrary, unless otherwise agreed to in writing between the Parties, each Party shall be responsible for costs associated with maintaining temporary utilities to their own property. If any Party completes the development of any Development Element for less than the amount agreed upon as the baseline budget for that Development Element, then the Party who achieved such cost savings may apply such cost savings to other Development Elements in the following priority: (a) Development Elements on such Party's portion of the OAB and (b) Development Elements on the other Party's portion of the OAB.

6.04 Design/Build Methodology; Contracting; Insurance.

a. In order to meet the TCIF schedule and to be consistent with its RFQ, REP, ENA, and LDDA negotiations, it is the intent that the City will work with the City's developer of the City Lands on the construction of the City Lead Improvements using the proposed design/build process. In order to meet the TCIF schedule, the Port will implement its own design/build process for the construction of the Port Lead Improvements.

b. Each lead Party shall apply their own procurement rules, policies and "community benefits" to the Development Elements that they are charged with delivering under this Restated Agreement, regardless of where the improvements are located. The non-lead Party may require reports regarding contracting that are reasonably required to satisfy such Parties' TCIF reporting requirements. Notwithstanding the foregoing to the contrary, the parties agree that the City Trade & Logistics Facilities, Oakland Bulk and Oversized Terminal, and Recycling Facihties are private improvements and subject to the agreement between the City and the applicable private party, certain of the City's procurement rules, policies and community benefits may not apply.

c. The Parties shall reasonably cooperate and agree upon insurance requirements related to the development of any Common Development Element, particularly as it relates to the release or presence of any hazardous materials.

6.05 Detailed Designs: The City and the Port shall each prepare or cause the preparation of detailed designs for each Development Element in a manner that is substantially consistent with such Development Element in the Master Plan.

a. Assignment of Existing Work Product; Release. The City hereby assigns to the Port the work product solely related to the design of the Port Lead Improvements and the 7th Street Project set forth in Exhibit D-1, attached hereto. The City hereby assigns to the Port the work product set forth in Exhibit D-2, which relates to both the City Lands and the Port Lands, but only as such work product is related to the development of the Port Lands and of dedicated City Streets on both City Lands and Port Lands. The City expressly retains ownership of such work product as it relates exclusively to the development of the City Lands. The work product assigned to the Port pursuant to this Section is referred to herein as the "Work Product". The Port hereby accepts the assignment of such work product, to the extent the Port incorporates such work product into its construction drawings (defined below). Except as otherwise agreed in this Restated Agreement, the Port on behalf of its managers, employees, officers, directors, representatives, agents, successors and assigns (the "Port Parties") hereby release the City, the Califomia Capital Group, CCIG Oakland Global, LLC and all City design consultants and each of their partners, members, managers, employees, officers, directors, representatives, agents, servants, attomeys, affiliates, parent companies, subsidiaries, successors and assigns, and all persons, firms, corporations and organizations acting on their behalf (the "Released Parties") from any and all claims that the Port Parties may now have or hereafter acquire against the Released Parties for any costs, losses, liability, damages, expenses, demands, actions or causes of action (collectively, "Claims") arising from or related to the Work Product, except to the extent any Claims arise out of the gross negligence or willful misconduct of any of the Released Parties.

b. This release shall not include Claims arising from or related to the following Work Product, to the extent the same (i) was prepared by, contracted for or commissioned by the City, the Califomia Capital Group, CCIG Global, LLC or any of City designers, architects, or professional engineers and (ii) actually relied upon by the Port and its design professionals: geotechnical reports and investigations; environmental studies, reports or

b. Each lead Party shall apply their own procurement rules, policies and "community benefits" to the Development Elements that they are charged with delivering under this Restated Agreement, regardless of where the improvements are located. The non-lead Party may require reports regarding contracting that are reasonably required to satisfy such Parties' TCIF reporting requirements. Notwithstanding the foregoing to the contrary, the parties agree that the City Trade & Logistics Facilities, Oakland Bulk and Oversized Terminal, and Recycling Facilities are private improvements and subject to the agreement between the City and the applicable private party, certain of the City's procurement rules, policies and community benefits may not apply.

c. The Parties shall reasonably cooperate and agree upon insurance requirements related to the development of any Common Development Element, particularly as it relates to the release or presence of any hazardous materials.

6.05 Detailed Designs: The City and the Port shall each prepare or cause the preparation of detailed designs for each Development Element in a manner that is substantially consistent with such Development Element in the Master Plan.

a. Assignment of **Existing Work** Product; Release. The City hereby assigns to the Port the work product solely related to the design of the Port Lead Improvements and the 7th Street Project set forth in Exhibit D-1, attached hereto. The City hereby assigns to the Port the work product set forth in Exhibit D-2, which relates to both the City Lands and the Port Lands, but only as such work product is related to the development of the Port Lands and of dedicated City Streets on both City Lands and Port Lands. The City expressly retains ownership of such work product as it relates exclusively to the development of the City Lands. The work product assigned to the Port pursuant to this Section is referred to herein as the "**Work Product**". The Port hereby accepts the assignment of such work product, to the extent the Port incorporates such work product into its construction drawings (defined below). Except as otherwise agreed in this Restated Agreement, the Port on behalf of its managers, employees, officers, directors, representatives, agents, successors and assigns (the "**Port Parties**") hereby release the City, the Califomia Capital Group, CCIG Oakland Global, LLC and all City design consultants and each of their partners, members, managers, employees, officers, directors, representatives, agents, servants, attomeys, affiliates, parent companies, subsidiaries, successors and assigns, and all persons, firms, corporations and organizations acting on their behalf (the "Released Parties") from any and all claims that the Port Parties may now have or hereafter acquire against the Released Parties for any costs, losses, liability, damages, expenses, demands, actions or causes of action (collectively, "Claims") arising from or related to the Work Product, except to the extent any Claims arise out of the gross negtigence or willful misconduct of any of the Released Parties.

b. This release shall not include Claims arising from or related to the following Work Product, to the extent the same (i) was prepared by, contracted for or commissioned by the City, the Califomia Capital Group, CCIG Global, LLC or any of City designers, architects, or professional engineers and (ii) actually relied upon by the Port and its design professionals: geotechnical reports and investigations; environmental studies, reports or

investigations; topographical and survey reports, studies and investigations; and utility markings, surveys, reports or studies.

c. Except as otherwise provided in this Restated Agreement, this release includes both known and unknown Claims and the Port, on behalf of the Port parties hereby waives the provision of Califomia Civil Code Section 1542, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or expect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor."

d. Rail Permitting Assistance. The Port agrees, that in the interest of continuity and relations with the railroads that the Port will use commercially reasonable and good faith efforts to retain, for some advisory capacity, HDR Engineering, the City's rail design consultant.

e. Design Coordination/Process. In connection with the detailed design development of the Backbone Infrastmcture, Port Rail Terminal, the 7th Street Project (only if 2012 ACTC Funds are available) and related Site Prep Work (each, a "Common Development Element"), the City and the Port agree to abide by the design approval process set forth in Exhibit E, attached hereto. No phase of any Common Development Element shall be commenced unless and until each Party has approved in writing (or been deemed to have been approved pursuant to Exhibit E) the final constmction drawings for such Common Development Element.

6.06 Right to Self-Help Related to Delivery of Development Elements: If a Party identified as the responsible Party for the design and constmction of a particular Development Element (the "Lead Party") fails to meet any one of the Milestone Dates set forth in the applicable schedule attached hereto as Exhibit B and D, the other Party (the "Substitute Party") shall have the right, but not the obligation, to avail itself of the rights set forth in this Section 6.06.

a. Conditions Precedent to Notice and Right to Cure for Self-Help. The Substitute Party may not either (1) provide notice to the Lead Party as set forth below or (2) avail itself of the self-help rights set forth in this Section 6.06 until the Substitute Party confirms in writing to the Lead Party's satisfaction that all of the following conditions for each Development Element that the Substitute Party seeks to assume ("Assumed Development Element") have been satisfied:

1) The Substitute Party is not in default or breach of this Restated Agreement;

2) The Substitute Party has met all scheduled Milestone Dates for each of its Development Elements;

3) If applicable to the subject Milestone Date, TCIF funding has been obligated for the Assumed Development Element.

Further, the Substitute Party may not either (1) provide notice to the Lead Party as set forth below or (2) avail itself of the self-help rights set forth in this Section 6.06 if the Lead Party is prevented from achieving the Milestone Date because of a

Force Majeure Event unless the Substitute Party is able to prove that it would not similarly be prevented from achieving the Milestone Date by such *Force Majeure* Event or other, concurrent *Force Majeure* Event.

If the Substitute Party elects to exercise its self-help rights pursuant to conditions described in this Section 6.06(a)(3), the Substitute Party shall be bound to meet all subsequent Milestone Dates for the Assumed Development Element as the Lead Party would have been had no Force Majeure notice been issued. Furthermore, if after exercising such self-help right, the Substitute Party fails to meet any Milestone Date for such Assumed Development Element, the Lead Party shall have the right (but not the obligation) to immediately re-take primary development responsibility for such Assumed Development Element by giving ten (10) days written notice to the Substitute Party. In such event, the Substitute Party shall take steps to assign contracts and documents back to the Lead Party in a similar manner as described in Section 6.06(c) below.

The Substitute Party shall have no right to and shall not, directly or indirectly, create or permit to be created or to remain and shall promptly discharge or remove any Encumbrance upon any interest in the underlying land to any Assumed Development Element (including, without limitation, the Port's fee or other interests in the Port Area) and, in the event of the registration, filing or attaching of any such Encumbrance after assuming such Assumed Development Element, the Substitute Party shall, at its sole cost and expense, immediately cause the same to be discharged. NOTICE IS HEREBY GIVEN THAT NEITHER THE CITY NOR THE PORT (AS THE CASE MAY BE) SHALL BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO THE SUBSTITUTE PARTY OR TO ANYONE HOLDING OR OCCUPYING ANY CITY LANDS OR PORT LANDS (AS THE CASE MAY BE) THROUGH OR UNDER THE SUBSTITUTE PARTY, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF THE CITY OR THE PORT IN AND TO THE CITY LANDS OR THE PORT LANDS (AS THE CASE MAY BE). TO THE EXTENT REQUIRED BY LAW, THE CITY MAY AT ANY TIME POST ANY NOTICES ON ANY CITY LANDS AND THE PORT MAY AT ANY TIME POST ANY NOTICES ON PORT LANDS UPON WHICH ANY ASSUMED DEVELOPMENT ELEMENTS ARE CONSTRUCTED REGARDING SUCH NON-LIABILITY OF THE CITY OR THE PORT.

The Port's fee interest in Port Lands and the Tidelands Trust shall not be subordinated under any circumstance whatsoever to any Encumbrance.

b. Notice and Right to Cure; Assumption of Responsibility. If a Substitute Party believes that the Lead Party has failed to meet a Milestone Date, the Substitute Party shall provide the Lead Party with written notice specifically stating the alleged default (the "Default Notice"). The Default Notice shall be transmitted via electronic mail and certified mail retum receipt to all of the persons hsted in Section 18.01 (Notices) of this Restated Agreement. Such Default Notice shall be transmitted (if at all) no later than ten (10) calendar days after the earlier of (i) the Lead Party's issuance of a notice of the occurrence of a Force Majeure Event pursuant to Section 16.01(a) below, or (ii) the

scheduled Milestone date as shown in Exhibit B or Exhibit C, as applicable. The Lead Party shall have forty five (45) days after receipt of the Default Notice to cure the default. If the Lead Party fails to timely cure the default within the forty five (45) calendar day period after the Default Notice is received, and such failure is not caused by a *Force Majeure* Event, the Substitute Party shall have the right, but not the obligation, to assume responsibility for the completion of the design and construction of the Assumed Development Elements as set forth in this Section 6.06 by delivering written notice to the Lead Party (the "Assumption Notice") no later than ten (10) calendar days after the expiration of such 45 day cure period. The Assumption Notice shall include the plan (including, without limitation, a financing plan) and procedure whereby the Substitute Party intends to complete the design and construction of the applicable Assumed Development Element. The *Force Majeure* provisions of this Section 6.06b shall not apply if the Substitute Party is able to prove that the Substitute Party (and not any assignee thereof) would not similarly be prevented from achieving the Milestone Date by such *Force Majeure* Event or other, concurrent *Force Majeure* Event.

c. Assignment. In the event a Lead Party timely receives an Assumption Notice in accordance with the provisions of this Section 6.06, the Lead Party shall (a) assign and deliver all applicable design documents, construction contracts, and construction materials related to the applicable Development Element to the Substitute Party and (b) pay to the Substitute Party any remaining matching funds to be expended by the Lead Party for the applicable Development Element (as set forth in Table 1 above), each within five (5) business days after receipt of the Assumption Notice.

d. **Indemnity, Insurance and Warranties.** The Substitute Party shall cause the Lead Party to be added (i) as an indemnitee in any indemnity provision included in all contracts directly associated with the applicable Development Element, (ii) where applicable, as an additional insured with respect to applicable commercial general liability policies, and (iii) as a beneficiary of all contractual warranties directly associated with the applicable Development Element.

The City shall be entitled to assign its rights under this Section 6.06 to the master developer of the City Lands upon written notice to the Port. However, the City hereby acknowledges and agrees that no assignment of its rights under this Section 6.06 shall relieve the City of any of its obligations under this Restated Agreement (including, without limitation, the provisions of this Section 6.06), and the City shall continue to be liable as a principal under this Restated Agreement for the acts or omissions of its assignee to the same extent as though no assignment had been made.

e. Completion of Assumed Development Element. Upon the completion of any Assumed Development Element, the Substitute Party shall immediately deliver and release to the Lead Party all rights, title, and interest that the Substitute Party may claim or have acquired to any and all of the improvements constructed or completed by the Substitute Party as part of the Assumed Development Element, together with any and all as-built construction drawings, free and clear of any and all claims, liens, and Encumbrances. The foregoing notwithstanding, the Substitute Party shall be entitled to retain a copy of all such as-built construction drawings.

6.07 Right of Way, Permit and Construction Coordination.

a. Right of Way and Permits. Subject to the following, each Party shall be responsible for obtaining the right of way and permits necessary to deliver the improvements for which they are responsible for delivering.

(i) To the extent that the construction of Backbone Infrastructure requires rights of way or easements (construction, utility and access) over a portion of a Parties' property, the owner of such property shall provide the same upon written request and without requiring consideration therefor. Notwithstanding the foregoing, the Parties shall develop standard indemnity and insurance provisions which will apply to each request for construction easements, and the Parties may impose reasonable conditions on the uses of such rights of way or easements. To the extent the construction of other Development Elements require rights of way or easements over a portion of a Party's property, the owner of such property shall consider and meet and confer with the Party who needs such right of way or easement to negotiate in good faith the terms and conditions for such right of way or easement.

(ii) To the extent feasible, the Parties shall coordinate and cooperate in the other Parties' efforts to obtain the required permits.

b. Coordination of Other Activities. The parties shall negotiate in good faith regarding procedures to deal with traffic control, temporary utilities and the maintenance of utility access for the Port, temporary parking, construction storage and temporary tenant relocation.

7.0 Funding for TCIF Projects: If the Port succeeds in amending the Baseline Agreements as described above, the City and the Port agree to allocate and use the funds shown in the source columns of Table 1 for the Development Elements shown in Table 1.

7.01 City Contribution: The City agrees to expend or cause the expenditure of City funds set forth in Table 1 above and use commercially reasonable efforts to cause the expenditure of the City Private Match funds set forth in Table 1 above, each as matching funds for the OHIT Project in a manner generally consistent with the applicable OHIT Project Programming Request (attached to the proposed amendment to the OHIT Baseline Agreement) and the applicable Project Delivery Schedule (see Exhibit B or Exhibit C, attached).

7.02 Port Contribution: The Port agrees to expend or cause the expenditure of the Port funds set forth in Table 1 above as matching funds for the OHIT Project in a manner generally consistent with the applicable OHIT Project Programming Request and the applicable Project Delivery Schedule.

7.03 Pursuit of Federal, State and Other Funds.

a. In General: If needed, the City and the Port agree to cooperate in good faith with one another and with the developers of the City Lands and the Port Lands, in applying for and pursuing federal, state, and other sources of public and private funds to develop additional transportation infrastructure improvements on the City Lands and the Port Lands. Such cooperation shall not require either the City or the Port to make any additional expenditure

of funds or resources without the prior written approval of City Council or the Port Board, as the case may be.

b. Alameda County Transportation Commission ("ACTC") Funds: The Port will seek ACTC funding of approximately $271 million ("ACTC Funds") for the development of the 7th Street Project and other development activities on the Port's side of OAB, and, contingent upon the Port succeeding in amending the Baseline Agreements as described above and the TCIF funds actually being available to fund the OHIT Project, the City shall use good faith and reasonable efforts to support the Port's efforts to obtain such ACTC Funds. If the ACTC Funds are issued in phases and ACTC determines that the Port is not ready/eligible for a particular phase, the City may, at its sole cost, apply for and receive funds from such phase for the OHIT Project (or other City projects).

c. Federal Funding Segregated. The Port will identify and segregate any federal funds it receives for its portion of the OAB for constmction of specified Development Elements. The Parties agree that no federal dollars will be transmitted to the City for the development of its portion of the OAB.

8.0 Management of Funds.

8.01 Generally Accepted Accounting Principles: All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and apphed in accordance with generally accepted accounting principles in the United States of America, consistently applied.

8.02 City and Port Accounting Responsibilities: The City and the Port shall each prepare and keep at their respective offices in the City of Oakland, complete and accurate books, records and accounts relating to all remediation, design, development (including, without limitation, predevelopment), contracting, and constmction of any improvements (including, without limitation, site preparation work) in connection with those Development Elements for which each entity is responsible for developing as set forth in Section 6.01 herein. Such books and records shall be maintained in a tme and accurate manner, in a form and manner in compliance with the requirements of the OHIT Baseline Agreement and in accordance with generally accepted accounting principles and generally accepted auditing standards. Such records may be in the form of electronic media compatible with, or convertible to, a format compatible with computers utilized hy each Party at their respective offices, or a computer mn hard copy. Each Party shall retain such books and records for a period of no less than five (5) years following the completion for each Development Element for which such Party is responsible as evidenced by a certificate of completion issued by the Port's Director of Engineering for the Port Lead Improvements or by the City's Director of Engineering for the City Lead Improvements; provided, however, that if prior to the expiration of such five (5)-year period, any audit, review or investigation is commenced by the other Party, the CTC, or CalTrans, or any claim is made or litigation is commenced relating to this Restated Agreement, or the OHIT Project, such books and records shall continue to be maintained by the responsible Party, and the other Party shall continue to have the right to inspect such books and records in the manner stated in this Restated Agreement, until the audit, claim or litigation is final. Notwithstanding any other provision in this Restated Agreement, failure of either Party to maintain records as required herein shall constitute a breach of this Restated Agreement.

8.03 Allocation of Liability Under the Amended Baseline Agreement. The Parties acknowledge that as between the CTC and Caltrans as one contracting party under the Amended Baseline Agreement and the City and the Port as another contracting party under the Amended Baseline Agreement, the City and Port are jointly and severally liable to the CTC and Caltrans for performance under the Baseline Agreement. However, if the acts or omissions of either Party causes a breach or default under the Baseline Agreement (including, without limitation, a failure to provide or cause the provision of adequate TCIF matching funds in accordance with this Restated Agreement), such Party shall indemnify, defend, and hold the other harmless for any claims, damages, costs, expenses and other liabilities, including, without limitation, any TCIF repayment or reimbursement obligations and reasonable attorney's fees and court costs, arising out of either Party's default or breach of the Amended Baseline Agreement

9.0 Disbursement of TCIF Funds.

9.01 Allocation of TCIF Funds: As shown in Table 1 above, the City and the Port have agreed that $65.8 million of TCIF Funds shall be allocated to the development of the Port Rail Terminal (a Port Lead Improvement) and $176.3 million of TCIF Funds shall be allocated to the development of City Site Prep and Backbone Infrastmcture (each, a City Lead Improvement).

9.02 Cash Flow & Match Analysis: If deemed necessary by both Parties, after the amendment to the OHIT Baseline Agreement has been approved by the CTC and CalTrans and the amended OHIT Baseline Agreement has been signed and delivered amongst the CTC, the Port, and the City but at least 90 days prior to the commencement of constmction on any improvements contemplated by the TCIF Projects as they may be amended by the amended Baseline Agreements, the City and the Port will jointly select an independent economic consuhant approved in writing by each of the City Administrator and the Port Executive Director. The independent economic consultant shall prepare and update cash flow and TCIF matching fund contribution requirement models to ensure that (i) there are sufficient matching funds on record in accordance with the TCIF mles and regulations to access the TCIF funds when needed to pay for constmction costs, and (ii) there are sufficient cash reserves to support constmction costs as required under, and in accordance with, the requirements of the Basehne Agreements (as the same may be amended from time to time), the provisions of this Restated Agreement, and for work to be agreed upon in the future between the City and the Port. As a condition precedent to the retention of the independent economic consultant, the following conditions must be satisfied:

a. The City and the Port must agree in writing on the selection and the process for selecting the independent economic consultant;

b. The general parameters and elements of the cash flow and TCIF matching fund contribution model must be established and agreed upon between the City and the Port; and

c. All required TCIF matching funds must be evidenced by (i) legally binding agreements between the entity that is funding the TCIF matching funds and the Port or the City, and (ii) written approval or acknowledgment from the CTC or CalTrans that all such TCIF matching funds for one or both of the TCIF Projects have been satisfied.

9.03 TCIF Cost Reimbursements: The Port shall be responsible for submitting for TCIF cost reimbursements on the Port Rail Terminal, and the City shall be responsible for submitting for TCIF cost reimbursements on the Site Prep Work on City Lands and the Backbone Infrastmcture.

Each Party who submits for TCIF cost reimbursement shall be responsible for providing such backup information and materials and performing any other follow up actions as may be required by the CTC and/or Caltrans or may otherwise be necessary to obtain such TCIF cost reimbursement. Each Party shall provide the other with copies of its reimbursement requests to CTC for tracking purposes. The City shall be solely responsible (as between the City and the Port) for accounting for and compliance with all TCIF requirements for the City Lead Improvements. The Port shall be solely responsible (as between the City and the Port) for accounting for and compliance with all TCIF requirements for the Port Rail Terminal.

9.04 Use of Third Party Entities: The City and the Port acknowledge and agree that the development of the Revised OHIT Project will require consultation and/or agreements with other third party entities in the design, development, and operation of the Revised OHIT Project in accordance with this Restated Agreement. If any such consultation or agreements with third party entities requires the expenditure of any funds by one Party to be reimbursed by the other Party, then the City and the Port agree that neither shall incur such expense without having first obtained the prior written approval of such expense from the other Party.

9.05 Allocation Accounting: Once every three (3) months from the effective date of this Restated Agreement, the City and the Port shall reconcile their respective funds and expenditures to ensure that each Party's contribution towards the Revised OHIT Project are in accordance with the terms and conditions of this Restated Agreement.

10. Port Rail Terminal Operator: The Port and City each hereby acknowledge (a) the importance of an identified rail operator's input during the design process for the Port Rail Terminal and (b) that the operator's input is required in order to allow the parties to negotiate and agree upon the Rail Access Agreement. Accordingly, the Port intends to solicit a rail operator who will provide railroad switching services for Port and City rail customers. As of May 2012, the Port anticipates entering into contract with the rail operator by December 28, 2012, subject to change based on the pace and progress of the design and construction. The Port will offer the Port's current and anticipated future rail customers, as well as the Port's rail operator (after the Port enters into a contract with such rail operator), an opportunity to review and comment on the various stages of design, as will the rail operator, following its selection by the Port.

11.0 Port Commitment to Permit City Access to Rail Terminal: In recognition of the City's needs for rail access to the Port Rail Terminal, the Port and City will negotiate in good faith an agreement for the Port Rail Terminal to serve the City's rail needs within the following parameters: (i) the Port shall use commercially reasonable efforts to select the operator of the Port Rail Terminal no later than a date to be agreed upon between the City and the Port; (ii) upon completion of the Port Rail Terminal, the Port shall require its operator of the Port Rail Terminal to provide rail services to the City's rail needs for a period of 20 years as follows: (a) priority rail service to City's rail needs for up to 50% of the train capacity at the Support Yard (the 8 approximately 4,000 foot tracks) portion of the Port Rail Terminal, provided that if the City's rail activity is not utilizing 50% of the train capacity at the Support Yard portion of the Port Rail Terminal, the Port shall have the right to use such train capacity for Port rail needs, and (b) priority rail service to Port's rail activity for up to 50% of the train capacity at the Support Yard portion of the Port Rail Terminal, provided that if the Port's rail activity is not utilizing 50% of the train capacity at the Support Yard portion of the Port Rail Terminal, the City shall have the right to use such train capacity for City rail activity; and (c) the new Knight Rail Yard (manifest train tracks) shall be operated on a first-come/first-served basis; (iii) the City and its tenants shall be required to pay the standard operator charges and Port rail tariffs as such charges and tariffs may be adjusted from time to time by the Port Board

(which charges shall be transparent, market rate (consistent with other West coast rail facilities) and non-discriminatory (as between City/Port tenants/custoruers); and (iv) should the demand for rail service from both the City's and the Port's rail needs reach or exceed 80% of the rail terminal's total capacity to serve all the interested customers for a continuous period of 12 consecutive months within 10 years after the completion of the Port Rail Terminal, the Port and the City shall negotiate in good faith for the expansion of the Port Rail Terminal. Additionally, upon the expiration of the term of the City's priority use, the City shall have non-exclusive, non-priority access to the Support Yard upon market rate terms.

If the Port operator is unable to deliver the rail services as provided in the preceding paragraph, the City shall have the right to provide such services for its own uses of the Port Rail Terruinal using its own operator. In such an event, the City and the Port shall negotiate in good faith the terms and conditions for the City's operator to enter and use the Port Rail Terminal at market rates. Additionally, the Parties agree that the Port will not prohibit Oakland Global Rail Enterprise from responding to the Port's operator RFP.

12.0 Maintenance of Public Utilities and Infrastructure: In developing the Backbone Infrastructure, the City shall use commercially reasonable efforts to avoid disruptions of utility services to the Port Lands without the Port's prior written permission. Such efforts shall include, but not be limited to, (a) installing the new utilities before decommissioning the existing utilities, (b) scheduhng work with its contractors to avoid disruptions and downtime, (c) using commercially reasonable efforts to minimize the number of hours of disruptions or interrupted service, and (d) providing the Port with at least seven (7) business days written notice of planned interruptions of service when it is infeasible to maintain constant service. The City shall be responsible for obtaining all necessary approvals from any third parties who will be the owner and/or user of any utihty or other infrastructure improvement developed as part of the Backbone Infrastructure prior to commencement of construction of such Backbone Infrastructure. If a particular utility or other infrastructure improvement developed as part of the Backbone Infrastructure is to be owned or maintained by either the Port or a third party, the City (as the lead entity for the development of the Backbone Infrastructure) shall give written notice ("Completion Notice") to the Port or such third party when, in the written opinion of the City's Director of Public Works, such utility or other infrastructure improvement is Substantially Complete subject to a list of punchlist items prepared by the City attached to or incorporated into such Completion Notice, and the City shall schedule a joint inspection of such utility or other infrastructure improvement with the Port or such third party within ten (10) business days after the Port or such third party receives such Corupletion Notice. For purposes of this Restated Agreement, "Substantially Complete" or "Substantial Completion" shall mean the reasonable written determination by the City's Director of Public Works that the utility or other infrastructure improvement which is the subject of the Completion Notice has been completed substantially in accordance with the final design and specific plans approved in accordance with this Restated Agreement, and are ready and available for use by the Port or such third party for the purposes for which they are intended. Following such joint inspection, the City shall add to the list of punchlist items any additional items discovered by either Party during the joint inspection. As to those utilities or infrastructure improvements that will be owned or used by the Port, if the City and the Port disagree whether such utility or infrastructure improvement is Substantially Complete, the Parties shall resolve such disagreement pursuant to the procedures set forth in Section 17.0 below. As to those utilities or infrastructure improvements that will be owned or used by a third party, the City shall be responsible for causing such party to accept the improvement for permanent maintenance. As to those utilities or infrastructure improvements that will be owned or used by the Port, upon agreement between the Parties that Substantial Completion has been achieved for such utility or infrastructure improvement, the Port shall accept such utility or other infrastructure improvement and shall maintain such utility and other infrastructure improvements in the same manner and standard as similar such utility and other infrastructure improvements are maintained throughout the City of Oakland. No Common Development

Element developed as part of the Backbone Infrastructure shall be deemed completed unless and until all parties who will be responsible for the permanent maintenance of such improvement has accepted such responsibility. As to those utilities or infrastructure improvements that will be owned or used as City public utilities or public infrastructure, the City shall accept such utility or other infrastructure improvement and shall maintain such utility and other infrastructure improvements in the same manner and standard as similar such utility and other infrastructure improvements are maintained throughout the City of Oakland. If the responsible Party fails to perform the required maintenance in accordance with the foregoing standard, the other Party may perform such maintenance pursuant to the self-help provisions of Section 6.06 above. The Parties hereby acknowledge that the City and Port have entered into previous payment agreements whereby the Port reimburses the City for the maintenance of certain public streets and utilities within the Port Area. If such a payment agreement already exists or is agreed upon in the future between the City and the Port for any Backbone Infrastructure within the Port Area, the provisions of this Section 12.0 shall not apply.

13.0 Proposed Land Exchange: The City has proposed an exchange of property rights (fee, easements, and leases) involving the properties listed on Exhibit G. Each Party will each use good faith efforts to negotiate a separate agreement to effectuate such an exchange.

14.0 Accommodation of Temporary Relocation of Trucking Facility: The City may need to temporarily relocate the 15-acre truck parking facility on its property during construction of its development on the OAB, in order to ensure the timely use of private matching funds. The Port will use good faith efforts to facilitate this temporary relocation on its own undeveloped property, if possible.

15.0 Deconstruction of Warehouses; Shared Costs and Responsibilities.

15.01 Elements of Deconstruction and Demolition: The City and the Port will share the costs of any deconstruction of the buildings on the OAB that cross property lines between the City Lands and the Port Lands ("Shared Buildings"), which costs may include the salvaging as whole timber posts, beams, trusses and siding of the Shared Buildings and other actions required as part of Mitigation Measure 4.6-9 of the Oakland Army Base Mitigation Monitoring and Reporting Program (MMRP) (including employing members of the local job-training bridge programs) ("Deconstruction") as provided herein. The Parties will also share the costs of the concurrent demolition of the remaining portions of the Shared Buildings, which demolition shall include the taking down of those portions of the Shared Buildings that are not deconstructed, clearing and hauling away of the materials and debris for proper disposal and documentation ("Demolition"). Neither Deconstruction nor Demolition will include any environmental remediation of property, for which the Parties' responsibilities and allocation of costs are set forth in the ARMOA, or the removal of the slabs, footings or flooring of the shared building, underground remediation, dewatering for construction purposes or the removal or treatment of hazardous materials (the "Excluded Items"). The costs of both the Deconstruction and Demolition of any or all of the Shared Buildings are referred to herein as the "Shared Costs."

15.02 Shared Costs: Shared Costs will include (a) the reasonable out-of-pocket transaction costs incurred by any Party for the study, design, implementation of the Deconstruction and Demolition (excluding in the case of each Party (i) its own costs and expenses for staff and internal overhead and (ii)) both in-house and outside legal counsel), (b) survey, environmental, insurance and consulting costs associated with the design, implementation or carrying out of the Deconstruction and Demolition, (c) costs of Deconstruction and Demolition, including any payments to third-party contractors or local job-training bridge program for the performance of the Deconstruction and Demolition.

15.03 Percentage Shares: For each Shared Building, each Party shall pay a percentage share of any Shared Costs in proportion to the percentage of the square footage of each of the Shared Buildings on each respective Party's property. For the purposes of this Restated Agreement, the Parties agree that the square footage and percentage share of the Shared Costs for each Shared Building are as follows, unless these percentages change as a result of the Proposed Land Exchange listed in Section 13.0:

Building #	Total Square Footage	Square Footage on Port Property	Port Percentage of Shared Costs	Square Footage on City Property	City Percentage of Shared Costs
804	237,983	210,194	88.32	27,789	11.68
805	239,170	181,273	75.79	57,897	24.21
806	237,760	185,614	78.07	52,146	21.93
807	237,752	114,285	48.11	123,287	51.89
808	238,518	69,398	29.10	169,120	70.90
Total	1,191,003	760,764	63.88	430,239	36.12

15.04 Initiation and Implementation of Deconstruction and Demolition: Either the Port or the City may initiate the implementation of the Deconstruction and Demolition of any of the Shared Buildings (the "Initiating Party") by first submitting an implementation plan for agreement by the other Party in writing relating to the Shared Building or Shared Buildings on which the Initiating Party intends to initiate the Deconstruction and Demolition. The implementation plan shall include, but not be limited to:

a. a scope of work, including any pre-demolition hazardous material survey (the costs of such survey shall be part of the Shared Costs);
b. submittals from and regarding any third-party consultant or contractor (including description of any bidding procedure or requirements);
c. estimated budget based on the scope of work identified in the Implementation Agreement for the Deconstruction and Demolition of the particular Shared Building or Shared Buildings;
d. estimated time for completion (including any phasing of the Deconstruction and Demolition) based on the scope of work identified in the Implementation Agreement for the Deconstruction and Demolition of the particular Shared Building or Shared Buildings;
e. insurance and indemnity provisions;
f. construction mitigation and environmental compliance; and
g. any other information deemed relevant by agreement between the Parties.

15.05 Hiring of Third-Party Contractors: Prior to the contracting or hiring of any third-party consuhant or contractor by any Party for the purpose of the Deconstruction or Demolition, each Party will review and accept the scope and budget for any such third-party contract, provided however, each Party shall complete its review of the scope and budget within thirty (30) days from the date that the Initiating Party delivers to the other Party in writing the scope and budget for review (which scope and budget may be submitted as part of the implementation plan), and no Party may unreasonably withhold its acceptance of the scope and budget. If no objection is raised during the thirty (30) day review period, the scope and budget shall be deemed accepted by the Parties and the Initiating Party may proceed with the hiring of the third party consultant or contractor. If any Party finds the scope and budget unacceptable, the objecting Party shall specify its objection within the thirty (30) day

review period and the Parties shall negotiate a resolution to the objection, provided however, that the objecting party shall alone bear any costs incurred as a result of the objection being raised (including, but not limited to, costs of engineering, survey or attorney services or costs due to delay of Deconstmction or Demolition).

15.06 Reimbursement of Deconstruction and Demolition Costs: The Initiating Party may initially pay the cost of any Deconstmction and Demolition it initiated and implemented pursuant to any implementation plan. The Initiating Party shall invoice the other Party for reimbursement of the other Party's percentage share of the Shared Costs, but in any event, no later than forty-five (45) days after the payment of such Shared Costs by the Initiating Party or forty-five (45) days after the Completion of the Deconstruction and Demolition, whichever is later. The other Party shall reimburse the Initiating Party for its share of the Shared Cost within forty-five (45) days from the date of the invoice from the Initiating Party.

15.07 Partial Deconstruction/Demolition: If one Party desires to proceed with the Deconstmction/Demolition of the portion of a Shared Building on its property prior to the other Party, the initiating Party shall provide the other Party with at least 180 days' prior written notice of such intent. Upon request of the other Party, the Parties shall meet and confer for a period of 60 days on methods to minimize the impact on the Party that desires to retain its portion of the Shared Building; however, upon the expiration of the 180 day notice period, the Initiating Party shall be entitled to proceed with the Deconstmction/Demolition of its portion of the Shared Building to the property line. In such an event, the Party desiring to preserve its portion of the Shared Building shall be required to take such steps, at its sole cost, to preserve its portion of the Shared Building. Consistent with the terms of the ARMOA, neither Party shall take any steps to delay or obstmct the other Party's development plans.

16.0 *Force Majeure*.

16.01 *Force Majeure* Events: In the event that either Party's responsibility under this Restated Agreement to develop and deliver any Development Element is affected by a *Force Majeure* Event, the provisions of this Section 16 shall apply.

(a) Notice of the Occurrence of a *Force Majeure* Event. The Party that is affected by a *Force Majeure* Event shall give notice as soon as practicable and in no event later than ten (10) calendar days following the date on which it first became aware of such *Force Majeure* Event to the other Party (provided that in the case of the same *Force Majeure* Event being a continuing cause of delay, only one notice shall be necessary), which notice shall include (i) a statement of which *Force Majeure* Event the claim is based upon, (ii) details of the circumstances from which the delay arises and (iii) an estimate of the delay in the performance of obligations under this Restated Agreement attributable to such *Force Majeure* Event and information in support thereof, if known at that time. The Party receiving such notice shall, after receipt thereof, be entitled by notice to require the Party claiming a *Force Majeure* Event to provide such further supporting information or details as the Party receiving such notice may reasonably consider necessary.

(b) Notice of the Cessation of a *Force Majeure* Event. The Party claiming a *Force Majeure* Event shall notify the other Party as soon as practicable and in no event later than ten (10) calendar days following the date on which it first became aware that a *Force Majeure* Event has ceased.

(c) Consequences of a *Force Majeure* Event. Subject to the Party claiming a *Force Majeure* Event giving the notice required in Section 16.01(a), a *Force Majeure* Event shall excuse such Party from whatever obligation or covenant such Party, using all commercially reasonable efforts, is not actually capable of performing or observing or causing to be performed or observed as a direct result of the *Force Majeure* Event being claimed for the *Force Majeure* Delay Period applicable to such *Force Majeure* Event. Notwithstanding the occurrence of a *Force Majeure* Event, (i) this Section 16.01(c) shall not excuse the Party claiming a *Force Majeure* Event from the performance and observance under this Restated Agreement of any obligations and covenants that such Party, using all commercially reasonable efforts, is actually capable of performing or observing, or causing to be performed during the applicable *Force Majeure* Delay Period, and (ii) during such applicable *Force Majeure* Delay Period, each Party shall use its commercially reasonable efforts to minimize the effect and duration of the *Force Majeure* Event. Nothing herein shall permit or excuse noncompliance with a change to applicable Laws.

16.02 Parties Rights: If a *Force Majeure* Event occurs that has the effect of rendering the Party claiming such *Force Majeure* Event in accordance with Section 16.01 not actually capable, despite using all commercially reasonable efforts, of performing, observing, or causing to be performed or observed, (i) the development and delivery of any Development Element, (ii) the maintenance of any roadway or other infrastmcture that either Party is required to perform under this Restated Agreement as a direct result of such *Force Majeure* Event, (iii) in the case of the Port, the completion of the Port Rail Terminal by June 30, 2015, or (iv) in the case of the City, the completion of the Maritime Street Common Development Element of the Backbone Infrastmcture by October, 2015, and of the Burma Road Common Development Element of the Backbone Infrastmcture by September 16, 2018, then the Party claiming such *Force Majeure* Event shall have the right to extend the due date for the performance of such obligation for an amount of time equal to the *Force Majeure* Delay Period.

17.0 Dispute Resolution.

17.01 Scope: Any dispute arising out of, relating to or in connection with any material provision of this Restated Agreement, including any question as to whether such dispute is subject to the dispute resolution procedures set forth below, which the Parties have been unable to resolve by the informal dispute resolution procedures described in Section 17.02 below, may be submitted to non-binding mediation under the mediation procedures described in Section 17.03 below.

17.02 Informal Dispute Resolution Procedures: The Parties agree that, at ah times, they will attempt in good faith to resolve all disputes that may arise under this Restated Agreement. The Parties further agree that, upon receipt of written notice of a dispute from a Party, the Parties will refer the dispute to the Designated Person of each Party. The Designated Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary, and shall gather and in good faith fumish to each other the information pertinent to the dispute. Statements made by Representatives of the Parties during the dispute resolution mechanisms set forth in this Section 17.02 and documents specifically created for such dispute resolution mechanisms shall be considered part of settiement negotiations and shall not be admissible in evidence by any proceeding without the mutual consent of the Parties.

17.03 Mediation: Mediation of a dispute under this Restated Agreement may not be commenced until the earher of: (a) such time as both of the Designated Persons, after following the procedures set forth in Section 17.02, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (b) fifteen (15) calendar days after the date of the notice referring the dispute to the Designated Persons, pursuant to Section 17.02. If, after such time period, the dispute remains unresolved, either Party may seek to resolve the dispute through non-binding mediation administered by the Judicial Arbitration Mediation Services ("JAMS"), or such other association as may be agreed to by the Parties. The Parties will cooperate with each other in selecting the arbitrator from the panel of neutral arbitrators knowledgeable in infrastructure development from JAMS, and in scheduling the time and place of the mediation. Unless otherwise agreed to by the Parties, such selection and scheduling shall be completed within forty-five (45) calendar days after the date of the notice referring the dispute to the Designated Persons. Unless otherwise agreed to by the Parties, the mediation shall not be scheduled for a date that is greater than 120 calendar days from the date of the notice referring the dispute to the Designated Persons. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party's individual attomeys' fees and costs related to the Party's participation in the mediation, which fees and costs shall be home by such Party). Statements made by Representatives of the Parties during the mediation procedures set forth in this Section 17.03 and documents specifically created for such mediation procedures shall be considered part of settlement negotiations and shall not be admissible in evidence by any proceeding without the mutual consent of the Parties.

17.04 Provisional Remedies. Notwithstanding anything to the contrary in this Section 17.0, no Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Restated Agreement.

18.0 Miscellaneous.

18.01 Notices: Any notice or other communication required to be given under or pursuant to this Restated Agreement shall be in writing and may be served by actual delivery in person or by registered mail, postage prepaid or by facsimile transmission, to the representative of the Party to whom such notice is to be given at the following locations respectively:

If to the Port:

Director of Maritime
Port of Oakland
530 Water Street, 6th Floor
Oakland, CA 94607
Facsimile: (510) 835-1641

With a copy to:

Deputy Port Attomey – Maritime
Port of Oakland
530 Water Street, 4th Floor
Oakland, CA 94607

Facsimile: (510) 444-2093

If to the City:

Assistant City Administrator for Community and
Economic Development
City of Oakland
250 Frank H. Ogawa Plaza, 2d Floor
Oakland, CA 94612
Telephone: 510-238-2229
Facsimile; 510-238-2226

With a copy to:

Office of the City Attomey
One Frank H. Ogawa Plaza, Sixth Floor
Oakland, CA 94612
Attention: Dianne Millner, Esq., Deputy City Attorney
Telephone: 510-238-3601
Facsimile: 510-238-6515

or at such other location as either Party shall advise by notice from time-to-time.

All notices provided for herein may be faxed (with machine verification of receipt), sent by Federal Express or other overnight courier service, personally delivered or mailed registered or certified mail, retum receipt requested. If a notice is sent by fax, it shall be deemed given when transmission is complete if (i) a confirmation of successful transmission is contemporaneously printed by the transmitting fax machine, and (ii) a copy of the notice is sent to the recipient by overnight courier for delivery on the Business Day next following the date of fax transmission. If a notice is personally delivered, sent by overnight courier service or sent by registered or certified mail, it shall be deemed given upon receipt or refusal of delivery.

18.02 Indemnification.

a. City: The City shall indemnify, protect, defend and hold harmless the Port, including, but not limited to, all of the members of the Board of Port Commissioners, its departments and other subdivisions, including, without limitation, all of the officers, employees, agents, contractors, and representatives of the Port, and their respective heirs, legal representatives, successors, and assigns, and each of them (collectively, the "Port Indemnified Parties") from and against any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits, and other proceedings, judgments, awards, costs, and expenses (including, without limitation, reasonable attorneys' fees and costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise (collectively, "Losses") to the extent arising out of the City's performance of its rights and obligations under this Restated Agreement, except to the extent of Losses resulting from the gross negligence or willful misconduct of any of the Port Indemnified Parties.

b. Port: The Port shall indemnify, protect, defend and hold harmless the City, including, but not limited to, all of the members of the its governing body, its departments and other subdivisions, including, without limitation, all of the officers, employees, agents, contractors, and representatives of the City, and its heirs, legal representatives, successors, and assigns, and each of them (the "City Indemnified Parties") from and against any and all Losses to the extent arising out of the Port's performance of its rights and obligations under this Restated Agreement, except to the extent of Losses resulting from the gross negligence or willful misconduct of any of the City Indemnified Parties.

18.03 No Modifications to ARMOA: Nothing in this Restated Agreement shall be construed to amend or modify the terms and conditions of the ARMOA, including without limitation, any funds to be deposited into the JERF. If there are any inconsistencies between the terms and conditions of the ARMOA and the terms and conditions of this Restated Agreement, the terms and conditions of this Restated Agreement shall control.

18.04 No Modifications to Baseline Agreements: Nothing in this Restated Agreement shall be construed to amend or modify the terms and conditions of the Baseline Agreements. Unless and until the OHIT Baseline Agreement is duly amended to (i) expressly recognize the City's financial contribution toward the TCIF matching funds and (ii) more clearly identify the scope of improvements to be developed on the City Lands - as evidenced by one or more written amendments to the Baseline Agreements approved by the CTC and the Port Board and signed by the authorized representatives of the CTC, CalTrans, and the Port - the City shall have no right to any TCIF funds and any expenditure by the City of funds set forth in Section 7.01 of this Restated Agreement is solely at the City's risk.

18.05 Headings: All headings and captions appearing in this Restated Agreement have been inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Restated Agreement or any provision thereof

18.06 No Presumption Against Drafter. This Restated Agreement has been negotiated at arm's length and between Parties sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Restated Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement (including, but not limited to Califomia Civil Code Section 1654).

18.07 Entire Agreement: This Restated Agreement is in furtherance of and in addition to the ARMOA and is the entire agreement among the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements (including the ARMOA to the extent there are any conflicts or inconsistencies between the ARMOA and this Restated Agreement) and understandings, whether oral or written, between the Parties with respect to the matters contained in this Restated Agreement.

18.08 No Representations: The making, execution and delivery of this Restated Agreement by the Parties have not been induced by any representations, statements, warranties or agreements other than those expressly set forth herein.

18.09 Successors and Assigns: This Restated Agreement shall be binding upon and inure to the benefit of each of the Parties and to their respective transferees, successors, and assigns.

18.10 No Third Party Beneficiaries: The Parties agree that it is their specific intent that no broker or any other person shall be a party to, or a third party beneficiary of, this Restated Agreement; and further that the consent of a broker or other third party shall not be necessary to any agreement, amendment, or document with respect to the transactions contemplated by this Restated Agreement.

18.11 No Waiver: No waiver hereunder by any Party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

18.12 Expenses: Except as expressly provided herein, each Party shall pay its own expenses incurred in connection with this Restated Agreement and the transactions contemplated hereby.

18.13 Counterparts: This Restated Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instmment. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other Parties to this Restated Agreement attached thereto.

18.14 Time of Essence: Time is of the essence in the performance of and the compliance with each of the provisions and conditions of this Agreement. All times provided in this Restated Agreement for the performance of any act shall be strictly constmed.

18.15 Severability: Should any provision in this Restated Agreement be illegal or not enforceable, it shall be considered separate and severable from this Restated Agreement and the remaining provisions shall remain in force and be binding upon the Parties as though the said provision had never been included.

18.16 Non-Waiver of Rights: No condoning, excusing or overlooking by the City or the Port of any default, breach or non-observance at any time by the Port or the City shall operate as a waiver of the City's or the Port's rights under this Restated Agreement conceming any continuing or subsequent default, breach or non-observance, or so as to defeat or affect the rights of the City or the Port conceming any such continuing or subsequent default or breach.

18.17 Amendments: This Restated Agreement constitutes the entire agreement between the Parties hereto and supersedes all previous negotiations, representations and documents in relation hereto made by any Party to this Restated Agreement, and may be amended only by an agreement in writing signed by the Parties.

18.18 Further Acts: Each of the Parties hereto shall perform such further acts and execute such further agreements as may be required from time-to-time to give proper effect to the intent of this Restated Agreement.

CITY OF OAKLAND, a municipal corporation acting by and through its City Council, on its own behalf and as successor agency to the Redevelopment Agency of the City of Oakland By: _____ Deanna J. Santana City Administrator Dated: Resolution No. _____ C.M.S. Approved as to form and legality: Barbara Parker, City Attorney By: _____ Deputy City Attorney Dated:	**CITY OF OAKLAND**, a municipal corporation acting by and through its Board of Port Commissioners By: _____ Omar Benjamin Executive Director Dated: Resolution No. _____ Approved as to form and legality: Michele Heffes, Port Attorney (Acting) By: _____ Port Attorney Dated:

Exhibit A

Project Description

Exhibit B

City Project Delivery Schedule for Each City Lead Improvement

1. Complete Design Build Bridging Documents:	September 28, 2012
2. Execute Design Build Contract:	November 30, 2012
3. Issuance of Notice to Proceed for Backbone Infrastructure:	May 31, 2013
4. Substantial Completion of Construction:	April 15, 2018

Exhibit C

Port Project Delivery Schedule

Port Rail Terminal Milestone Dates, Pursuant to Section 6.02

1. Issuance of Request for Proposals for design build contractor for the Port Rail Terminal by ***December 31, 2012***;

2. Execution of a Design Build Contract by the Port for the Port Rail Terminal by ***June 30, 2013***.

3. Issuance of Notice to Proceed for Demolition/Deconstruction or Site Prep Work for Port Rail Terminal by ***December 30, 2013***.

4. Substantial Completion of the Port Rail Terminal by ***June 30, 2015***.

Exhibit D-1

City-Port Infrastructure Work Product Related to the Design of the Port Lead Improvements and the 7th Street Project

Exhibit D-2

City-Port Infrastructure Work Product Related to Both the City Lands and the Port Lands
(But only as such work product is related to the development of the Port Lands and of dedicated City Streets on both City Lands and Port Lands).

Exhibit E

OAB Design Approval Process

For Common Development Elements

1.00 Approval and Comment — General. The City and the Port shall each submit to the other for review in accordance with this Submittal Review Process Common Development Elements of the Revised OHIT Project described in Section 6.04(e) of this Restated Agreement.

2.00 Approval Required. The City shall submit to the Port for the Port's approval those Common Development Elements that are City Lead Improvements, and the Port shall submit to the City for the City's approval those Common Development Elements that are Port Lead Improvements.

2.01 The City or the Port (as the case may be) shall submit for the other Approval (defined below) the draft plans and specifications ("Contract Data") for the apphcable Common Development Element at the following stages:

Design Build Bridging Documents: 90% and subsequent material modifications; and

Construction Drawings: 50%, 90%, and subsequent material modifications.

The Parties further agree to submit to the other signature set Construction Drawings for Comment only.

3.00 Approving Party Comment. A Lead Party shall consider any comments received from the Approving Party in good faith, but (subject to the Approval rights set forth herein) retains sole discretion on whether to take any action or make any changes in response to the comments.

4.00 Approval. When either Party is entitled to "Approve" any item (each an "Approving Party") from the other Party, the Approving Party shall give its approval ("Approval") unless doing so is reasonably likely to (a) (i) materially adversely impact the Approving Party's operations, (ii) adversely impact the Approving Party's costs (unless the other Party agrees in writing to pay such costs), or (iii) adversely impact the Approving Party's safety, security or compliance with Laws. When Approving Party is entitled to "Comment" on any item from the other Party, the other Party shall consider any comments received from the Approving Party in good faith, but retains sole discretion on whether to take any action or make any changes in response to the comments.

4.01 The Parties acknowledge and agree that, except as otherwise expressly provided in this Restated Agreement, neither Party's comment on or Approval of any item, nor any other review, inspection, observation or review of any item by such Approving Party, shall be construed to be for the purpose of determining the accuracy or completeness of schedules, plans, specifications, documents or any other item. In connection therewith, the Parties agree that, except as otherwise expressly provided in this Restated Agreement, the Approving Party shall not be liable for errors, inconsistencies or omissions in any item received from the other Party. Neither any Approval or Comment by the Approving Party, nor any other review, inspection, observation or review by the Approving Party, is intended to alter the responsibilities of the other Party, its Design-Build Contractor, its O&M Contractor and any others with respect to any item submitted to the Approving Party for Approval or Comment.

5.00 Submittal Review Process. Unless otherwise provided in this Restated Agreement, whenever one Party submits Contract Data or other items for review pursuant to this Restated Agreement, the process described in this Section 5.00 ("Submittal Review Process") shall apply:

5.01 The City or the Port, as the case may be, shall dehver with the Contract Data to the Approving Party a written request (the "Review Request Notice") specifying in reasonable detail (a) the item or items for which Approval or Comment, as the case may be, are sought, (b) whether in the submitting Party's view the Approving Party is entitled to Comment or Approve the item or items, and (c) if not in digital form, five (5) copies of the material subject to Approval or Comment. If the Approving Party reasonably and in good faith believes a Review Request Notice is incomplete or inadequate so that the Approving Party cannot properly review the Review Request Notice as required by the Submittal Review Process, the Approving Party shall notify the other Party as promptly as reasonably possible of the deficiency and reasons therefore (but in no event later than the applicable Review Response period in Section 5.02 below), in which case the submitting Party shall correct the deficiency and resubmit, and the Approving Party will respond as required by Section 5.02.

5.02 Unless a longer period is specifically noted in the Review Request Notice, the Approving Party shall have ten (10) Business Days after receipt of the Review Request Notice (the "Review Response Period") to deliver a written response to the other Party (except that the Review Response Period shall automatically be twenty (20) Business Days if the submittal is a submitting Party's Proposed Change or any change to a Final Design). If the Approving Party is entitled to Approve (in accordance with Section 4.00 above or otherwise), the written response (the "Review Response") shall either (a) indicate Approval, or (b) indicate "no Approval" and reason(s) therefore. In case of "no Approval," the Approving Party will use reasonable efforts to include detailed commentary and/or markup sufficient to describe any deficiencies in the submittal, and will also use reasonable efforts to identify terms which would be acceptable to the Approving Party to allow the requested work to continue. If the Approving Party is entitled to Comment only (and not Approve), the Review Response shall either indicate "no Comment" or "Comment," in which latter case the Approving Party will use reasonable efforts to include detailed commentary and/or markup sufficient to describe the Approving Party's concems.

5.03 Should the Approving Party require additional time beyond the Review Response Period, the Approving Party shall request a time extension ("Extension") of not more than five (5) Business Days in writing in accordance with this Section 5.00 prior to the expiration of the Review Response Period, which if submitted by that time shall be automatically granted. The parties agree that they have (or plan to) retain consultants for the specific purpose of assisting the Party's Approval and Comment rights under this Restated Agreement in a timely manner.

5.04 Upon receipt of the Review Response, the submitting Party shall have ten (10) Business Days to provide a written response to the Approving Party, detailing the proposed disposition of the Review Response.

5.05 If the submitting Party agrees to do so, the submitting Party will incorporate the Review Response into the Common Development Element designs. If the submitting Party objects to the commentary and/or markup, the Parties shall then have five (5) Business Days to make such arrangements or take such steps as they shall mutually agree to satisfy the objection(s).

5.06 If after the end of this five (5) Business Day period the Parties, after using good faith efforts, are unable to resolve such objections, either Party may seek non-binding mediation pursuant to the procedures set forth in Section 17.0 of the Restated Agreement.

Exhibit F

Definitions

"2002 EIR" shall have the meaning set forth in the second Recital of the Initial Agreement.

"2012 ACTC Funds" shall mean up to $271 million in funds that the Port will apply to the Alameda County Transportation Commission for if a sales tax measure for infrastructure improvements in Alameda County is passed by the voters of Alameda County in November, 2012.

"7th Street Baseline Agreement" shall have the meaning set forth in the ninth Recital of the Initial Agreement.

"7th Street Project" shall have the meaning set forth in the seventh Recital of the Initial Agreement.

"ACTC Funds" shall have the meaning set forth in Section 7.03b of this Restated Agreement.

"Addendum" shall have the meaning set forth in Section 3.01 of this Restated Agreement.

"Agency" shall have the meaning set forth in the preamble of the Initial Agreement.

"Agency Board" shall mean the governing body of the Agency as determined in accordance with the California Community Redevelopment Law (Health and Safety Code Sections 33000, et seq.

"Agency/City Indemnified Parties" shall have the meaning set forth in Section 6.02b of the Initial Agreement.

"Agency Lands" shall have the meaning set forth in the fourth Recital of the Initial Agreement.

"Agreement" shall have the meaning set forth in the preamble of this Cost Sharing and Lead Agency Designation Agreement.

"Approval" shall have the meaning set forth in Section 4.00 of Exhibit E to this Restated Agreement.

"Approving Party" shall have the meaning given in Section 4.00 of Exhibit E to this Restated Agreement.

"ARMOA" shall have the meaning set forth in Section 2.01a of the Initial Agreement.

"Assumed Development Element" shall have the meaning given in Section 6.06a of this Restated Agreement.

"Assumption Notice" shall have the meaning set forth in Section 6.06a of this Restated Agreement.

"Backbone Infrastructure" shall mean the new Maritime Street, Burma Road, Wake Avenue (realignment) and a "backbone" utility corridor and other utility infrastructure to serve both the Port Lands and the City Lands.

"Baseline Agreement" or "Baseline Agreements" shall have the meaning set forth in the ninth Recital of the Initial Agreement.

"Caltrans" shall have the meaning set forth in the eighth Recital of the Initial Agreement.

"CEQA" shall have the meaning set forth in the second Recital of the Initial Agreement.

"City" shall have the meaning set forth in the preamble of the Initial Agreement.

"City Lands" shall mean the Agency Lands.

"City Charter" shall mean the Charter of the City of Oakland originally adopted by the people of the City of Oakland on November 5, 1968, as amended from time-to-time.

"City Indemnified Parties" shall have the meaning set forth in Section 18.02b of this Restated Agreement.

"City Environmental Work" shall mean the environmental remediation on the City Lands necessary to complete the RAP and, in conjunction with the other work, the RMP.

"City Lead Improvements" shall mean the Backbone Infrastructure, City Environmental Work, City Trade & Logistics Facilities, Berth 7 Terminal, Recycling Facilities and related Site Prep Work for each such Development Element.

"City Trade and Logistics Facilities" shall mean the trade and logistics facilities located on the City Lands.

"Claims" shall have the meaning set forth in Section 6.04a of this Restated Agreement.

"Common Development Elements" or "Common Development Element" shall mean the Backbone Infrastructure, Port Rail Terminal, and related Site Prep Work for each such Development Element.

"Contract Data" shall mean the items to be submitted by one Party to the other Party pursuant to Section 6.05c and Exhibit E of this Restated Agreement.

"CTC" shall have the meaning set forth in the seventh Recital of the Initial Agreement.

"Default Notice" shall have the meaning given in Section 6.06a of this Restated Agreement.

"Delivery Schedule" shall have the meaning given in Section 6.02 of this Restated Agreement.

"Demolition" shall have the meaning given in Section 15.01 of this Restated Agreement.

"Designated Person" means the representative of each Party who is designated as such for the purposes of Section 17.

"Development Element" or "Development Elements" shall mean the development elements set forth in Section 5.02a.i through 5.02a.vii of this Restated Agreement together with the 7th Street Project (as defined in the Initial Agreement).

"Encumbrance" shall mean any mortgage, deed of trust, claim, levy, lien, judgment, execution, pledge, charge, security interest, restriction, covenant, condition, reservation, rights of way, liens, encumbrances, certificate of pending litigation, judgment or certificate of any court, and other matters of any nature whatsoever, whether arising by operation of Law or otherwise created, affecting the lands upon which any Assumed Development Element is developed.

"Excluded Items" shall have the meaning set forth in Section 15.01 of this Restated Agreement.

"Extension" shall have the meaning given in Section 5.03 of Exhibit E to this Restated Agreement.

"*Force Majeure* Delay Period" means that period during which a Party claiming a *Force Majeure* Event in accordance with the notice provisions of Section 16.01(a) is not actually capable, despite using all commercially reasonable efforts, of performing or observing or causing to be performed or observed one or more of its obligations or covenants under this Restated Agreement as a direct result of the *Force Majeure* Event being claimed by such Party.

"*Force Majeure* Event" means any event beyond the reasonable control of the City or the Port, as the case may be, that delays or interrupts the performance of the obligations or covenants of the City or the Port, respectively, hereunder, including, without limitation, the availability of TCIF funds for reimbursement of construction costs associated with each Development Element in accordance with the Amended Baseline Agreement, the filing of a lawsuit challenging the City's or the Port's CEQA determinations for the Revised OHIT Project, any delays caused by any Party submitting a written notice of dispute pursuant to Section 17.02 of this Restated Agreement regarding any Approval required under Exhibit E (OAB Design Approval Process for Common Development Elements) to this Restated Agreement, any delays not caused by the Party claiming a *Force Majeure* in the issuance of any governmental permits required to develop any Development Element, an intervening act of God or public enemy, war, act of terror, invasion, armed conflict, act of foreign enemy, blockade, revolution, sabotage, civil commotions, interference by civil or military authorities, earthquake, riot or other public disorder, epidemic, quarantine restriction, strike, labor protest, stop-work order or injunction issued by a Governmental Authority (other than the Port) of competent jurisdiction, governmental embargo, restrictions, priorities or afiocations of any kind and all kinds, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, tomado, hurricane or other natural disaster; but only if such event is not the result of (i) the negligence or misconduct of the City or the Port, as the case may be, or their respective Representatives, or (ii) any act or omission by the City or the Port, as the case may be, or their respective Representatives in breach of the provisions of this Restated Agreement.

"Governmental Authority" shall mean any court, federal, State or local government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority, including the City and the Port, of the United States of America, including any successor agency.

"Initial Agreement" shall mean the Cost Sharing Agreement dated for reference purposes only as of June 11, 2011 by and amongst the Agency, the City, and the Port.

"Initiating Party" shall have the meaning given in Section 15.04 of this Restated Agreement.

"JERF" shall have the meaning set forth in Section 2.01a of the Initial Agreement.

"JIDF" shall have the meaning set forth in Section 2.01b of the Initial Agreement.

"Law" shall mean any resolution, order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, mling, policy, program, permit, statute, code, rule or regulation of, or conditions applicable to the lands on which any Development Element is constmcted or under any permit, license, concession, authorization or other approval by, or other directives issued by, any Governmental Authority, including any adopted, promulgated or enacted subsequent to the date of this Restated Agreement, as the same may be modified, amended, or reissued, and including, but not limited to, the Charter of the City of Oakland (including, without limitation, Section 728 entitled "Living Wages and Labor Standards at Port-Assisted Businesses" and laws which seek to reduce the risk from, and to mitigate the results of, an act that threatens the safety and security of personnel, the Port's facilities, private property and the public, such as the Federal Maritime Transportation Security Act of 2002), the Port's Tariff, any project labor agreements that the Port is a party to, land use restrictions or limitations relating to human or public health, the Environment, water, sanitation, safety, security, welfare, the filling of or discharges to the air or water or navigation and use of the Port Area.

"Lead Party" shall have the meaning given in Section 6.06 of this Restated Agreement.

"Losses" shall have the meaning set forth in Section 11.02a of this Restated Agreement.

"Master Plan" shall mean the master infrastmcture development plan for the OAB as provided in the *Oakland Army Base Master Plan Design Set* dated April 2, 2012 prepared by Architectural Dimensions Master Design Team that is subject to comments previously provided by the Port being adequately addressed.

"Milestone Date" shall have the meaning given in Section 6.02 of this Restated Agreement.

"MMRP" shall have the meaning given in Section 15.01 of this Restated Agreement.

"NEPA" shall mean the National Environmental Protection Act.

"OAB" shall have the meaning set forth in the second Recital of the Initial Agreement.

"OAB Project Area" shall have the meaning set forth in the first Recital of the Initial Agreement.

"Oakland Bulk and Oversized Terminal" shall mean the West Gateway Break Bulk Terminal and rail spur located on the City Lands.

"OHIT" shall have the meaning set forth in the seventh Recital of the Initial Agreement.

"OHIT Baseline Agreement" shall have the meaning set forth in the eighth Recital of the Initial Agreement.

"OHIT Project" shall mean the revised Project Description for the OHIT Baseline Agreement set forth in Section 2.02a of this Restated Agreement, including, without limitation, each of the Development Elements therein. The OHIT Project does not include the 7th Street Project Development Element.

"Party" shall mean the City or the Port.

"Plan Dispute Notice" shall have the meaning set forth in Section 5.03d of the Initial Agreement.

"Port" shall have the meaning set forth in the preamble of the Initial Agreement.

"Port Area" shall have the meaning set forth in the third Recital of the Initial Agreement.

"Port Board" shall mean the Board of Port Commissioners as duly appointed pursuant to Section 702 of the City Charter.

"Port Environmental Work" shall mean the environmental remediation on the Port Lands necessary to complete the RAP and, in conjunction with the other work, the RMP

"Port Indemnified Parties" shall have the meaning set forth in Section 11.02a of this Restated Agreement.

"Port Lands" shall have the meaning set forth in the fifth Recital of the Initial Agreement.

"Port Lead Improvements" shall mean the Port Rail Terminal, Port Environmental Work and related Site Prep Work on the Port Lands.

"Port Parties" shall have the meaning given in Section 6.04a of this Restated Agreement.

"Port Rail Terminal" shall mean the new rail yard located on approximately 35 acres on the eastern portion of the Port Lands including any utility relocation or protection required to vacate that portion of 14th Street within the Port Lands. The Port Rail Terminal will include: (i) approximately 33,000 feet of unit train support tracks for the storage of up to 3,700 foot long unit trains; (ii) approximately 16,000 feet of manifest tracks for the storage of rail cars; and (iii) miscellaneous rail yard infrastmcture such as an administration building, gatehouse, air compressors, fencing, switches, and signaling.

"Project" shall have the meaning set forth in the sixth Recital of the Initial Agreement.

"Project Description" shall mean the 2012 Oakland Army Base Project Description as stated in the Addendum and as set forth in Section 3.01 of this Restated Agreement.

"Public Improvements" shall mean all improvements to either the City Lands or the Port Lands paid for by public funds, including without limitation, any City funds, Port funds, TCIF funds, other state funds, or federal funds and without regard to whether such funds are grants or loans. As currently contemplated by the City and the Port, Public Improvements includes all rail improvements, all street and utility improvements, and all site preparation work (both on public roadways and adjacent lands) including without limitation, the capping and/or removal of old existing utilities, any environmental remediation and/or compliance work, any soil surcharging, any grading and paving, and any other work needed to prepare the land for constmction.

"RAP/RMP" means the Final Remediation Action Plan dated September 27, 2002, amended on July 29, 2004 to include the Subaru Lot and on December 4, 2006 to include the East Maritime Army Reserve Property, to address Hazardous Materials at the EDC Property (as defined in the ARMOA) together with the Final Risk Management Plan, attached as Appendix E to the Final Remediation Action Plan, setting forth the procedures for addressing Environmental Conditions at the EDC Property as they are identified.

"Recycling Facilities" shall mean the recycling facilities located on the City Lands.

"Redevelopment MOU" shall have the meaning set forth in the third Recital of the Initial Agreement.

"Redevelopment Plan" shall have the meaning set forth in the first Recital of the Initial Agreement.

"Released Parties" shall have the meaning given in Section 6.04a of this Restated Agreement.

"Representative" means, with respect to any Party, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, developer, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, sub-lessees, customers, or other person for whom such Party is at law responsible or other representative of such Party and any professional advisor, consultant or engineer designated by such Party as its "Representative."

"Responsible Agency" shall have the meaning set forth in Section 1.03b of the Initial Agreement.

"Restated Agreement" shall mean this Amended and Restated Cost Sharing Agreement

"Review Request Notice" shall have the meaning given in Section 5.01 of Exhibit E to this Restated Agreement.

"Review Response Period" shall have the meaning given in Section 5.02 of Exhibit E to this Restated Agreement.

"Review Response" shall have the meaning given in Section 5.02 of Exhibit E to this Restated Agreement.

"Revised OHIT Project" shall have the meaning given in Section 1.07 of this Restated Agreement, all as further depicted in Drawing X-127 attached to Exhibit A of this Restated Agreement.

"Shared Buildings" shall have the meaning given in Section 15.01 of this Restated Agreement.

"Shared Costs" shall have the meaning given in Section 15.01 of this Restated Agreement.

"Site Prep Work" shall mean all demolition/de-constmction, earthwork, and other site preparation on the Port Lands and the City Lands as necessary to construct the Development Elements.

"Submittal Review Process" shall have the meaning given in Section 5.00 of Exhibit E to this Restated Agreement.

"Substantial Completion" or "Substantially Complete" shall have the meaning given in Section 12.0 of this Restated Agreement.

"Substitute Party" shall have the meaning given in Section 6.06 of this Restated Agreement.

"TCIF" shall have the meaning set forth in the seventh Recital of the Initial Agreement.

"TCIF Projects" shall have the meaning set forth in the seventh Recital of the Initial Agreement.

"TEU" or "TEUs" shall have the meaning set forth in the second Recital of the Initial Agreement.

"Tidelands Trust" shall mean the State of California's public tmst for commerce, navigation and fisheries, and particularly the Act of the Legislature of the State of California, entitled "An Act Granting Certain Tidelands and Submerged Lands of the State of California to the City and Regulating the Management, Use and Control Thereof," approved May 1, 1911 (Statutes 1911, Chapter 657), as amended.

"Work Product" shall have the meaning given in Section 6.05a of this Restated Agreement.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 MAY 31 PM 4:40

Approved as to Form and Legality:

Deputy City Attorney

CITY OF OAKLAND

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE: (1) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT/BILLBOARD FRANCHISE AGREEMENT, GROUND LEASES, SITE MANAGEMENT PASS-THROUGH LEASE, AND RELATED DOCUMENTS (COLLECTIVELY "LDDA") BETWEEN THE CITY OF OAKLAND, AND PROLOGIS CCIG OAKLAND GLOBAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY (OR ITS RELATED ENTITIES OR AFFILIATES), FOR THE DEVELOPMENT OF A MIXED-USE INDUSTRIAL (WAREHOUSING AND LOGISTICS), COMMERCIAL, INCLUDING BILLBOARD, MARITIME, RAIL, AND OPEN SPACE PROJECT ON APPROXIMATELY 130 ACRES IN THE CENTRAL, EAST, AND WEST GATEWAY AREAS OF THE FORMER OAKLAND ARMY BASE ("PROJECT"); (2) AMENDING IN PART THE CITY'S EMPLOYMENT AND CONTRACTING PROGRAMS FOR THE ARMY BASE PROJECT; AND (3) WAIVING THE ADVERTISING AND REQUEST FOR PROPOSAL PROCESS FOR A DESIGN-BUILD CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS AS DESCRIBED IN THE LDDA ("PUBLIC IMPROVEMENTS"), AND AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A CONTRACT FOR THE DESIGN-BUILD OF THE PUBLIC IMPROVEMENTS WITH CCIG OAKLAND GLOBAL, LLC, IN AN AMOUNT TO BE DETERMINED PURSUANT TO THE TERMS OF THE LDDA; ALL OF THE FORGOING DOCUMENTS TO BE IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED DOCUMENTS, WITHOUT RETURNING TO CITY COUNCIL

WHEREAS, in 2003, in order to enable local economic redevelopment and job creation and ease the economic hardship on the local community caused by the base closure per Section 2903 of Title XXIX of Public Law 101-510, the U.S. Department of the Army ("Army") transferred via No-Cost Economic Development Conveyance ("EDC") certain real property (the "EDC Property") located in the City of Oakland, County of Alameda, State of California, to the Oakland Base Reuse Authority ("**OBRA**"), a joint powers authority composed of the City of Oakland ("City") and the Redevelopment Agency of the City of Oakland ("Agency") under the California Joint Exercise of Powers Act as set forth in Title 1, Division 7, Chapter 5, Article 1 of the Government Code of the State of California (Government Code § 6470 *et seq.*) by that certain Quitclaim Deed for No-Cost Economic Development Conveyance Parcel, ("Army EDC

Deed") recorded August 8, 2003, as Doc. 2003-466370 in the Office of the Recorder of Alameda County, California (the "Official Records"); and

WHEREAS, immediately thereafter, OBRA transferred portions of the EDC Property to the Port of Oakland ("Port"), such that the Port now owns approximately 241 acres (the "Port Development Area"), and the City owns approximately 170 acres, (the "Gateway Development Area"), which EDC Property is generally depicted on the site map attached as **Exhibit A**; and

WHEREAS, in 2006, pursuant to the Oakland Army Base Title Settlement and Exchange Agreement between the State of California, acting by and through the State Lands Commission ("State"), the Port, OBRA and the City dated June 30, 2006, the City and Port completed the exchange of public trust lands, such that the public trust was terminated on all of the City owned EDC Property (see State of California Patent and Trust Termination recorded August 7, 2006, as Doc. 2006-301853 in the Official Records), except on one approximately 16.7 acre parcel conveyed from the State to the City by State of California Patent and Trust Termination recorded August 7, 2006, as Doc. 2006-301850 ("Parcel E"); and

WHEREAS, also in 2006 and 2007, the portions of the EDC Property owned by OBRA that were not subject to the public trust were conveyed by OBRA to the Agency by the following Quitclaim Deeds, recorded September 19, 2006 as Docs. 2006-354006 and 2006-354007 and May 17, 2007 as Doc. 2007-190760 in the Official Records; and

WHEREAS, pursuant to a March 3, 2011 Purchase and Sale Agreement, the Agency sold and conveyed the Agency-owned portions of the EDC Property, excepting Parcel E, to the City by grant deed recorded January 31, 2012 as Doc. 2012-30757 in the Official Records; Parcel E, was transferred to the City as successor agency on February 1, 2012, pursuant to ABx1 26, the law dissolving redevelopment agencies; and the City desires to continue the redevelopment efforts in the Gateway Development Area; and

WHEREAS, the City of Oakland Charter Section 305 authorizes the City's Mayor to actively promote economic development to broaden and strengthen the commercial and employment base of the City; and

WHEREAS, pursuant to City Planning Code Section 17.104.060, advertising signs are permitted under the terms and conditions of a franchise agreement authorized by the City; and

WHEREAS, to guide redevelopment of the EDC Property, the City adopted the Oakland Army Base Area Redevelopment Plan in 2000, as most recently amended and restated March 21, 2006 per City Ordinance No. 12734 C.M.S ("Redevelopment Plan"), and adopted the Base Reuse Plan in July 31, 2002, which plans affect and control the development of the EDC Property; and

WHEREAS, in 2008, the City issued a Request for Qualifications to identify potential development teams for redevelopment of a portion of the Gateway Development Area, including all aspects of the planning and development of the site; and

WHEREAS, the City selected Prologis Property, L.P. ("Prologis") (successor-in-interest to AMB Property, L.P., a Delaware limited partnership), and CCIG Oakland Global, LLC ("CCIG"), a California limited liability company (successor-in-interest to California Capital

Group, a California general partnership) (Prologis and CCIG referred to herein collectively as "Developer") to negotiate with regarding development of a portion of the Gateway Development Area the ("Project Site" or "Property"), generally depicted on the site map attached as Exhibit B; and

WHEREAS, the City and Developer entered into an Exclusive Negotiating Agreement ("ENA") on January 22, 2010, a first amendment on August 10, 2010 and a second amendment on April 11, 2011; a third amendment is pending execution by June 12, 2012, regarding the Project Site; and

WHEREAS, to support redevelopment of the EDC Property and serve the Gateway Development Area, including the Project Site, beginning in 2008, the Port, then the City and the Port, began pursuing Trade Corridor Improvement Fund ("TCIF") grant monies under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 for infrastmcture improvements to serve the EDC Property, known as the Outer Harbor Intermodal Terminals ("OHIT") improvements; and

WHEREAS, the development contemplated in the ENA is dependent on infrastmcture described and funded in part by the TCIF grant monies, including a rail yard, and to that end, the City and Port have entered into an agreement that describes how the City and Port will cooperate on developing the shared infrastmcture and related costs, known as the Cost Sharing Agreement, dated July 27, 2011, which agreement may be amended from time to time; and

WHEREAS, during the ENA period, the City entered into a Professional Services Agreement with the California Capital Group, to design the OHIT infrastmcture improvements for the EDC Property and related necessary off-site intersection improvements ("Public Improvements") to support the timeline required by the application for TCIF monies; and

WHEREAS, consistent with the terms developed through the ENA period, the City desires to have the Developer, through its affiliate and assignee, CCIG: (a) act as the franchisee/licensee for the constmction and operation of billboards on the Project Site; (b) manage the Project Site for pre-constmction work and the Public Improvements work through a pass-through lease, and (c) manage the constmction, through a design-build contract, of the Public Improvements; and

WHEREAS, during the ENA period, the City and the Developer evaluated the design and financial feasibility of a proposed mixed-use industrial (warehousing and logistics), commercial, including billboards, maritime, rail, and open space project on the Project Site; and

WHEREAS, Developer desires to lease the Project Site for billboard use and development of approved uses ("Private Improvements") in five lease areas - Billboard Sites, West Gateway, Rail Right of Way, Central Gateway and East Gateway; and

WHEREAS, together, the Public Improvements and Private Improvements on the Project Site are considered the "Project;" and

WHEREAS, staff and Developer have negotiated the terms of a Lease Disposition and Development Agreement ("LDDA") and its exhibits, including Ground Leases related to the four lease areas for the lease of the Project Site for development of the Private Improvements, a

Billboard Franchise/Lease Agreement, a Site Management Pass-Through Lease to allow for management of the Project Site for the Public Improvement work, a Design-Build Contract for construction of the Public Improvements, and related documents which set forth the terms and conditions of the development of the Project and the use of the Property by the Developer and any successors to the Property; copies of the LDDA and its attachments are attached hereto as Exhibit C; and

WHEREAS, pursuant to Oakland Municipal Code Sections 2.04.050.1, 2.04.051.B, and 2.04.180, the City Council may waive advertising and bidding and request for proposal processes to select a contractor for award of a contract to design and construct a design-build project upon a finding that it is in the best interests of the City to do so; and

WHEREAS, conducting a competitive bid process for a design-build project as complex as the Public Improvements would require four to six months and entail developing a scope and Request for Proposals, advertising the project, holding at least two pre-bid meetings, evaluating submissions, negotiating the contract, and seeking the City Council's authorization to enter into the contract; and

WHEREAS, to be able to begin construction by the TCIF deadline of December 2013, the selected contractor would have to use more resources on the project than usual at a higher cost to the City; and

WHEREAS, the City Administrator recommends that it is in the best interests of the City to waive the advertising and bidding and request for proposal processes for the contract to design and construct the Public Improvements because it enables TCIF project timelines to be met and helps ensure retention of the TCIF grant monies, which are necessary for the construction of Public Improvements; and

WHEREAS, consistent with the purposes of the EDC transfer from the Army to create local jobs, the City and Developer desire to implement a Community Benefits Program as set forth in the LDDA that commits to, among other things, creating jobs for the local community in West Oakland, and to that end includes employment policies and procedures that are intended to strengthen existing City policies and expressly supersede the employment portions of City Council Ordinance No. 12389 (12/18/01), as amended by City Council Ordinance 13101 (12/20/11), and the program Guidelines in the Local and Small Local Business Enterprise Program guidance dated February 1, 2012 with regard to Local Employment Program, Local Construction Employment Referral Program, and Apprenticeship Program; and

WHEREAS, consistent with the purposes of the EDC transfer from the Army, the City has amended the Base Reuse Plan to reflect development of the Project; and

WHEREAS, the City finds that the Project will implement the goals and objectives of the Redevelopment Plan and the Base Reuse Plan; and

WHEREAS, the City previously prepared and certified/adopted the 2002 Oakland Army Base ("OARB") Redevelopment Plan Environmental Impact Report, which was a "project level" EIR pursuant to California Environmental Quality Act ("CEQA") Guidelines section 15180(b); the 2006 OARB Auto Mall Supplemental EIR and 2007 Addendum; and the 2009 Addendum for the Central Gateway Aggregate Recycling and Fill Project; while the Port prepared and adopted

the Port's 2006 Maritime Street Addendum (collectively called "Previous CEQA Documents); and

WHEREAS, in addition to any grant funds, City funds will be available for the construction of the Public Improvements pursuant to the Design-Build contract from: (1) Joint Army Base Infrastructure Fund (5672) Infrastructure Master Plan Project (C415720); (2) OBRA Leasing & Utility Fund (5671) Leasing & Utility Project (P294110); (3) OBRA Utility & Leasing Fund (5671) Tidelands Tmst Related Project (C437310); (4) Oakland Army Base Joint Remediation Fund (5674); and (5) scheduled land sales; and

WHEREAS, the funds in the Oakland Army Base Remediation Fund (5674) shall be used solely for the environmental remediation of the Project Site, and if funds remain after environmental remediation has been completed, staff will recommend that the City Council reprogram the funds remaining in Oakland Army Base Remediation Fund (5674) for other Public Improvements; and

WHEREAS, in retum for the City's agreement to franchise and lease up to five billboard sites to Developer, Developer is required to pay billboard proceeds to the City on the terms and conditions set forth in the Billboard Franchise/Lease Agreement; and

WHEREAS, in retum for the City's lease of the Property to Developer, Developer is required to pay rent to the City on the terms and conditions as set forth in the Ground Leases; and

WHEREAS, the initial terms of the Ground Leases shall commence on the date possession is delivered under the LDDA, and continue for 66 years from the commencement date, all on the terms and conditions as described in the respective Ground Leases; and

WHEREAS, under the Ground Leases, the City shall retain ownership of the Project Site at all times; and

WHEREAS, the LDDA requires that the Developer constmct and operate the Project consistent with the Redevelopment Plan and restricts the use of the Property to specified uses as set forth in the "Scope of Development" attached to the LDDA; and

WHEREAS, the LDDA incorporates a Community Benefits Program that addresses environmental, contracting and jobs requirements consistent with the so-called "Areas of Agreement" as set forth in that certain City Council meeting report dated December 13, 2011.

WHEREAS, consistent with the Areas of Agreement, the City has adopted a resolution authorizing the City Administrator to use reasonable efforts in good faith to negotiate and execute a Cooperation Agreement with specified Community Groups, the Alameda County Building and Constmction Trades Council, and the Alameda County Central Labor Council (collectively the "Coalition"), an unincorporated association of employment and contracting advocacy organizations that, among other things, in retum for the Coalition's release of claims regarding the Project, requires the City to include (a) a Construction Jobs Policy as a material term of any contract that the City awards for work to be performed on the Project Site; and (b) an Operations Jobs Policy as a material term of certain leases or service contracts that the City enters into with any entity that may employ workers on the Project Site; and

WHEREAS, a copy of the proposed LDDA and its exhibits with the related agreements is on file with the City Clerk;

NOW, THEREFORE THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1: The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present. Thus, prior to approving the Project, the City can rely on the Previous CEQA Documents and the 2012 OARB Initial Study/Addendum.

Section 2: Specifically, the City Council affirms and adopts as its own, the findings and determinations the June 12, 2012, City Council Agenda Report, including without limitation the discussion, findings, conclusions, specified conditions of approval (including the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program ("SCA/MMRP")), and the CEQA findings contained in ***Attachment C*** to the Agenda Report, each of which is hereby separately and independently adopted by this Council in full, as if fully set forth herein.

Section 3: The City Council finds and determines that this action complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies.

Section 4: The record before this Council relating to this action, includes without limitation those items listed in ***Attachment C*** to the Agenda Report for this item, as if fully set forth herein, which are available at the locations listed in said Exhibit.

Section 5: The City hereby finds and determines that the lease of the Property through the Site Management Pass-through Lease for the Public Improvements, the Billboard Franchise/Lease Agreement and the Ground Leases by the City to the Developer for the Project furthers economic development in the City, conforms to and furthers the goals and objectives of the Redevelopment Plan in that: (1) the Project, once developed, will create permanent jobs for low and moderate income people, including jobs for area residents; (2) the Project will enhance the City's and Port's competitiveness and enable it to capture more of the growth in the global logistics industry; and (3) the Project, once developed, will enhance depreciated and stagnant property values in the surrounding areas, and will encourage efforts to alleviate economic and physical blight conditions in the area, including high business vacancy rates, excessive vacant lots, and abandoned buildings, by enhancing the development potential and overall economic viability of neighboring properties.

Section 6: Pursuant to Oakland Municipal Code Sections 2.04.050.1, 2.04.051.B, and 2.04.180 and for the reasons set forth above and in the City Administrator's Agenda Report accompanying this Ordinance, the City Council finds that it is in the best interests of the City to waive advertising and bidding and request for proposal processes for the selection of a qualified contractor to design and constmct the Public Improvements, and so waives the requirements.

Section 7: The City Administrator or her designee is authorized to negotiate and execute a contract for the design-build of the Public Improvements with CCIG in an amount to be determined pursuant to the terms of the LDDA.

Section 8: The City Administrator or her designee is authorized to lease the Property to Developer, subject to and on the terms and conditions of the LDDA and the respective Site Management Pass-Through Lease, and Ground Leases/Billboard Franchise/Lease Agreement.

Section 9: The City Administrator or her designee is authorized to allocate funding in the amount of $54,500,000 for the implementation of the Project from (1) Joint Army Base Infrastmcture Fund (5672) Infrastmcture Master Plan Project (C415720); (2) OBRA Leasing & Utihty Fund (5671) Leasing & Utility Project (P294110); (3) OBRA Utility & Leasing Fund (5671) Tidelands Tmst Related Project (C437310); (4) Oakland Army Base Joint Remediation Fund (5674); and (4) scheduled land sales to Fund (5672) and Project (to be established).

Section 10: The funds in Oakland Army Base Remediation Fund (5674) shall be used solely for the environmental remediation of the Project Site, and if funds remain after environmental remediation has been completed, staff will recommend that the City Council reprogram the funds remaining in Oakland Army Base Remediation Fund (5674) for other Public Improvements.

Section 11: The City and the Developer have agreed to a Community Benefits Program that includes environmental, contracting and jobs provisions as set forth in the LDDA. The environmental requirements are set forth in the SCA/MMRP attached to the LDDA. The contracting requirements follow the City's Contracting Policy (Council Ordinance 13101 (12/20/11)), as amended by this LDDA to provide for a capacity study/good faith compliance provisions and special conditions for contracting with West Oakland businesses. The Developer has agreed to implement a Constmction Jobs Policy and an Operations Job Policy, both of which strengthen existing City employment policies. The Constmction Jobs Policy and the Operations Job Pohcy expressly supersede the employment portions of City Ordinance No. 12389, as amended by Council Ordinance 13101 (12/20/11), and the program Guidelines in the Local and Small Local Business Enterprise Program guidance dated Febmary 1, 2012 with regard to Local Employment Program, Local Constmction Employment Referral Program, and Apprenticeship Program. The City has agreed to make good faith efforts to enter into a Cooperation Agreement with the Community Groups and a Project Labor Agreement for the Public Infrastmcture that incorporates the Constmction Jobs Policy and Operations Jobs Policy

Section 12: The City Administrator or her designee is hereby authorized to negotiate and execute, in form and content substantially in conformance with the LDDA and its attachments, as set forth in Exhibit C, without retuming to City Council: (1) the LDDA with the Developer for the Project, (2) upon satisfaction or waiver of the conditions precedent, the Ground Lease(s); (3) the exhibits to the LDDA including, without limitation, the Billboard Franchise/Lease Agreement, Site Management Pass-Through Lease, and the Design-Build Contract; and (4) such other additions, amendments or other modifications to the LDDA (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions which the LDDA contemplates to be conclusively evidenced by the execution and delivery by the City Administrator of the LDDA and any such amendments thereto; and (5) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the lease and development of the Property for the Project in order to consummate the transaction under the LDDA in accordance with this

Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

Section 13: The City Council authorizes City staff to amend the LDDA and related documents if required by the CTC to preserve TCIF funds for the development of the 2012 OARB Project without retuming to City Council; and be it

Section 14: The City Administrator shall determine satisfaction of conditions precedent under the LDDA to the conveyance of the leasehold estates in the Project, such determination to be conclusively evidenced by the execution and delivery by the City Administrator of the respective Site Management Pass-Through Lease or Ground Lease(s).

Section 15: All documents related to this transaction shall be reviewed and approved by the City Attorney's Office prior to execution, and copies will be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,_____, 2012

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

DATE OF ATTESTATION: _____

EXHIBIT A

EDC Property

EXHIBIT A - EDC Property

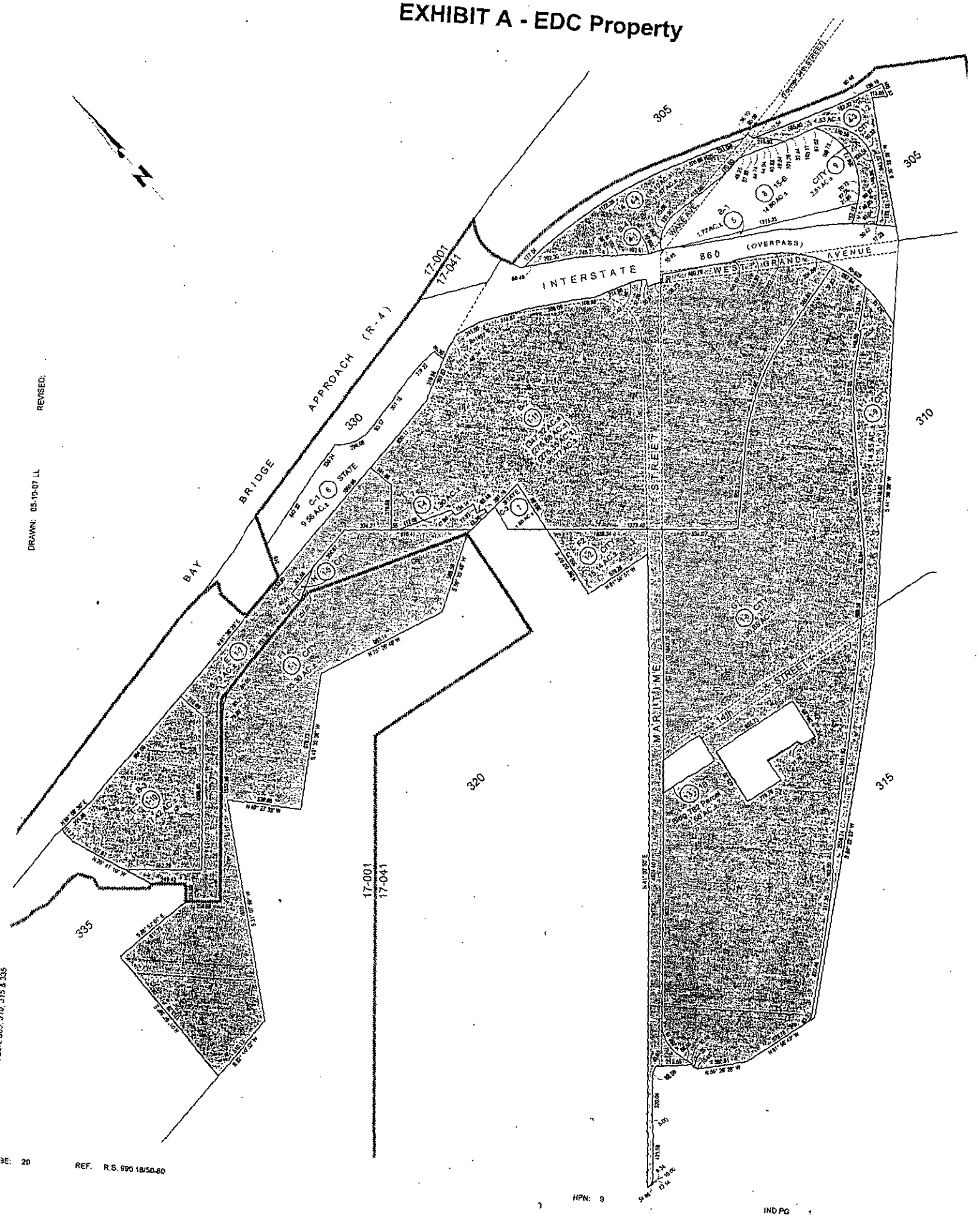
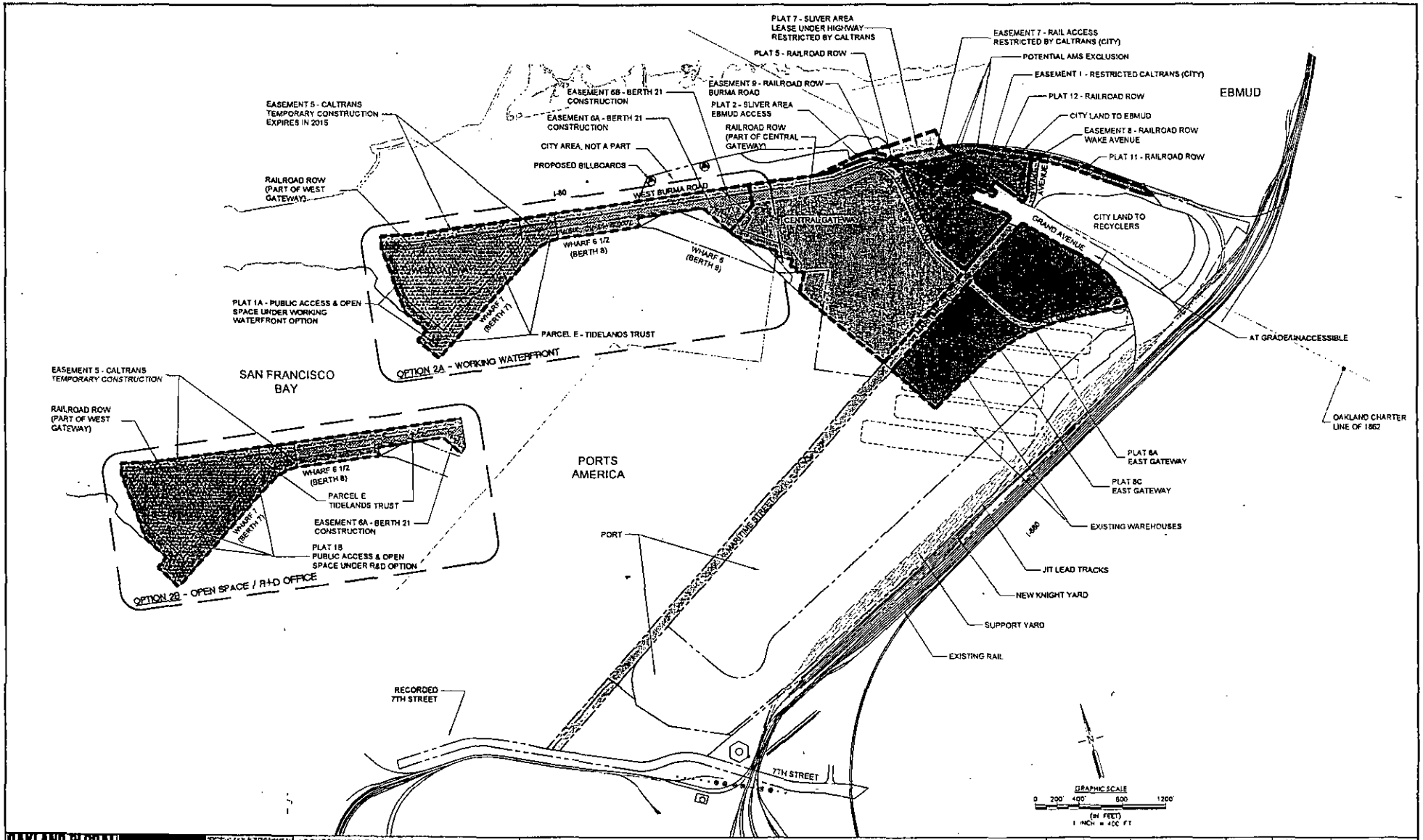


EXHIBIT B

Project Site



OAKLAND GLOBAL

ARCHITECTURAL DIMENSIONS

ARCHITECTURAL DIMENSIONS
MASTER PLAN TEAM
JAMES HEILBRONNER
415-933-6651
300 FRANK H. OGAWA PLAZA, SUITE 375
OAKLAND, CA 94612

PROJECT INFO.

ATTACHMENT 1 - SITE MAP 1

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

CAT. NO	AD-0125.02
INVOICE NO.	13189

REV	DATE	COMMENT

JOB NO.	OAB02
SCALE	1" = 400
DATE	5/23/2012
DRAWN BY	K. CHABOT
CHECKED BY	J. HEILBRONNER

DRAWING NO
X-184
SHEET 1 OF 2

EXHIBIT C

LDDA and Attachments

NOTICE AND DIGEST

ORDINANCE AUTHORIZING, WITH RESPECT TO A PORTION OF CITY-OWNED LAND AT THE FORMER OAKLAND ARMY BASE CONSISTING OF APPROXIMATELY 130 ACRES: (1) CONSTRUCTION OF SPECIFIED PUBLIC IMPROVEMENTS; (2) LEASE OF THE PROPERTY TO PROLOGIS CCIG OAKLAND GLOBAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY ("DEVELOPER"), FOR 66 YEARS, AND (3) A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT WITH THE DEVELOPER TO DEVELOP THE PROPERTY WITH A MIXED USE INDUSTRIAL (WAREHOUSING AND LOGISTICS), BILLBOARD, COMMERCIAL, MARITIME, AND OPEN SPACE PROJECT

This ordinance authorizes lease and development of approximately 130 acres of City-owned land at the former Oakland Army Base into a mixed-use industrial (warehousing and logistics), commercial, maritime, billboard, and open space project. Prologis CCIG Oakland Global, LLC, a Delaware limited liability company, will construct the public and private improvements of the development project.

HK/MS Joint Draft 5/31/12

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO:

The City of Oakland
250 Frank H. Ogawa Plaza, 3rd Floor
Attn: Real Estate Department
Oakland, CA 94612

(Space Above For Recorder's Use)

ARMY BASE GATEWAY REDEVELOPMENT PROJECT

LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

between

THE CITY OF OAKLAND

"City"

and

PROLOGIS CCIG OAKLAND GLOBAL, LLC

"Developer"

Effective Date: _____, 2012

LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

This Lease Disposition and Development Agreement (the "Agreement") is entered into as of the Effective Date listed on the fitle page of this Agreement, by and between the CITY OF OAKLAND, acting both in its capacity as an independent municipal corporafion and as the successor agency to the Redevelopment Agency of the City of Oakland ("Successor Agency") (together, the "City"), and PROLOGIS CCIG OAKLAND GLOBAL, LLC, a Delaware limited liability company (the "Developer") (each individually referred to a "Party" and collectively referred to as the "Parties"). [*Globdl note to word processing: bold all initial defined terms; insert into definitions glossary*]

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and the Developer agree as follows:

A. In 2003, in order to enable local economic redevelopment and job creation and ease the economic hardship on the local community caused by the base closure per Section 2903 of Title XXIX of Pubhc Law 101-510, the Army transferred via No-Cost Economic Development Conveyance ("EDC") certain real property (the "EDC Property") located in the City of Oakland, County of Alameda, State of Califomia, to the Oakland Base Reuse Authority ("OBRA"), a joint powers authority composed of the City and the former Redevelopment Agency of the City of Oakland ("Agency") under the Califomia Joint Exercise of Powers Act as set forth in Title 1, Division 7, Chapter 5, Article 1 of the Government Code of the State of Califomia (Government Code § 6470 *et seq.*) by that certain Quitclaim Deed for No-Cost Economic Development Conveyance Parcel ("Army EDC Deed"), recorded August 8, 2003, as Doc. 2003-466370 in the Official Records. Immediately thereafter, OBRA transferred portions of the EDC Property to the Port, such that the Port now owns approximately 241 acres of the EDC Property (the "Port Development Area") and OBRA retained approximately 170 acres, known as the Gateway Development Area. The EDC Property is generally depicted on the site map attached as Attachment 1.

B. In 2006, pursuant to the Oakland Army Base Title Settlement and Exchange Agreement between the State of Califomia, acting by and through the State Lands Commission ("SLC"), the City, the Port, OBRA and the Agency, dated June 30, 2006, the parties to such agreement completed an exchange of public trust lands, such that the public tmst was terminated on all of the EDC Property then owned by the OBRA (see State of Cahfomia Patent and Tmst Termination recorded August 7, 2006, as Doc. 2006-301853 in the Official Records), except on one, approximately 16.7 acre parcel conveyed from the SLC to the Agency by State of Califomia Patent and Tmst Termination recorded August 7, 2006, as Doc. 2006-301850 ("Parcel E").

C. Also in 2006 and 2007, the portions of the EDC Property owned by OBRA that were not subject to the public tmst were conveyed by OBRA to the Agency by the following Quitclaim Deeds, recorded September 19, 2006 as Docs. 2006-354006 and 2006-354007 and May 17, 2007 as Doc. 2007-190760 in the Official Records.

D. On March 3, 2011, the Agency and the City entered into a Purchase and Sale Agreement, approved by City Council Ordinance No. 83254 C.M.S. and Agency Resolution No. 2011-0025 C.M.S. (the "Agency-City PSA"), whereby the Agency agreed to sell and convey, inter alia, the Agency-owned portions of the EDC Property, excepting Parcel E, to the City under its own auspices, and the City agreed to accept assignment of all agreements related to such property (the "EDC Property Agreements"). The EDC Property Agreement include, but are not necessarily limited to the agreements set forth in Attachment 12.

E. On June 29, 2011, Governor Jerry Brown signed AB1x26, which is state legislation requiring the dissolution of all redevelopment agencies ("AB 26").

F. On January 10, 2012, the City Council passed Resolution No. 83679 C.M.S., electing to serve as the Successor Agency pursuant to AB 26.

G. On January 31, 2012, the City closed escrow under the Agency-City PSA and took title to the Agency-owned portions of the EDC Property (excluding Parcel E) pursuant to the grant deed recorded January 31, 2012 as Doc. 2012-30757 in the Official Records and assumed all of the Agency's right and obligations under the EDC Agreements with respect to such property.

H. On February 1, 2012, the Agency was dissolved, and Parcel E and the Agency's rights and obligations under the EDC Property Agreements with respect to Parcel E were transferred to the City as Successor Agency by operation of law pursuant to AB 26.

I. The transfers of the Agency-owned portions of the EDC Property from the Agency to the City and the City as Successor Agency are subject to approval by the Army pursuant to that certain EDC MOA, and may require Department of Toxic Substances Control ("DTSC") approval in accordance with the Consent Agreement. The transfers of the Agency-owned portions of the EDC Property and assumption of the related contractual obligations under the EDC Property Agreements to the City in its capacity as an independent municipal corporation (rather than as the Successor Agency) are subject to approval or other action (e.g., involuntary transfer to the Successor Agency) by the Oversight Board, State Controller and/or the California Department of Finance, as applicable, pursuant to the requirements of AB 26. The transfer of the portions of the Lease Property to Developer pursuant to this Agreement, the Billboard Agreement and the Ground Leases are subject to the approval of the Army pursuant to the EDC MOA, may also require the approval of the DTSC pursuant to the Consent Agreement and the approval of the Oversight Board, State Controller and/or the California Department of Finance, as applicable, pursuant to the requirements of AB 26. The foregoing approvals have not yet been finalized.

J. Nevertheless, the City has contractual obligations stemming from the EDC to the Army and DTSC that require remediation and redevelopment of the EDC Property that necessitate the continued pursuit of redevelopment, therefore, the City desires to continue the redevelopment efforts in the Gateway Development Area, and the City of Oakland

Charter Section 305 authorizes the City's Mayor to encourage economic development in the City.

K. To guide redevelopment of the EDC Property, the City adopted the Oakland Army Base Area Redevelopment Plan in 2000, as most recently amended and restated March 21, 2006 per City Ordinance No. 12734 C.M.S , and adopted the Base Reuse Plan in _____, 20__, which plans affect and control the development of the EDC Property.

L. In 2008, the City issued a Request for Qualifications to identify potential development teams for redevelopment of certain portions of the Gateway Development Area, generally consisting of the West Gateway, Central Gateway and East Gateway, and City selected Prologis Property, L.P. *[Dev Note: confirm whether Prologis will transfer its interest to an SPE prior to JV/LDDA execution.]* ("Prologis") (then named AMB Property, L.P., a Delaware limited partnership), and CCIG Oakland Global, LLC ("CCIG"), a Califomia limited liability company (successor-in-interest to Califomia Capital Group, a Califomia general partnership to negotiate with regarding development on portions of the Gateway Development Area. Prologis and CCIG are the joint venture members of Developer.

M. The City and Developer (through their joint venture members) entered into an Exclusive Negotiating Agreement ("ENA") on January 22, 2010, a first amendment to the ENA was executed on August 10, 2010, a second amendment was executed on April 11, 2011, and a third amendment was executed on _____, 2012 ("Third Amendment to ENA").

N. During the ENA period, the City and Developer evaluated the design and financial feasibility of a proposed mixed-use industrial (warehousing and logistics), commercial, including billboards, maritime, rail, and open space project and related infrastmcture needs on approximately 140 acres of the Gateway Development Area and adjacent Port-owned lands (the "Project Site"), as depicted on the site map attached as Attachment 1.

O. To support redevelopment of the EDC Property, beginning in 2008, the Port, then the City and the Port, began pursuing Trade Corridors Improvement Fund ("TCIF") grant monies under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 for infrastmcture improvements to serve the EDC Property, known as the Outer Harbor Intermodal Terminals ("OHIT") improvements.

P. The development contemplated in the ENA, the Project and this Agreement is dependent on OHIT improvements to be funded in part by the TCIF grant monies, including the rail yard, and to that end, the City and Port contemplate enteringan Amended and Restated Cost Sharing Agreement (the "Amended and Restated CSA"), which agreement describes how the City and Port will cooperate on developing the shared infrastmcture and fund the related costs.

Q. During the ENA period, the City entered into a Professional Services Agreement with the Califomia Capital Group, to prepare a master plan for the Project and the related improvements (the "Master Plan"). Assignment of that contract to CCIG was approved pursuant to the Third Amendment to ENA. The draft Master Plan is subject to the

approval of the City and the Port pursuant to the provisions of the Amended and Restated CSA.

R. The City desires to have the Developer, and in some cases its Affiliate the Califomia Capital & Investment Group, Inc. ("CCIG, Inc.") to: (a) act as the franchisee/licensee for the construction and operation of certain billboards on the Project Site (per the Billboard Franchise/Lease Agreement attached as Attachment 4 to this Agreement); (b) manage the Lease Property for leasing, pre-construction work (e.g., site control and security and soils handling) and the construction of the public infrastructure described in 6 (collectively, the "Public Improvements") through a design-build delivery method by means of a Property Management Agreement (the form and material terms are attached as Attachment 5 to this Agreement). The City has determined that pursuing the Public Improvements under a design-build delivery method without formal bidding, as provided for in the City's Charter and Municipal Code, is in the best interests of the City, is consistent with the Request for Qualifications and enables TCIF project fimelines to be met.

S. The City also desires to lease to Developer approximately 140 acres of land within the Gateway Development Area (which areas are defined as the "Lease Property") for purposes of developing mixed-use industrial (warehousing and logistics), commercial, maritime, rail, and related support uses, as defined in the Scope of Development attached as Attachment 7 ("Private Improvements"). The Lease Property is generally depicted on the site map attached as Attachment 1. The Lease Property may be revised to exclude certain portions currently included or to include additional portions of the EDC Property and adjacent areas that may come into City control in the future in accordance with this Agreement.

T. Together, the Public Improvements and Private Improvements to be completed in accordance with this Agreement and the applicable Ground Lease are considered the "Project."

U. Consistent with the purposes of the EDC transfer from the Army to create local jobs, the City and Developer desire to implement a Community Benefits Program as set forth in this Agreement that commits to, among other things, creating jobs for the local community in West Oakland, and to that end includes employment policies and procedures that are intended to strengthen existing City policies and expressly supersede the employment [*and contracting?]* portions of City Council Ordinance No. 12389 (12/18/01), as amended by City Council Ordinance 13101 (12/20/11), and the provisions of the Jobs/Housing Ordinance, City Council Ordinance 12442 (7/30/02), as more particularly set forth in this Agreement.

V. The City has found that the Project will implement the goals and objectives of the Oakland Army Base Area Redevelopment Plan.

W. Consistent with the purposes of the EDC transfer from the Army, the City is amending the Base Reuse Plan to reflect the Project considered herein.

X. The City has conducted all required hearings on the Project and has fully analyzed all potentially significant environmental effects in compliance with the CEQA and the CEQA Guidelines as more fully described in the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report ("EIR") and the Addendum _____ ("EIR Addendum").

Y. The actions contemplated in this Agreement are authorized by City Ordinance No. _____, dated _____, 2012 ("Ordinance").

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and mutual obligations contained in this Agreement, and in reliance on the Developer's representations and warranties set forth herein, the City and Developer agree as follows:

ARTICLE I

GENERAL

1.1 Term.

The Term of this Agreement shall be from the Effective Date until the Close of Escrow on the last of the three contemplated Ground Leases, unless this Agreement is earlier terminated in accordance with its provisions.

1.2 Definitions.

Initially capitalized Terms used in this Agreement are defined in Article X, or have the meanings given them when first defined.

1.3 Relationship of This Agreement to Attached Agreements. [*Note to reviewers: Notwithstanding the following provisions regarding the stand-alone nature of the additional agreements, this initial draft contains language regarding how certain provisions and obligations of such other agreement will be implemented. To the extent included here, such operative provisions will control future drafts, but may be moved over to the appropriate agreement in such future drafts.*]

1.3.1 Billboard Agreement

This Agreement contemplates that the Parties will enter into the Billboard Agreement in a form substantially similar to the form at Attachment 4. This Agreement and the Billboard Agreement establish the rights and obligations of the Parties as to the development and operation of up to five billboard sites as identified in the Scope of Development for the Private Improvements at Attachment 7. Upon execution of the Billboard Agreement, the Billboard Agreement shall exclusively govern the rights and obligations of the Parties with respect to the subject of the Billboard Agreement. The parties contemplate that, in accordance with the terms of the Billboard Agreement, the Billboard Agreement may survive termination of this Agreement. [*Note: Billboard Agreement to include a provision related to the initial potential exclusion of Sites 1 and 2 if Caltrans initially objects, but with Developer o have the right to*

subsequently add back in if Caltrans subsequently agrees during the term of the Billboard Agreement.]

1.3.2 Property Management Agreement

This Agreement contemplates that the City and CCIG, Inc. will enter into a Property Management Agreement in a form substantially similar to the form at Attachment 5. This Agreement and the Property Management Agreement establish the rights and obligations of the Parties as to certain site management activities, including lease management, soils handling, and oversight responsibilities for the design and construction of the Pubhc Improvements on the Project Site. Upon the execution of the Property Management Agreement , the Property Management Agreement shall exclusively govem the rights and obligations of the Parties with respect to the subject of the Property Management Agreement. The Property Management Agreement shall teminate automatically and have no further effect as to each Phase upon the Close of Escrow for such Phase. In addition, in the event this Agreement is terminated by its terms (other than the partial termination as to a Phase at the Close of Escrow) the Property Management Agreement shall terminate automatically and have no further force or effect.

13.3 Ground Leases

This Agreement contemplates a separate Ground Lease for each of the three Phases of the Lease Property: the West Gateway, Central Gateway and the East Gateway, in a form substantially similar to the forms provided in Attachment 3. If all of the conditions precedent applicable to the Close of Escrow, as set forth in Article V of this Agreement, are satisfied as to a Phase, then the Parties shall execute and deliver the applicable Ground Lease for such Phase and City shall thereupon lease the applicable Phase to the Developer and the Developer shall lease the applicable Phase from the City, pursuant to such Ground Lease. Except as otherwise expressly set forth herein or in the Ground Lease, the provisions of this Agreement will govem the rights and obligations of the Parties as to each Phase until the Close of Escrow for such Phase and the provisions of the applicable Ground Lease shall exclusively govem the rights and obligations of the Parties as to each Phase after the Close of Escrow for such Phase. The Parties contemplate that the Ground Leases, upon Close of Escrow and in accordance with the terms of such Ground Leases, will survive termination of this Agreement.

1.4 Security Deposit.

The Developer shall deposit with the City the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) as security for the performance of Developer's obligations under this Agreement, due within ten (10) days of the Effective Date of this Agreement. [*Note: Parties to discuss depositing the Security Deposit into an escrow account held by a third party and subject to a written escrow agreement consistent with the terms of this Agreement regarding the application, return or City's retention of the Security Deposit.*]

1.5 Potential Modifications to the Lease Property.

(a) Potential Exclusions from Lease Property. The City shall have the right to exclude the approximately 15-acre AMS Site from the Lease Property if the City enters into a binding contract for the use of the AMS Site to fulfill BCDC's 15-acre tmck parking requirement

for the City Property prior to the time set forth on the Schedule of Performance. If the City fails to enter into such a contract in a timely manner, the City's right to exclude the AMS Site from the Lease Property shall tenninate. Further, the City shall have the right to exclude the City Exchange Properties from the Lease Property in exchange for the inclusion of the Port Exchange Properties in the Exchange Parcel as set forth in Section 1.5(b) if the City enters into a binding agreement to acquire or acquires titie to the Port Exchange Properties prior to the time set forth in the Schedule of Performance. If the City fails to timely enter into a binding agreement for the acquisition of or acquire title to the Port Exchange Properties, the City's right to exclude the City Exchange Properties from the Lease Property shall terminate.

(b) Potential Additions to Lease Property. The City has the right to include the Port Exchange Properties in the Lease Property in exchange for the exclusion of the City Exchange Properties from the Lease Property as contemplated in Section 1.5(a) above. If the City fails to timely enter into a binding agreement for the acquisition of or acquire titie to the Port Exchange Properties, the City's right to include the Port Exchange Properties in the Lease Property shall terminate.

1.6 Recordation of Memorandum of LDDA.

Concurrentiy with the execution and delivery of this Agreement, the Parties have executed and caused to be notarized the Memorandum of Lease Disposition and Development Agreement in the form attached hereto as Attachment 9. The Memorandum of LDDA shall be recorded in the Official Records within the time set forth on the Schedule of Performance.

1.7 Execution of Billboard Agreement

The Parties shall enter into a Billboard Agreement in a form substantially consistent with the form Attachment 4 by the time set forth on the Schedule of Performance.

1.8 Execution of Property Management Agreement

The City shall execute and the Developer shall cause CCIG, Inc. to execute a Property Management Agreement substantially in the form attached as Attachment 5 by the time set forth on the Schedule of Performance.

ARTICLE II

THIRD PARTY COORDINATION

2.1 Cooperation by the Parties

The Parties acknowledge that the Project requires a number of discretionary approvals and agreements with non-City governmental entities and other third parties which have a material affect on Project feasibility, the Schedule of Performance, and the implementation of this Agreement. Therefore, the Parties agree to communicate regularly and to cooperate in good faith, including meeting and conferring as necessary, joint invitations to and attendance at

meetings, copies of correspondence and execution of mutually acceptable applications as owner and applicant where necessary and appropriate to implement the Project and this Agreement. [*Discuss Dev request: "Such cooperation shall be at no third party cost to the cooperating party."*]

2.2 Third Parties Agreements, Approvals and Permits

The following is a summary of the agreements, approvals and permits that Parties acknowledge are essential to the success of the Project. The Parties shall cooperate as set forth in Section 2.1 above with respect to the City's pursuit and acquisition of such matters. For each such matter, during the time period between the execution or acquisition of the same and the termination of this Agreement: (a) the City shall use its best efforts to perform its obligations and secure the material benefit of its rights under such matter, each prior to the times set forth in the Schedule of Performance, if applicable, and (b) the City shall not seek or agree to amend the provisions of such matter without Developer's prior written consent, which may not be unreasonably withheld, conditioned or delayed.

2.2.1 Third Party Approvals of Prior Transfers and this Agreement

The City shall have obtained the approval or other applicable form of confirmation related to the Army, DTSC, the Oversight Board, Department of Finance and State of California of (a) the prior transfers of the Lease Property and EDC Property Agreements form the Agency to the City and (b) the subsequent transfers of the Lease Property pursuant to this Agreement prior to the applicable time(s) set forth in the Schedule of Performance.

2.2.2 Amended and Restated CSA

The City and Port shall execute an Amended and Restated CSA in a form substantially similar to the attachment to the Staff Report for the June 19, 2012 City Council meeting by the time set forth in the Schedule of Performance. Further, if the City is entitled to exercise a self help remedy under the Amended and Restated CSA, to the extent permitted under the Amended and Restated CSA, the City hereby agrees to assign such remedy to the Developer.

2.2.3 Amended OHIT Baseline Agreement.

The Port, City, the California Department of Transportation ("Caltrans") and the California Transportation Commission (the "CTC") shall enter into an amended and restated Trade Corridors Improvement Fund Project Baseline Agreement for the amended OHIT project as contemplated in Section ___ of the proposed Amended and Restated CSA (the "Amended OHIT Baseline Agreement") prior to the time set forth in the Schedule of Performance, which agreement: (i) expressly approves of the parties to the Design Build Contract described in Section ___ below, (ii) expressly approves of the application of the cost of the design and construction of the Private Improvements as matching funds, (iii) expressly approves of the timing of the private improvement matching funds being expended after the majority of the TCIF funds and (iv) includes a date for the final audit of the required matching funds that is no earlier than January 1, 2024.

2.2.4 Cooperation Agreement

_____The City and the applicable third parties shall have entered into a Cooperation Agreement in substantially the form of the draft agreement included in the Staff Report for the June 19, 2012 City Council meeting prior to the time set forth in the Schedule of Performance.

2.2.5 Rail Service Agreement

The City, Port and, if applicable, the Port Rail Terminal Operator shall have entered into that certain Rail Service Agreement as contemplated in Section ___ of the Amended and Restated CSA prior to the time set forth in the Schedule of Performance. [*Note: City to assign (prorata) its rights thereunder to Developer in conjunction with the Close of Escrow for each Ground Lease.*]

2.2.6 Caltrans

2.2.6.1 Construction Easement

Caltrans shall have vacated its right to occupy a portion of the West Gateway pursuant to that certain temporary construction easement recorded in the Official Records on February 13, 2002 as Instrument No. 2002-72862 (the "Caltrans WGW Easement") prior to the time set forth in the Schedule of Performance. Developer shall have the right to negotiate with Caltrans with respect to an early vacation of all or a portion of the Caltrans WGW Easement area and the City shall cooperate with such efforts at no third party cost to the City. To the extent that that Developer is able to secure such early vacation, the Base Rent under the West Gateway Lease shall be abated until the current expiration date of the Caltrans WGW Easement.

2.2.6.2 Billboard Sites

The City shall use commercially reasonable efforts to obtain Caltrans' consent to a reservation of the sites for bill boards 1 and 2 as identified in the Scope of Development, and reasonable access and utility easement thereto, from its conveyance of the [*note: insert reference to parcel*] to Caltrans for inclusion in the Billboard Agreement premises. If Caltrans initially refuses to agree to the proposed reservation, the City shall continue to use commercially reasonable effort to obtain the right to locate billboards on such sites (at no third party cost to the City, but with an obligation to convey offers from the Developer) and if the City subsequently obtain such rights, the sites shall be added to the premises under the Billboard Agreement for no additional consideration.

2.2.6.3 Underfreeway Easement

The City shall use commercially reasonable efforts to obtain Caltrans' agreement to amend the [*note: insert reference to West Grand underfreeway easement*] to add the following to the list of permitted uses: the right to install, maintain, repair and replace (a) improvements related to the intended two railroad lines accessing the West Gateway and the Central Gateway; (b) the vehicular, bike and pedestrian access improvement to the West Gateway; and (c) any

other Public Improvements intended to be installed and maintained in such location. The City may satisfy its obligations under this Section by obtaining the right to install at least one rail line.

2.2.7 Other Non-City Approvals

City to use commercially reasonable efforts to obtain all necessary permits or approvals necessary to construct the Public Infrastmcture in accordance with the Schedule of Performance and shall cooperate with Developer it its pursuit of third party permits and approval related to the Private Improvements. If City is unable to obtain a required permit for the Public Infrastmcture, parties will commence the meet and confer process set forth in Section 2.4 below.

2.2.8 EBMUD MOA

The City, the required Affiliate of Developer and the East Bay Municipal District shall enter into a Memorandum of Agreement insubstantially similar form attached to the June 19, 2012 Staff Report to the City Council hereto prior to the time set forth in the Schedule of Performance (the "EBMUD MOA"). Upon final execution, the EBMUD MOA shall be inserted as Attachment 17 to this Agreement. The Developer shall be required to include the EBMUD MOA in the Ground Leases for the Central Gateway and the West Gateway.

2.3 Meet and Confer Process for Material Issues

[*Confirm timing with City staff*] The parties desire that this Agreement and the ability to develop the Project or substantial portions of the Project not automatically terminate upon the non-satisfaction of certain conditions precedent (primarily related to the loss of TCIF funds or the inability to deliver the Public Infrastmcture or realize the benefit of the Port Rail Terminal). Therefore, as specified in the Schedule of Performance, the parties agree to meet and confer and exclusively negotiate with each other in good faith to determine means to preserve the mutual benefits of the Project. During an initial period to expire on December 1, 2012, the parties would negotiate regarding the feasibility of developing substantially the same project , with no change in the Permitted Uses set forth in the Scope of Private Development or the Base Rent contemplated under the ground Leases. If the parties are unable to agree upon a means to deliver such project, the parties would continue to negotiate through May 31, 2013 regarding the feasibility of developing a different, but mutually beneficial project to be developed at the Lease Property. Notwithstanding the terms of this Section to the contrary, the Developer shall have the right to terminate the negotiation period upon written notice to the City. In the event that the City Administrator deemed it to be in the best interest of the City in his or her sole discretion, the City Administrator shall have the authority to extend the exclusive negotiating period by entering into an amendment to this Agreement.

ARTICLE HI
DEVELOPMENT OF THE PUBLIC IMPROVEMENTS

3.1 The City's Construction Obligation.

The City shall develop the Public Improvements in accordance with the terms of this Article III. [*Note to reviewers: the key terms of agreement are set forth below and the final language is being drafted and will be inserted; subject to City staff confirmation*]

1. City, at its cost, to be responsible for the design and construction of the Public Improvements pursuant to the time set forth in the Schedule of Performance.

2. City's maximum obligation to expend (current and future) City funds to complete the Public Infrastructure to be limited to approximately $55.4mm [confirm $3M park fund], plus any Port funds the currently available in the Joint Remediation Fund, any funds available to the City from the existing Cost Cap remediation policy. Such cap shall not apply to any "long term" off-site traffic improvements of posting closing obligations related to the remediation of Hazardous Materials.

3. The Professional Services Agreement entered into between the City and CCIG with respect to the Master Plan shall be assigned to CCIG, Inc. and, subject to the following amendments will be the vehicle used to develop the bridging documents for the Public Improvements. Amendments to include a fee payable to CCIG, Inc. equal to 4% of the third party costs related to the preparation of the bridging documents, mutual waiver of consequential damages, scope to be amended to include the investigation/identification of haz. mat. issues that may affect the delivery of the Public Improvements, all not to exceed the current budget of approximately $14.1mm.

4.Delivery of the Public Improvements to be pursuant to a design build contract between CCIG, Inc. and a member or members of the Developer's RFP team as "at-risk" construction manager and prime contractor that provide a guaranteed maximum price ("GMP") for the delivery of the Public Improvements upon the completion of the bridging documents. The details of the design build contract are more particularly set forth in Attachment 5 (Property Management Agreement). If the City and identified, available third party funds are insufficient to pay the GMP, the parties shall meet and confer pursuant to Section 2.4. The Design Build Contract shall provide that the Developer is an intended third party beneficiary of the warranty provisions of such contract and it subcontracts, and (b) a named insured under the applicable insurance policies.

5. The City shall be required to form, at Developer's initial cost subject to reimbursement as set forth below, a Community Services District formed pursuant to California Government Code Section 61000 et seq., which would be responsible for maintaining, operating, repairing, replacing that portion of the Public Improvements to be owned and otherwise maintained by the City (the "CSD"). The CSD would be managed by a three (3) member board of directors. The board members would be recommended by the City Administrator and confirmed by the City Council; provided, however, the City shall appoint Developer representatives to two (2) board

positions until the expiration of all Ground Leases. Developer's representatives shall be subject to removal by City Council for cause. The CSD shall (a) be imposed on [Insert reference to entire City Property:], (b) adopt the maintenance standards reasonably and mutually acceptable to City and Developer] and (c) adopt an initial budget that (i) provides for a reimbursement of Developer's CSD formation costs, (ii) and a capital reserve schedule of _____. Developer shall have the right to reasonably approve the underwriter, bond counsel, administrative load, amount and timing of funding, amount of capitalized interest and basis for spread of lien against the included parcels.

3.2 Community Benefits Program [*Note: Language And Matrix Subject To Further Negotiation.*]

The City and Developer believe that development of the Project provides tremendous opportunities to the West Oakland community, the City as a whole, and the region. The ENA required that the community benefit program in the LDDA address funding, jobs, contracting and environmental issues, and various community meetings, workshops and City Council meetings have been held on the issue. The final community benefits program has, to the extent feasible, strived to incorporate the "Areas of Agreement" that were the outcome of workshops led by Councilmember Brunner and presented to the City Council with the Agenda Report dated December 13, 2011 and the environmental and green building recommendations that were the outcome of a series of workshops conveyed by Vice Mayor Nadel and presented to the City Council with the Agenda Report dated March 28, 2012 as well as the contracting recommendations provided to City Council with the Agenda Report dated May 8, 2012. All of these topics are addressed in the matrix of community benefits program terms provided as Attachment 15, which is incorporated as material term and the City and Developer agree to comply with commitments herein. Specifically, the commitments provided by the City and Developer in community benefits program matrix are aimed at maximizing the community benefits provided by the Project, including creating high-quality local jobs and training opportunities, business opportunities, and environmental benefits, and the requirements will be incorporated into the Public Improvement and Private Improvement work as set forth in the Attachment 15.

ARTICLE IV
REMEDITATION [*entire article to be reviewed/revised*]

4.1 **City's Disclosure.** The City hereby makes the following disclosures to the Developer:

(a) **Presence of Hazardous Materials.** Hazardous Materials exist in soil and groundwater at, on and under portions of the Project Site and in buildings currently existing on the Project Site. The City has provided Developer with a reference index of environmental assessment reports pertaining to the Gateway Development Area, the current version of which is attached as Attachment 10. The City shall continue to make available to the Developer for review and copying complete copies of all listed documents at the City's document repository of OARB environmental reports located at 250 Frank Ogawa Plaza, 3rd Floor, Dimond Room, Oakland, California. The City shall make access available at all reasonable times through at

least Close of Escrow. The City shall update Attachment 10 upon written request from Developer. In addition, if the City becomes aware of any material information relating to environmental conditions at, on under or emanating from the Project Site, including, without limitation, the presence of Hazardous Materials, the City shall so inform Developer and provide Developer with a copy of such information no later than ten (10) days following the City's discovery of the information. In addition to above-referenced reports, the Port may have additional environmental reports that the City does not have.

(b) HSC 25359.7 Notice of Release. This Agreement, which is a public ordinance, was properly circulated in accordance with applicable Laws and City procedures and does not become effective until at least thirty (30) days after the first reading at a property noticed meeting of the City Council. This LDDA provides the thirty (30) day written notice that there has been a release of hazardous materials on or beneath the Project Site pursuant to Health and Safety Code section 25359.7, as required in the Covenant.

(c) Environmental Remediation Requirements. The EDC Property was transferred to the City through the City's predecessor in interest, OBRA, from the Army pursuant to that certain EDC Memorandum of Agreement dated September 27, 2002 ("EDC MOA"). The EDC MOA required the City to complete environmental services (including investigation, remediation and related document preparation activities) for the EDC Property as set forth in the Environmental Services Cooperative Agreement dated May 16, 2003 ("ESCA"). Pursuant to the ESCA, the City, through its predecessor in interest, OBRA, contractually assumed the Army's remediation responsibilities (except in limited circumstances specifically identified in the ESCA) and agreed to remediate the EDC Property so that the Army could obtain its Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") covenant certifying completion of remediation, as required by federal law. In the ESCA, the City committed to complete the environmental response activities set forth in that certain Consent Agreement between the City and the California Department of Toxic Substance Control ("DTSC"), dated September 27, 2002, as revised May 19, 2003 and amended May 2, 2005 ("Consent Agreement"), and the associated Remedial Action Plan ("RAP") and Risk Management Plan ("RMP"), each also dated September 27, 2002, with the RAP amended on August 2, 2004 (collectively, the "RAP/RMP"), in order to achieve regulatory closure. The agreement by the City to assume remediation obligations was endorsed by Governor Gray Davis in the Governor's August 6, 2003 approval of the Army's Finding of Suitability for Early Transfer ("FOSET"). To approve the FOSET and meet the terms of the Consent Agreement, the City provided financial assurances that the remediation identified and required by the ESCA would be completed. Those assurances consisted of (a) purchasing an environment insurance policy, the Remediation Cost Cap Environmental Site Liability Policy issued by Chubb Custom Insurance Company, Policy No. 3730-58-78 ("Environmental Insurance Policy"), which covers the period from August 7, 2003 to August 7, 2013, and (b) establishing a separate account (the "Remediation Fund"), which was jointly established with the Port and set aside approximately eleven milhon ($11,000,000) for the sole purpose of paying for remediation costs on the EDC Property. Finally, the EDC Property is also subject to the Regional Water Quality Control Board Order No. R2-2004-0086, dated November 5, 2004 ("RWQCB Order").

(d) ARMOA. Because the City and Port each own portions of the EDC Property, the City and Port contractually allocated responsibility for clean up of the EDC

Property pursuant to the terms of that certain Amended and Restated Memorandum of Agreement ("City/Port ARMOA") dated February 27, 2008, which agreement requires the City and Port to coordinate on (a) all remediation work plans and schedules under the Consent Agreement and RAP/RMP, (b) insurance submittals pursuant to the Environmental Insurance Policy, and (c) payments to and from the Remediation Fund.

(e) The Consent Agreement, RAP/RMP, RWQCB Order, Covenant and Army EDC Deed. The Consent Agreement, RAP/RMP and RWQCB Order contain controlling environmental requirements and standards for Remediation of Hazardous Materials at the EDC Property and are included as Attachments 11A, 11B and 11C, respectively. The Consent Agreement specifically sets forth the scope and schedule of work to be completed to remediate environmental hazards on the EDC Property. The RAP/RMP identifies the priority remediation sites ("RAP Sites") at the former Oakland Army Base and establishes the cleanup goals for the entire EDC Property. The RMP sets forth the risk management protocols and the procedures for addressing environmental conditions at the EDC Property, including the presence and potential presence of Hazardous Materials, as they are identified. The RWQCB Order, specifies the cleanup requirements for petroleum impacted soil and groundwater on the EDC Property. The Consent Agreement includes a Covenant to Restrict Use of the Property ("Covenant"), which prohibits certain sensitive land uses, requires notice of a release of Hazardous Materials to future owners or lessees of the land, requires an annual certification be submitted to DTSC attesting to compliance with the Covenant and reserves DTSC's right of access to the EDC Property. The Army EDC Deed also incorporates the Covenant, requires that the City provide written notice of any noncompliance with the Covenant to the Army and requires that the Army be provided with a right of access to the EDC Property for purposes of environmental investigation, remediation or other corrective action, if and to the extent required. For purposes of this Agreement, the government agencies identified in this section *5.1(c)(2)* are collectively referred to as the "Resource Agencies" and the documents identified in this section, as well as any other requirements of the applicable Hazardous Materials Laws, are collectively referred to as the "Environmental Remediation Requirements."

(f) Notice of Restrictions in the Covenant and EDC Deed. The Covenant required by DTSC as part of the Consent Agreement provides that all of the environmental restrictions set forth in the Covenant shall be included in any transfer of the EDC Property or any interest therein. The Covenant is provided in full in Attachment 12A. Further, the Army EDC Deed provides that all of the environmental protection provisions of the Army EDC Deed shall be included either verbatim or by reference into any transfer of the EDC Property or any interest therein. The Army EDC Deed is provided in full in Attachment 12B. Required notices and copies of the Covenant and Army EDC Deed shall also be provided in each Ground Lease and any subsequent subleases. Developer covenants that it will include or reference the Covenant and Army EDC Deed in each of its future leases and/or subleases.

4.2 Responsibility for Environmental Remediation.

(a) [*TERMS TO BE INSERTED IN ACCORDANCE WITH THE FOLLOWING; PROCESS ISSUES TO BE NEGOTIATED:*]

(b) The City is responsible for Remediation in accordance with Environmental Remediation Requirements of Pre-Close of Escrow Remediation which includes: (1) RAP Sites, (2) Remediation in course of Public Improvements, (3) Remediation in response to Releases found during Developer Pre-Close of Escrow Due Diligence, to the extent such Release is not caused by or contributed to by Developer.

(c) The City shall be responsible for all demotion work and associated Hazardous Materials abatement in accordance with Hazardous Materials Laws.

(d) Notwithstanding issuance by the DTSC or RWQCB, as applicable of one or more No Further Action letters for the Remediation work set forth in (b) above, the City shall remain responsible for any additional Remediation work required by any Regulatory Agency (*e.g.* "reopeners"), which shall constitute "City Post-Close of Escrow Remediation Work".

(e) The City has committed to spend up to $54.5 million (fifty-four million and 500,000 thousand dollars) for Public Infrastmcture work which includes Remediation as funded through the Remediation Fund at the EDC Property. To date, the City has spent approximately $[X] million of the pledged $55 million. . To date, the City has spent approximately ***$[X]*** million of the pledged $55 million. In the event that these combined funds are insufficient fund all of the City's pre-Close of Escrow obligations as identified in this Section 1.2, then the Parties shall meet and confer as provided in Section ***[X]*** of this LDDA to negotiate an allocation of the remaining pre-Close of Escrow funding requirements. To the extent that the Developer agrees to fund some portion of such costs, then it shall be entitled to apply its payments dollar for dollar as a discount off Base Rent.

(f) Developer has right to conduct due diligence at its sole cost and expense prior to execution of the Ground Lease.

(g) Upon Close of Escrow, with the exception of the City's obligations pursuant to this Agreement and/or the Ground Lease, Developer agrees to accept the Project Site "As-Is, Where-Is" and as between Developer and the City to be responsible for (a) any Release of Hazardous Materials at the Project Site caused by the Handling of Hazardous Materials, except to the extent the City or its employees or contractors cause or contribute to such a Release and (b) Remediation required for any new Hazardous Materials Release on, under or about the Project Site during its tenancy; provided, however, that the City shall retain responsibility for any City Post-Close of Escrow Remediation Work, except to the extent that Developer or its contractors, sub-lessees, or invitees, cause or contribute to such contamination.

(h) Following Close of Escrow, with the exception of the City's obligations pursuant to this Agreement and the Ground Lease, Developer shall be responsible for Remediation associated with development of the Private Improvements.

(i) Through the Ground Lease, Developer shall (i) comply with, and cause its contractors, sublessees and invitees to comply with, all Environmental Remediation Requirements; (ii) provide notice to the City in advance of any subsurface activities; (iii) if a potential Release is discovered, follow a process to be negotiated prior to resuming activities in that location, including a process to identify the entity responsible for remediation; (iii) if the

Remediation is a City Post-Close of Escrow Remediation Work obligation, Remediation shall be the City's responsibility and shall follow a coordination process to be negotiated, including a self-help right to the Developer; (iv) if the Remediation is an Army retained condition, the Parties will coordinate with the Army and Resource Agencies; (v) if the Remediation is the Developer's responsibllity, Developer shall proceed with Remediation under the City's oversight following a process to be negotiated, including a self help right to the City.

ARTICLE V

DISPOSITION OF THE LEASE PROPERTY THROUGH ESCROW

5.1 Agreement to Ground Lease the Lease Property.

Subject to the terms, covenants and conditions of this Agreement, the City agrees to lease the Lease Property to the Developer for the development of the Project, all in accordance with the terms and conditions set forth in this Agreement. Close of Escrow to occur in three Phases, one each for East Gateway, Central Gateway and West Gateway within the specific time period after the satisfaction (or written waiver, where applicable) of the applicable conditions precedent.

5.2 Conditions to the City's Obligation to Close of Escrow.[*note to reviewers: this section requires further review and revision*]

(a) The City's Conditions Precedent. The following shall be conditions precedent to the City's obligation to lease the Lease Property and Close the Escrow for the Ground Lease, and thereby deliver the Lease Property to the Developer; the conditions shall be met before conveyance by ground lease of the Lease Property: [*Note to reviewers: Some of the conditions precedent will apply only to certain Phases. Final drafts to allocate. To be supplemented by the applicable items set forth in the Schedule of Performance.]*

(i) The Developer shall have performed in all material respects all obligations under this Agreement required to be performed on its part before the Close of Escrow, and there shall not exist any Event of Default or Unmatured Event of Default on the Developer's part under this Agreement, and all of the Developer's representations and warranties made in Article VII of this Agreement shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Closing Date. At Closing, the Developer shall deliver to the City a certificate to confirm the accuracy of such representations and warranties in all material respects.

(ii) The Public Improvements necessary to serve the Lease Property have been completed [or have been committed to be completed on a schedule, including right of entry, financing, all improvement plans and regulatory approvals in place].

(iii) The Developer shall have furnished certificates of the insurance policies required by the applicable Ground Lease.

(iv) The agreements to be executed by the Developer pursuant to Section 3.5(b) hereof shall have been executed by the Developer and delivered into Escrow. [Confirm and revise as necessary]

(v) The Developer has met all the requirements of the Schedule of Performance which, pursuant to the express terms of the Schedule of Performance, must be satisfied prior to the Close of Escrow, not otherwise waived in writing by the City.

(vi) The Developer has submitted into escrow such evidence of authority to enter into this Agreement and the Ground Lease, and the transactions that these documents contemplate, as the City and the escrow holder may reasonably require.

(vii) At the time for the Close of Escrow there shall not be any litigation or administrative challenges pending concerning (A) this Agreement, (B) the Ground Lease, (C) the City's approval of this Agreement, the Ground Lease (D) any Regulatory Approval required for development, construction, use or occupancy of the Project (including environmental review for such Regulatory Approval), or (E) the development of the Project pursuant to approved construction drawings.

(viii) The CSD shall have been formed.

(ix) The applicable phase shall be a separate legal parcel [This condition may not be waived].

(b) Satisfaction of the City's Conditions. The conditions precedent set forth above are intended solely for the benefit of the City. Subject to Section 13.2 of this Agreement, if any such condition precedent is not satisfied on or before the required completion date specified therefore in this Agreement or in the Schedule of Performance, the City shall have the right in its sole discretion either to waive in writing the condition precedent in question and proceed with the Close of Escrow and lease of the Lease Property or, in the alternative, to terminate this Agreement by written notice to the Developer. In addition, the date for the Close of Escrow may be extended, at the City's option for a reasonable period of time, not to exceed thirty (30) days, specified by the City in a written notice to the Developer, or by Force Majeure pursuant to Section 13.2 hereof, to allow such conditions precedent to be satisfied, subject to the City's further right to terminate this Agreement upon the expiration of the period of any such extension if all such conditions precedent have not been satisfied.

5.3 Conditions to the Developer's Obligation to Close Escrow. [*note to reviewers, this section requires further review and revision*]

Developer's obligations under this Agreement and any Close of Escrow with respect to any particular Phase are subject to the satisfaction (or timely written waiver, where applicable) of the following conditions precedent prior to the expiration of the applicable time period (if none stated, the Closing Date (defined below)):[*Note: Discuss outside closing date to be included in Close of Escrow Provision; subject to City staff/legal review and comment.*]

In consideration of the complexity of the proposed Project and the need to have the certainty provided by the prior satisfaction of the conditions precedent set forth in this Section 5.3, the parties agree that the Close of Escrow with respect to any Phase shall occur within six (6) months after the satisfaction of all the applicable conditions precedent as reasonably approved by Developer and Developer's receipt both receipt of both (a) written notice from the City that all of the applicable conditions precedent have been satisfied and (b) any of the documentation related to the satisfaction of such condition required pursuant to this Section. Developer shall have the right within such six (6) month period to enter upon the applicable Phase pursuant to the terms of Section ___/Right of Entry for the purposes of confirming the satisfaction of any, some or all of the applicable conditions precedent. In the event that Developer determines that any one of the conditions precedent has not actually been satisfied, Developer shall provide the City with written notice of the failure of the condition, which notice shall specifically identify the failed condition and state with specificity the items causing the failure of the condition. In the event that Developer delivers such a notice, the six (6) month period identified in this Section shall be tolled commencing on the date of the City's receipt of the notice through the date that (y) the City causes the satisfaction of the previously failed condition as reasonably approved by Developer and (z) Developer's receipt of written notice of such satisfaction.

Developer shall have the right to waive or partially waive the requirement of certain of the applicable conditions precedent upon written notice to the City. In such an event, the effect of the waiver shall only be with respect to the timing of the satisfaction of the condition and, notwithstanding the Close of Escrow on any particular Phase, the City shall continue to be obligated to uses its best efforts to cause the subsequent satisfaction of such condition. [*Notes to reiewers: If a specific date is called out, but not provided, please refer to the Schedule of Performance. To be supplemented by the applicable items set forth in the Schedule of Performance.Some of the conditions precedent will apply only to certain Phases. Final drafts to allocate.*]

1. Prior Approvals. The City shall have obtained the approval of the Army, DTSC, the Oversight Board, State of Califomia and Department of the prior transfers of the Lease Property to the City and further transfers set forth herein.

2. Restated Cost Sharing Agreement. (a) the Port and the City shall have entered into the Amended and Restated CSA and (b) Developer shall have approved such Restated Cost Sharing Agreement pursuant to the provisions of Section ___ [*cross reference applicable Section providing for the coordination of the City's rights under the Amended and Restated CSA.*].

3. Develop Agreement; Planned Unit Development. T the City shall have granted Final Approval (defined below) of a Development Agreement and a Planned Unit Development zoning ordinance ("PUD") for the Lease Property which are acceptable to Developer.

As used in this Section _____, the term "Final Approval" shall mean that the City's Planning Commission or City Council, as applicable, shall have made a final determination in favor of the proposed action and all applicable administrative appeal or legal challenge periods

shall have expired without the filing of a timely appeal or challenge, or in the event of a timely filing, the appeal or challenge shall have been finally resolved to Developer's sole satisfaction.

4. Master Plan; Budgets. (a) the Port and the City shall have approved the final form of the Master Plan pursuant to Section ___ of the Amended and Restated CSA and agreed upon any necessary changes to the baseline budgets for the revised OHIT project and (b) Developer shall have approved of the Master Plan and any necessary changes to the baseline budgets pursuant to the terms of Section ___ of this Agreement.

5. Property Management Agreement. The City shall have entered into the Property Management Agreement with CCIG, Inc.

6. Materials Handling. Prior The City shall have approved a location, plan and operation for Materials Handling Operation pursuant to the property Management Agreement.

7. TCIF Matters. The following shall have occurred prior to the specific deadlines:

a. Amended OHIT Baseline Agreement. Prior to _____, (a) the applicable parties shall have entered into the Amended OHIT Baseline Agreement and (b) Developer shall have approved of such agreement pursuant to the terms of Section ___ of this Agreement.

b. TCIF Funding. Prior to _____, all of the conditions precedent under the Amended OHIT Baseline Agreement to the payment of the applicable TCIF funds to the City shall have been satisfied or waived by Caltrans and the CTC in writing and such funds shall have actually been paid to the City.

c. Other Matching Funds. Prior to _____, the City shall have provided Developer with security reasonably acceptable to Developer that the City, Port and Recycler matching funds have been authorized and secured.

8. Existing Leases. Prior to _____, the City shall have terminated all leases, license agreements or other agreements permitting a third party to occupy the Premises and the tenants thereunder shall have vacated the Premises.

10. Deconstruction/Demolition. Prior to _____, the City shall have caused the deconstruction/demolition of all improvements on the Premises except the Public Improvements and those improvements permitted to be maintained on the Premises pursuant to the Permitted Exceptions. The foregoing condition expressly includes _____ [*cross reference the historic warehouses to be demolished.*]. *[Note: Need to discuss a standard for demolition, records/certification and confirmation.*]

11. Port Rail Terminal.

a. Union Pacific ROW/Improvements. Prior to _____, the Port shall have entered into a written agreement with respect to the acquisition of the right of way and the construction of the rail improvements included within the scope of the "Port Rail Terminal" as defined in the Amended and Restated CSA which are on Union Pacific Railroad ("UPRR") property, including lead tracks north of the Port Property to Powell Street, switching improvements at the 7th Street Grade Separation, and connections from UPRR's Oakland International Gateway rail terminal and Burlington Northern Santa Fe's Joint Intermodal Terminal to the south.

b. Operator. Prior to _____, the Port shall have issued a Request for Proposals regarding the selection of an operator for the Port Rail Terminal to deliver the services set forth in Attachment ____ [Note: Need to provide these services.]. Prior to _____, the Port shall have selected the operator for the Port Rail Terminal pursuant to the Request for Proposals.

c. Rail Access Agreement. Prior to _____, (a) the Port and the City shall have executed a definitive, written Rail Access Agreement and the services to be delivered by the operator of the Port Rail Terminal pursuant to Section ___ of the Amended and Restated CSA and (b) Developer shall have approved of such agreement pursuant to the terms of Section ___ of this Agreement.

d. Design Build Contract. Prior to _____, the Port shall have issued a Request for Proposals related to the design and construction of the Port Rail Terminal. Prior to _____, the Port shall have entered into a contract for the design and construction of the Port Rail Terminal pursuant to the Request for proposals.

e. Commencement of Construction for the Port Rail Terminal. Prior to _____, the Port shall have commenced construction of the Port Rail Terminal as required pursuant to the Amended and Restated CSA.

f. Completion of the Port Rail Terminal. Prior to _____, the Port Rail Terminal shall have been Substantially Completed (as defined in Section ____ of the Amended and Restated CSA), the operator for the Port Rail Terminal shall have the staff and equipment on site and operational as necessary to deliver the services required pursuant to the approved Rail Access Agreement.

12. Public Improvements. The following Public Improvements shall have been Completed (defined below) for the applicable Phase as set forth on Attachment 6:

As used in this Section ___, the term "Completed" means that the applicable improvement (i) has been constructed pursuant to the applicable plans and specifications that have been approved by the applicable public agency/utility; (ii) has been subject to the inspections required by the applicable public agency/utility and such entity/utility has accepted the improvement for permanent maintenance; (iii) is available for use by the public for its intended purpose. [*Note: Need to discuss records/certification and confirmation.*]

13. Caltrans.

a. Vacation of West Gateway. With respect to the West Gateway only, Caltrans shall have vacated the portions of the West Gateway occupied pursuant to [*cross reference to settlement agreement*] and its right to occupy portions of the West Gateway thereunder shall have terminated.

c. Under Freeway Easement. Prior to _____, the City and Caltrans shall have entered into an amendment to the easement included in Permitted Exception No. ___ (recorded as Series No. _____ in the Official Records of Alameda County) pursuant to Section ___ above to allow at least one rail line.

14. Maintenance CSD. The City shall have formed the CSD.

15. Tide Insurance. With respect to each Phase, the Titie Company shall be irrevocably committed (upon payment of the applicable premium) to issue a current ALTA Leasehold Policy of Title Insurance ("Title Policy") for the portion of the Lease Property to be included in the applicable closing (the "Premises") which shall be written in the amount of $_____ [*Note: Specify amounts for each phase.*] and shall insure leasehold title to the Premises to be vested in Developer, subject only to the following exceptions (the "Permitted Exceptions"): (a) the standard printed exceptions set forth in the Titie Policy; (b) general and special real property taxes and assessments for the current fiscal year, a lien not yet due and payable; (c) the exceptions identified in Attachment 14 ; and (d) any exceptions caused by Developer. Developer shall have the right to identify the primary titie insurance company and any desired re-insurance companies for each Phase.

16. Remediation of Hazardous Materials. The City shall have obtained all of the required No Further Action Letters with respect to the applicable Phase.

17. City Representations and Warranties. All representations and warranties of the City contained in this Agreement shall be tme and correct in all material respects on the Effective Date and as of the Close of Escrow with the same effect as though such representations and warranties were made at and as of the Close of Escrow.

18. City Covenants. The City shall have performed and satisfied all material agreements and covenants required hereby to be perfonned by the City Seller prior to or at the applicable Close of Escrow.

19. No Moratorium. No governmental or quasi-govemmental agency or authority, including, without limitation, the City of Oakland, shall have imposed a moratorium on the issuance of building permits or certificates of occupancy and no utility serving the Lease Property shall have issued a moratorium on the provision of any new or increased services.

20. Subdivision. The applicable Phase shall have been created as a separate legal parcel. (This condition may not be waived.)

____ 21. WAPA. Prior to _____ the City and the Developer shall have entered into an agreement whereby the City is committed to deliver electric power to the occupants of the Lease Property at a at the rates provided under and for the term of the Western Area Power Agreement. [Confirm with City staff]

If any condition precedent to Developer's obligations under Section ____ fails or is not satisfied in a timely manner or otherwise waived in writing by Developer, then Developer may elect to terminate this Agreement. Upon termination of this Agreement due to the failure of any condition precedent set forth in Section ____: (a) Escrow Holder shall promptiy retum all documents to the respective parties who delivered such documents to Escrow; and (b) Escrow Holder shall promptiy remit the Security Deposit to Developer. Upon termination of this Agreement due to a failure of any condition precedent set fortn in Section _____[City Default], the termination provisions of Sections _____[Insert reference to the breach of representation/covenant sections.], as applicable shall apply. Subject to the foregoing, upon termination of this Agreement, the parties shall be relieved of all rights and obligations under this Agreement, except as otherwise provided in the Agreement. [*Note: Discuss list of surviving obligations.*]

5.4 Escrow.

(a) **Opening of Escrow.** The Developer shall open an escrow for the conveyance of the Lease Property through the Ground Lease ("Escrow") with the local office of such titie company as the Developer may select and the City may find reasonably satisfactory ("Titie Company") ten (10) days prior to the Close of Escrow.

(b) **Joint Escrow Instructions; Closing Date.** Within ten (10) days prior to the Close of Escrow, the Parties shall prepare joint escrow instructions as necessary and consistent with this Agreement, and deliver such escrow instructions to the Title Company. The Close of Escrow shall occur after the date all of the conditions precedent described in Sections ___ and ___ (conditions precedent)are either satisfied or waived (as permitted) in writing by the Party that is benefited by such conditions.

5.5 Delivery of the Lease Property.

(a) **The Parties Obligation to Close Escrow.** Provided that the conditions to the City's obligations with respect to delivery of the Lease Property set forth in Section 3.2 and the conditions to the Developer's obligations with respect to Close of Escrow and acceptance of Delivery of the Lease Property as set forth in Section 3.3 have been satisfied or expressly waived (as permitted) in accordance with this Agreement, the City and the Developer shall instruct the Titie Company to complete the Close of Escrow, as set forth below. Upon the Close of Escrow, the City shall deliver the Lease Property to the Developer, and the Developer shall accept the delivery of the Lease Property, under the Ground Lease.

(b) **Steps to Close Escrow.** The Close of Escrow for the Lease Property shall be completed as follows:

(i) On or before the Close of Escrow, the City shall execute and acknowledge, as necessary, and deposit into Escrow with the Title Company the following: (1) two counterpart originals of the Ground Lease; (2) one original counterpart Memorandum of Ground Lease in recordable form, (3) a copy of any resolution(s) of the City authorizing the execution and delivery of the Ground Lease and any other evidence of authority as the Developer or the Title Company may reasonably require. [*Review and confirm*]

(ii) On or before the Close of Escrow, the Developer shall execute and acknowledge, as necessary, and deposit into escrow with the Titie Company the following: (1) two counterpart originals of the Ground Lease and one original counterpart Memorandum of Ground Lease in recordable form; (2) the certificate as to the accuracy of the representations and warranties under this Agreement required by Section 11.2; (3) such resolutions of the Developer and its constituent members authorizing the execution and delivery of the Ground Lease and any other evidence of authority as the City or the Title Company may reasonably require; (4) all costs of escrow to be paid per the custom and practice in the County of Alameda.

(iii) The City and the Developer shall instruct the Titie Company to consummate the Escrow as provided in this Article V. Upon the Close of Escrow, the Memorandum of Ground Lease shall be recorded.

(iv) The Titie Company shall issue title policies to the Developer and the City as required under Section 3.7.

(v) The Title Company shall deliver to each Party the counterpart copies of each agreement referred to in this Section 3.5(b) signed by the other Party, and any other documents held for the account of such Party.

(c) Costs of Escrow. To be paid per the custom and practice in the County of Alameda .

5.6 Condition of Title to the Lease Property.

(a) Permitted Title Exceptions. Except for those "Approved Title Exceptions" shown on Attachment 17 [***add any other specific exceptions***] (collectively, the "Permitted Exceptions"), the City shall deliver to the Developer the Lease Property under and subject to the provisions of the Ground Lease for the term specified in the Ground Lease, free and clear of (i) possession or right of possession by others, (ii) unpaid or delinquent taxes of any kind and (iii) any liens, covenants, assessments, agreements, easements, leases or other encumbrances.

(b) Title Defect. If at the time scheduled for Close of Escrow in the Schedule of Performance, any (i) possession by others, (ii) rights of possession other than those of the Developer, or (iii) lien, encumbrance, covenant, assessment, agreement, easement, lease or other matter which is not a Permitted Title Exception encumbers the Lease Property and would materially and adversely affect the development of the Lease Property ("Titie Defect"), the City will have up to thirty (30) days after the date scheduled for Close of Escrow to remove all such Title Defects. The Close of Escrow shall be extended to the earlier of seven (7) Business Days after all such Titie Defects are removed or the expiration of the thirty (30) day

period (the "Extended Close of Escrow"). If the Titie Defect can be removed by bonding or the payment of a liquidated sum of money and the City has not so bonded or made such payment within the thirty (30) day period, the Developer shall have the right but not the obligation to cause a bond to be issued. The City shall not intentionally materially alter the condition of titie to the City-owned Parcels existing as of the date of this Agreement except for the documents and transactions contemplated hereunder.

(c) The Developer's **Remedies with Respect to Uncured Title Defects.** Except as otherwise provided herein, and subject to Force Majeure, if at the date specified for the Extended Close of Escrow, unless the Parties mutually agree to extend such date, a Titie Defect still exists, the Developer may by written notice to the City either (i) terminate this Agreement or (ii) accept delivery of the Lease Property under the Lease; provided, however, that if the Title Defect is the result of a breach of City's covenant under the last sentence of Section 3.6(b) hereof, Developer may seek specific performance, self-help and damages. If the Developer accepts delivery, the Titie Defect will be deemed waived unless it is the result of a breach of City's covenant under the last sentence of Section 3.6(b) hereof. If the Developer does not accept delivery and fails to terminate this Agreement within seven (7) days after the date specified for the Extended Close of Escrow, or any extension provided above, the City may terminate this Agreement upon three (3) Business Days written notice to the Developer. If the Agreement is terminated under this Section, the Developer shall have no further remedies against the City with respect to such termination.

5.7 Title Insurance.

(a) Title Insurance to be Issued at the Close of Escrow. The joint escrow instmctions described in Section 3.4(b) will provide that concurrentiy with Delivery, the Title Company will issue and deliver to the Developer, an A.L.T.A. extended coverage titie insurance policy, with such coinsurance or reinsurance and direct access agreements as the Developer may request reasonably, in an amount designated by the Developer which is satisfactory to the Titie Company, insuring that the leasehold estate in the Lease Property are vested in the Developer subject only to the Permitted Titie Exceptions, and with such endorsements as may be reasonably requested by the Developer, all at the sole cost and expense of the Developer; and

(b) Surveys. The Developer shall be responsible for securing any and all surveys and engineering studies at its sole cost and expense, as needed for the titie insurance required under this Agreement or as otherwise required to consummate the transactions contemplated by this Agreement. The Developer shall provide the City with complete and accurate copies of all such final surveys and engineering studies.

5.8 Taxes and Assessments.

Developer understands that this Agreement or the Ground Lease may constitute a possessory interest and that interest may be subject to property taxation. If for any reason imposed, ad valorem taxes and assessments levied, assessed or imposed for any period either before (as a result of the parties' execution of this Agreement) or after Delivery of the Lease Property, including but not limited to, possessory interest taxes, shall be the sole responsibility of the Developer.

5.9 Compliance with Laws.

At its sole cost and expense, the Developer, after Close of Escrow, shall comply at all times during the term of this Agreement with all Laws, Regulatory or Governmental Approvals, Mitigation Measures, the Ground Lease, and any insurance requirements to the extent material to the construction and operation of the Project under this Agreement and the Ground Lease.

5.10 Lease Property As Is Risk of Loss. [*Open item for discussion: Dev requsts the following sections will be revised to provide that the City's liability with respect to Haz. Mat. shall survive the close of escrow.*]

(a) Acceptance of Lease Property in "As Is With All Faults" Condition; Risk of Loss. The City shall not prepare the Lease Property for any purpose whatsoever related to the Developer's obligations to construct the Private Improvements, except for City's obligations with respect to [Public Improvements; confirm all in Article III] as expressly provided and limited by Article II above. Subject to the provisions of Article III, and Section 3.6 above with regard to Permitted Title Exceptions, the Developer agrees to accept the Lease Property in its "AS-IS WITH ALL FAULTS" condition on the date of Close of Escrow; provided that there is no material change in the physical condition of the Lease Property caused by an event outside the control of the Developer or its agents between the effective date of this Agreement and the date of Close of Escrow that would materially adversely interfere with the development, construction, use or occupancy of the Project for its intended uses, in which event the Developer shall be entitled to terminate this Agreement, by written notice to City; and provided further that the City will not under any circumstances be liable to the Developer for any monetary damages which may result should any portion of the Lease Property be damaged or destroyed partially, substantially or totally at any time before delivery to the Developer. The Developer acknowledges that it has been afforded a full opportunity to inspect all of the public records of the City relating to the Developer's proposed use of the Lease Property. The City makes no representations or warranties as to the accuracy or completeness of any matters in such records. The Developer shall perform a diligent and thorough inspection and investigation of the Lease Property, either independently or through its experts, including, but not limited to the quality and nature, adequacy and physical condition of the Lease Property, geotechnical and environmental condition of the Lease Property including, without limitation, presence of lead, asbestos, other Hazardous Materials, any groundwater contamination, soils, the suitability of the Private Improvements for the Project, zoning, land use regulations, historic preservation laws, and other Laws governing the use of or construction on the Lease Property, and all other matters of material significance affecting the Lease Property and its development, use, operation, and enjoyment under this Agreement or the Ground Lease.

(b) DISCLAIMER OF REPRESENTATIONS AND WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED AND LIMITED BY ARTICLE III AND THE PERMITTED TITLE EXCEPTIONS IN SECTION 3.6, THE DEVELOPER AGREES THAT THE LEASE PROPERTY IS BEING DELIVERED BY THE CITY AND ACCEPTED BY THE DEVELOPER IN ITS "AS-IS WITH ALL FAULTS" CONDITION. THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY, NOR ANY EMPLOYEE, OFFICER, COMMISSIONER, REPRESENTATIVE, OR

OTHER AGENT OF THE CITY HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE LEASE PROPERTY, THE SUITABILITY OR FITNESS OF THE LEASE PROPERTY OR APPURTENANCES TO THE LEASE PROPERTY FOR THE DEVELOPMENT, USE, OR OPERATION OF THE PROJECT, ANY COMPLIANCE WITH LAWS OR APPLICABLE LAND USE OR ZONING REGULATIONS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE LEASE PROPERTY, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE LEASE PROPERTY OR THE PROJECT.

Developer Initials: _____

5.11 Release Concerning the Physical Condition of the Lease Property. [*Open item for discussion: Dev requests The following sections will be revised to provide that the City's liability with respect to Haz. Mat. shall survive the close of escrow*]

As part of its agreement to accept the Lease Property in its "As-Is With All Faults" condition, the Developer on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge the City, and its employees, officers, commissioners, representatives, or other agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Developer may now have or that may arise of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Lease Property or Project, including, without limitation, any Hazardous Materials in, on, under, the Project (including, but not limited to, soils and groundwater conditions), and (ii) any Laws applicable to such conditions (including, without limitation, Hazardous Materials Laws, but excluding any claims, demands, or causes of action Developer may now or hereafter have against third party claims related to the condition of the Lease Property or any Laws applicable thereto that arose during or relate to the period prior to the Close of Escrow.

In connection with the foregoing release, the Developer acknowledges that it is familiar with Section 1542 of the Califomia Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Developer Initials: _____

By initialing above, the Developer expressly agrees that the release contemplated by this Section includes unknown claims. Accordingly, the Developer hereby waives the benefits of Civil Code § 1542, and benefits under any other statute or common-law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Agreement, the foregoing release shall survive any termination of this Agreement.

5.12 Environmental Matters. [*Open item dev request: The following sections will be revised to provide that the City's liability with respect to Haz. Mat. shall survive the close of escrow]*

From and after Close of Escrow, the Developer shall comply with the provisions of all Environmental Remediation Requirements and all Hazardous Materials Laws applicable to the Lease Property and the Project, including the Private Improvements and the activities conducted on the Lease Property and Project, and all uses, improvements, and appurtenances of and to the Lease Property, as further provided in the Ground Lease.

5.13 Indemnification. ***[TBD]***

ARTICLE VI

ASSIGNMENT AND TRANSFER

6.1 *[Note to reviewers: this Article to be drafted to permit Significant Change among Affiliated parties without City consent; transfers of Developer's interest in the Agreement to Affiliates without City consent so long as Developer remains liable for past and prospective obligations. Developer to be entitled to unaffiliated entities and be no longer liable for prospective obligations subject to City's consent which shall not be unreasonably withheld, conditioned or delayed so long as proposed transferee has adequate net worth, reputation and experience for the Project. [Confirm with City staff]*

ARTICLE VII

REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

7.1 Developer Representations and Warranties. The Developer represents and warrants as follows, as of the Effective Date and as of the Close of Escrow of the Lease Property:

(a) Valid Existence; Good Standing. The Developer is a limited partnership duly organized and validly existing under the laws of the State of California. The Developer has all requisite power and authority to own its property and conduct its business as presently conducted. The Developer has made all filings and is in good standing in the State of California.

(b) Authority. The Developer has all requisite power and authority to execute and deliver this Agreement and the agreements contemplated by this Agreement and to carry out and perform all of the terms and covenants of this Agreement and the agreements contemplated by this Agreement.

(c) No Limitation on Ability to Perform. Neither the Developer's organizational documents, nor the organizational documents of any of its members, nor any other agreement or Law in any way prohibit, limits or otherwise affects the right or power of the Developer to enter into and perform all of the terms and covenants of this Agreement. Neither the Developer nor any of its members are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by the Developer of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or threatened suits or proceedings or undischarged judgments affecting the Developer or any of its members before any court, governmental City, or arbitrator which might materially adversely affect the enforceability of this Agreement or the business, operations, assets or condition of the Developer.

(d) Valid Execution. The Developer's execution and delivery of this Agreement and the agreements contemplated hereby have been duly and validly authorized by

all necessary action and in full compliance with all applicable laws. This Agreement will be a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to the application of bankruptcy and insolvency laws, and for the possible unavailability of specific performance which is dependent on the exercise of judicial discretion. The Developer has provided to the City a written resolution of the Developer authorizing the execution of this Agreement and the agreements contemplated by this Agreement.

(e) **Defaults.** The execution, delivery and performance of this Agreement (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which the Developer or any member is a party or by which the Developer's assets or any member's assets may be bound or affected, or (B) any law, statute, ordinance, regulation, or (C) the Articles of Organization or the Operating Agreement of the Developer, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of the Developer or its members.

(f) **Meeting Financial Obligations.** The Developer is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and the Developer is not in default or claimed default under any agreement for borrowed money.

The representations and warranties in this Section shall survive any termination of this Agreement.

7.2 Citv Representations and Warranties.

The City hereby represents and warrants as follows, as of the Effective Date and as of the date of each Close of Escrow for the Lease Property:

(a) Authority: The City has the necessary authority, power and capacity to own the Lease Property and to enter into this Agreement and the documents and transactions contemplated herein and to carry out the obligations of this Agreement and the documents and transactions contemplated herein. The City has good right, full power and absolute authority to ground lease the Lease Property to the Developer in the manner contemplated herein. The City has taken all necessary or desirable actions, steps and company and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, this Agreement and the ground lease of the Lease Property by the City to the Developer. This Agreement is a legal, valid and binding obligation of the City, enforceable against it in accordance with its terms subject to: (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (b) the fact that equitable remedies, including the remedies of specific performance and injunction, may only be granted in the discretion of a court. ***[Note: City to amend as necessary with respect to AB26, Army, DTSC approval of this and prior transfers.]***

(b) Leases and Contracts: As of the Close of Escrow, there are no sale, lease, management, maintenance, service, supply, insurance or other contracts (or any

amendments thereto) that affect any portion of the Lease Property or its operation and that will be binding upon the Developer or the Lease Property after the Close of Escrow.

(c) Litigation; Condemnation: Except for those matters first arising after the Effective Date and disclosed in writing by the City to the Developer promptiy upon obtaining knowledge of same, the City has received no written notice regarding any, and to the best of the City's knowledge there are no, actions, proceedings, litigation or governmental investigations or condemnation actions either pending or threatened against the Lease Property.

(d) Violation of Laws. The City has received no written notice from any government authority regarding any, and to the best of the City's knowledge there are no, violations with respect to any law, statute, ordinance, mle, regulation, or administrative or judicial order or holding (each, a "Law"), whether or not appearing in any public records, with respect to the Lease Property, which violations remain uncured as of the date hereof.

(e) No Attachments. There are no attaclmients, executions or assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankmptcy or under any other debtor-relief laws pending or threatened against the City.

(f) Due Diligence Items. [*Open item for City review: To the best of the City's knowledge, each of the Due Diligence Items is a true and correct copy of the document in the City's possession or control.*]

(g) Hazardous Materials. [*Open item for City review*: Except as expressly disclosed by the Due Diligence Items and to the best of the City's knowledge, (a) the City has not received notice from any governmental authority of the need to take corrective action regarding elimination or control of Hazardous Materials (as defined in Section 11.1.2 below) on or about the Lease Property or of the existence of Hazardous Materials on or about the Lease Property in violation of existing laws; (b) no person or entity has used, generated, manufactured, installed, released, discharged, stored or disposed of any Hazardous Materials on, under, in or about the Lease Property, or transported any Hazardous Materials to or from the Lease Property, in violation of any law; and (c) there are no imderground storage tanks located on, under or in the Lease Property.

(h) No Bulk Sale. The transaction set forth in this Agreement does not constitute a "bulk sale" as set forth in Califomia Commercial Code Section 6102.

7.3 Remedy for Breach of Representation or Warranty.

7.3.1 Pre-Closing Discovery. In the event that, prior to the Close of Escrow, The Developer has current actual knowledge that any one of The City's representations and warranties is materially inaccurate, the Developer (as its sole and exclusive remedy for same) shall have the right to terminate this Agreement by written notice to The City of such election prior to the Closing. If, notwithstanding The Developer's current actual knowledge of a materially inaccurate representation or warranty, The Developer closes escrow on the acquisition of the Lease Property, the Developer shall be deemed to have waived any claim arising out of such material inaccuracy. If the Developer elects to terminate this Agreement pursuant to this

Section: (a) if the applicable representation or warranty was not materially inaccurate when originally made, this Agreement shall terminate, the Deposit returned to the Developer, and neither party shall have any further liability or obligations hereunder, except those that expressly survive termination and (b) if the applicable representation or warranty was materially inaccurate when originally made, the termination provisions of Section ____ shall apply.

7.3.2 Post-Closing Discovery. The City's representations and warranties set forth in Section 7.2 shall survive the Close of Escrow for the period of 18 months.

ARTICLE VIII

DEFAULTS, REMEDIES AND TERMINATION

8.1 *[Note to reviewers: To be modified as consistent with the terms set forth on the draft Schedule of Performance.]*

ARTICLE IX

GENERAL PROVISIONS

9.1 **Right of First Refusal.** If the City is forced, by operation of law or order of a court of competent jurisdiction, to sell all or any portion of the Lease Property, the Developer shall have a right of first refusal to purchase the affected area for a period of 60 days after receipt of term sheet. If the Developer rejects the proposed terms and the City shall have 120 days to enter into a binding contract on the proposed terms. If not binding contract is entered within 120 days of the Developer's initial rejection, the City shall reoffer to the Developer on the same or different terms. If the Developer rejects, or fails to respond in writing, within 30 days of the second offer, this Section shall have no further force or effect. [*Subject to Dev/City review and confirmation*]

9.2 Force Majeure – Extension of Time of Performance.

(a) **Effect of Force Majeure.** Subject to Sections 11.2(b), (c), and (d), below, neither the City, the Developer, nor any successor-in-interest to either (the "Delayed Party", as applicable) will be considered in breach or in default of any obligation or satisfaction of a condition to an obligation of another Party which is provided for in this Agreement , including, without limitation, the Schedule of Performance, but excluding any provision for the payment of money, if an event of Force Majeure has occurred with respect to such obligation or condition. Subject to the provisions of Sections 11.2(b), (c), and (d) below, the time fixed for performance of any obligation under this Agreement shall be extended for the duration of the event of Force Majeure.

(b) **Definition of Force Majeure.** "Force Majeure" means events that cause enforced delays in the Delayed Party's performance of its obligations under this Agreement, or in the satisfaction of a condition to another Party's performance under this Agreement (other than the obligations or conditions relating to the payment of money), due primarily to causes beyond the Delayed Party's control, including, but not restricted to acts of God or of a public enemy; fires, floods, tidal waves, epidemics, quarantine restrictions, freight embargoes,

earthquakes, unusually severe weather, delays of contractors or subcontractors due to any of these causes; substantial interruption of work because of other construction by third parties in the immediate vicinity of the Lease Property; archeological finds on the Lease Property; discovery of the presence or habitat of a threatened, candidate or endangered species protected by the Federal Endangered Species Act or the Califomia Endangered Species Act; strikes, and substantial interruption of work because of labor disputes; inability to obtain materials or reasonably acceptable substitute materials (provided that the Developer has ordered such materials on a timely basis and the acts or omissions of the Developer are not otherwise at fault for such inability to obtain materials); unlawful detainer actions or other administrative appeals, litigation or arbitration relating to the relocation of tenants or elimination of the rights or interests of third parties, if any, from the Lease Property; delay in the issuance of any City or other governmental permits or approvals beyond customary processing times for a project of similar magnitude and complexity, provided that: the Developer timely sought such permits or approvals and diligently responds to any requests for further information or submittals; or any Litigation Force Majeure. In the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Developer or the City will be extended for the period of the delay; provided, however, within thirty (30) days after the beginning of any such delay, the Delayed Party shall have first notified the other Parties in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the enforced delay. Notwithstanding anything to the contrary in this Section 11.2, the condition of the market, lack of credit or financing (unless such lack is itself a result of some other event of Force Majeure) shall not be considered to be a matter beyond the Developer's control and therefore no event caused by a lack of such financing or credit in and of itself shall be considered to be an event of Force Majeure for purposes of this Agreement.

(c) **Definition of Litigation Force Majeure.** "Litigation Force Majeure" means any action or proceeding before any court, tribunal, arbitration or other judicial, adjudicative or legislation-making body, including any administrative appeal, brought by a third party, who is not an Affiliate or related to Developer, which (i) seeks to challenge the validity of any action taken by the City in connection with the Project, including the City's approval, execution and delivery of this Agreement , the Ground Lease, and its performance thereunder, including any challenge under the Califomia Environmental Quality Act, the performance of any action required or permitted to be performed by the City hereunder, or any findings upon which any of the foregoing are predicated, or (ii) seeks to challenge the validity of any other Regulatory Approval.

(d) **Limitation.** Provided the Parties are proceeding diligentiy and prosecuting all matters within their respective control with diligence, Force Majeure, other than Litigation Force Majeure, for which there shall be no time limit, will be limited, in the aggregate, to a total of thirty six months, and in no event shall an obligation to occur after the Outside Date. At any time thereafter, the other Party may terminate the Agreement by giving thirty (30) days' notice to the Delayed Party.

9.3 Notices and Approvals.

(a) **Manner of Delivery.** Except as otherwise expressly provided for in this Agreement, all notices, demands, approvals, consents and other formal communications

between the City and the Developer required or permitted under this Agreement shall be in writing and shall be deemed given and effective (i) upon the date of receipt if given by personal delivery on a business day before 5:00 p.m. local time (or the next business day if delivered personally after 5:00 p.m. or on a day that is not a business day), or (ii) three (3) Business Days after deposit with the U.S. Postal Service for delivery by United States Registered or Certified Mail, First Class postage pre-paid, to the City or the Developer at their respective addresses for notice designated in Section 11.3(d). For the Parties' convenience, copies of the notices may be given by email to the addresses set forth below for Party; however, no Party may give official or binding notice by email.

(b) **Requests for Approval.** In order for a request for any approval or other determination by the City or the City required under the terms of this Agreement to be effective, it shall be clearly marked "Request for Approval" and state (or be accompanied by a cover letter stating) substantially the following:

(i) the Section of this Agreement under which the request is made and the action or response required;

(ii) if applicable under the terms of this Agreement, the period of time as stated in this Agreement within which the recipient of the notice shall respond; and

(iii) if applicable under the terms of this Agreement, that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the request for approval which is the subject matter of the notice.

In the event that a request for approval states a period of time for approval which is less than the time period provided for in this Agreement for such approval, the time period stated in this Agreement shall be the controlling time period.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section.

(c) **Addresses for Notices.** All notices shall be properly addressed and delivered to the Parties at the addresses set forth below or at such other addresses as either Party may designate by written notice given the manner provided in Section 11.3(a):

To the City: City of Oakland
1 Frank H. Ogawa Plaza
Oakland, CA 94612
Attn: City Administrator
Facsimile: 510.238.2223

And with a copy to:	Office of the City Attorney 1 Frank H. Ogawa Plaza Oakland, CA 94612 Attn: City Attorney Facsimile: 510.238.6500
To the Developer:	[Developer to provide]
With a copy to:	[Developer to provide]

9.4 Conflict of Interest.

No member, director, official or employee of the City may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interest of any corporation, partnership or association in which she or he is interested directly or indirectly.

9.5 Covenant of Non-Discrimination.

The Developer expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that as to the Lease Property and any Private Improvements constructed or to be constructed thereon, or any part thereof, or alterations or changes thereto, and in addition to any other term, covenant and condition of this Agreement, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, sexual orientation, gender, disability, marital status, domestic partner status, Acquired Immune Deficiency Syndrome or HIV status, religion, age, national origin or ancestry by the Developer or any occupant or user of the Lease Property in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Lease Property, or any part thereof, and the Developer itself (and any Person claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Lease Property or any part thereof nor shall Developer or any occupant or user of the Lease Property or any part thereof or any transferee, successor, assign or holder of any interest in the Lease Property or any part thereof or any person or entity claiming under or through such transferee, successor, assign or holder, establish or permit any such practice or practices of discrimination or segregation, including without hmitation, with respect to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or others of the Lease Property or any part thereof The Developer shall ensure that language substantially similar to the above is incorporated into all leases, rental agreements and grant deeds for the Project.

Any transferee, successor, assign, or holder of any interest in this Agreement or the Lease Property, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed or mortgage or otherwise, and whether or not any written instrument or oral agreement contains the foregoing prohibitions against discrimination, will be bound hereby and shall not violate in whole or in part, directly or indirectly, these nondiscrimination requirements.

9.6 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., California time, on the performance or cure date.

(b) Weekends and Holidays. A performance date which falls on a Saturday, Sunday or federal holiday is deemed extended to the next working day.

(c) Days for Performance. All periods for performance specified in this Agreement in terms of days shall be calendar days and not Business Days, unless otherwise expressly provided in this Agreement.

(d) Time of the Essence. Time is of the essence with respect to each required completion date in the Schedule of Performance, subject to the provisions of Section 11.2 relating to Force Majeure.

(e) Interpretation of Agreement.

(i) Exhibits. Whenever an Attachment is referenced, it means an Attachment to this Agreement unless otherwise specifically identified. All such Attachments are incorporated in this Agreement by reference.

(ii) Captions. Whenever a Section, Article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement and in the table of contents have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provisions of this Agreement.

(iii) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(iv) No Presumption Against Drafter. This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement (including, but not limited to California Civil Code Section 1654).

(v) Costs and Expenses. The Party on which any obligations imposed in this Agreement shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(vi) Agreement References. Wherever references made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered Article, Section or Paragraph of this Agreement or any subdivision of this Agreement.

(vii) City Approvals. Unless this Agreement otherwise expressly provides, all approvals, consents or determinations to be made by or on behalf of the City under this Agreement shall be made by the City Administrator, and the Developer shall be entitled to rely conclusively upon the authority of the City Administrator to bind the City to such approvals, consents and determinations as are made by the City Administrator and delivered to the Developer in writing.

9.7 Successors and Assigns.

This Agreement is binding upon and will inure to the benefit of the successors and assigns of the City and the Developer, subject to the limitations on assigmnents set forth in Article VI. Where the term "Developer" or "City" is used in this Agreement, it means and includes each Party's respective successors and assigns.

9.8 No Third Party Beneficiaries.

This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have or acquire any right or action based upon any provisions of this Agreement.

9.9 Real Estate Commissions.

The Developer and the City each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the party to whom such claim is made agrees to indemnify the other Party from any Losses arising out of such a claim.

9.10 Counterparts.

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

9.11 Entire Agreement.

This Agreement (including the Attachments) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous agreements between the Parties, including but not limited to, the Exclusive Negotiating Agreements as amended, with respect to all or any part of the terms and conditions mentioned or incidental to this Agreement. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

9.12 Amendment.

Neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instmment executed by the Parties. The City Administrator shall be authorized to determine, on a case by case basis at his or her discretion, if a requested amendment is minor in nature, and may be authorized by the City Administrator or is major in nature and must be authorized by the City Council.

9.13 Applicable Law; Jurisdiction; Venue.

The applicable laws of the State of Califomia shall govem the validity, constmction and the effect of this Agreement. The City and the Developer both consent to exclusive personal and subject matter jurisdiction in the Superior Court of the State of Califomia.

9.14 Further Assurances.

The Parties agree to execute and acknowledge such other and further documents as the Parties may deem necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Agreement. The City represents and warrants to the Developer that the City Administrator is authorized to execute on behalf of the City any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local entities to other Persons that are necessary or proper to achieve the purposes and objectives of this Agreement and do not materially increase the obligations of the City under this Agreement, if the City Administrator, in consultation with the Oakland City Attomey, determines that the document is necessary or proper and in the City's best interest. The City Administrator's signature on any such document, and approval as to form and legality by the Oakland City Attomey, shall conclusively evidence such a determination by him or her.

9.15 Attorneys' Fees.

Each Party shall bear its own costs in the preparation and execution of this Agreement. If any Party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto conceming the meaning or interpretation of any provision of this Agreement, then the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable Attomeys' Fees and Costs incurred in any action or arbitration commenced pursuant to this Agreement. Any such Attomeys' Fees and Costs incurred by any Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attomeys' Fees and Costs obligation is intended to be severed from the other provisions of this Agreement and to survive and not be merged into such judgment.

9.16 Relationship of Parties.

The subject of this Agreement is a private development with no Party acting as the agent of the other Party in any respect and none of the provisions of this Agreement shall be deemed to render the City a partner in the Developer's business, or joint venture or member in

any joint enterprise with the Developer. The Parties acknowledge that a CCIG, Inc., an Affiliate of Developer, will act as the City's agent under the terms of the Property Management Agreement; however, such relationship of Developer's Affiliate shall in no way create an agency relationship between the City and the Developer.

9.17 Severability.

If any provision of this Agreement where its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

9.18 Effective Date.

This Agreement shall become effective as of the last to occur of the following events: (1) the Ordinance is effective, (2) each of the Parties has duly executed and delivered this Agreement to the other Party, (3) the consents required under Section 2.3.1 [*confirm with City re AB 26*] have been obtained (the "Effective Date"). The Effective Date of this Agreement will be inserted by the City on the cover page and on page 1 of this Agreement; provided however, no failure by the City to do so shall in any way invalidate this Agreement.

9.19 Inspection of Books and Records.

The City and its agents have the right within three (3) Business Days after prior written notice to the Developer at all reasonable times and from time to time to inspect the books and records of the Developer in a location in Oakland during regular business hours pertaining to the Developer's compliance with its obligations under this Agreement. Nothing in this Section 11.21 shall affect the City's or the City's rights under other provisions of this Agreement or the Ground Lease.

9.20 Uses.

The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to all or any portion of the Lease Property, that the Developer, such successors and assignees shall devote the Lease Property to the uses specified in the Scope of Development and the Ground Lease. In the event of any conflict, prior to the Close of Escrow, the Scope of Development shall control the uses permitted on the Lease Property and after Close of Escrow, the Ground Lease shall control the uses permitted on the Lease Property.

9.21 Estoppel Certificate by City.

City shall execute, acknowledge and deliver to Developer (or at Developer's request, to any prospective mortgagee of Developer's leasehold interest under the Ground Lease, or other prospective transferee of Developer's interest under this Agreement), within twenty (20) Business Days after a request, a certificate stating to the best of the City's knowledge (a) that this

Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect as modified, and stating the modifications or if this Agreement is not in full force and effect, so stating), (b) whether or not, to the knowledge of City , there are then existing any defaults under this Agreement (and if so, specifying the same) and (c) any other matter actually known to the City, directiy related to this Agreement and reasonably requested by the requesting Party. In addition, if requested, City shall attach to such certificate a copy of this Agreement and any amendments thereto, and include in such certificate a statement by City that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Agreement, including all modifications thereto. Any such certificate may be relied upon by Developer, any successor, and any prospective mortgagee or transferee of Developer's interest in this Agreement.

ARTICLE X

DEFINITIONS

For purposes of this Agreement initially capitalized terms shall have the meanings ascribed to them in the Sections where they are used or in this Article. To the extent there is any inconsistency, the meaning first ascribed to them in the Sections where the terms are used shall control.

AB 26 means the provisions of Califomia Assembly **Bill 26** adopted into law June 28, 2011, and any successor statute thereto, as may be amended from time to time.

Affiliate means any Person directiy or indirectiy Controlling, Controlled by or under Common Control with another Person.

Agents means, when used with reference to any Party to this Agreement or any other Person, the members, officers, directors, commissioners, employees, agents and contractors of such Party or other Person, and their respective heirs, legal representatives, successors and assigns.

Agency means the former Redevelopment Agency of the City of Oakland.

Agency-City **PSA** as defined in Recital D.

Agreement means this **Lease** Disposition and Development Agreement, as it may be amended in accordance with its terms.

Amended and **Restated** CSA as defined in Section [redacted].

Amended **Baseline** Agreement as defined in Section [redacted].

AMS Site means the approximately 15-acre Ancillary Maritime Services Site as depicted on the site map attached as Attachment 1.

Ancillary Maritime Uses as defined on the Scope of Private Improvements attached as Attachment 7.

Army means the United States of America, acting through the Secretary of the Army, Department of the Army, and any successor department, City or instmmentality.

Army EDC Deed means that certain quitclaim deed from the Army for the EDC Property as described in Section X.

Attorneys' Fees and Costs means reasonable attorneys' fees (including fees from attomeys in the Office of the City Attomey of Oakland), costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Award means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

Base Reuse Plan as defined in Recital J, as may be amended from time to time.

Billboard Agreement means that certain Billboard Franchise and Lease Agreement between City and Developer, regarding the installation and use of advertising billboards on or adjacent to the Premises, in substantialiy in the form provided in Attachment [redacted].

BCDC means the Bay Area Development and Conservation Commission.

Books and Records as defined in the Ground Lease.

Bona Fide Institutional Lender is defined in the Ground Lease.

Business Day means any day that is neither a Saturday, a Sunday, nor a day observed as a holiday by either the City or the State of Califomia or the United States govemment.

Caltrans means the Califomia Department of Transportation.

CCIG means CCIG Oakland Global, LLC.

Central Gateway means the 42.6± acres of real property, comprising a portion of the former Oakland Army Base and located between the East Gateway and West Gateway, commonly referred to as the West Gateway and depicted on Attachment 1.

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.).

CEQA means the Califomia Environmental Quality Act.

City means the City of the City of Oakland, a municipal corporation.

City Administrator means the City Administrator of City or his or her designee.

City/Port ARMOA means the Amended and Restated Memorandum of Agreement for Oakland Army Base dated February 27, 2008, among the City, the City, and the Port, as the same may be amended from time to time.

City/Port Insurance Policy means the Remediation Cost Cap Environmental Site Liability Insurance Policy covering the OAB EDC Property issued by Chubb Custom Insurance Company, Policy No. 3730-58-78, which covers the period from August 7, 2003 to August 7, 2013, as the same may be amended from time to time.

Close of Escrow or Closing Date means the date of delivery through Escrow by the City of a leasehold estate in the Lease Property under the Ground Lease.

Commencement of Construction shall mean commencement of excavation [refine definition depending on how it is used].

Community Benefits or Community Benefits Program means those Project benefits to the community required as set forth in Article __ and Attachment __.

Completion or Completed is defined in Section 6.1(c).

Consent Agreement means that certain agreement between the City and DTSC regarding the EDC Property dated September 27, 2002.

Control, Controlled by, Controlling, or Common Control is defined in the Ground Lease.

Cost Sharing Agreement as defined in Recital O.

Covenant as defined in Section ___.

CTC means the Califomia Transportation Commission, a Califomia agency.

Delayed Party is defined in Section 14.2(a).

Design Build Contract as defined in _____.

Developer means Prologis CCIG Oakland Global, LLC, or any successor permitted under this Agreement.

Developer Affiliate means an entity that controls, is controlled by, or is under common control with the Developer. [confirm with David]

Development Agreement means a development agreement with respect to all or any portion of the Project Site as may be finally approved by City at any time pursuant to Califomia Govemment Code sections 65864 *et seq.* and applicable provisions of City's

Municipal Code or ordinances pertaining to development agreements and executed by City and Developer pursuant to Section ___.

DTSC means the State of Califomia, Environmental Protection City, Department of Toxic Substances Control, and any successor governmental authority of DTSC.

East Gateway means the 29.6± acres of real property, comprising a portion of the former Oakland Army Base and located adjacent to the East Gateway, commonly referred to as the West Gateway and depicted on Attachment 1.

EBMUD means East Bay Municipal Services District.

EDC means Economic Development Conveyance.

EDC Property means the former Oakland Army Base transferred by the Army in 2002 as defined in Recital A.

EDC MOA means that certain EDC Memorandum of Understanding dated September 27, 2002 regarding the conveyance of the EDC Property from the Army.

Effective Date as defined in Section 11.19.

EIR as defined in Recital W.

EIR Addendum as defined in Recital W.

ENA means Exclusive Negotiating Agreement, and all amendments as defined in Recital F.

Environmental Remediation Requirements means the agreements, permits, and orders with the Regulatory Agencies regarding Hazardous Materials on the EDC Property and Hazardous Material Laws

ESCA means Environmental Services Cooperative Agreement regarding the EDC Property as described in Section X.

Escrow as defined in Section 4.4(a).

Event of Default as defined in Article X.

Floor Area as defined in Attachment ___.

Floor Area Ratio as defined in Attachment ___.

Force Majeure means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control, including, but not restricted to, acts of God or of the public enemy, acts of the govemment, acts of the other Party, fires, fioods, earthquakes, tidal waves, terrorist acts, strikes, freight embargoes, delays of subcontractors and unusually severe weather. Force Majeure does not include failure to obtain

financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to complete performance of the hindered act.

Governmental Approvals as defined in Section 5.19.

Ground Lease as provided in Attachment 4.

Handle when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material ("Handling" will have a correlative meaning).

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under CERCLA or under Section 25281 or Section 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of a structure, or are naturally occurring substances on, in or about the Project Site and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

Hazardous Material Claims means any and all enforcement, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Material Laws, together with any and all Losses made or threatened by any third party against City or the LDDA Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Remediation costs, fines, natural resource damages, damages for decrease in value of the LDDA Property or any structures thereon, the loss or restriction of the use of the LDDA Property, and attorneys' fees and consultants' fees and experts' fees and costs.

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Project Site, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions.

Indemnified Parties means either the City or the Developer, to the extent that either is making a claim pursuant to an indemnity provision under this Agreement including, but not limited to, and to the extent applicable, all of the City's or the Developer's or any Developer Affiliate's boards, commissions, departments, agencies or other subdivisions, including without limitation, all of the Agents of the City or the Developer, and their respective heirs, legal representatives, successors and assigns, and each of them.

Indemnify means indemnify, protect, defend and hold harmless.

Indemnifying Party means the City or the Developer, to the extent that any party is obliged to indemnify the other Parties pursuant to an indemnity provision under this Agreement.

Investigation or **Investigate** when used with reference to Hazardous Material means any activity undertaken to deteruine the nature and extent of Hazardous Material that may be located in, on, under or about the Lease Property, which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Lease Property.

Laws means all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, whether or not in the contemplation of the Parties, which may affect or be applicable to the Lease Property or any part of the Lease Property (including, without limitation, any subsurface area, use of the Lease Property and the buildings and improvements on or affixed to the Lease Property), or the use of the Lease Property including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any body or bodies exercising similar functions, having or acquiring jurisdiction of the Lease Property, and similarly the phrase "Law" shall be construed to mean the same as the above in the singular as well as the plural.

Leasehold **Mortgage** as defined in the Ground Lease.

Lease Property as defined in Recital R.

Loss or Losses means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), llens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and out of pocket costs and expenses (including, without limitation, reasonable Attorney's Fees and Costs, and consultants' fees and costs, and consultants' fees and costs, and court costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Listed **RAP/RMP Sites** means those locations specifically identified in the RAP/RMP as RAP Sites and RMP Locations and as set forth in Exhibit E to the Consent Agreement.

Loss or Losses when used with reference to indemnification means any and all claims, demands, losses, liabilities, damages (excluding consequential damages), llens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable attorneys' fees and costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Master Plan as defined in ____.

Memorandum of Lease Disposition and Development Agreement means the Memorandum of this Agreement between the City and the Developer, suitable for recordation in the Official Records and in the form of Attachment 8.

Memorandum of Ground Lease as defined in the Ground Lease.

Minimum Project as defined in the Ground Lease. [refer to Scope of Improvements?]

Minimum Project Cost as defined in the Ground Lease. [refer to Scope of Improvements?]

MMRP means those the Mitigation Monitoring and Reporting Plan attached as Attachment ____.

OBRA means the Oakland Base Reuse Authority, a joint powers authority described in Recital A, which authority was dissolved on _____ [City to provide date.

OHIT as defined in Recital N.

Official Records mean, with reference to the recordation of documents, the Official Records of the County of Alameda.

Outside Lease Date means [January 1, 2016.]

Outside Date means June 30, 2020 [refer to CTC]

Parcel E as defined in Recital B.

Parties mean the City and Developer, as Parties to this Agreement;

Partner shall mean the constituent partners in Developer: Prologis Property, L.P. and CCIG Oakland Global, LLC.

Party means the City or Developer, as a Party to this Agreement;

Permitted Title Exceptions as referred to in Section 4.6 and attached as Attachment 17.

Permitted Transfers as defined in Section ____.

Person means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or association, the United States, or a federal, state or political subdivision thereof

Phase means, as applicable, the following areas of the Lease Property: the applicable, the West Gateway, the Central Gateway and the East Gateway.

Port means the Port of Oakland.

Private Improvements is defined in the Scope of Private Improvements attached as Attachment __.

Project means the construction and operation of the Public Improvements and Private Improvements under the terms of this Agreement and the applicable Ground Lease.

Project Site as defined in Recital M.

Prologis means Prologis Property, L.P.

Property Management Agreement defined in _____ and substantially in the form of Attachment _____.

Public Improvements means backbone infrastructure planning, design and construction, including remediation of the Gateway Development Area, demolition, surcharging and final grade as more particularly described in the Scope of Public Improvements at Attachment _____.

Public Improvements Budget as defined in Section 4.2(a)(ii)(A).

Public Improvements Schedule of Performance as defined in _____.

PUD means a planned unit development with respect to all or any portion of the Project as may be finally approved by City at any time pursuant to applicable provisions of City's Municipal Code or ordinances pertaining to planned unit developments pursuant to Section _____.

RAP/RMP means that certain Remedial Action Plan/Risk Management Plan for the EDC Property described in Section X.

Regulatory Agency means any governmental agency having jurisdiction over the Project Site, including, but not limited to the Army, DTSC, and the RWQCB.

Release when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Material in, on, under or about the LDDA Property or any portion thereof

Remediate or **Remediation** when used with reference to Hazardous Materials means any activities undertaken to investigate, clean up, remove, transport, dispose, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the LDDA Property or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

Remediation Fund means that certain account established by the City and the Port for purposes of paying for Remediation at the EDC Property as described in Section X.

RWQCB means the San Francisco Bay Regional Water Quality Control Board.

RWQCB Order means the permit from the RWQCB related to the EDC Property as described in Section X.

Schedule of Performance as attached hereto as Attachment 6.

Scope of Private Improvements as attached hereto as Attachment 5.

Scope of Public Improvements as attached hereto as Attachment ___.

Significant Change means any dissolution, merger, consolidation or other reorganization, or issuance, sale, assignment, hypothecation or other transfer of legal or beneficial interests in the Developer, directiy or indirectiy, in one or more transactions, by operation of law or otherwise, that results in any of the following: (a) a change in the identity of Persons Controlling the Developer; (b) the admission of any new shareholder or other equity investor that has the right to exercise Control over the Developer, (c) the dissolution of the Developer; or (d) the sale of 50% (fifty percent) or more of the Developer's assets, outstanding equity interests, capital or profits, or of the assets, outstanding equity interests, capital or profits of any Person controlling the Developer, except to a Developer affiliate and except for sales of publicly traded stock.

SLC means State Lands Commission.

Special District means any community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982 (Califomia Govemment Code sections 53311 *et seq.*) or otherwise, special assessment district, facilities assessment district, landscaping and lighting district, and any other infrastmcture financing or infrastmcture maintenance financing district or device established at any time upon the approval of City with respect to all or any portion of the Project.

State means the State of Califomia.

State Patent means the State of Califomia Patent and Tmst Termination as defined in Recital B.

Successor Agency as defmed in the introductory paragraph.

TCIF means the Trade Corridor Improvement Fund administered by CTC.

Term as defined in Section 1.1.

Title Company as defined in Section 4.4(a).

Title Defect as defined in Section 4.6(b).

Transfer as defined in Section 8.1(C).

Unmatured Event of Default means any Event of Default that, with the giving of notice of the passage of time, or both, would constitute an Event of Default under this Agreement.

West Gateway means the ___± acres of real property, comprising a portion of the former Oakland Army Base and located adjacent to the Central Gateway, commonly referred to as the West Gateway and depicted on Attachment 1.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly appointed representatives as of the date first above written.

SIGNATURE PAGES FOLLOW

DEVELOPER:

Prologis CCIG Oakland Global, LLC

By: _____

By: _____

By _____
[NAME]
[TITLE]

By: _____

By: _____

By _____
[NAME]
[TITLE]

CITY OF OAKLAND,
a municipal corporation

By _____
City Manager

Approved as to Form

By: _____
Deputy City Attorney

ATTACHMENTS TO LDDA

		STATUS 5/31 4:30 am
Attachment 1	Site Maps	*Draft to be included*
Attachment 2	Legal Description of Lease Property	*Insert legal from PTR.*
Attachment 3	Ground Lease forms	*Insert WIP drafts*
	-West Gateway	
	-Central and East	
Attachment 4	Billboard Agreement	*Insert WIP drafts*
Attachment 5	Property Management Agreement	*Insert Term sheet/to be replaced with draft agreement.*
Attachment 6	Scope of Development for Public Improvements	*Included below*
Attachment 7	Scope of Development for Private Improvements	*Included below*
Attachment 8	Schedule of Performance	*Included below*
Attachment 9	Memorandum of LDDA	*Included below*
Attachment 10	City's Environmental Assessment Reports	*Betsy to email list 5/31 am.*
Attachment 11A	Consent Agreement with *D*TSC	*Docs to be inserted in final form*
Attachment 11B	RAP/RMP	*Docs to be inserted in final form*
Attachment 1iC	RWQCB Order	*Docs to be inserted in final form*
Attachment 12A	Covenant to Restrict Use of Property	*Docs to be inserted in final form*
Attachment 12B	Army EDC Deed	*Docs to be inserted in final form*
Attachment 13	Due Diligence Right of Entry	*Insert WIP draft*
Attachment 14	Permitted Titie Exceptions	*Insert PTR.*
Attachment 15	Community Benefits Matrix, with Operations and Construction Jobs Policies and certified MMRP	
Attachment 16	Form of Assignment and Assumption Agreement	*WIP to be insertedt*
Attachment 17	EBMUD MOA	*Insert final, executed draft as part of execution*

Attachment 6

OAB Public Infrastructure

The future vertical development of the OAB requires improvements to the underlying land and infrastmcture before vertical improvements can be realized. Vertical improvements are dependent upon the land being retrofitted along with new underground utilities and new on-surface roads and improvements. Vertical development, defmed as buildings and above-ground structures, requires the following improvements at large and by Gateway Area. The improvements described in further detail in the April 1, 2012 *Oakland Army Base Master Plan Design Set,* as amended from time to time.

At **L**arge/Applicable to **L**ease **P**roperty.

Import of clean fill material, with compaction to city required building standards, to raise the existing roadways to a new elevation that conforms with current drainage regulations.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New drainage filtration areas around the site to accept ground water for natural filtration before such water goes into the drainage piping.

New landscaping and respective irrigation for filtration areas.

New landscaping at large to aid in reduction in greenhouse gas emissions and to comply with City standards.

New recycled water piping to serve the landscaping throughout the site.

New on-site and off-site road work to rebuild Maritime Avenue from Engineer's Road to the south at the intersection of 7th Street including new signal improvements at intersections.

New on-site street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New on-site traffic signals for the roads mentioned above including new electrical improvements to serve the signals.

New domestic water piping to serve the vertical development for both domestic use and fire protection.

New sanitary sewer piping to serve the vertical development including pump stations due to low elevations of the system.

New electrical conduits, duct banks, conductors, vaults and switches to distribute power to vertical development and road related improvements.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, crosswalks and rail crossing gates to facilitate pedestrian and bike mobility through the site.

Implementation of Mitigation Measures 3.16-1 through 3.16-33, inclusive, and related Standard Conditions of Approval as set forth in the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program for the EIR Addendum for the 2012 OARB Project.

East Gateway

Import of clean fill material, with compaction to city required building standards, to raise the existing site to a new elevation that conforms with current drainage regulations.

Remediation of existing sand fill layer on the site to prevent future liquefaction during seismic events.

Remediation of existing native subsoil (Bay mud) to densify the material to avoid unacceptable settlement and displacement of buildings.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New drainage filtration areas around the site to accept ground water for natural filtration before such water goes into the drainage piping.

New landscaping and respective irrigation for filtration areas.

New landscaping at large to aid in reduction in greenhouse gas emissions and to comply with City standards.

New recycled water piping to serve the landscaping throughout the site.

New road work to rebuild Maritime Avenue and construct a new East Burma Road.

New street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New traffic signals for the roads mentioned above including new electrical improvements to serve the signals.

New domestic water piping to serve the vertical development for both domestic use and fire protection.

New sanitary sewer piping to serve the vertical development including pump stations due to low elevations of the system.

New electrical conduits, duct banks, conductors, vaults and switches to distribute power to vertical development and road related improvements.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, crosswalks and rail crossing gates to facilitate pedestrian and bike mobility through the site.

Completion of contamination remediation RAP/RMP on subsoils by City and Port.

Grading and drainage work to facilitate construction of new rail tracks and related equipment.

Central Gateway

Import of clean fill material, with compaction to city required building standards, to raise the existing site to a new elevation that conforms with current drainage regulations.

Remediation of existing sand fill layer on the site to prevent future liquefaction during seismic events.

Remediation of existing native subsoil (Bay mud) to densify the material to avoid unacceptable settlement and displacement of buildings.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New drainage filtration areas around the site to accept ground water for natural filtration before such water goes into the drainage piping.

New landscaping and respective irrigation for filtration areas.

New landscaping at large to aid in reduction in greenhouse gas emissions and to comply with City standards.

New recycled water piping to serve the landscaping throughout the site.

New road work to rebuild Maritime Avenue and construct a new East Burma Road.

New street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New traffic signals for the roads mentioned above including new electrical improvements to serve the signals.

New domestic water piping to serve the vertical development for both domestic use and fire protection.

New sanitary sewer piping to serve the vertical development including pump stations due to low elevations of the system.

New electrical conduits, duct banks, conductors, vaults and switches to distribute power to vertical development and road related improvements.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, crosswalks and rail crossing gates to facilitate pedestrian and bike mobility through the site.

Completion of contamination remediation RAP/RMP on subsoils by Cify and Port.

Grading and drainage work to facilitate construction of new rail tracks and related equipment.

Reconstruction of storm water outfalls to the Bay to facilitate receipt of increased size of drain piping and related water flow.

West Gateway

Import of clean fill material, with compaction to city required building standards, to raise the existing site to a new elevation that conforms with current drainage regulations.

Remediation of existing sand fill layer on the site to prevent liquefaction during seismic events.

Remediation of existing native subsoil (Bay mud) to densify the material to avoid unacceptable settiement and displacement of buildings.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New drainage filtration areas around the site to accept ground water for natural filtration before such water goes into the drainage piping.

New landscaping and respective irrigation for filtration areas.

New landscaping at large to aid in reduction in greenhouse gas emissions and to comply with City standards.

New recycled water piping to serve the landscaping throughout the site.

New road work to rebuild Maritime Avenue and construct a new East Burma Road.

New street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New traffic signals for the roads mentioned above including new electrical improvements to serve the signals.

New domestic water piping to serve the vertical development for both domestic use and fire protection.

New sanitary sewer piping to serve the vertical development including pump stations due to low elevations of the system.

New electrical conduits, duct banks, conductors, vaults and switches to distribute power to vertical development and road related improvements.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New pubhc safety features such as sidewalks, ramps, crosswalks and rail crossing gates to facilitate pedestrian and bike mobility through the site.

Completion of contamination remediation RAP/RMP on subsoils by City and Port.

Grading and drainage work to facilitate construction of new rail tracks and related equipment.

Wharf improvements to Berths 7 and 8. [*Note: With a $25.9mm contribution from the ground lessee of the West Gateway.*]

Attachment 7
SCOPE OF DEVELOPMENT
(Private Improvements)

1. Uses. The purpose of this Agreement is to provide for the development of the Lease Property into a new facility that supports the international, national, regional and local movement of goods by way of the seaport, railroad and roadway networks. Once constructed, the Private Improvements will include the following uses:

- trade and logistics facilities (warehouse, distribution and related facilities), including, but not limited to, general purpose warehouses, cold and refrigerated storage, trailer and container cargo storage and movement, chassis pools, container freight stations, deconsolidation facilities, truck terminals, and regional distribution centers ("Trade & Logistics");

- either (1) a ship-to-rail terminal designed for the export of non-containerized bulk goods and import of oversized or overweight cargo (the "Bulk Terminal") ("Option A") if the Public Improvements are funded by TCIF Funds, or (2) office or research and development facilities/trade and logistics facilities ("Option B"), at the Developer's option but only if the Public Improvements are not funded by TCIF Funds;

- ancillary circulation, utility and rail improvements designed to supplement the Public Improvements consistent with the Master Plan (collectively, "Support Improvements"); and

- five billboards.

In the event that the AMS Site is included in the Lease Property, the Project will also include 15 acres of truck service uses, including parking, fueling stations, weighing stations, training and certification facilities, maintenance facilities, chassis pool and related retail (collectively, "Ancillary Maritime Uses").

2. Location and Density of Uses. The Private Improvement uses would be located in the following Phases and in the following densities:

a. East Gateway (approximately 29.6 acres). The East Gateway would be developed with Trade & Logistics uses and related Support Improvements. New facilities shall be developed with a minimum of 250,000 square feet of Floor Area (defined below) at an aggregate minimum FAR (defined below) of 0.29 ("Minimum East Gateway Project") and up to a maximum Floor Area of 442,560 square feet at any permissible FAR.

b. Central Gateway (approximately 42.6 acres). The Central Gateway would be developed with Trade & Logistics uses and related Support Improvements. New facilities would

be developed with a minimum of 300,000 square feet of Floor Area at an aggregate minimum FAR of 0.29 ("Minimum Central Gateway Project") and up to a maximum Floor Area of 537,000 square feet of new facilities at any permissible FAR. In the event that the AMS Site is included in the Lease Property, the Central Gateway would (a) include an additional 15 acres and up to an additional 37,673 square feet of Floor Area of Ancillary Maritime Uses. [*Confirm if/how AMS Site included/excluded from minimum project/calculation of FAR*]

c. **West Gateway** (approximately 34.1 (Option A) or 11 (Option B) acres). Under Option A, the West Gateway will be improved with Bulk Terminal uses, Rail Improvement uses and related Support Improvements, including the repurposing of the existing 146,460 square foot warehouse and the construction of new rail improvements, equipment yards and temporary structures. The "Minimum West Gateway Project" shall mean wharf repair and Rail Improvements consistent with the Master Plan and a functioning Bulk Terminal with appropriate tenant improvements and equipment capable of servicing one or more export products. Under Option B, the West Gateway portion of the Lease Property will be improved with up to a maximum Floor Area of 175,000 square feet of new office or research and development uses and related Support Improvements. The Option B scenario does not include a minimum project.

d. **Billboards.** The billboards include the following:

Number	Billboard Location	Size	Sides	Display Type
1	Bay Bridge 500' East of Toll Plaza (West Gateway) – South Line, East & West Face	20'H x 60'W	2	LED
2	Bay Bridge 1000' East of Toll Plaza – South Line, West Face (West Gateway)	20'H x 60'W	1	Backlit
3	I-880 West Grand 500' North of Maritime (Central Gateway) – West Line, North & South Face	14'H x 48'W	2	LED
4	I-880 West Grand South of Maritime (East Gateway) – West Line, North & South Face	14'H x 48'W	2	Backlit
5	I-880 West Grand 500' South of Maritime (East Gateway) – West Line, North & South Face	14'H x 48'W	2	LED

Notes:

Backlit Display: Static translucent sign lit from behind, traditionally has two ad faces (front and back).

LED Display: Changeable digital sign comprised of LED bulbs, can have as many as 12 rotating digital ads.

As used in this Attachment, the term "Floor Area" means _____ _____, and FAR means _____

So long as the minimum projects defined herein are achieved and the aggregate maximum allowed Floor Area is not exceeded, the Developer shall be entitled to transfer Floor Area between the Phases upon written notice to the City. In such an event, the Parties shall memorialize the transfer in writing by means of an amendment to the applicable Ground Leases.

3. Timing for Commencement and Completion of **Minimum** Projects. The following times shall be included in the applicable Lease for each Phase. All times provided shall be subject to Force Majeure as defined in the applicable Lease. All times provided shall be subject to the Outside Date.

1. West Gateway: The Minimum West Gateway Project shall obtain the first building permit and commence construction within 6 months after the effective date of the applicable Ground Lease and shall be Complete within two years after issuance of the first building permit.

2. East Gateway: The Minimum East Gateway Project shall (i) obtain the first building permit for a minimum of 150,000 square feet of Floor Area with a minimum FAR of 0.29 and commence construction within 12 months of the effective date of the applicable Ground Lease, (ii) be Complete within 4 years from the issuance of the first building permit.

3. The Minimum Central Gateway Project shall (i) obtain the first building permit for a minimum of 150,000 square feet of Floor Area with a minimum FAR of 0.29 and commence construction within 12 months of the effective date of the applicable Ground Lease, (ii) be Complete within 4 years from the issuance of the first building permit.

4. With respect to East and Central Gateways only, any amount built in one Phase in excess of minimum requirement may be credited against the other Phase.

5. With respect to the East and Central Gateways only, an additional 150,000 square feet of Floor Area at a minimum FAR of 0.29 shall be complete on either or both the East Gateway or Central Gateway within 6 years of the issuance of the first building permit on either the East Gateway or Central Gateway.

6. For the purposes of this Attachment, "Complete" shall mean that a foundation/slab is in place under a building permit and active, on-going construction.

[Note for inclusion in Lease terms: completion guarantees to be provided building by building as they are constructed. With respect to failure to comply with minimum project, the City's remedy shall be the applicable liquidated damages and a termination right limited to the unimproved portion of the applicable Phase – lease continues with respect to improved land (including completed structures and under active construction).]

Attachment 8
Schedule of Performance

INTRODUCTION

Several principles apply to an effective understanding of this Schedule of Performance: (i) all terms used herein have the same meanings as provided in the Agreement (or "LDDA") to which this Schedule of Performance is attached; (ii) parenthetical numbers are references to sections of the Agreement; (iii) unless expressly limited in the Agreement, all Required Completion Dates provided for in this Schedule of Performance may be extended by applicable Force Majeure provisions; and (iv) in the event of an inconsistency between this Schedule of Performance and the Agreement, the Agreement shall prevail [*NOTE TO REVIEWERS: UNTIL FINAL DRAFT THIS SCHEDULE WILL PREVAIL OVER THE AGREEMENT*]. Except as otherwise provided in the Agreement, the Required Completion Date may be extended by mutual agreement of the Parties from time to time and documented in writing, so long as such extension does not exceed the Outside Date as defined in the Agreement. Except as otherwise provided in the Agreement, the City Administrator shall be authorized to grant extensions under this Schedule of Performance on behalf of the City so long as such extension does not exceed the Outside Date as defined in the Agreement.

	LLDA Obligation **(LLDA Section *to be added*)**	**Party(ies) Responsible for Compliance**	**Required Completion Date**	Remedy for Default? [*means preceded by standard 30-day notice and opportunity to cure. SD assumed to be returned if City default or no default situation; kept by City for Dev default as LD.
1	Execution of LDDA and Memorandum of LDDA (§)	City and Developer	Prior to Effective Date of LDDA.	Not effective as to the parties if not executed.
2	U.S. Army and DTSC consent to transfer of the Property to the City (§ 2.3.1)	City	Prior to Effective Date of LDDA.	Not effective as to the parties if not received.
3	Confirmation of City's authority to lease under AB 26 and effect on LDDA deal terms. (§ 2.3.1)	City	[*Effective Date*?] Prior to execution of Design Build Contract, and in no event later than first Lease Closing.	Termination right for both parties if clawback; City right to terminate if no clawback

				but material effect on deal terms.
4	Developer delivers Security Deposit to City. (§ ___)	Developer	Within 10 days after Effective Date of LDDA.	Event of Default by Developer. Termination of LDDA* No other remedies.
5	Memorandum of LDDA recorded. (§ ___)	City or Developer	Concurrent with recordation of the Parcel Map.	Specific performance; self help.
6	Cooperation Agreement Executed. (§ ___)	City	Prior to commencement of construction of Public Improvements.	Dev/City to meet and confer prior to City execution of Cooperation Agreement; Dev right to review and right to terminate if material change community benefit expectations.
7	Property Management Agreement Executed (§ ___)	City and Developer	Within 30 days after Effective Date of LDDA.	Right to Specific Performance or terminate, at election of parties.*
8	Billboard Agreement Executed (§ ___)	City and Developer	Within 30 days after Effective Date of the LDDA	Right to SP to sign by parties; otherwise just comply with terms of billboard agreement [to include termination of billboard agreement with Dev if LDDA terminates due to Dev default; 20 year term if

				LDDA terminates with no fault or City fault.*
9	Amended and Restated CSA Executed. (§ ___)	City	Within 30 days after Effective Date of the LDDA	If not executed by Port or City then Dev can elect workout provision if effect is loss of TCIF Funds.* If City or Port fail to comply with material terms of the CSA, Dev's remedies are self help, specific performance or workout if the effect is loss of TCIF.*
10	Master Plan and TCIF Baseline Budgets Approved by Developer and Port. (§ ___)	N/A	Within 30 days after Effective Date of the LDDA	If not approved by Port or Deyeloper then only remedy is work out if effect is loss of TCIF.*
11	EBMUD MOA Executed by EBMUD, City and Developer Affiliate. (§ ___)	City and Developer	Within 30 days after Effective Date of the LDDA	SP for City/Dev to execute. *[Include final executed version as attachment to LDDA and Ground Leases for West/Central Gateways.]*
12	OHIT Basehne Agreement Executed. (§ ___)	City	The earlier of (1) the City's receipt of actual notice from CTC that they will not execute the	City and Dev. work out to find other public financing for Public

			OHIT Baseline Agreement, or (2) November 7, 2012.	Improvement.*
13	Parcel Map Recorded (§ ___)	City	Within six (6) months of Effective Date of the LDDA; but in no event later than first Lease Closing.	Not an Event of Default until Lease Closing. Specific performance if not recorded by proposed close of escrow.
14	Port Land Exchanges Per Amended and Restated CSA Approved by Port, City and Developer and Recorded. (§ ___)	City	Enter binding land exchange agreement within 30 days of Effective Date of LDDA and then complete and record within prior to approval of final approved Bridging Documents, Final Budget, and Schedule of Performance for Public Improvements.	Failure to complete Port Land Exchanges with approval; not a default; proceed with project with existing land configuration*
15	Bridging Documents, Final Budget for Pubhc Improvements, and Schedule of Performance for Public Improvements Approved by City and Developer. (§ ___)	City and Developer	Within 180 days of Effective Date of LDDA.	City and Dev's remedy is to enter work out if lack of pubhc fuuds; terminate LDDA if can't reach agreement * [Cannot unreasonably withhold, cpndition or delay if consistency with Master Plan and OHIT Baseline Agreement.]
16	Development Agreement and PUD Approved by City Council. (§ ___)	City and Developer	Within 180 days of Effective Date of LDDA.	Developer's only remedy is to terminate if City

				does not process in good faith or DA/PUD approved, but does not contain the terms that support a financially feasible project* [All City regulatory authority to be reserved, once approved LDDA will require City ongoing obligation to comply and consult with Dev before amending or terminating]; not a Developer Default; no City remedies.]
17	CTC Approval of Guaranteed Maximum Price and Design Build Contract for Public Improvements. (§ ___)	City	Within 180 days of Effective Date of LDDA (automatically extended based on terms of Amended Baseline Agreement.)	Dev and City right to terminate if no CTC approval obtained; subject to Work out for alternate public financing.
18	Design Build Contract Executed. (§ ___)	Developer shall cause its Affiliate, CCIG, Inc. to execute.	Within 10 days of receipt of CTC approval.	Specific Performance; termination rights at election of City.
19	Caltrans Agreement Executed for Billboard Sites (§ ___)	City and Developer	No time requirement [*billboard agreement to provide continued cooperation to obtain*]	No Default of either party for failure to obtain Caltrans approval for billboard sites.
20	Caltrans Agreement Executed	City and	Within 180 days of	So long Caltrans

	for Under Freeway Rail (§ ___)	Developer	Effective Date of the LDDA; not in no event later than the first Lease Closing.	approves one rail line tinder freeway; no Default if not obtained.
21	Necessary Non- City Governmental Approvals for Construction of Public Improvements Received by City (§ ___)	City and Developer	Prior to construction of Public Improvements; within 180 days of Effective Date of LDDA.	If not obtained, only remedy is termination pf LDDA.* No other remedies.
22	Commence Formation of Special District. (§ ___)	City and Developer.	Within one (1) year of Effective Date of LDDA.	City self help; Developer's consent will be provided in LDDA. Specific Performhance for consent.* Dev may bring specific perfoimance to ifbrm.* No termmation right.
23	City Enters Contract for Use of AMS Site. (§ ___)	City	The earher of (1) the issuance of the Notice to Proceed with the construction of the Public Improvements, (2) one year from the Effective Fate of the LDDA.	Not an event of default. If City not imder contract with other operator by completion date then deerned included in Lease Property and Dev must coinply with Bay Plan tnick parking reoiiirements.
24	Notice to Proceed and commencement of construction of Public Improvements. (§ ___)	City	In accordance with the earher of (1) the terms of the OHIT Baseline Agreement or (2) agreed upon Schedule of Performance for the Public	Terminatioii of LDDA if City fails to meet Schedule or Performance.* No other remedies. Developer

			Improvements.	retains Security deposit.
25	Meet and Confer Regarding Public Improvement Progress and Budget. (§ ___)	City and Developer	As needed, but no less than once per quarter from the issuance of the Notice to Proceed until the Completion of the Public Improvements.	Not a Default. Dev can terminate LDDA only if City fails to meet Schedule of Performance. Specific Performance if necessary to enforce regular meeting attendance.
26	Port Rail Terminal Agreement with Union Pacific Railway. (§ ___)	City	By the date provided in the Amended and Restated Cost Sharing Agreement.	If Port does not approve agreement, Dev or City may elect self help to the extent allowed under CSA, specific performance, or terminate LDDA after workout.*
27	Request for Proposals Issued for Operator of Port Rail Terminal. (§ ___)	City	By the date provided in the Amended and Restated Cost Sharing Agreement.	If Port does not issue timely Dev or City may elect self help to the extent allowed under CSA, specific performance , or termmate LDDA after workout.*
28	City Access Agreement to Port Rail Terminal Approved by Developer and Executed by City and Port. (§ ___)	City and Developer	By the date provided in the Amended and Restated Cost Sharing Agreement.	If City or Port does not enter agreement then Dev or City may elect self help to the extent allowed under CSA, specific performance , or

				termimate LDDA after workout.*
29	Rail Terminal Design Build Contract Executed by Port. (§ ___)	City	By the date provided in the Amended and Restated Cost Sharing Agreement.DA.	If City or Port does not enter agreement then Dev and City can termimate LDDA after workout.*
30	Rail Terminal Construction Commenced. (§ ___)	City	By the date provided in the Amended and Restated Cost Sharing Agreement.	If City or Port does not enter agreement then Dev or City inay elect self help to the extent allowed under CSA, specific performance, or terminate LDDA after workout.*
31	Rail Terminal Construction Completed and Operational. (§ ___)	City	By the date provided in the Amended and Restated Cost Sharing Agreement; but in no event later than Closing of first Lease.	If City or Port does not enter agreement then Dev or City may elect self help to the extent allowed imder CSA, specific performance, or terminate LDDA after workout.*
32	Completion of Public Improvements, including all necessary infrastructure remediation activities, de-constmction/demolition of all existing improvements for the applicable Phase. City issues Notices of Completion to Developer for applicable Phase. (§ ___)	City	In accordance with the Schedule of Performance for the Public Improvements agreed to by the Parties in accordance with Section __ of the LDDA.	Dev can terminate LDDA after workout.*
33	Termination of All Existing Leases, including Pass Through Lease as to the applicable portion of the Lease	City	Prior to Lease Closing for applicable portion of the Lease Property.	Condition precedent to Lease Closing; remedies related

	Property. (§ ___)			to failure to close.
34	Termination of Caltrans Construction Easement. (§ ___)	City	Prior to Lease Closing for West Gateway.	No Default. Lease just cannot be closed until the existing term ends. City cannot amend or exteiid ternis without Dev conseht.
35	Escrow Opened for apphcable Phase. (§ ___)	City and Developer	Within 30 days from receipt of Notice of Completion of Public Improvements from City for the applicable Phase.	If either other party completely fails to eooperate tii Opeiung Escrow, remedies are SP or terminatioii by party seekiiig cooperation.*
36	Developer and City Execute Right of Entry Agreement and Developer Initiates Due Diligence Period for applicable Phase for Dehvery Condition of Property and Environmental Remediation (§ ___)	Developer	Within 10 days from receipt of Notice of Completion of Public Improvements from City for the apphcable Phase.	SP or tcrmination by City if Developer does not proceed with dihgence. If Developer defaults, City also keeps Security Deposit ahd Liquidated Damages. SP for Dey if City fails to execute Right of Entiy.
37	Developer Identifies Additional Remediation Required, in any, for the applicable Phase. (§ ___)	Developer	Within Due Diligence Period [*define as 30 days from execution of the Right of Entry Agreement*].	Not a Default. If Dey does not identify remediation by end of peri6d, Dey deemed to approve property as is where as.
38	City completes identified Additional Remediation, if any, for the applicable Phase.	City	Prior to Lease Closing; but in no event later than 30	If City fails to complete timely, SP or LDDA can

	(§ ___)		days of receipt of notice from the Developer, unless the nature of the required remediation requires a longer period of time.	be terminated by Developer.* If the required remediation schedule would affect the Parties ability to close within the Outside Lease Closing Date for Remediated Lease Property, parties may lease a portion of a Phase, if possible, or terminate.*
39	Determination of Lease Property Square Footage for the applicable Phase for the Purposes of Final Legal Description and Base Rent. (§ ___)	City and Developer	Prior to Lease Closing.	No Default. City make initial determination and notifies the Developer; Developer may objects within 10 days of receipt; otherwise deemed approved. If they object; an ALTA boundary survey based on the recorded Parcel Map would be prepared by Developer at Developer's cost.
40	Formation of Special District. (§ ___)	City and Developer	Prior to first Lease Closing.	City self help; Developer's consent will be provided in LDDA. Specific Performance for consent.* Dev may bring specific performance to

				form.* No termination right.
41	City and Developer Approve Permitted Title Exceptions for applicable Phase.	City and Developer	Prior to Lease Closing.	As long as no additional unpermitted exceptions; Developer has to approve. If new exceptions and City fails to remove; then Dev. terminate.*
42	Developer completes (or City waives in writing) all City Required Conditions Precedent to Lease and submits required information and documents to Escrow for the applicable Phase. (§ ___)	Developer	Prior to City obligation to enter Lease; but in no event later than 180 days of Opening of Escrow for the applicable Portion of the Lease Property.	Specific Performance or Termination of LDDA if Dev has met conditions and City does not close.* Developer gets Security Deposit returned. No other remedies.
43	City completes (or Developer waives in writing) all Developer Required Conditions Precedent to Lease and submits required information and documents to Escrow for the applicable Phase. (§ ___)	City	Prior to obligation for Developer, or Developer Affiliate, to enter Lease; but in no event later than 180 days of Opening of Escrow of the Lease Property.	If City has met all conditions and Dev does not close City option to (1) Specific Performance or (2) Termination of LDDA.* City also keeps Security Deposit ($500M) and gets Liquidated Damages ($5M minus credit of Security Deposit). No other reinedies.
44	Lease Closing on applicable Phase. (§ ___)	City and Developer	After all conditions precedent have been satisfied or waived by the Parties; but in	See 42, 43 above.

			no event longer than 180 days of Opening of Escrow on the Lease Property.	
45	Partial Termination Notice Recorded Issued at Each Closing and Final Termination Notice recorded at Final Lease Closing. (§ ___)	City	Concurrent with Closing, or termination of the LDDA by its terms.	Specific Performance*

Attachment 9

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

The City of Oakland
250 Frank H. Ogawa Plaza, 3rd Floor
Attn: Real Estate Department
Oakland, CA 94612

Mail Tax Statements to the Above Address

THIS SPACE ABOVE FOR RECORDER'S USE

MEMORANDUM OF LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

This Memorandum of Lease Disposition and Development Agreement ("Memorandum") is entered into as of this ____ day of _____, ____, by and between the City of Oakland, a mumicipal corporation (the "Lessor") and _____, a _____ ("Lessee"), with respect to that certain Lease Disposition and Development Agreement dated as of _____ ___, ____ (the "LDDA") with respect to the real property described on Exhibit A hereto.

This Memorandum shall incorporate herein all of the terms and provisions of the LDDA as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the LDDA, of which this is a memorandum.

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

IN WITNESS WHEREOF, Lessor and Lessee have executed this Memorandum of Lease Disposition and Development Agreement this ____ day of _____, ____.

[SIGNATURES FOLLOW ON NEXT PAGE]

"LESSOR" THE CITY OF OAKLAND,
a municipal corporation

By: _____

City Administrator Approved as to

form and legality:

By: _____
Deputy City Attomey

"LESSEE" _____,
a _____

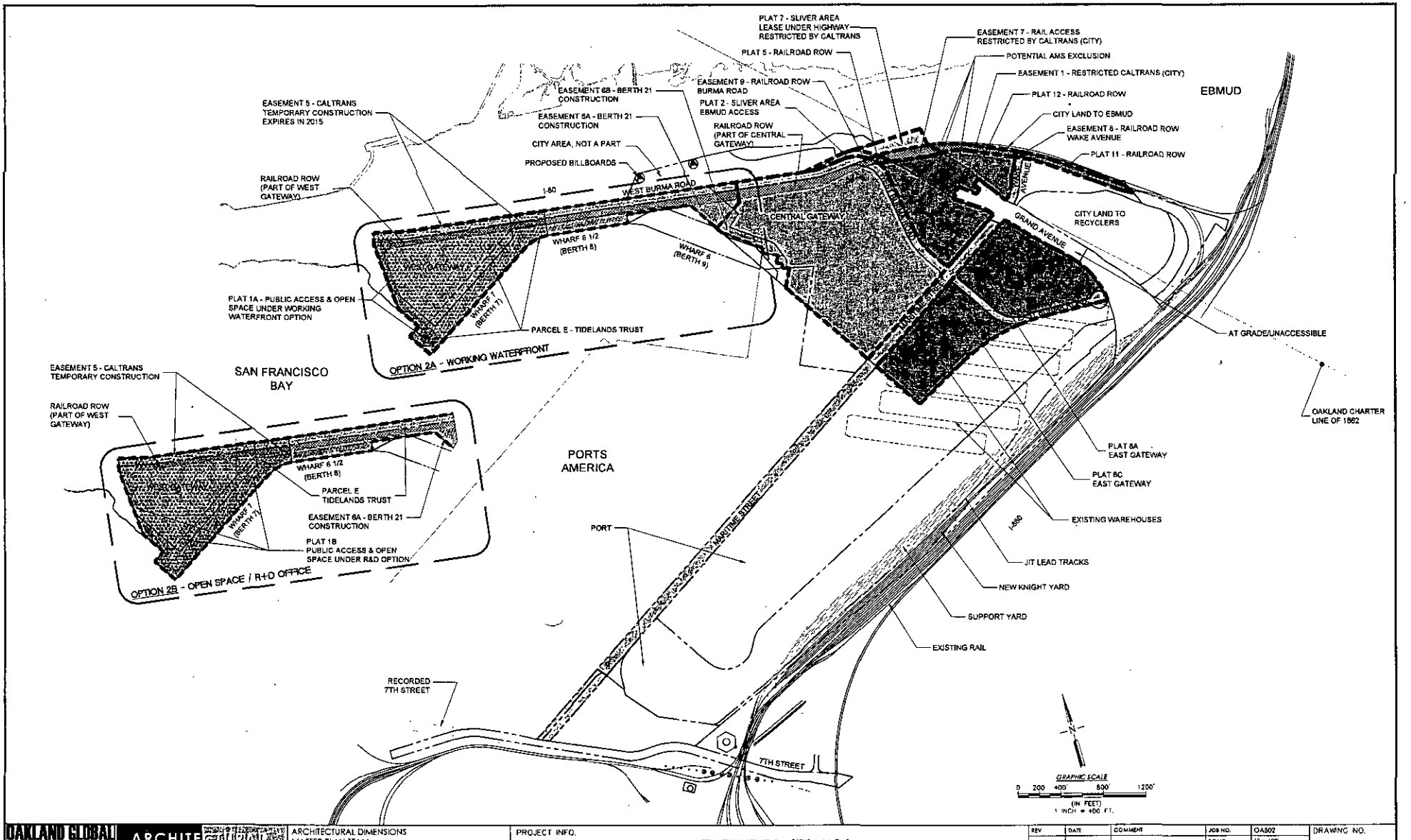
By: _____,
a _____

By: _____,
a _____

Order No. _____

EXHIBIT "A"

LEGAL DESCRIPTION



OAKLAND GLOBAL

ARCHITECTURAL DIMENSIONS

ARCHITECTURAL DIMENSIONS
MASTER PLAN TEAM
JAMES HEILBRONNER
925-932-8451
300 FRANK H. OGAWA PLAZA, SUITE 375
OAKLAND, CA 94612

PROJECT INFO.

ATTACHMENT 1 - SITE MAP 1

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

CAT. NO	AD-0125.02
INVOICE NO	13189

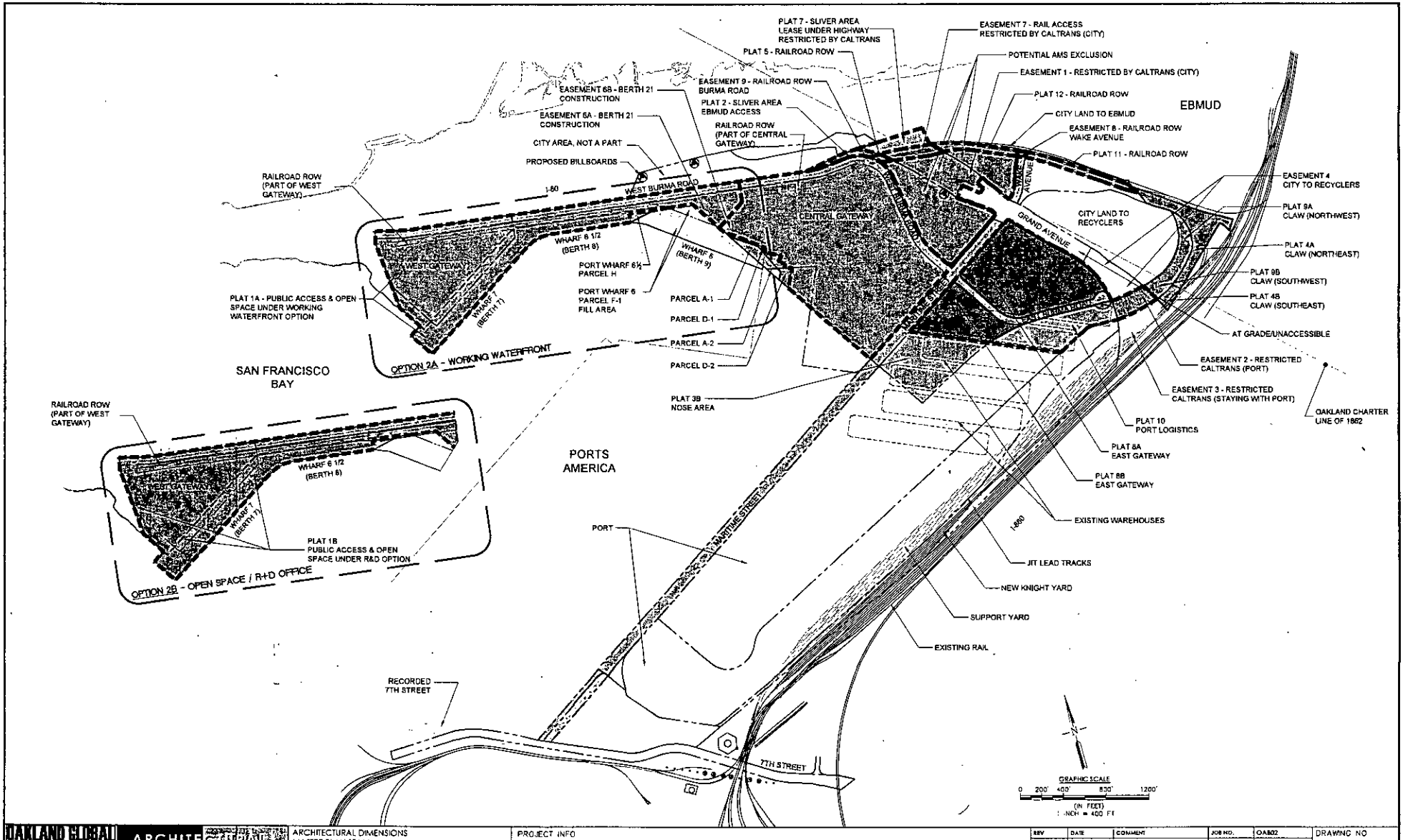
REV	DATE	COMMENT

JOB NO.	OA302
SCALE	1" = 400'
DATE	5/23/2012
DRAWN BY	K. CHABOT
CHECKED BY	J. HEILBRONNER

DRAWING NO.

X-184

SHEET 1 OF 2



OAKLAND GLOBAL

ARCHITECTURAL DIMENSIONS

ARCHITECTURAL DIMENSIONS
MASTER PLAN TEAM
JAMES HELBRONNER
925-952-6651
300 FRANK H. OGAWA PLAZA, SUITE 375
OAKLAND, CA 94612

PROJECT INFO

ATTACHMENT 1 - SITE MAP 2 (ALTERNATIVE PARCELS)

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

CAT. NO	AD-0125.03
INVOICE NO	13190

REV	DATE	COMMENT

JOB NO.	OA802
SCALE	1" = 400'
DATE	5/23/2012
DRAWN BY	K. CHABOT
CHECKED BY	J. HELBRONNER

DRAWING NO
X-185
SHEET 2 OF 2

LEGAL DESCRIPTION

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

EDC PROPERTY (PARCELS B-2 AND B-3)

PARCEL B-2

PARCELS 1 AND 2, PARCEL MAP NO. 10074, FILED DECEMBER 15, 2011, PARCEL MAP BOOK 318, PAGES 74-75, INCLUSIVE, ALAMEDA COUNTY RECORDS

APN: 018-0507-001-11

PARCEL B-3

A PORTION OF PARCEL 1 AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED FOR NO-COST ECONOMIC DEVELOPMENT CONVEYANCE PARCEL, COUNTY OF ALAMEDA, CALIFORNIA, RECORDED AUGUST 8, 2003 AS DOC NO. 2003456370 IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT CITY OF OAKLAND MONUMENT NO. 7SE13, SAID MONUMENT BEING A PIN SET IN CONCRETE, IN A MONUMENT WELL MARKING THE INTERSECTION OF THE CENTERLINES OF MARITIME STREET AND 10TH STREET, AS SAID STREETS ARE SHOWN ON THAT UNRECORDED MAP ENTTTLED "OAKLAND ARMY TERMINAL BOUNDARY MAP" PREPARED BY WILSEY & HAM ENGINEERS IN 1958 FOR THE U.S. ARMY CORPS OF ENGINEERS, FILE NO. 45-1-286 (HEREINAFTER REFERRED TO AS THE ARMY MAP), SAID MONUMENT IS FURTHER DESCRIBED AS BEING PORT OF OAKLAND MONUMENT ID H005 AS SHOWN UPON RECORD OF SURVEY 990, FILED FOR RECORD IN BOOK 18 OF RECORDS OF SURVEYS, AT PAGES 50-60, ALAMEDA COUNTY OFFICIAL RECORDS;

THENCE SOUTH 38°00'05" WEST, 989.35 FEET TO THE EASTERN MOST CORNER OF PARCEL SEVEN AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED, RECORDED JUNE 15, 1999 AS DOC. NO. 99-222447 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 99222447), BEING A POINT ON THE LINE OF ORDINARY LOW TIDE IN THE BAY OF SAN FRANCISCO AS IT EXISTED ON THE 4TH DAY OF MAY IN THE YEAR 1852 (HEREINAFTER REFERRED TO AS THE AGREED LOW TIDE LINE OF 1852) AS DESCRIBED AND AGREED UPON IN CITY OF OAKLAND ORDINANCE NO. 3099 A CERTIFIED COPY OF WHICH WAS RECORDED ON OCTOBER 10, 1910 IN BOOK 1837 OF DEEDS, PAGE 84, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS 1837 DEEDS 84), SAID POINT BEING MARKED BY A PIN SET IN CONCRETE IN A MONUMENT WELL, AS SHOWN ON SAID ARMY MAP;

THENCE ALONG SAID AGREED UPON LOCATION OF THE "AGREED LOW TIDE LINE OF 1852" (1837 DEEDS 84) NORTH 41°00'50" EAST, 3829.19 FEET TO THE EASTERN MOST CORNER OF PARCEL 4 AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED FOR BERTH 21 SUBMERGED/UPLAND PROPERTY RECORDED AUGUST 8, 2003 AS DOC. NO. 2003466373 IN THE OFFICE OF THE RECORDER OF SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 2003466373);

THENCE DEPARTING FROM THE SAID AGREED UPON LOCATION OF THE "AGREED LOW TIDE LINE OF 1852" (1837 DEEDS 84), NORTH 80°39'13" WEST, 4577.07 FEET TO A POINT IN THE

EXISTING WESTERLY PERIMETER FENCE LINE OF SAID PIER 7, SAID EXISTING PERIMETER FENCE BEING THE WESTERN BOUNDARY OF SAID PARCEL 1 (DOC. 2003466370) AND THE POINT OF BEGINNING OF PARCEL OF PARCEL B-3 AS HEREIN DESCRIBED;

THENCE NORTHERLY ALONG THE SAID WESTERLY PERIMETER FENCE LINE OF PIER 7, BEING THE SAID WESTERN BOUNDARY OF PARCEL 1 (DOC. 2003466370), THE FOLLOWING TWO COURSES:

1) NORTH 20°41'10" WEST 427.98 FEET TO AN ANGLE POINT IN SAID FENCE LINE;

2) THENCE NORTH 01°48'40" WEST, 114.71 FEET TO A POINT ON THE SOUTHERN BOUNDARY OF PARCEL "S" AS DESCRIBED IN THAT CERTAIN INDENTURE AND CONVEYANCE BY AND BETWEEN THE STATE OF CALIFORNIA ACTING BY AND THROUGH IT'S DEPARTMENT OF PUBLIC WORKS AND THE CALIFORNIA TOLL BRIDGE AUTHORITY, AND CITY OF OAKLAND, ACTING BY AND THROUGH IT'S BOARD OF PORT COMMISSIONERS, RECORDED ON FEBRUARY 17, 1942 IN BOOK 4186 OF OFFICIAL RECORDS, AT PAGE 156 IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS 4185 O.R. 156) BEING THE GENERALLY NORTHERN BOUNDARY OF SAID PARCEL 1 (DOC. 2003466370); THENCE ALONG THE SAID SOUTHERN BOUNDARY OF SAID PARCEL "S" (4186 O.R 156), BEING THE SAID GENERALLY NORTHERN BOUNDARY OF PARCEL 1 (DOC. 2003466370), THE FOLLOWING TWO COURSES:

1) NORTH SS°0S'30" EAST, 291.86 FEET;
2) THENCE NORTH 81°36'25" EAST 984.09 FEET;

THENCE DEPARTING FROM THE SAID SOUTHERN BOUNDARY OF SAID PARCEL "S" (4186 O.R. 156), BEING THE SAID GENERALLY NORTHERN BOUNDARY OF PARCEL 1 (DOC. 2003466370), SOUTH 08°23'15" EAST 210.89 FEET;

THENCE SOUTH 41°23'42" WEST 1098.60 FEET;

THENCE NORTH 48°40'48" WEST 552.26 FEET TO THE POINT OF BEGINNING, CONTAINING 758,852 SQUARE FEET (17.421 ACRES), MORE OR LESS, MEASURED IN GROUND DISTANCES.

APN: 000-0507-001-10

PORT "SLIVER" PARCELS (PARCELS C-2 AND C-1)

PARCEL C-2

A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN ACT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA ENTITLED "AN ACT GRANTING CERTAIN TIDE LANDS AND SUBMERGED LANDS OF THE STATE OF CALIFORNIA TO THE CITY OF OAKLAND AND REGULATING THE MANAGEMENT, USE AND CONTROL THEREOF," APPROVED MAY 1, 1911 AS CHAPTER 657 OF STATUTES OF 1911, AND AMENDATORY ACTS (HEREINAFTER REFERRED TO AS STAT. 1911, CH. 657), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF OAKLAND MONUMENT NO. 7SE13, SAID MONUMENT BEING A PIN SET IN CONCRETE, IN A MONUMENT WELL MARKING THE INTERSECTION OF THE CENTERLINES OF MARITIME STREET AND 10TH STREET, AS SAID STREETS ARE SHOWN ON THAT UNRECORDED MAP ENTITLED "OAKLAND ARMY TERMINAL BOUNDARY MAP" PREPARED

BY WILSEY & HAM ENGINEERS IN 1958 FOR THE U.S. ARMY CORPS OF ENGINEERS, FILE NO. 45-1-285 (HEREINAFTER REFERRED TO AS THE ARMY MAP), SAID MONUMENT IS FURTHER DESCRIBED AS BEING PORT OF OAKLAND MONUMENT ID H006 AS SHOWN UPON RECORD OF SURVEY 990, FILED FOR RECORD IN BOOK 18 OF RECORDS OF SURVEYS, AT PAGES 50-60, OFFICIAL RECORDS OF THE SAID COUNTY OF ALAMEDA;

THENCE SOUTH 38°00'05" WEST, 989.35 FEET TO THE EASTERN MOST CORNER OF PARCEL SEVEN AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED, RECORDED ON JUNE 15, 1999 AS DOC. NO. 99222447 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 99222447), BEING A POINT ON THE LINE OF ORDINARY LOW TIDE IN THE BAY OF SAN FRANCISCO AS IT EXISTED ON THE 4TH DAY OF MAY IN THE YEAR 1852 (HEREINAFTER REFERRED TO AS THE AGREED LOW TIDE LINE OF 1852) AS DESCRIBED AND AGREED UPON IN CITY OF OAKLAND ORDINANCE NO. 3099, A CERTIFIED COPY OF WHICH WAS RECORDED ON OCTOBER 10, 1910 IN BOOK 1837 OF DEEDS, PAGE 84, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS 1837 DEEDS 84), SAID POINT BEING MARKED BY A PIN SET IN CONCRETE IN A MONUMENT WELL, AS SHOWN ON SAID ARMY MAP;

THENCE NORTHEASTERLY ALONG SAID AGREED UPON LOCATION OF THE "AGREED LOW TIDE LINE OF 1852" (1837 DEEDS 84) NORTH 41°00'50" EAST, 3829.19 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE DEPARTING FROM THE SAID AGREED UPON LOCATION OF THE "AGREED LOW TIDE LINE OF 1852" (1837 DEEDS 84), NORTH 48°48'07" WEST, 839.34 FEET TO A POINT ON THE GENERALLY SOUTHERLY LINE OF PARCEL 1, TRACT 14 AS DESCRIBED IN SAID FINAL JUDGMENT AS TO INTERESTS OF DEFENDANT CITY OF OAKLAND, A MUNICIPAL CORPORATION, UNITED STATES OF AMERICA VS. CITY OF OAKLAND, ET AL., CASE NO. 21758-L, CASE NO. 21930-L, CASE NO. 22084-L RECORDED FEBRUARY 24, 1960, REEL 032, IMAGE 660 OF OFFICIAL RECORDS IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS REEL: 32, IMAGE:650), BEING THE POINT OF BEGINNING OF THE SAID PORTION OF LANDS (STAT. 1911, CH. 657) HEREIN DESCRIBED;

THENCE DEPARTING THE GENERALLY SOUTHERLY LINE OF SAID PARCEL 1, TRACT 14 (REEL: 32, IMAGE: 560), NORTH 48°48'07" WEST, 275.79 FEET TO A POINT ON A LINE THAT IS 100.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE LINE OF MEAN HIGH TIDE IN THE OAKLAND OUTER HARBOR, WHICH FOR THE PURPOSES OF THIS LEGAL DESCRIPTION IS BASED UPON A SURVEY, BY THE PORT OF OAKLAND IN SEPTEMBER 2001, OF THE LOCATION OF MEAN HIGH WATER FOR THE SAID OAKLAND OUTER HARBOR AS DEFINED BY THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION/NATIONAL OCEAN SERVICE;

THENCE NORTHERLY ALONG SAID PARALLEL LINE, THE FOLLOWING TWO COURSES:

1) NORTH 11°00'07" EAST 181.49 FEET;

2) NORTH 41°18'35" WEST 11.95 FEET TO A POINT ON THE SAID GENERALLY SOUTHERLY LINE OF PARCEL 1, TRACT 14 (REEL: 32, IMAGE: 560);

THENCE DEPARTING FROM SAID PARALLEL LINE, EASTERLY AND SOUTHERLY ALONG THE SAID GENERALLY SOUTHERLY LINE OF PARCEL 1, TRACT 14 (REEL: 32, IMAGE: 550) THE FOLLOWING TWO COURSES:

1) NORTH 86°48'30" EAST 235.15 FEET;

2) SOUTH 08°03'07" WEST, 385.68 FEET TO THE POINT OF BEGINNING, CONTAINING 65,473

SQUARE FEET (1.503 ACRES), MORE OR LESS, MEASURED IN GROUND DISTANCES.

BEARINGS AND DISTANCES CALLED FOR HEREIN ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE III, NORTH AMERICAN DATUM OF 1983 (1986 VALUES) AS SHOWN UPON THAT CERTAIN MAP ENTITLED RECORD OF SURVEY 990, FILED IN BOOK 18 OF RECORD OF SURVEYS, PAGES 50-60, OFFICIAL RECORDS OF THE SAID COUNTY OF ALAMEDA. TO OBTAIN GROUND LEVEL DISTANCES, MULTIPLY DISTANCES CALLED FOR HEREIN BY 1.0000705.

APN: 000-0507-007

PARCEL C-1:

A PORTION OF THE LANDS DESCRIBED AS PARCEL 2 IN THAT CERTAIN QUITCLAIM DEED BETWEEN THE STATE OF CALIFORNIA AND THE CITY OF OAKLAND, RECORDED FEBRUARY 23, 1979 AS DOC. NO. 79-034788 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 79034788), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF OAKLAND MONUMENT NO. 7SE13, SAID MONUMENT BEING A PIN SET IN CONCRETE, IN A MONUMENT WELL MARKING THE INTERSECTION OF THE CENTERLINES OF MARITIME STREET AND 10TH STREET, AS SAID STREETS ARE SHOWN ON THAT UNRECORDED MAP ENTITLED "OAKLAND ARMY TERMINAL BOUNDARY MAP" PREPARED BY WILSEY & HAM ENGINEERS IN 1958 FOR THE U.S. ARMY CORPS OF ENGINEERS, FILE NO. 45-1-286 (HEREINAFTER REFERRED TO AS THE ARMY MAP), SAID MONUMENT IS FURTHER DESCRIBED AS BEING PORT OF OAKLAND MONUMENT ID H006 AS SHOWN UPON RECORD OF SURVEY 990, FILED FOR RECORD IN BOOK 18 OF RECORDS OF SURVEYS, AT PAGES 50-60, OFFICIAL RECORDS OF THE SAID COUNTY OF ALAMEDA;

THENCE NORTH 06°22'58" WEST, 3704.99 FEET TO THE WESTERN MOST CORNER OF SAID PARCEL 2 (DOC. 79-034788), SAID CORNER BEING MARKED BY A CONCRETE NAIL AND CALTRANS TAG SET FLUSH, AS SHOWN ON RECORD OF SURVEY NO. 1687, FILED IN BOOK 25 OF RECORDS OF SURVEYS, AT PAGES 58-69, THE SAID COUNTY OF ALAMEDA OFFICIAL RECORDS, AND BEING THE POINT OF BEGINNING OF THE PORTION OF SAID PARCEL 2 (DOC. 79034788) HEREIN DESCRIBED;

THENCE ALONG THE WESTERN AND GENERALLY NORTHERN LINES OF SAID PARCEL 2 (DOC 79034788) THE FOLLOWING THREE COURSES:

1) NORTH 21°36'13" EAST, 249.00 FEET TO AN ANGLE POINT MARKED BY A 1" IRON PIPE AND CALTRANS CAP UNDER A CYCLONE FENCE, AS SHOWN ON SAID RECORD OF SURVEY NO. 1587;

2) NORTH 75°30'42" EAST, 642.22 FEET TO AN ANGLE POINT MARKED BY A 1" IRON PIPE AND CALTRANS CAP, AS SHOWN ON SAID RECORD OF SURVEY NO. 1687;

3) NORTH 78°23'41" EAST, 230.24 FEET TO THE WESTERN MOST CORNER OF PARCEL 1 DESCRIBED IN THAT CERTAIN GRANT DEED FROM THE CITY OF OAKLAND TO THE STATE OF CALIFORNIA, RECORDED FEBRUARY 3, 1995 AS DOC. NO. 95028117 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 95028117), SAID CORNER BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 295.00 FEET AND A CENTRAL ANGLE OF 58°05'18", FROM WHICH BEGINNING THE RADIUS POINT BEARS NORTH 45°29'15" EAST;

THENCE ALONG THE GENERALLY SOUTHERLY LINE OF SAID PARCEL 1 (DOC 95028117) THE

FOLLOWING FIVE COURSES:

1) ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 299.08 FEET TO A POINT OF TANGENCY;

2) NORTH 77°23'57" EAST, 93.57 FEET;

3) NORTH 78°35'02" EAST, 301.18 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1457.00 FEET AND A CENTRAL ANGLE OF 12°33'12";

4) ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 319.22 FEET TO AN ANGLE POINT FROM WHICH THE RADIUS POINT BEARS SOUTH 01°08'14" WEST;

5) SOUTH 09°10'00" EAST, 85.90 FEET TO A POINT ON THE NORTHWEST LINE OF THE LANDS DESCRIBED IN THAT CERTAIN FINAL JUDGMENT AS TO TRACT 5, UNITED STATES OF AMERICA VS. CITY OF OAKLAND, STATE OF CALIFORNIA, ET AL., CASE NO. 21930-L, DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED FEBRUARY 16, 1951 IN BOOK 6351 OF OFFICIAL RECORDS, PAGE 334 IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS 6361 O.R. 334);

THENCE ALONG THE GENERALLY NORTHWEST LINE OF SAID TRACT 5 (6361 O.R. 334), SOUTH 64°17'11" WEST, 319.85 FEET TO A POINT ON THE GENERALLY SOUTHERLY LINE OF PARCEL "S" DESCRIBED IN THAT CERTAIN INDENTURE AND CONVEYANCE BY AND BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND THROUGH ITS DEPARTMENT OF PUBLIC WORKS AND THE CALIFORNIA TOLL BRIDGE AUTHORITY, AND THE CITY OF OAKLAND, A MUNICIPAL CORPORATION, ACTING BY AND THROUGH TTS BOARD OF PORT COMMISSIONERS, RECORDED FEBRUARY 17, 1942 IN BOOK 4185 OF OFFICIAL RECORDS, PAGE 156, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS 4185 O.R. 156);

THENCE ALONG SAID GENERALLY SOUTHERLY LINE OF SAID PARCEL "S" (4185 O.R. 156), SOUTH 81°36'26" WEST, 1660.88 FEET TO THE POINT OF BEGINNING, CONTAINING 416,298 SQUARE FEET (9.557 ACRES), MORE OR LESS, MEASURED IN GROUND DISTANCES.

APN: 000-0507-005

PUBLIC TRUST PARCEL (PARCEL E)

PARCEL E

A PORTION OF PARCEL 1 AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED FOR NO-COST ECONOMIC DEVELOPMENT CONVEYANCE PARCEL, COUNTY OF ALAMEDA, CALIFORNIA, RECORDED AUGUST 8, 2003 AS DOC. NO. 2003466370 IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 2003465370), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF OAKLAND MONUMENT NO. 7SE13, SAID MONUMENT BEING A PIN SET IN CONCRETE, IN A MONUMENT WELL MARKING THE INTERSECTION OF THE CENTERLINES OF MARITIME STREET AND 10TH STREET, AS SAID STREETS ARE SHOWN ON THAT UNRECORDED MAP ENTTTLED "OAKLAND ARMY TERMINAL BOUNDARY MAP" PREPARED BY WILSEY & HAM ENGINEERS IN 1958 FOR THE U.S. ARMY CORPS OF ENGINEERS, FILE NO.

45-1-286 (HEREINAFTER REFERRED TO AS THE ARMY MAP), SAID MONUMENT IS FURTHER DESCRIBED AS BEING PORT OF OAKLAND MONUMENT ID H006 AS SHOWN UPON RECORD OF SURVEY 990, FILED FOR RECORD IN BOOK 18 OF RECORDS OF SURVEYS, AT PAGES 50-60, ALAMEDA COUNTY OFFICIAL RECORDS;

THENCE SOUTH 38°00'05" WEST, 989.35 FEET TO THE EASTERN MOST CORNER OF PARCEL SEVEN AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED, RECORDED JUNE 15, 1999 AS DOC. NO. 99222447 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS DOC 99222447), BEING A POINT ON THE LINE OF ORDINARY LOW TIDE IN THE BAY OF SAN FRANCISCO AS IT EXISTED ON THE 4TH DAY OF MAY IN THE YEAR 1852 (HEREINAFTER REFERRED TO AS THE AGREED LOW TIDE LINE OF 1852) AS DESCRIBED AND AGREED UPON IN CITY OF OAKLAND ORDINANCE NO. 3099 A CERTIFIED COPY OF WHICH WAS RECORDED ON OCTOBER 10, 1910 IN BOOK 1837 OF DEEDS, PAGE 84, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS 1837 DEEDS 84), SAID POINT BEING MARKED BY A PIN SET IN CONCRETE IN A MONUMENT WELL, AS SHOWN ON SAID ARMY MAP;

THENCE ALONG SAID AGREED UPON LOCATION OF THE "AGREED LOW TIDE LINE OF 1852" (1837 DEEDS 84) NORTH 41°00'50" EAST 3829.19 FEET TO THE EASTERN MOST CORNER OF PARCEL 4 AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED FOR BERTH 21 SUBMERGED/UPLAND PROPERTY RECORDED AUGUST 8, 2003 AS DOC. NO. 2003465373 IN THE OFFICE OF THE RECORDER OF SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 2003466373);

THENCE DEPARTING FROM SAID AGREED UPON LOCATION OF THE "AGREED LOW TIDE LINE OF 1852" (1837 DEEDS 84), NORTHWESTERLY ALONG THE NORTHEASTERN BOUNDARY, AND ITS NORTHWESTERLY EXTENSION OF SAID PARCEL 4 AND THE NORTHEASTERN BOUNDARY OF PARCEL 3 DESCRIBED IN SAID QUITCLAIM DEED (DOC 2003466373), NORTH 48°48'07" WEST 1962.29 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE CONTINUING ALONG THE SAID NORTHEASTERN BOUNDARY OF PARCEL 3 (DOC. 2003466373), AND THE GENERALLY NORTHERN BOUNDARY OF SAID PARCEL 3 (DOC. 2003465373) THE FOLLOWING TWO COURSES:

1) NORTH 48°48'07" WEST 334.21 FEET;

2) THENCE SOUTH 81°26'43" WEST 354.67 FEET TO THE EASTERN MOST CORNER OF PARCEL 8 AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED FOR WEST MARITIME SUBMERGED PROPERTY RECORDED AUGUST 8, 2003 AS DOC. NO. 2003465374 IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 2003466374);

THENCE DEPARTING FROM THE SAID GENERALLY NORTHERN BOUNDARY OF PARCEL 3 (DOC. 2003466373), WESTERLY AND SOUTHERLY ALONG THE NORTHERN AND WESTERN BOUNDARIES OF SAID PARCEL 8 (DOC. 2003456374), THE FOLLOWING THREE COURSES;

1) SOUTH 80°58'50" WEST, 241.55 FEET;

2) THENCE SOUTH 08°24'05" EAST, 40.51 FEET;

3) THENCE SOUTH 07°08'25" EAST, 42.27 FEET TO AN ANGLE POINT IN THE EXISTING FACE OF WHARF LOCATED AT THE PORTION OF THE FORMER OAKLAND ARMY BASE KNOWN AS PIER 8, BEING A POINT ON THE SAID GENERALLY NORTHERN BOUNDARY OF PARCEL 3 (DOC. 2003455373);

THENCE DEPARTING FROM THE SAID WESTERN BOUNDARY OF SAID PARCEL 8 (DOC. 2003466374), CONTINUING IN A GENERALLY WESTERLY DIRECTION ALONG THE EXISTING FACE OF WHARF OF SAID PIER 8 AND PIER 7, BEING THE SAID GENERALLY NORTHERN BOUNDARY OF PARCEL 3 (DOC. 2003466373) THE FOLLOWING SIX COURSES:

1) SOUTH 81°35'04" WEST, 751.30 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF;

2) THENCE SOUTH 74°45'15" WEST, 80.05 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF;

3) THENCE SOUTH 61°28'19" WEST, 85.21 FEET TO AN ANGLE POINT IN SAID FACE OF WHARP;

4) THENCE SOUTH 48°06'56" WEST, 79.89 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF;

5) THENCE SOUTH 41°20'07" WEST, 1332.88 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF;

5) THENCE NORTH 48°42'09" WEST, 259.68 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF, SAID ANGLE POINT BEING AN ANGLE POINT IN THE WESTERLY BOUNDARY OF SAID PARCEL 1 (DOC. 2003466370);

THENCE DEPARTING FROM THE SAID GENERALLY NORTHERN BOUNDARY OF PARCEL 3 (DOC. 2003465370), CONTINUING ALONG THE SAID FACE OF WHARF OF PIER 7, SAID FACE OF WHARF BEING THE SAID WESTERN BOUNDARY OF PARCEL 1 (DOC. 2003466370), THE FOLLOWING TWO COURSES:

1) NORTH 41°15'18" EAST, 124.89 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF;

2) NORTH 48°38'16" WEST, 249.42 FEET TO A POINT IN THE EXISTING WESTERLY PERIMETER FENCE LINE OF SAID PIER 7;

THENCE NORTHERLY ALONG THE SAID WESTERN PERIMETER FENCE LINE OF PIER 7, SAID PERIMETER FENCE BEING THE SAID WESTERN BOUNDARY OF PARCEL 1 (DOC. 2003466373), NORTH 20°41'10" WEST, 212.85 FEET;

THENCE DEPARTING FROM THE SAID WESTERN PERIMETER FENCE LINE OF PIER 7, SAID PERIMETER FENCE BEING THE SAID WESTERN BOUNDARY OF PARCEL 1 (DOC. 2003466373), SOUTH 48°40'48" EAST 552.26 FEET;

THENCE NORTH 41°23'42" EAST 1098.60 FEET;

THENCE NORTH 08°23'15" WEST 210.89 FEET TO A POINT ON THE SOUTHERN BOUNDARY OF PARCEL "S" AS DESCRIBED IN THAT CERTAIN INDENTURE AND CONVEYANCE BY AND BETWEEN THE STATE OF CALIFORNIA ACTING BY AND THROUGH IT'S DEPARTMENT OF PUBLIC WORKS AND THE CALIFORNIA TOLL BRIDGE AUTHORITY, AND CITY OF OAKLAND, ACTING BY AND THROUGH IT'S BOARD OF PORT COMMISSIONERS, RECORDED ON FEBRUARY 17, 1942 IN BOOK 4186 OF OFFICIAL RECORDS, AT PAGE 156 IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS 4186 O.R. 156); THENCE ALONG THE SOUTHERN BOUNDARY OF SAID PARCEL "S" (4186 O.R. 156), NORTH 81°36'26" EAST 2132.80 FEET;

THENCE DEPARTING FROM THE SAID SOUTHERN BOUNDARY OF PARCEL "S" (4186 O.R. 156), SOUTH 08°55'17" EAST 191.86 FEET;

THENCE SOUTH 41°08'50" WEST 319.69 FEET TO THE POINT OF BEGINNING, CONTAINING 728,996 SQUARE FEET (16.735 ACRES), MORE OR LESS, MEASURED IN GROUND DISTANCES.

BEARINGS AND DISTANCES CALLED FOR HEREIN ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE III, NORTH AMERICAN DATUM OF 1983 (1986 VALUES) AS SHOWN UPON THAT CERTAIN MAP ENTTTLED RECORD OF SURVEY 990, FILED IN BOOK 18 OF RECORD OF SURVEYS, PAGES 50-50, ALAMEDA COUNTY RECORDS. TO OBTAIN GROUND LEVEL DISTANCES, MULTIPLY DISTANCES CALLED FOR HEREIN BY 1.0000705.

APN: 000-0507-001-07

~~BALDWIN YARD PARCEL (ADJUSTED PARCEL 14 TO INCLUDE PARCEL B-4)~~

ADJUSTED PARCEL 14

A PORTION OF THE PARCELS OF LAND DESCRIBED IN THAT CERTAIN INDENTURE BETWEEN THE SOUTHERN PACIFIC COMPANY AND THE UNITED STATES OF AMERICA, RECORDED APRIL 3, 1941, IN BOOK 4017 OF OFFICIAL RECORDS, PAGE 485 IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS 4017 O.R. 485); A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN FINAL JUDGMENT AS TO TRACT 1 AND AS TO LACK OF INTERESTS OF CERTAIN PERSONS AS TO PROPERTY SUBJECT TO THE ABOVE ACTION, UNITED STATES OF AMERICA VS. SANTA FE LAND AND IMPROVEMENT CO., SOUTHERN PACIFIC RAILROAD COMPANY ET AL., CASE NO. 23099-S, DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED OCTOBER 22, 1951, IN BOOK 6566 OF OFFICIAL RECORDS, PAGE 301 IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS 6566 O.R. 301); A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN FINAL JUDGMENT AS TO INTERESTS OF DEFENDANT CITY OF OAKLAND, A MUNICIPAL CORPORATION, UNITED STATES OF AMERICA VS. CITY OF OAKLAND ET AL., CASE NO. 21758-L, CASE NO. 21930-L, CASE NO. 22084-L, DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED FEBRUARY 24, 1960, REEL 032, IMAGE 660 OF OFFICIAL RECORDS IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS REEL:032, IMAGE:560); A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN FINAL JUDGMENT AS TO TRACT S, UNITED STATES OF AMERICA VS. CITY OF OAKLAND, STATE OF CALIFORNIA ET AL., CASE NO. 21930-L, DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED FEBRUARY 16, 1951 IN BOOK 6361 OF OFFICIAL RECORDS, PAGE 334 IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY HEREINAFTER REFERRED TO AS 6361 O.R. 334); A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN FINAL JUDGMENT AS TO PARCEL NO. 6, UNITED STATES OF AMERICA VS. CITY OF OAKLAND, STATE OF CALIFORNIA ET AL., CASE NO. 21930-L, DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED MAY 23, 1960, REEL 092, IMAGE 111 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS REEL:092, IMAGE:111), ALL OF WHICH ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF OAKLAND MONUMENT NO. 7SE13, SAID MONUMENT BEING A PIN

ARMY BASE GATEWAY REDEVELOPMENT PROJECT

GROUND LEASE
FOR
WEST GATEWAY,

between

THE CITY OF OAKLAND

"City" or "Landlord"

and

[CCIG ENTITY]

"Developer" or "Tenant"

Dated as of _____, 20_____

GROUND LEASE
FOR
WEST GATEWAY

THIS GROUND LEASE (this "Lease") is entered into on _____ ___, 2012 by and between the CITY OF OAKLAND, a municipal corporation and successor agency to the former Redevelopment Agency of the City of Oakland (the "City" or "Landlord"), and [CCIG ENTITY] (the "Developer" or "Tenant") (each individually referred to as a "Party" and collectively referred to as the "Parties").

RECITALS

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. These Recitals refer to and use certain capitalized terms that are defined in Section 39 of this Lease.

B. The City is the owner of that certain real property located in a portion of the former Oakland Army Base, comprised of approximately _____ acres of land [either 34.1 acres, if for use as break bulk marine terminal, or 11 acres if used for other purposes pursuant to Scope of Development], improvements, and appurtenances, and commonly referred to by the Parties as the West Gateway. Pursuant to the June 30, 2006 [confirm date] Oakland Army Base Title Settlement and Exchange Agreement, all of the [the West Gateway, Central Gateway or East Gateway] was freed from the public trust for commerce, navigation and fisheries ("public trust"), the terms and conditions of Chapter 657 of the Statutes of 1911, as amended ("1911 Grant"), and other statutory restrictions, with the exception of one approximately 16.7 acre parcel ("Parcel E"), which was impressed with the public trust and the terms and conditions of the 1911 Grant by patent from the State of California.

C. The City and an affiliate of Developer have executed that certain Lease Disposition and Development for the Army Base Gateway Redevelopment Project, dated _____, 2012 (the "LDDA"), which provides, among other things, for the execution and delivery by the Parties, upon satisfaction of conditions precedent set forth therein, of a lease by City to Developer of the West Gateway (the "Phase"), and the development thereon of certain Private Improvements, as defined and described therein (and defined and described herein as the "Initial Improvements"), including but not limited to [brief description of end use facilities in West Gateway; e.g., bulk and manifest intermodal or break bulk marine terminal, etc.] (the "Project").

D. All conditions precedent to the execution and delivery of this Lease, as set forth in the LDDA, have been satisfied or waived by the Parties in accordance with the LDDA.

E. This Lease is being made in conformance with and pursuant to the authority given to the City in the City Charter. The conveyance by ground lease of the West Gateway to the Developer was authorized by Council Ordinance No.___ C.M.S. This Lease, as it pertains to Parcel E, is also consistent with the public trust and the terms and conditions of the 1911 Grant. In addition, the rents due to the City under Article 2 of this Lease are allocable between Parcel E and the remainder of the Premises for purposes of the City's compliance with its obligations under Section 6306 of the Public Resources Code.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and mutual obligations contained in this Lease, and in reliance on the Developer's representations and warranties set forth herein, the City and Developer agree as follows:

ARTICLE 1. PREMISES; TERM

1.1 Premises.

(a) Lease of Premises; Description. For the Rent and subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the real property in the City of Oakland, California, located (i) in the West Gateway, as more particularly described on Exhibit___ attached hereto (the "West Gateway Property"), and (ii) in the North Gateway and adjacent real property, as more particularly described on Exhibit____ attached hereto (the "Railroad R/O/W Property," and, together with the "West Gateway Property, the "Property"). The Property includes the land, and all Improvements thereto existing as of the Commencement Date, together with all rights, privileges and licenses appurtenant to the Property and owned by Landlord. The Property is depicted on the Site Plan attached hereto as Exhibit____. The Property and all other Improvements now and hereafter located on the Property, including the Initial Improvements and any Additional Improvements hereafter constructed on the Property (subject to Article 6), are referred to in this Lease as the "Premises." Notwithstanding any provision herein to the contrary, the Property and the Premises do not include any dedicated public rights of way within any Phase.

(b) Permitted Title Exceptions. The leasehold interest granted by Landlord to Tenant pursuant to Subsection 1.1(a) is subject to (i) the matters reflected in Exhibit___ (the "Permitted Title Exceptions"); (ii) all deed restrictions in the EDC Deed and the CRUP, as those terms are used in the LDDA; (iii) any Regulatory Approvals required by law to be recorded against the Property as a result of the development and activities permitted by the LDDA and this Lease; and (iv) other matters as Tenant shall cause or suffer to arise subject to the terms and conditions of this Lease.

(c) "AS IS WITH ALL FAULTS". TENANT AGREES THAT THE PREMISES ARE BEING LEASED BY LANDLORD, AND ARE HEREBY ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, "AS IS, WITH ALL FAULTS." TENANT ACKNOWLEDGES AND AGREES THAT NEITHER LANDLORD, CITY, NOR ANY OF THE OTHER INDEMNIFIED PARTIES, NOR ANY AGENT OF ANY OF THEM, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE

CONDITION OF THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE OR OPERATION OF THE PROJECT, THE COMPLIANCE OF THE PREMISES OR THE PROJECT WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR, EXCEPT AS MAY BE SPECIFICALLY PROVIDED IN THIS LEASE OR THE LDDA, WITH RESPECT TO ANY OTHER MATTER PERTAINING TO THE PREMISES OR THE PROJECT.

As part of its agreement to accept the Premises in its "As Is With All Faults" condition, effective upon Close of Escrow (as defined in the LDDA) of the Property, the Tenant, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge, the Landlord, the City, and their Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Tenant may now have or that may arise an account of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Premises, including, without limitation, any Hazardous Materials in, on, under, or above, or about the Premises (including, but not limited to, soils and groundwater conditions)(other than Landlord's obhgation to pay [or reimburse Tenant] for certain environmental remediation costs as expressly set forth in the LDDA, and (ii) any Laws applicable to such conditions, including without limitation, Hazardous Material Laws.

In connection with the foregoing release, the Tenant acknowledges that it is familiar with Section 1542 of the Califomia Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Tenant agrees that the release contemplated by this Section includes imknown claims. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

DEVELOPER:	CITY:
[CCIG ENTITY]	CITY OF OAKLAND, a municipal corporation
By: _____ [NAME] [TITLE]	By _____ City Administrator

(d) No Subdivision of Property. Notwithstanding any provision herein to the contrary, Developer shall have no right to subdivide the Property or the Premises without Landlord's prior written consent in its sole and absolute discretion.

1.2 Term of Lease.

Subject to the Parties' execution of this Lease, the effectiveness of this Lease shall commence on the date written on the cover page of this Lease (the "Commencement Date") and Landlord shall deliver to Tenant possession of the Premises on the Commencement Date. The Lease shall expire on the date that is sixty-six (66) years thereafter ("Term"), unless earlier terminated by subsequent mutual written agreement of the Parties or otherwise in accordance with this Lease. The period from the Commencement Date until the final expiration, or any such earlier termination, of this Lease is referred to as the "Term." This Lease shall be terminated upon and concurrently with termination of the LDDA for any reason prior to issuance of a Certificate of Completion, other than as to any provisions herein which expressly survive termination of this Lease.

1.3 Definitions.

All initially capitalized terms used herein are defined in Section 39 or have the meanings given them when first defined. All initially capitalized terms or acronyms used, but not defined in this Lease, shall have the same meanings as in the LDDA.

1.4 Relationship of Lease to LDDA.

This Lease establishes the rights and obligations of Tenant and Landlord during the Term, but does not serve to relieve or release the Parties from any of their respective rights, obligations and liabilities arising at any time under the LDDA. In the event of any inconsistency between this Lease and the LDDA with respect to the Premises or the lease, development, use or occupancy thereof, this Lease shall.

1.5 Grant of Foundation Easement and Right to Enter.

Landlord hereby grants to Tenant an easement in Landlord's property located underneath the Premises for the purpose of installation, repair and maintenance of foundation systems, elevator pits, sump pits, utilities, sub-base materials and other materials or structures which are part of or necessary to the Improvements to be constructed by Tenant on the Premises and for the purpose of performing the environmental remediation work pursuant to the LDDA necessary to comply with the Environmental Remediation Requirements (as defined in the LDDA), including but not limited to implementation of the RAP and RMP (as those terms are defined in the LDDA). Such easement shall be appurtenant to and run with the Premises and this Lease, and shall terminate upon expiration or earlier termination of this Lease. Tenant shall ensure that any contaminated soil or groundwater that is excavated, disturbed or uncovered during the installation of any foundation pilings or other structural support elements pursuant to this easement shall be managed and disposed of off-site in accordance with the RAP, the RMP, all other Environmental Remediation Requirements, the provisions of Article ____, as well as applicable provisions of local, state and federal law, including implementing as necessary special handling procedures and disposal offsite of excavated, disturbed or uncovered soil classified as hazardous waste as applicable.

1.6 Reserved Easements.

(a) Landlord reserves to itself the following rights (which shall not be deemed obligations):

(i) The right to grant to others in the future, easements, licenses, and permits for construction, maintenance, repair, replacement, relocation, and reconstruction, and related temporary access easements, and other easements, in each case, necessary for any utility facilities over, under, through, across, or on the Premises.

(ii) The right to operate, maintain, repair, and improve [storm drain mainlines that convey storm water runoff from areas outside of the Premises, through the Premises, and out to the San Francisco Bay.]

(iii) The right, including the right to grant others, to enter upon the Premises and perform such work as may reasonably be necessary to operate, maintain, repair, improve or access any of the reserved easement areas, to exercise any of Landlord's other rights under this Lease, or in the event of an emergency or as otherwise provided in this Lease.

(b) Prior to exercising any of its rights under Section 1.6(a), Landlord shall give reasonable notice thereof to Tenant (except in the event of an emergency in the opinion of Landlord acting reasonably). Subject to Tenant's reasonable cooperation with Landlord, the easements reserved for the benefit of Landlord (or its licensees or permittees) in this Section 1.6 shall not unreasonably interfere with Tenant's operations of the Premises.

(c) In connection with exercising its reserved easements in this Section 1.6, Landlord shall repair, at no cost to Tenant or its Subtenants, any damage directly caused by work performed by Landlord in connection with the reserved easement, or its licensee's or permittee's (but excluding the repair of any damage caused or exacerbated by Tenant's or its Subtenant's acts or omissions) within thirty (30) calendar days after Landlord's receipt of notice of such damage, provided that if such repair reasonably cannot be completed within thirty(30) calendar days, such period shall be extended as reasonably necessary so long as Landlord diligently completes such repairs.

ARTICLE 2. RENT

2.1 Tenant's Covenant to Pay Rent.

During the Term of this Lease, Tenant shall pay Rent for the Premises to Landlord in the amounts, at the times and in the manner provided in this Article 2 and elsewhere in this Lease.

2.2 Base Rent.

(a) Amount and Time of Payment. Not later than thirty (30) days after the end of each quarter of each Lease Year, Tenant shall pay to Landlord the following amounts ("Base Rent"):

(i) Lease Years 1-10. For each of the first 10 Lease Years, Tenant shall pay an amount ("Initial Base Rent") equal to the sum of: (A) the product of $0.04 per square foot per month multiplied by the total square footage of that portion of the Premises

containing the West Gateway Property; plus (B) the product of $0.03 per square foot per month multiplied by the total square footage of that portion of the Premises containing the Railroad R/O/W Property] The Parties acknowledge and agree that, as of the Commencement Date: (1) the total square footage of that portion of the Premises containing the West Gateway Property is _____ square feet and the Initial Base Rent attributable to such portion of the Premises is $_____; (2) the total square footage of that portion of the Premises containing the Railroad R/O/W Property is _____ square feet and the Initial Base Rent attributable to that portion of the Premises is $_____; and (3) the total Initial Base Rent is $_____. Notwithstanding the first sentence of Section 2.2(a), Tenant shall pay the Base Rent for the first Lease Year on or before the Commencement Date.

(ii) Lease Years 11-15. For each of the eleventh (11th) through the fifteenth (15th) Lease Years, Tenant shall pay an amount (the "First Adjusted Base Rent") equal to the Initial Base Rent as increased pursuant to this paragraph. To calculate the First Adjusted Base Rent, the Initial Base Rent shall be increased by the cumulative and annually compounded percentage increase in the CPI during each of the first 10 Lease Years (disregarding any decrease in the CPI during such period), based upon an Indexed comparison of the last CPI published prior to each Anniversary Date during the first 10 Lease Years (in each such instance, a "New CPI") to the CPI published one year prior to the New CPI; provided, however, that, (A) in the event that the Commencement Date of this Lease is after the Outside Lease Date, the Initial Base Rent shall be increased by the cumulative and annually compounded percentage increase in the CPI during each Pre-Lease Year and each of the first 10 Lease Years (disregarding any decrease in the CPI during such period), based upon an Indexed comparison of the last CPI published prior to each Anniversary Date during such period (in each such instance, a "New CPI") to the CPI published one year prior to the New CPI; and (B) subject to such cumulative and annually compounded increase, the calculated annual percentage increase in the Base Rent for any such Lease Year or Pre-Lease Year, as applicable, shall be not less than two percent (2%) greater nor more than three percent (3%) greater than the calculated Base Rent for the immediately preceding Lease Year or Pre-Lease Year, as applicable. By way of example, but not in modification or limitation, of the foregoing, an example calculafion of First Adjusted Base Rent is set forth on Schedule ___.

(iii) Remaining Term. During each Lease Year following the First Adjustment Period (the "Remaining Term"), Tenant shall pay an amount (the "Remaining Term Base Rent") equal to the First Adjusted Base Rent, subject to increase every five (5) Lease Years during the Remaining Term (each a "5-Year Period") pursuant to this paragraph. Effective upon the start of each successive 5-Year Period, the Remaining Term Base Rent shall be increased by the cumulative and annually compounded percentage increase in the CPI during each of the immediately preceding five (5) Lease Years (disregarding any decrease in the CPI during such period), based upon an Indexed comparison of the last CPI published prior to each Anniversary Date during the preceding 5-Year Period (in each such instance, a "New CPI") to the CPI published one (1) year prior to the New CPI; provided, however, that, subject to such cumulative and annually compounded, increase, the calculated annual percentage increase in the Remaining Term Base Rent for any such Lease Year shall be not less than two percent (2%) greater nor more than three percent (3%) greater than the calculated Remaining Term Base Rent for the immediately preceding Lease Year. By way of example, but not in modification or limitation, of

the foregoing, an example calculation of adjusted Remaining Term Base Rent is set forth on Schedule ___.

(b) Fair Market Rent Adjustment

(i) Timing and Amount. In the event that the Premises are not used as a break bulk marine terminal, then, in addition to the adjustments to Base Rent set forth in Section 2.2(a), the Base Rent shall be adjusted as set forth in this Section 2.2(b). Effective as of the first day of the twentieth (20th) Lease Year and as of the first day of the fortieth (40th) Lease Year (each, the "FMR Adjustment Date"), the Base Rent then in effect (each, the "Pre-FMR Adjustment Base Rent") shall be adjusted to an amount (the "FMR Adjusted Base Rent") equal to ninety-five percent (95%) of the Fair Market Rent (as defined in and determined in accordance with Section 2.2(h)(ii)) of the Property as of the applicable FMR Adjustment Date. Notwithstanding the preceding provisions of this Section 2.2(b)(i) or any other provision of this Lease to the contrary,

(A) in no event shall the FMR Adjusted Base Rent under this Section 2.2(h) be less than the Pre-FMR Adjustment Base Rent in effect as of the applicable FMR Adjustment Date;

(B) in no event shall the FMR Adjusted Base Rent under this Section 2.2(b) be greater than the sum of (A) an amount equal to the Initial Base Rent for that portion of the Premises containing the West Gateway as increased each Lease Year, on a cumulative and annually compounded basis, at the rate of five percent (5%) for each Lease Year prior to the FMR Adjustment Date; plus (B) an amount equal to the Initial Base Rent for that portion of the Premises containing the Railroad R/O/W Property as increased each Lease Year, on a cumulative and annually compounded basis, at the rate of five percent (5%) for each Lease Year prior to the FMR Adjustment Date.

(C) in the event that the FMR Adjusted Base Rent as of the applicable FMR Adjustment Date, determined in accordance with this Section 2.2(b), is less than the Pre-FMR Adjustment Base Rent in effect as of the applicable FMR Adjustment Date, then the Base Rent for the 5-Year Period commencing on the applicable FMR Adjustment Date shall remain equal to the Pre-FMR Adjustment Base Rent in effect as of the applicable FMR Adjustment Date, without giving effect to any CPI adjustment under Section 2.2(a)(iii) during such 5-Year Period.

The Parties agree that the Base Rent adjustment set forth in Section 2.2(a)(iii) will continue to apply to the start of each 5-Year Period during the Remaining Term, subject to the terms of this Section 2.2(b).

(ii) Agreement on Fair Market Rent. The Fair Market Rent shall be determined in the manner specified in this Section 2.2(h)(ii) and, as and to the extent applicable, Section 2.2(b)(iii). The process for determining the Fair Market Rent shall begin one (1) year prior to the applicable FMR Adjustment Date (each, the "FMR Determination Initiation Date"). Upon the applicable FMR Determination Initiation Date, Landlord and Tenant shall attempt in good faith to agree upon Fair Market Rent for the Property. Landlord and Tenant shall have

ninety (90) days from the applicable FMR Determination Initiation Date to agree on the Fair Market Rent ("Negotiation Period") as of the applicable FMR Adjustment Date. As used herein, "Fair Market Rent" means the annual fair market rental value of the Property, which shall be calculated by (i) determining the value of the fee interest in the Property in accordance with the provisions of this Section as of the applicable FMR Adjustment Date, taking into account the permitted uses of the Property as specitied in Article 3 of this Lease (the "Fair Market Value"), and (ii) applying an appropriate rate of return to the Fair Market Value, taking into account in determining such rate of return the effect, if any, of the remaining Term of this Lease. If the Parties reach an agreement as to the Fair Market Rent, they shall promptly execute a written instmment to evidence such agreement, and such written instmment shall constitute a conclusive determination of Fair Market Rent for the applicable FMR Adjustment Date.

(iii) Appraisal: Arbitration. If the Parties have not agreed on the Fair Market Rent during the Negotiation Period, the Fair Market Rent shall be determined by the appraisal and arbitration procedure set forth below.

(A) Appointment of Appraisers: Appraisal Instmctions. Each Party shall appoint one (1) appraiser within thirty (30) days after the end of the Negotiation Period. Upon selecting its appraiser, each Party shall promptly notify the other Party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualitied by training and experience in Alameda County, disinterested and independent, and shall be a member in good standing of the Appraisal Institute (MAI), or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding professional designations. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing commercial real estate development sites in Alameda County. If either Party fails to appoint its appraiser within such 30 day period, the appraiser appointed by the other Party shall individually determine the Fair Market Rent in accordance with the provisions hereof Each appraiser shall make an independent determination of the Fair Market Rent. The Tenant shall provide to each appraiser a current inventory of buildings and vacant space in the Project, lease abstracts for each Sub-Tenant, a current income statement detailing all income and expense data for the Project, and other Project information as may be necessary to make a determination of Fair Market Rent., Each appraiser shall share with the other the indicators of value that will be used to determine Fair Market Rent including but not necessarily limited to land value data, rental rates, capitalization rates, and rates of return on ground leases, but each appraiser shall independentiy determine the appropriate assumptions to make based on the provisions of this Section of this Ground Lease and each appraiser's own assessment of the market. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither Party shall communicate with the appraiser appointed by the other Party regarding the instmctions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instmctions in this Section or the interpretation of this Lease, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instmctions or interpretative guidance received from the Party appointing such appraiser. There shall not be any arbitration or adjudication of the instmctions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its

written appraisal setting forth the Fair Market Rent to the Parties within sixty (60) days after the appointment of the last of such appraisers. If the higher appraised Fair Market Rent is not more than one hundred ten percent (110%) of the lower appraised Fair Market Rent, then the Fair Market Rent shall be the average of such two (2) Fair Market Rent figures.

(B) Arbitration. If the higher appraised Fair Market Rent is more than one hundred ten percent (110%) of the lower appraised Fair Market Rent, then the Parties shall agree upon and appoint an independent arbitrator within thirty (30) days after both of the first two (2) appraisals have been submitted to the Parties. The arbitrator shall have the minimum qualifications as required of an appraiser pursuant to paragraph (i) above, and shall also have experience acting as an arbitrator of disputes involving commercial real estate, including ground leases and rental valuation. If the Parties do not appoint such arbitrator within such 30-day period, then either Party may apply to the Superior Court of the State of California in and for the County of Alameda for appointment of an arbitrator meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent arbitrator meeting the foregoing qualifications. Such arbitrator shall consider the appraisals submitted by the Parties as well as any other relevant written evidence which the Parties may choose to submit. If a Party chooses to submit any such evidence, it shall deliver a complete and accurate copy to the other Party at the same time it submits the same to the arbitrator. Neither Party shall conduct ex parte communications with the arbitrator regarding the subject matter of the arbitration. Within thirty (30) days after his or her appointment, the arbitrator shall conduct a hearing, at which Landlord and Tenant may each make supplemental oral and/or written presentations, with an opportunity for testimony by the appraisers and questioning by the Parties and the arbitrator. Within thirty (30) days following the hearing, the arbitrator shall select the appraised Fair Market Rent determined by one or the other of the first two (2) appraisers that is closer to the rent that, in the opinion of the arbitrator, is the Fair Market Rent, and such Fair Market Rent amount selected by the arbitrator shall be the Fair Market Rent for the applicable Lease Year under this Section. The determination of the arbitrator shall be limited solely to the issue of deciding which of the appraisals of the two appraisers is closer to the actual Fair Market Rent. The arbitrator shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Lease.

(C) Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Fair Market Rent by appraisal or arbitration shall be conclusive, final and binding on the Parties. Neither the appraisers nor the arbitrator shall have any power to modify any of the provisions of this Lease and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Lease. Subject to the provisions of this Section, the Parties shall cooperate to provide all appropriate information to the appraisers and the arbitrator. The appraisers (but not the arbitrator) can utilize the services of special experts, including experts to determine property condition, market rates, leasing commissions, renovation costs and similar matters. The appraisers and the arbitrator shall each produce their determination in writing, supported by the reasons for the determination.

(D) Conduct of Arbitration Proceeding. Any arbitration proceeding in connection with the determination of such Fair Market Rent shall be subject to California Code of Civil Procedures Sections 1280 to 1294.2 (but excluding Section 1283.05) with respect to discovery) or successor California laws then in effect relating to arbitration generally. Any such proceeding shall be conducted in the City of Oakland. Any judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction of such arbitration in accordance with the terms of this Lease. This arbitration provision does not affect the rights of either Party to seek confirmation, correction or vacation of the arbitration award pursuant to California Code of Civil Procedure Section 1285 et. seq.

(E) Fees and Coast: Waiver. Each Party shall bear the fees, costs and expenses of the appraiser it selects under Subsection (h)(i) and of any experts and consultants used by the appraiser. The fees, costs and expenses of the arbitrator and the costs and expenses of the arbitration proceeding, if any, under Subsection (h)(ii) shall be shared equally by Landlord and Tenant. Each Party waives any claims against the appraiser appointed by the other Party, and against the arbitrator, for negligence, malpractice or similar claims in the performance of the appraisals or arbitration contemplated by this Section.

(F) ARBITRATION OF DISPUTES. With respect to the arbitration provided for in this Section 2.2(b)(iii), the Parties agree as follows:

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS IN THIS LEASE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OF JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

_____ _____

Landlord's Initials Tenant's Initials

2.3 Participation Rent.

(a) Payment Obligation. In the event that the Premises are used as a break bulk marine terminal, then, in addition to Base Rent payable under Section 2.2, Tenant shall pay to Landlord, in accordance with this Section 2.3, an annual sum equal to ten percent (10%) of the Annual Gross Tariff Revenues ("Participation Rent").

(b) Participation Rent Payment and Statement. Participation Rent shall be paid at the same time as, and together with, payment of Base Rent, subject to Annual Reconciliation as provided in Section 2.3(c). Concurrentiy with each payment of Participation Rent, Tenant shall deliver to Landlord a statement ("Participation Rent Statement"). The Participation Rent Statement shall be prepared in accordance with GAAP, certified by Tenant as complete and correct in all material respects (subject only to changes resulting from the Annual Reconciliation described in Section 2.3(c), in a level of detail and format reasonably acceptable to Landlord, and itemizing the following, on a monthly basis, for the preceding quarterly period and for the Lease Year to date:

(i) Annual Gross Tariff Revenues;

(ii) A calculation and reporting of Participation Rent payable to City; and

(iii) Disclosure of the nature and amount of all dealings with Affiliates with respect to Annual Gross Tariff Revenues.

Acceptance of any Participation Rent or Participation Rent Statement by Landlord shall not constitute a waiver of Landlord's right to additional Participation Rent justified by the Annual Reconciliation or any other inspection, review or audit undertaken by Landlord. Upon the expiration or any earlier termination of the Term, any unpaid Participation Rent owed by Tenant hereunder shall become immediately due and payable.

(c) Annual Reconciliation. Participation Rent shall be adjusted through an annual reconciliation at the end of each Lease Year and following the expiration or earlier termination of the Term. Within ninety (90) days after the expiration or earlier termination of each Lease Year and the expiration or earlier termination of the Term, Tenant shall deliver to Landlord audited supplementary schedules for such Lease Year, which shall be prepared at Tenant's sole cost and expense by a certified public accounting firm reasonably approved by Landlord, prepared in accordance with GAAP and showing all of the matters required in each Participation Rent Statement ("Annual Reconciliation Statement"), except that each Annual Reconciliation Statement shall be based on the entire Lease Year, broken down on a monthly basis, instead of a quarterly basis. Each Annual Reconciliation Statement also shall indicate the amount of any overpayment or underpayment of Participation Rent for such Lease Year resulting from the accounting firm audit. Each Annual Reconciliation Statement shall be in reasonable detail sufficient for such accounting firm to issue an auditor's statement that such Annual Reconciliation Statement and supplementary schedules fairly and accurately reflect the terms and provisions of this Lease, which auditor's statement shall be provided to Landlord in writing with the Annual Reconciliation Statement. Tenant shall accompany the Annual Reconciliation

Statement with the full amount of any underpayment of Participation Rent, together with interest thereon at the Default Rate from the date such underpaid Participation Rent was due and payable hereunder. At Landlord's option, any overpayments of Participation Rent may be either refunded to Tenant, applied to any other amounts then due and unpaid, or applied to Base Rent due at the first opportunity during the new Lease Year after Landlord's receipt and review of the Annual Reconciliation Statement. An Annual Reconciliation Statement shall be deemed accurate and complete if not challenged within seven (7) years [NOTE: Discuss this time period and compare to Uptown Lease 3 year period under "Audit" below] following the date of its delivery to Landlord. Tenant's obligations under this Section____ are in addition to Landlord's audit rights under Section_____.

2.4 Manner of Payment.

Tenant shall pay all Rent to Landlord, in lawful money of the United States of America, to the Treasurer of the City or his or her designee as provided herein at the address for notices to Landlord specified in this Lease, or to such other person or at such other place as Landlord may from time to time designate by notice to Tenant. Rent shall be payable at the times specified in this Lease without prior notice or demand; provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Rent shall be due thirty (30) business days following the giving by Landlord of such demand, notice, invoice or the like to Tenant specifying that such sum is presentiy due and payable. If this Lease terminates as a result of Tenant's default, including Tenants' insolvency, any Rent or other amounts due hereunder shall be immediately due and payable upon termination.

2.5 No Abatement or Setoff

Tenant shall pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, deduction, or counterclaim, except as provided in Sections 10, 11, 24.1, 34 (as to a Mortgagee), and any other provision of this Lease which expressly provides for such abatement, setoff, deduction, offset, or counterclaim. Notwithstanding the provisions of Section 4.L in the event that Tenant has submitted to City an application for a building permit for the Initial Improvements and such application has been deemed complete by City, and if City thereafter takes longer than sixty (60) days to complete its plan check and processing and to issue such building permit based upon such complete application, Base Rent hereunder with respect to such portion of the Premises containing such Initial Improvements shall be abated for the period between the expiration of such sixty (60)-day period and the date upon which such building pennit is issued by City. [NOTE: Provision to be added regarding Rent Abatement for CCIG early termination, at its own expense, of CalTrans construction easement during the term thereof for which City has received prepaid rent.]

2.6 Interest on Delinquent Rent.

If any Base Rent or Participation Rent is not paid within ten (10) days following the date it is due, or if any Additional Rent is not paid within thirty (30) days following written demand for payment of such Additional Rent, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the "Default Rate") equal to the greater of (i) ten percent

(10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar law. Payment of interest shall not excuse or cure any default by Tenant.

2.7 Late Charges.

Tenant acknowledges and agrees that late payment by Tenant to Landlord of Rent will cause Landlord increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of Landlord's rights or remedies hereunder and regardless of whether such late payment results in an Event of Default, Tenant shall pay a late charge (the "Late Charge") equal to one and one-half percent (1-1/2%) of all Rent or any portion thereof which remains unpaid more than ten (10) days after Landlord's notice to Tenant of such failure to pay Rent when due, provided, however, that if Tenant fails to pay Rent when due on more than two (2) occurrences in any Lease Year, the Late Charge will be assessed as to any subsequent payments in such Lease Year remaining unpaid more than ten (10) days after they are due, without the requirement that Landlord give any notice of such payment failure. Tenant shall also pay reasonable Attorneys' Fees and Costs incurred by Landlord by reason of Tenant's failure to pay any Rent within the time periods described above. The Parties agree that such Late Charge represents a fair and reasonable estimate of the cost which Landlord will incur by reason of a late payment by Tenant.

2.8 Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and Tenant's obligations of every kind and nature relating to the Premises that may arise or become due under this Lease, whether foreseen or unforeseen, which are payable by Tenant to Landlord pursuant to this Lease, shall be deemed Additional Rent. Landlord shall have the same rights, powers and remedies, whether provided by law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Rent.

2.9 Net Lease.

It is the purpose of this Lease and intent of Landlord and Tenant that, except as specifically stated to the contrary in Section 2.5, all Rent shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, except as may be provided in this Lease or the LDDA, Landlord shall not be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, except as otherwise expressly provided in Sections 4.1(b) and 4.1(c). Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Landlord would otherwise be or become liable by reason of Landlord's estate or interests in the Premises and any Improvements, any rights or interests of Landlord in or under this Lease,

or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof Except as may be specifically and expressly stated to the contrary in Section 2.5, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

2.10 Security Deposit.

(a) Cash Deposit or Letter of Credit. On or before the Master Lessee shall cause to be deposited with Landlord, in cash, or, at the election of Tenant, a Letter of Credit from a Bona Fide Institutional Lender with such term and in form and substance reasonably satisfactory to Landlord, and in any case for the sole benefit of Landlord, in the amount of $_____, which the Parties agree is in an amount equal to three (3) months Initial Base Rent (the "Security Deposit"), which shall secure and guaranty the full and faithful performance and observance by Tenant at all times during the Term of all the covenants, terms and conditions herein contained to be performed, suffered or observed by Tenant under this Lease, including, without limitation, the payment of Rent and any other amounts due to Landlord hereunder, reasonable amounts necessary to remedy any default by Tenant hereunder, to repair and clean the Premises at the end of the Term, or to reimburse Landlord for the actual costs incurred by Landlord in connection with exercising its rights hereunder (collectively, for purposes of this Section 2.9, "Tenant's Lease Obligations"). Landlord shall not be required to keep the Security Deposit separate or segregated form its general funds or in any interest bearing account or investment, and Tenant shall not be entitled to any interest on the Security Deposit.

(c) Renewal of Letter of Credit. Subject to the provisions of Section 2.10(a), if the Security Deposit is in the form of a Letter of Credit and such Letter of Credit is for a term less than the entire Term of this Lease, Tenant shall cause such Letter of Credit to be renewed, re-issued, amended or replaced at least ninety (90) days prior to its expiration in order to assure that there is no lapse in the effectiveness of the Letter of Credit or the Security Deposit. If Tenant shall fail to comply with its obligations under the preceding sentence, then Landlord may draw upon the whole of the then-posted Letter of Credit and hold the proceeds of the Letter of Credit as and for the Security Deposit

(e) Application and Replenishment. If Tenant is in default in respect to any of Tenant's Lease Obligations, Landlord may (but shall not be required to) use, apply, draw upon, or retain the whole or any part of the Security Deposit to the extent required for the payment of any Rent or other amounts owed Landlord under this Lease, or the reimbursement of the actual costs reasonably incurred by the Landlord in connection with exercising its rights under this Lease. It is agreed that the sums represented by the Security Deposit shall be deposited or posted for the sale benefit of Landlord as an advance guaranty payment of the Rent and other sums and Tenant's Lease Obligations due by Tenant hereunder, but does not in any way represent a

measure of Landlord's damages and in no event shall Tenant be entitled to a refund or particular application of the Security Deposit or to cancel or terminate a Letter of Credit posted as the Security Deposit. Neither the application by Landlord of all or any portion of the Security Deposit, nor Landlord's demand for or acceptance of money to restore the Security Deposit, shall result in any waiver of Landlord's right under this Lease and applicable Law to declare Tenant in default of this Lease or to terminate or declare a forfeiture of this Lease. Tenant's payment of the Security Deposit shall not limit Tenant's liability to Landlord for the payment of amounts due to Landlord by Tenant in excess of the amount of the Security Deposit. Whenever and as often as Landlord draws upon the Security Deposit, Tenant shall, within ten (10) Business Days after Landlord's request therefor, restore the Security Deposit to its original amount.

(g) Refund of Balance. Subject to any deductions made by Landlord in accordance with this Lease (or a good faith estimate of such amounts), Landlord shall refund the balance of the Security Deposit, if any, to Tenant at its last address known to Landlord within sixty (60) calendar days of the later of the expiration or earher termination of the Term.

(i) Waiver. The Parties agree that the Security Deposit can be held and applied against future damages, including, without limitation, future Rent damages, and Tenant waives application of the provisions of Califomia Civil Code §1950.7, or any similar, related, or successor provision of law, for all purposes with respect to this Lease, including, without limitation, with respect to the time periods by which the Security Deposit must be retumed to Tenant.

2.11 Books and Records and Audit.

(a) Books and Records. Tenant shall keep all Tenant's Books and Records according to GAAP. Tenant shall maintain a separate set of accounts, including bank accounts limited to the Premises, to allow a determination of expenses incurred and revenues generated directiy from the Premises. If Tenant operates all or any portion of the Premises through a Subtenant or Agent, Tenant shall cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

(b) Audit. Tenant agrees to make all of Tenant's Books and Records available to Landlord, or to any Landlord or City auditor, or to any auditor or representative designated by Landlord (hereinafter collectively referred to as "Landlord Representative"), for the purpose of examining Tenant's Books and Records, to determine the accuracy of Tenant's Parricipation Rent Statements and other required reports, statements and accounting under this Lease (collectively, "Tenant Accounting"), for a period of three (3) years after such Tenant Accounting was delivered to the Landlord. If Landlord wishes to audit Tenant's Books and Records, Landlord shall give Tenant thirty (30) days' written notice of its intention to audit. Landlord shall complete its audit as soon as reasonably possible. Tenant shall cooperate with the Landlord representative during the course of any audit. Any audit by Landlord shall be at Landlord's own expense, except as hereinafter provided. Tenant shall keep such Books and Records for seven (7) years and maintain them and/or make them available in Oakland to Landlord's representative. All Tenant's financial reports, statements and accounting provided by Tenant to Landlord hereunder shall be deemed conclusively approved by Landlord after the expiration of the three (3) year period following delivery of Tenant's accounting, unless an audit

is made within said three (3)-year period and Landlord claims that errors or omissions have occurred. In such event, Tenant shall retain the Books and Records and make them available until those matters are resolved. If Tenant operates the Premises through a Subtenant or Agent, Tenant shall require such Subtenant or Agent to provide the Landlord with the foregoing audit right with respect to the books and records of such Subtenant or Agent. If any such audit reveals that Tenant has misstated any amount shown in any Tenant accounting, and such misstatement has resulted in any underpayment of Rent by Tenant, Tenant shall pay Landlord, promptiy upon demand, the difference between the amount Tenant has paid and the amount it should have paid to Landlord and as further subject to interest as set forth in Section 2.5. In addition, if such misstatement results in an underpayment of Rent in any audit period of three percent (3%) or more, Tenant shall pay the cost of the audit. At Landlord's option, any overpayments revealed by an audit may be either refunded to Tenant, applied to any other amounts then due and unpaid, or applied to Base Rent due subsequent to the audit.

2.12 Public Disclosure.

Tenant acknowledges that under the Califomia Public Records Act and the City's Sunshine Ordinance both as they may be amended or modified, or any similar public records disclosure law hereinafter enacted that by its terms applies to this Agreement (collectively, the "Disclosure Laws"), all Tenant's Books and Records and documents maintained by Tenant (or maintained for Tenant by Tenant's Agents) relating to the operation of the Premises and delivered or required to be delivered by Tenant to Landlord may be considered public records and, to the extent required by the Disclosure Laws, will be made available to the public upon request. Landlord shall not in any way be liable or responsible for the disclosure of any such information, books or records or portions thereof if the disclosure is made pursuant to a request under the Disclosure Laws.

ARTICLE 3. USES

3.1 Uses within Premises.

Tenant shall use and operate the Premises in accordance with the Project parameters set forth in the Scope of Development attached hereto as Exhibit ___ and otherwise in accordance with the LDDA and the Community Benefits Program and as further required or permitted in this Article 3. Subject to the preceding sentence, Tenant shall use the Premises solely for the following uses (collectively, the "Permitted Uses"), and Tenant shall not allow any changes or additions to the Pennitted Uses without the prior written consent of the Landlord in its sole and absolute discretion, or changes in its use or operation of the Premises that would be inconsistent with the Scope of Development without the prior written consent of Landlord in its sole and absolute discretion:

[**NOTE:** Use descriptions below may need to be modified or may not be necessary in light of use descriptions to be contained in final version of Scope of Development.]

(a) Warehouse and Logistics Facilities. [**NOTE: Further detail needed**] High through-put warehouse and logistics facilities, with _____± total Leasable Square Feet,

for the processing of import/export containers and commodities and including major retailer distribution centers.

(b) R&D and Office. [**NOTE: Further detail needed**] Not less than ____± total Leasable Square Feet of research and development facilities. Administrative office use for management of the Premises, the size of which shall be as reasonably determined by Tenant in light of the intended use and size of the Project.

(c) Bulk and Manifest Intermodal. [**NOTE: Further detail needed**]

(d) Private Rail. [**NOTE: Further detail needed**]

(e) Truck Parking and Services. [**NOTE: Further detail needed**] _____± acres for truck parking and services.

(f) Waterfront Open Space. [**NOTE: Further detail needed**] _____± acres of open space along the waterfront frontage of the Premises, including _____ [describe any facilities or other improvements].

(g) Recycling Facilities. [**NOTE: Further detail needed**] Recycling facilities comprised of _____.

(h) Break Bulk Marine Terminal. [**NOTE: Further detail needed**]Break bulk marine terminal facilities comprised of _____.

(i) Other Permitted Uses. [**NOTE: REVIEW AND DISCUSS**] Any other uses permitted by Landlord in its sole and absolute discretion, which may include, without limitation, storage of maintenance equipment and supplies used in connection with the operation or maintenance of the Premises for all Permitted Uses; public access, circulation and open space; within public access and open space areas, without limiting anything else in this Lease, and to the extent permitted by, and in accordance with, all Laws and Regulatory Approvals, programming of exhibitions and tournaments, live concerts and musical perfonnances, theater performances and other forms of live entertainment, public ceremonies, fairs, markets, shows, sporting events or other public or private exhibitions and activities related thereto; children's play area; and other uses reasonably related or incidental to any of the Permitted Uses hereunder.

3.2 Advertising and Signs.

Tenant shall have the right to install signs and advertising within the interior of any retail, restaurant, office, entertainment or _____buildings located on the Premises; provided, however, that no advertising promoting the sale or use of alcohol, guns/firearms or tobacco shall be allowed. Any proposed signs or advertisements on the exterior of the Premises, including without limitation, on any awnings, canopies, flags, banners, LED or other electronic display devices, sails or vessels shall be subject to Landlord's approval, not to be unreasonably withheld, conditioned or delayed. It shall be reasonable for the Landlord to prohibit general advertising (i.e. signs not directly advertising the person or business located at or on the Premises), or any signs that would violate Tenant's limitations on use as set forth in Section 3.3 hereof All signs

shall comply with applicable Laws regulating signs and advertising. Tenant shall have no right to install or use any billboard advertising except as may be provided in the Billboard Agreement.

3.3 Limitations on Uses by Tenant.

(a) Prohibited Activities. Tenant shall not conduct or permit on the Premises any of the following activities:

(i) any activity that creates waste or a public or private nuisance, but without limitation on any right given to Tenant to alter, modify, repair, restore or construct the Improvements in accordance with all Laws and Regulatory Approvals;

(ii) any activity that is not within the Pennitted Use or previously approved by the Landlord in writing;

(iii) any activity that will cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

(iv) any activity or object that will materially overload or cause damage to the Premises;

(v) any activity that constitutes waste or nuisance to owners or occupants of adjacent properties. Such prohibited activities do not include activities that are necessary and integral to the operation the Project, but otherwise include, without limitation, adult entertainment on a commercial basis, medical cannabis, illegal drug distribution, the preparation, manufacture or mixing of anything that might emit any objectionable odors other than ordinary cooking odors, noises or lights onto adjacent properties with such intensity as to constitute a nuisance, or the use of amplified music, sound or light apparatus (other than customary indoor lighting) with such intensity as to constitute a nuisance. This Section shall not be construed to limit any right given Tenant to alter, modify, repair, Restore, or construct Improvements in accordance with all Laws and Regulatory Approvals;

(vi) any activity that will in any way unlawfully injure, obstruct or interfere with the rights of other tenants, owners or occupants of adjacent properties, including rights of ingress and egress;

(vii) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Landlord; and

(viii) any private membership clubs or private membership eating or drinking establishments without the prior written consent of Landlord which may be given or withheld by Landlord in its sole and absolute discretion.

(b) Land Use Restrictions. Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Landlord's reversionary interest in the Premises, or obtain changes in applicable land use laws or conditional use authorizations or other permits for any uses not provided for hereunder, in each instance without Landlord's prior written consent, which consent may be withheld in Landlord's

sole and absolute discretion, and subject to the provisions of Article 6. Notwithstanding the foregoing, nothing in this Lease shall prohibit Tenant from obtaining final condominium map approval and a final Subdivision Public Report from the Califomia Department of Real Estate or filing a condominium plan with the City of Oakland; provided, however, that Developer acknowledges it may not actually convert the Premises to condominiums without first obtaining all necessary governmental approvals and the consent, in their sole and absolute discretion, of the City under this Agreement.

3.4 Premises Must Be Used.

Tenant shall use the Premises continuously during the Term in accordance with the Scope of Development, the Regulatory Approvals, and the Pertnitted Uses and shall not allow the Premises or any portion thereof to remain unoccupied or unused (subject to customary vacancies, re-tenanting, and periodic repairs and maintenance, casualty damage or condemnation) without the prior written consent of Landlord, which consent may be withheld in Landlord's discretion. Notwithstanding the foregoing, Tenant will not be in violation of this Section 3.4 so long as Tenant is using commercially reasonable efforts to lease vacant space in the Premises or, if a subtenant has vacated a portion of the Premises but the sublease remains in effect, if Tenant is diligentiy pursuing legal remedies Tenant has under such sublease, or, if a retail subtenant that is continuing to pay rent ceases operations in the Premises with the right to do so under its sublease. Except as expressly set forth in this Lease, or as otherwise permitted in advance in writing by Landlord in its sole and absolute discretion, all Permitted Uses of the Premises shall be income-generating uses.

ARTICLE 4. TAXES AND OTHER IMPOSITIONS

4.1 Payment of Possessory Interest, Taxes and Other Impositions.

(a) Possessory Interest Taxes. Tenant shall pay or cause to be paid, prior to delinquency, all Impositions comprised of possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or Tenant's leasehold estate (but excluding any such taxes separately assessed, levied or imposed on any Subtenant), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)). Subject to the provisions of Section 4.3, all such taxes shall be paid directly to the City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 4.3.

Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the applicable governmental Assessor. Tenant further acknowledges that any Sublease or Transfer permitted under this Lease may constitute a change in ownership, within the meaning of

the Califomia Revenue and Taxation Code, and therefore may result in a transfer tax and reassessment of any possessory interest created hereunder in accordance with applicable Law.

Notwithstanding the preceding provisions of this Section 4.1(a) or any other provision in this Lease to the contrary, City shall pay or waive any City transfer tax payable with respect to the Parties' initial entry into this Lease.

(b) Other Impositions. Without limiting the provisions of Section 4.1(a), Tenant shall pay or cause to be paid all other Impositions, to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)), which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any Subtenant). Subject to the provisions of Article 5, Tenant shall pay all Impositions directiy to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. The foregoing or any other provision in this Lease notwithstanding, Tenant shall not be responsible for any Impositions arising from or related to, Landlord's fee ownership interest in the Property or premises (including, without limitation, any real property taxes or assessments), the Landlord's interest as landlord under this Lease or any transfer thereof, including but not limited to, Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Landlord's fee interest or a transfer thereof

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which the Termination Date occurs shall be apportioned and prorated between Tenant and Landlord on a daily basis.

(d) Proof of Compliance. Within a reasonable time following Landlord's written request which Landlord may give at any time and give from time to time, Tenant shall deliver to Landlord copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Landlord, evidencing the timely payment of such Impositions.

4.2 Landlord's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 5.1, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency, Landlord, at its sole and absolute option, may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, Landlord shall give Tenant written notice specifying a date at least ten (10) business days following the date such notice is given after which Landlord intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify Landlord that it is contesting such Imposition pursuant to

Section 5.1, then Landlord may thereafter pay such hnposition, and the amount so paid by Landlord (including any interest and penalties thereon paid by Landlord), together with interest at the Default Rate computed from the date Landlord makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to Landlord within ten (10) business days following demand.

4.3 Right of Tenant to Contest Impositions and Liens.

Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other Person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Landlord. Tenant shall give notice to Landlord within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to Landlord in any instance where Landlord's interest in the Premises may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Landlord is a necessary party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by or in the name of Landlord or any owner of the Premises, Landlord, at the request of Tenant and at no cost to Landlord, with counsel selected and engaged by Tenant, subject to Landlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Landlord, at its own expense and at its sole and absolute option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by or in the name of Landlord or any owner of the Premises. Except as provided in the preceding sentence, Landlord shall not be subjected to any liabihty for the payment of any fines, penalties, costs, expenses or fees, including Attomeys' Fees and Costs, in connection with any such proceeding, and without limiting Article 13 hereof, Tenant shall Indemnify Landlord for any such fines, penalties, costs, expenses or fees, including Attomeys' Fees and Costs, which Landlord may be legally obligated to pay.

4.4 Landlord's Right to Contest Impositions.

At its own cost and after notice to Tenant of its intention to do so, Landlord may but in no event shall be obligated to contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require Landlord to pay any Imposition as long as it contests the validity, applicability or

amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. Landlord shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest.

ARTICLE 5. COMPLIANCE WITH LAWS

5.1 Compliance with Laws and Other Requirements.

During the Term, Tenant shall comply, at no cost to Landlord, (i) with all applicable Laws (including Regulatory Approvals), (ii) with the requirements of all policies of insurance required to be maintained pursuant to Article 14 of this Lease, and (iii) with the LDDA (so long as the LDDA remains in effect). The foregoing sentence shall not be deemed to limit Landlord's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, except with respect to subsurface Hazardous Materials conditions, the remediation and residual management of which shall be governed exclusively by the approved Remedial Action Plan, the Risk Management Plan requirements as they relate to the Premises, including any amendments or modifications to either of them, as they may be modified, and state and federal regulatory agencies that may validly assert jurisdiction over the Site. In particular, Tenant acknowledges that the Permitted Uses under Section 3.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including but not limited to, building permits, nor do such uses limit Landlord's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to Landlord, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises. This Section 5.1 shall not apply to compliance with Laws (including Regulatory Approvals) which relate to Hazardous Materials, such compliance being governed exclusively by Article 15 hereof, or to contests of any Imposition or other lien, such contests being exclusively governed by Article 5 hereof Notwithstanding anything to the contrary herein, Tenant shall not be in default hereunder for failure to comply with any Laws or insurance requirements if Tenant is contesting such Laws (including Regulatory Approvals), or insurance requirements diligently and in good faith by appropriate proceedings and at no cost to Landlord, provided that Tenant shall indemnify Landlord against and hold Landlord harmless from any Losses resulting from such contest and provided that such contest does not result in the loss or suspension of the insurance coverage required to be maintained by Tenant hereunder.

(a) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section 5.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises or the Improvements, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Landlord, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. Except as provided in Articles 9

or 10, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Landlord. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Landlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation, except to the extent provided in Article 10, or Sections 17.1 or 17.2.

(b) Proof of Compliance. Upon request by Landlord, Tenant shall promptly provide Landlord with evidence of its compliance with any of the obligations required under this Section.

5.2 Regulatory Approvals.

(a) City Approvals. Tenant understands and agrees that Landlord is entering into this Lease in its proprietary capacity as the holder of fee title to the Property, and not in its capacity as a regulatory agency of the City. Tenant understands that the entry by the Landlord into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including the Landlord itself in its regulatory capacity. By entering into this Lease, the Landlord is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

(b) Approval of Other Agencies; Conditions. Tenant understands that the Project and Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any alterations or Additional Construction to the Premises, may require that approvals, authorizations or permits be obtained from governmental agencies with jurisdiction. Tenant shall be solely responsible for obtaining Regulatory Approvals as further provided in this Section. In any instance where Landlord will be required to act as a co-permittee, and in instances where modifications are sought to the Remedial Action Plan and/or the Risk Management Plan, or where Tenant proposes Additional Construction which requires Landlord's approval under Section 6, Tenant shall not apply for any Regulatory Approvals (other than a building permit from the Landlord) without first obtaining the approval of Landlord, which approval will not be unreasonably withheld, conditioned or delayed. Throughout the permit process for any Regulatory Approval, Tenant shall consult and coordinate with Landlord in Tenant's efforts to obtain such Regulatory Approval, and Landlord shall cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approval, provided that Landlord shall have no obligation to make expenditures or incur expenses other than administrative expenses. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any other regulatory agency than Landlord, if Landlord is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of Landlord whether on or off the Premises, unless in each instance Landlord has previously approved such conditions in writing in Landlord's sole and absolute discretion. No such approval by Landlord shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, Landlord shall join, where required, in any application by Tenant for a required Regulatory

Approval, and in executing such permit, provided that Landlord shall have no obligation to join in any such application or execute the permit if the Landlord does not approve the conditions imposed by the regulatory agency under such permit as provided herein. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be responsible for complying, at no cost to Landlord or the City, with any and all conditions imposed by any regulatory agency as part of a Regulatory Approval. With the consent of Landlord (which shall not be unreasonably withheld or delayed), Tenant shall have the right to appeal or contest in any manner permitted by law any condition imposed upon any such Regulatory Approval. Tenant shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval and Landlord shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Article 13, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which Landlord may be liable in connection with Tenant's failure to comply with any Regulatory Approval.

ARTICLE 6. IMPROVEMENTS

6.1 Initial Improvements.

Tenant shall construct or cause to be constructed the Initial Improvements in accordance with this Section 6.1 in the manner and within the times set forth in the Scope of Development and the Construction Documents for the Initial Improvements. Landlord acknowledges that the extent and scope of any City design review for the Initial Improvements may be governed by the provisions of the PUD and the Development Agreement.

(a) Construction Documents.

Tenant shall prepare and submit to Landlord, for review and written approval hereunder, reasonably detailed Schematic Drawings, and following Landlord's approval of such Schematic Drawings, Preliminary and Final Construction Documents which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings, Preliminary and Final Construction Documents are referred to as "Construction Documents"). Landlord may waive the submittal requirement of Schematic Drawings for a particular Initial Improvement if it determines in its discretion that the scope of such Initial Improvement does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. Landlord shall approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval shall state in writing the reasons for disapproval. If Landlord deems the Construction Documents incomplete, Landlord shall notify Tenant of such fact within twenty-one (21) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If Landlord notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If Landlord disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of this Section 6.1(a), Landlord shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in Landlord's

previous notice of rejection, and Landlord shall approve or disapprove the revisions to the Construction Documents within fifteen (15) days after resubmission. If Landlord fails to approve or disapprove Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 6.1, such failure shall not constitute an Event of Default under this Lease on the part of Landlord, but such Construction Documents shall be deemed approved by the Landlord in its proprietary capacity, provided that Tenant first provides Landlord with at least ten (10) days prior written notice that Tenant intends to deem said Construction Documents so approved.

(b) Progress Meetings; Coordination. From time to time at the request of either Party during the preparation of Construction Documents, Landlord and Tenant shall hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. Landlord and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to Landlord can receive prompt and speedy consideration.

(c) Landlord Approval of Construction Documents.

Upon receipt by Tenant of a disapproval of Construction Documents from Landlord, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses Landlord's written objections. Tenant shall resubmit such revised portions to Landlord as soon as possible after receipt of the notice of disapproval. Landlord shall approve or disapprove such revised portions in the same manner as provided in Section 6.1 for approval of Construction Documents (and any proposed changes therein) initially submitted to Landlord. If Tenant desires to make any substantial change in the Final Construction Documents after Landlord has approved them, then Tenant shall submit the proposed change to Landlord for its reasonable approval. Landlord shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to Landlord. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period.

(d) Construction Permits. Tenant, at its cost, shall be responsible for applying for and diligently pursuing the issuance of, and thereafter compliance with, all permits and other Regulatory Approvals, including any required environmental certification, allowing construction and development of the Initial Improvements (the "Construction Permits"). Upon request by Landlord, Tenant shall provide to Landlord copies of all Construction Permits.

(e) Construction Schedule and Reports. All construction with respect to the Project shall be accomplished expeditiously, diligentiy, and within the timeframes set forth within the Scope and Schedule of Performance. During periods of construction, Tenant shall submit to Landlord written progress reports when and as reasonably requested by Landlord.

(f) Conditions to Commencement of Construction. Notwithstanding any provision herein to the contrary, Tenant shall not commence construction of any Initial Improvements until all of the following conditions have been satisfied or waived by Landlord:

(i) Landlord shall have approved the Final Construction Documents;

(ii) Tenant shall have obtained all Construction Permits;

(iii) Tenant shall have entered into the Initial Improvements Construction Contract;

(iv) **[DISCUSS]** The Completion Guaranty with respect to such Initial Improvements shall be in full force and effect **[DISCUSS POSSIBILITY OF PARTIAL RELEASES FROM COMPLETION GUARANTY]**; and

(v) If requested by Landlord, Tenant shall have submitted to Landlord the following bonds (or equivalent security acceptable to Landlord in its sole and absolute discretion) issued by a licensed surety, naming the City as co-obligee or assignee, and in a fonn reasonably satisfactory to City (the "Construction Bonds"):

(A) A performance bond in an amount not less than one hundred percent (100%) of the cost of construction of the Initial Improvements, based upon the Initial Improvements Construction Contract, as security for the faithful performance of such construction; and

(B) A labor and material payment bond in an amount not less than one hundred percent (100%) of the cost of construction of the Project pursuant to the Construction Contract, as security for payment to persons performing labor and furuishing materials in connection with such construction.

(e) Construction Standards. All construction of the Initial Improvements shall be accomplished in accordance with the Construction Documents and good construction and engineering practices and applicable Laws.

(f) Safety Matters. Tenant shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury, damage, disruption or inconvenience to the Premises and Improvements and surrounding property, or the risk of injury to members of the public, caused by or resulting from such construction. Tenant shall make adequate provision for the safety and convenience of all persons affected by such construction, including erecting construction barricades substantially enclosing the area of such construction and maintaining them until construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions. Dust, noise and other effects of such work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas.

(g) Costs of Construction. Tenant shall bear and pay all costs and expenses of construction of the Initial Improvements, whether onsite or offsite, including, without limitation, the cost of connections to existing utility lines in adjacent rights-of-way, and any and all cost overruns. Without limiting the preceding provisions, Tenant shall be responsible for performing all site preparation work necessary for construction of the Initial Improvements. Such preparation shall include, without limitation, all Remediation and Handling of Hazardous Materials (subject to the terms of Article 15), disabled access, tenant improvements, demolition

of existing structures, grading and all structure and substructure work, public access improvements, and tenant improvements.

(h) Rights of Access. During any period of construction, Landlord and its Agents shall have the right to enter areas in which construction is being performed, on reasonable prior notice during customary construction hours, subject to the rights of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Landlord to conduct such inspections or any liability in connection therewith.

(i) Prevailing Wages. In accomplishing construction of the Initial Improvements, Tenant shall comply with City's prevaihng wage policy and City's community jobs policy included within the Community Benefits Program. Tenant shall also comply with any applicable, mandatory prevailing wage law of the State of Californiia.

(j) As-Built Plans and Specifications.

Tenant shall furuish to Landlord one set of as-built plans and specifications with respect to the Initial Improvements within one hmdred twenty (120) days following completion. If Tenant fails to provide such as-built plans and specifications to Landlord within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from Landlord, Landlord will thereafter have the right to cause an architect or surveyor selected by Landlord to prepare as-built plans and specifications showing such Additional Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to Landlord as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Additional Construction under applicable regulations adopted by Landlord in its regulatory capacity.

6.2 Landlord's Right to Approve Additional Construction.

(a) Construction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform Additional Construction in accordance with the provisions of this Section 6.2, provided that Tenant shall not, without Landlord's prior written approval (which approval shall not be unreasonably withheld or delayed) do any of the following:

(i) Construct additional buildings or other additional structures, otner than to replace or restore those previously existing;

(ii) Increase the bulk or height of any Improvements beyond the bulk or height approved for the then-existing Improvement (other than changes in the bulk or height of equipment penthouses);

(iii) Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law);

(iv) Decrease the Gross Building Area or the Leasable Area of the Premises after Completion by more than 5%;

(v) Materially increase [NOTE: provide parameter of "material increase"?] the Gross Building Area of the Premises; or

(vi) Perform Additional Construction involving replacement or reconstruction that materially alters the exterior architectural design of any Improvements for any replacement construction. In connection with any replacement or restoration, Tenant shall use materials of at least equal quality, durability, and appearance to the materials originally installed, as reasonably determined by Landlord.

The parties acknowledge that, without limiting what constitutes the Landlord's reasonable approval under this Section 8.2(a), it shall be reasonable for Landlord to withhold its consent under this Paragraph 9.1(a) if the proposed Additional Construction would (i) violate any Regulatory Approvals or applicable Laws or (ii) upon completion of the Additional Construction, result in a change of use of Project which would materially adversely impact the Project or payment to Landlord or City of any amounts hereunder.

(b) Notice by Tenant. At least thirty (30) days before commencing any Additional Construction which in Tenant's good faith judgment, requires Landlord's approval, Tenant shall notify Landlord of such proposed Additional Construction. Such notice shall be accompanied by Final Construction Documents for such Additional Construction. Within twenty (20) days after receipt of such notice from Tenant, Landlord shall have the right to object to any such Additional Construction, to the extent that such Additional Construction requires Landlord's approval.

(c) Permits. Tenant acknowledges that Landlord's approval of Additional Construction (or the fact that Tenant is not required to obtain Landlord's approval) does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from the Landlord itself in its regulatory capacity, including, without limitation, building permits.

(d) Other Requirements. The requirements set forth in Sections 6.1(a)-(f) also shall apply to any and all Additional Construction requiring Landlord's approval, subject to the following modifications:

(i) Construction Schedule. All Additional Construction shall be accomplished expeditiously and diligently, subject to Force Majeure;

(ii) Conditions to Commencement of Construction. Tenant shall have submitted to Landlord in writing its good faith estimate of the anticipated total construction costs of the Additional Construction. If such good faith estimate exceeds One Million and No/100 Dollars ($1,000,000), Tenant shall also submit evidence reasonably satisfactory to Landlord of Tenant's ability to pay such costs as and when due.

(iii) As-Built Plans and Specifications. Tenant shall only be required to furnish to Landlord as-built plans and specifications with respect to Additional Construction costing One Hundred Thousand Dollars ($100,000) as indexed, or more.

6.3 Minor Alterations.

Landlord's approval hereunder shall not be required for (a) the installation, repair or replacement of furnishings, fixtures, equipment or decorative Improvements or repair or replacement of worn out or obsolete components of the Improvements which do not materially affect the structural integrity of the Improvements unless otherwise required under Section 6.2(a)(i)-(vi), (b) recarpeting, repainting the interior or exterior of the Premises, groundskeeping, or similar alterations, or (c) any other Additional Construction which does not require a building permit (collectively, "Minor Alterations").

6.4 Tenant Improvements.

Landlord's approval hereunder shall not be required for the installation of tenant improvements and finishes (excluding retail storefronts or facades) to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing shall not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a building permit from the City, acting in its regulatory capacity.

6.5 Title to Improvements.

During the Term of this Lease, Tenant shall own all of the Improvements, including all Additional Construction and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants). During the Term, for federal income tax purposes, Tenant shall be the "tax owner" of the Improvements, including all Additional Construction, and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants) and shall be entitled to depreciation deductions and any tax credits with respect to the Improvement, including all Additional Construction and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and other personal property of Tenant and its Subtenants other than Landlord), will vest in Landlord without further action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to Landlord.

ARTICLE 7. MANAGEMENT; REPAIR AND MAINTENANCE

7.1 Management and Operating Covenants.

Following Completion of the Initial Improvements, Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with standards for the maintenance and operation of comparable [logistics or R&D/office as applicable] projects located [NOTE: DISCUSS] in military base reuse and port areas elsewhere in the State of California, subject to the provisions of Articles 9 and 10 relating to damage and

destmction and Condemnation. Tenant shall be exclusively responsible, at no cost to Landlord, for the management and operation of the Improvements.

7.2 Tenant's Duty to Maintain.

Except as otherwise provided in this Article 7, and Sections 10 and 11 hereof, throughout the Term of this Lease, Tenant shall maintain and repair, at no cost to Landlord, the Premises, in the condition and repair required under Section 6.1, and in compliance with all applicable Laws and the requirements of this Lease. Tenant shall promptiy make (or cause others to make) all necessary repairs, renewals and replacements, whether stmctural or non-stmctural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen. Tenant shall make such repairs with materials, apparatus and facilities as originally installed and approved by Landlord under the LDDA or this Lease, or, if not originally subject to Landlord approval or not commercially available, with materials, apparatus and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Tenant shall be at least equivalent in quality, appearance, pubhc safety, and durability to and in all respects consistent with the Initial Improvements.

7.3 Costs of Repairs, Etc.

(a) No Obligation of Landlord; Waiver of Rights. As between Landlord and Tenant, Tenant shall be solely responsible for the condition, operation, repair, maintenance and management of the Premises, including any and all Improvements, from and after the Commencement Date. Landlord shall have no obligation to make repairs or replacements of any kind or maintain the Premises, any Improvements or any portion thereof Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or replacements at Landlord's expense, or (except as provided in Section 13) abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Landlord's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

(b) Notice. Tenant shall deliver to Landlord, promptiy after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any govemmental authority (other than Landlord) having responsibility for the enforcement of any applicable Laws (including Disabled Access Laws or Hazardous Materials Laws), asserting that the Project is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Article 14, asserting that the requirements of such insurance policy or policies are not being met.

ARTICLE 8. UTILITY SERVICES

8.1 Utility Services.

Landlord, in its proprietary capacity as owner of the Property and landlord under this Lease, shall not be required to provide any utility services to the Premises or any portion of tiie Premises. Tenant and its Subtenants shall be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which the

Premises are put (it being acknowledged that City is the sole and exclusive provider to the Premises of certain public utility services). Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Landlord under this Lease, or entitie Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Landlord relating to this Lease, any Losses arising from or in connection with City's provision of (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such htigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Preinises.

ARTICLE 9. DAMAGE OR DESTRUCTION

9.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Article 9.

(b) Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen (a "Casualty Event"), and such Casualty Event (i) could materially impair use or operation of any ruaterial portion of the Improvements for their intended purposes for a period of thirty (30) days or longer, or (ii) exceeds in an individual instance the amount of Two Hundred and Fifty Thousand And No/100 Dollars ($250,000.00) or aggregate amount, together with any other Casualty Event occurring during the preceding 5-Year Period, of Seven Hundred Fifty Thousand And No/100 Dollars ($750,000.00).then Tenant shall promptiy, but not more than ten (10) days after the occurrence of the Casualty Event, give written notice thereof to Landlord describing with as ruuch specificity as is reasonable, given the ten-day time constraint, the nature and extent of such damage or destruction; provided, however, that Tenant shall provide Landlord with a supplemental and more detailed written report describing such matters with specificity within ninety (90) days after the occurrence of the damage or destruction. The provisions of this Section 8.1(b) are in addition to, and not in lieu of, the incident management provisions of Section 38.17.

(c) Waiver. The Parties intend that this Lease fully goveru all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly,

Landlord and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the Califomia Civil Code, as such Sections may from time to time be amended, replaced, or restated.

9.2 Rent after Damage or Destmction.

If there is any damage to or destmction of the Premises, including the Improvements thereon, this Lease shall not terminate except as otherwise specifically provided in Section 11.4. In the event of any damage or destmction to the Improvements that does not result in a termination of this Lease, and at all times before completion of Restoration, Tenant shall pay to Landlord all Rent at the times and in the manner described in this Lease.

9.3 Tenant's Obligation to Restore.

Except at the option of Tenant during the last five (5) years of the Term as set forth below [or as permitted under Section 9.7 below], if all or any portion of the Improvements are damaged or destroyed , then Tenant shall, subject to Section 9.4 hereof, within a reasonable period of time (allowing for securing necessary Regulatory Approvals), commence and diligentiy, subject to Force Majeure, Restore the Improvements to the condition they were in immediately before such damage or destmction, to the extent possible in accordance with then applicable Laws (including, but not limited to, any required code upgrades), without regard to the amount or availability of insurance proceeds. All Restoration performed by Tenant shall be in accordance with the procedures set forth in Section 6 relating to Additional Constmction and shall be at Tenant's sole expense. If insurance proceeds are available for such Restoration, tiien Tenant shall deposit all insurance proceeds received by Tenant in connection with a casualty event with a Depositary to Restore the Premises, which Depositary shall be authorized to make disbursement therefrom in accordance with Section 10.5; provided, however, that if at any time the estimated or actual cost to Restore ("Casualty Cost") exceeds the net insurance proceeds actually deposited with the Depositary, then Tenant shall either (i) also deposit with the Depositary such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds ("Additional Casualty Cash"), or (ii) obtain payment or performance bonds in the full amount of the Additional Casualty Cash to cover the payment and performance of the Restoration and naming Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees and in form reasonably satisfactory to Landlord (such bonds, together with such net insurance proceeds and any interest earned thereon, and the Additional Casualty Cash, the "Casualty Restoration Funds"). In the event Tenant shall elect not to Restore the Premises during the last 5 years of tne Term, Tenant shall have the right to terminate this Lease with respect to that portion of the Premises containing the Improvements so damaged or destroyed upon written notice to Landlord which shall be delivered if at all within sixty (60) days of written notice of the Casualty Event to Landlord, in which event, the Tenant may use all available insurance proceeds to raze those improvements on the Premises designated by Landlord and shall then cause the Depositary to turn over the balance of any available insurance proceeds to Landlord. If Tenant obtains payment or performance bonds related to a Restoration (which Tenant may or may not obtain in its discretion), Tenant shall name Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obhgees, and shall deliver copies of any such bonds to Landlord promptiy upon obtaining them.

9.4 Rights of Landlord. In addition to the other remedies available to Landlord that are set forth elsewhere in this Lease, the following remedies shall be available to Landlord in the event of a Casualty Event:

(a) Expiration or Termination of Lease Prior to Completion of Any Restoration. In any case where this Lease shall expire or be terminated prior to the completion of the Restoration, Tenant shall (i) promptiy account to Landlord for all amounts spent in connection with any Restoration which was undertaken, (ii) immediately pay over or cause the Depositary to pay over to Landlord the remainder, if any, of the Casualty Restoration Funds received by Tenant or held by the Depositary prior to such termination or cancellation, (iii) pay over or cause the Depositary to pay over to Landlord, within five (5) business days after receipt thereof, any Casualty Restoration Funds received by Tenant or the Depositary subsequent to such termination or cancellation, and (iv) immediately pay over to Landlord any outstanding Additional Casualty Cash that Tenant should have deposited with the Depositary prior to such termination or cancellation. Upon completion of and payment for the Restoration, Landlord shall retum to Tenant any unused portion of the Casualty Restoration Funds.

(b) Failure to Restore Following a Casualty Event.

(i) If, in the event of a Casualty Event, (A) Tenant fails or neglects to commence the diligent Restoration of the Premises or the portion thereof so damaged or destroyed, or (B) having so commenced such Restoration, Tenant fails to diligentiy complete the same in accordance with the terms of this Lease, then Landlord may, by giving sixty (60) calendar days' prior notice to Tenant, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease and the Term shall immediately become forfeited and void.

(ii) If, in the event of a Casualty Event, (A) Tenant fails or neglects to commence the diligent Restoration of the Premises or the portion thereof so damaged or destroyed, (B) having so commenced such Restoration, Tenant fails to diligentiy complete the same in accordance with the terms of this Lease, or (C) prior to the completion of any such Restoration by Tenant, this Lease shall expire or be terminated in accordance with the terms of this Lease, then Landlord may, but shall not be required to, complete such Restoration at Tenant's expense and shall be entitled to be paid out of the Casualty Restoration Funds for the relevant Restoration costs incurred by Landlord. Upon completion of and payment for the Restoration, Landlord shall retum to Tenant any unused portion of the Casualty Restoration Funds. Tenant's obligations under this Section 9.4 shall survive the expiration or termination of this Lease.

9.5 Payment of Casualty Restoration Funds to Tenant. Subject to the satisfaction by Tenant of all of the terms and conditions of this Article 9, the Depositary shall pay to Tenant from time-to-time any Casualty Restoration Funds it holds, but not more than the amount actually collected by the Depositary upon the loss, together with any interest eamed thereon, after reimbursing itself therefrom, as well as Landlord, to the extent, if any, of the reasonable expenses paid or incurred by the Depositary and Landlord in the collection of such monies, to be utilized by Tenant solely for the Restoration, such payments to be made as follows:

(a) prior to commencing any Restoration, Tenant shall fiimish to Landlord for its approval the estimated cost, estimated schedule and detailed constmction and design plan for the completion of the Restoration, each prepared by an architect, engineer and general contractor;

(b) the Casualty Restoration Funds held by the Depositary shall be paid to Tenant in installments as the Restoration progresses, subject to Section 9.5(c), based upon requisitions to be submitted by Tenant to the Depositary and Landlord in comphance with Section 9.6, showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by Tenant; provided, however, that if any Encumbrance is filed against the Premises or any part thereof in connection with the Restoration, Tenant shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged in accordance with this Lease; provided further that notwithstanding the foregoing, but subject to the provisions of Section 9.5(c), the existence of any such Encumbrance shall not preclude Tenant from receiving any installment of Casualty Restoration Funds held by the Depositary so long as (i) such Encumbrance will be discharged with funds from such installment and at the time Tenant receives such installment Tenant delivers to Landlord and the Depositary a release of such Encumbrance executed by the lienor and in recordable form, or (ii) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord;

(c) the amount of each installment to be paid to Tenant shall be the aggregate amount of Casualty Costs theretofor incurred by Tenant minus the aggregate amount of Casualty Restoration Funds theretofor paid to Tenant in connection therewith; provided, however, that all disbursements to Tenant shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depositary is sufficient to complete the Restoration; and

(d) except as provided in Section 9.4, upon completion of and payment for the Restoration by Tenant, subject to the rights of any Mortgagee, the Depositary shall pay the balance of the Casualty Restoration Funds it holds, if any, to Tenant; provided, however, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), Tenant shall nevertheless be required to make the Restoration and provide the deficiency in fiinds necessary to complete the Restoration as provided in Section 9.3.

9.6 Conditions of Payment. The following shall be conditions precedent to each payment made to Tenant as provided in Section 9.5:

(a) Tenant shall have fumished Landlord with estimates of costs and schedule and a detailed constmction plan for the completion of the Restoration, as provided for in Section 9.5(a);

(b) at the time of making such payment, no Event of Default exists; and

(c) the Restoration shall be carried out in accordance with Article 9, and there shall be submitted to the Depositary and Landlord the certificate of the applicable architect or engineer stating that (i) the materials and other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 15.3(c)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's lien or other Encumbrances have been claimed, except for any mechanic's lien for claims that (A) will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (provided that a release of such Encumbrance is delivered to the Depositary in accordance with Section 9.5(b)), or (B) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord, (ii) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (iii) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Casualty Restoration Funds or has been made out of the Casualty Restoration Funds received by Tenant, (iv) the sum then requested does not exceed the value of the services and materials described in the certificate, (v) the work relating to such requisition has been performed in accordance with this Lease, (vi) the balance of the Casualty Restoration Funds held by the Depositary or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion, and (vii) in the case of the final payment to Tenant, the Restoration has been completed in accordance with this Lease.

9.7 Tenant's Election to Restore or Terminate. **[DISCUSS]**

(a) Uninsured Casualty or Major Damage or Destruction. If an event of Major Damage or Destruction occurs during the last ten (10) years of the Term, or if an event of Uninsured Casualty occurs at any time during the Term, then at the time Tenant provides Landlord with the ninety (90) day report described in Section 9.1(b) above, Tenant shall also provide Landlord with written notice (the "Casualty Notice") either (1) electing to commence and complete Restoration of the Improvements, or (2) electing to terminate this Lease (subject to the conditions of Section 11.4(b)). For purposes hereof, "Uninsured Casualty" will mean an event of damage or destruction for which the costs of Restoration (including the cost of any required code upgrades) exceeds One Million and No/100 Dollars ($1,000,000), as Indexed, (or Three Million and No/100 Dollars ($3,000,000)) as Indexed for mold damage if Tenant does not obtain property insurance covering mold damage plus, in all cases, the amount of any applicable policy deductible (except in the case of damage or destruction caused by earthquake, if Tenant is obligated to carry earthquake insurance pursuant to Section 14.1(a)(ii), the amount of the policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake damage under Tenant's property insurance policy maintained under Section 14.1(a)(ii) hereof as of the date of casualty, or the actual amount of the policy deductible) and which is not covered by available insurance proceeds payable under the policies of insurance that Tenant is required to carry under Section 14 hereof (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required to be

maintained hereunder). Proceeds of insurance shall not be deemed "available" for purposes of this Article 9 to the extent that a Mortgagee, pursuant to the terms of its Mortgage if approved by Landlord under Section 34.8, retains or requires the application of such proceeds for purposes other than Restoration. Tenant shall provide Landlord with the Casualty Notice no later than ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Tenant elects to Restore the Improvements, all of the provisions of Section 9 that are applicable to Additional Construction of the Improvements shall apply to such Restoration of the Improvements to the condition they were in prior to such Major Damage or Destruction as if such Restoration were Additional Construction.

(b) Other Circumstances Allowing Termination. Notwithstanding the foregoing or subsequent provisions of this Article 9, Tenant shall not be required to Restore the Improvements and may elect to terminate this Lease in accordance with this Article 9 if: (A) the Laws then existing would not allow Tenant to Restore the Improvements; (B) all necessary governmental approvals required for the Restoration of the Improvements cannot be obtained, within eighteen months (18) from the date of the damage or destruction; provided that Tenant is proceeding as promptly as reasonably practicable and is using all commercially reasonable efforts to obtain such approvals within such time; or (C) in the case of Major Damage and Destruction occurring prior to the last ten (10) years of the Term, if Tenant reasonably anticipates, based upon a schedule of performance for such Restoration prepared with due diligence by Tenant in consultation with a licensed general contractor experienced is similar construction projects in Oakland and approved by Landlord, that at the time of completion of the Restoration, less than ten (10) years would remain in the Term. If Tenant elects to terminate based on any of the immediately foregoing determinations and Landlord reasonably disputes Tenant's determination, Landlord may submit the matter to arbitration, as set forth in Section 12.9 hereof

(c) Conditions to Termination. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 9.4(a) above, Tenant shall do all of the following:

(i) Tenant in its election to terminate described in Section 9.4(a) shall provide Landlord with a statement of the cost of Restoration, and the amount by which the cost of Restoration plus the amount of any applicable policy deductible (subject to the limitations on the policy deductible for damage or destruction caused by earthquake or flood as set forth in Section 9.4(a)(i) above) exceeds insurance proceeds payable (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder), accompanied by supporting evidence reasonably acceptable to Landlord, such as at least two (2) bids from experienced general contractors, and supporting documentation from Tenant's insurer as to the amount of the policy deductible, and the coverage available for the event of damage and destruction; and

(ii) Tenant shall pay or cause to be paid the following amounts from casualty insurance proceeds upon the later of making the election to terminate or promptly following receipt of such proceeds in the following order of priority:

(A) first, to Landlord (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the actual costs incurred for any work required to alleviate any threat to the pubhc safety and welfare or damage to the environment, including without limitation, any demolition or hauling of rubble or debris;

(B) second, to each Non-Affiliate Mortgagee demanding payment thereof in accordance with its Non-Affihate Mortgage and apphcable Law (in order of hen priority and not pro rata), that portion of the remaining casualty insurance proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction in an amount not to exceed the aggregate amounts then owed to the Non-Affiliate Mortgagee and secured by all Non-Affiliate Mortgages under the loan documents therefor;

(C) third, to Landlord and Tenant in equal amounts until the outstanding balance of the Total Repayment Amount has been paid in full; and

(D) all remaining insurance proceeds to Landlord.

(d) Upon Termination. Tenant shall deliver possession of the Premises to Landlord and quitclaim to Landlord all right, titie and interest in the Premises and any remaining Improvements.

(e) Landlord's Election Upon Notice of Termination. Notwithstanding the foregoing, if Tenant elects to terminate this Lease solely due to an Uninsured Casualty under circumstances permitted by Section 9.4(a) then Landlord may, upon such occurrence during the Term, by notice in writing given to Tenant within sixty (60) days after Tenant's Casualty Notice, elect any of the following: (i) terminate the Lease and accept the surrender of the Premises in their then-existing condition, or (ii) in tiie event of an Uninsured Casualty, continue the Lease in effect, and pay the amount by which the cost of Restoration (including the cost of any required code upgrades) will exceed the net available proceeds of any insurance payable under the policies of insurance that Tenant is required to carry under Article 14 hereof (or which would have been payable but for Tenant's default in its obligation to maintain such insurance) by more than One Million and No/100 Dollars ($1,000,000), as Indexed annually plus the amount of any applicable policy deductible (except that in the case of damage or destruction caused by earthquake, the amount of the policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake damage under Tenant's property insurance policy maintained under Section 14.1(a)(ii) hereof as of the date of casualty, or the actual amount of the policy deductible) and require Tenant to Restore the Premises in accordance with Section 11.4(b). During the last 10 years of the Term, Landlord will not have the right to elect to pay the incremental cost and cause Tenant to Restore unless Tenant agrees to do so, in its sole discretion.

9.8 Effect of Termination.

If Tenant elects to terminate the Lease under Section 9.4(a) above, and Landlord elects not to continue the Lease in effect if allowed under Section 9.4(d), then, on the date that Tenant shall have fully complied with all other provisions of Section 9.4(b) to the satisfaction of Landlord, this Lease shall terminate (except that, for purposes of payment of Rent, the effective date of termination shall be the date of the event of damage or destruction). Upon such

termination, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such teruination, subject to payruent to Landlord of accrued and unpaid Rent (i.e. Rent payable on dates occurring on or prior to the date of tennination), through the date of the event of damage or destruction; provided, however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such teruination. In addition, termination of this Lease under this Section 9 shall not limit the right of a Mortgagee to a New Lease under Section 34 unless such Mortgagee has agreed otherwise. The rights of any Mortgagee hereunder, and any rights of Tenant or Landlord to receive insurance proceeds in accordance with the provisions of this Lease will survive the tentination of this Lease. At Landlord's request following any teruination, Tenant shall deliver to Landlord a duly executed and acknowledged quitclaim deed suitable for recordation and in form and content satisfactory to Landlord.

9.9 Distribution Upon Lease Termination.

If Tenant is obligated to and fails to Restore the Improveruents as provided herein and this Lease is tenninated, all insurance proceeds held by Landlord, Tenant and, subject to Article 34, any Mortgagee, or not yet collected, shall be paid to and retained by Landlord; subject to the rights of any Mortgagee under a Mortgage to such insurance proceeds if approved by Landlord under Section 34.8.

9.10 Use of Insurance Proceeds.

(a) Restoration. Except in the event of tennination of this Lease, ah all-risk coverage insurance proceeds, earthquake and flood proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Landlord or Tenant by reason of damage to or destruction of any Improveruents, if any (other than business or rental interruption insurance), must be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the contrary in this Section 9, and subject to the rights of any Mortgagee.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this Section 9, and if Tenant Restores the Improvements and there is a Mortgage encumbering the Lease, then any insurer paying corupensation in excess of One Million and No/100 Dollars ($1,000,000), as Indexed (or any lesser amount if required by any Mortgagee), under any all-risk or earthquake insurance policy required to be carried hereunder shall pay such proceeds to the Mortgagee that is the holder of any Mortgage which is the most senior lien against the Improvements or an insurance trustee reasonably acceptable to Landlord designated by such Mortgagee, for purposes of Restoration only. If there is no Mortgage encurubering the Lease, then the insurance proceeds shall be paid to a trustee (which shall be a bank or trust company) designated by Landlord within twenty (20) days after written request by Tenant, having an office in Oakland. Unless agreed otherwise by the Parties, and subject to the requirements of any Mortgagee, the insurer shall pay insurance proceeds of One Million and No/100 Dollars ($1,000,000) as Indexed or less directiy to Tenant for purposes of Restoration in accordance with this Lease. If the funds are paid to a trustee in accordance herewith, the trustee shall hold all insurance proceeds in an interest-bearing federally insured account (with interest added to the proceeds). However, such trustee or Mortgagee shall pay to Tenant, from time to time as the work of rebuilding, Restoration and repair shall progress, in amounts designated by

certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such repairs, rebuilding and Restoration. If there is no Mortgage encumbering the Lease and a trustee is holding the proceeds, the Landlord shall instruct the trustee to pay Tenant the cost of any emergency repairs necessitated by the event of daruage or destruction in advance of the actual Restoration within thirty (30) days of such request. The trustee or Mortgagee, as the case may be, shall be required to make such payments upon satisfaction that the amount necessary to provide for Restoration or repair of any buildings and other Improvements destroyed or damaged, which may exceed the amount received upon such policies, has been provided by the insured for such purposes and its application for such purposes is assured. Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptiy in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. Provided that no uncured Event of Default (or unmatured Event of Default) that has not been waived by Landlord shall exist on the date such damage is repaired, the Improvements shall have been Restored in accordance with the provisions of this Section 9 and all sums due under this Lease shah have then been paid in full, any excess of monies received from insurance remaining with the trustee or Mortgagee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant.

9.11 No Release of Tenant's Obhgations.

No damage to or destruction of the Premises or Improvements or any part thereof for fire or any other cause shall peruit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided herein.

9.12 Arbitration of Disputes.

(a) Estimators. In the event Landlord and Tenant cannot mutually agree upon the cost of Restoration or the cost of replacing the Improvements under Section 9.4(a)(i) or if Landlord disputes Tenant's determination allowing for termination under Section 9.4(a)(ii), such disputes shall be determined in the manner provided in this Section 9.12. Either Party may invoke the provisions of this Section 9.12 at any time that a dispute as to any such amount exists, by delivering written notice to the other Party. Within twenty (20) business days after delivery of notice invoking the provisions of this Section, each Party shall designate, by written notice to the other Party, a licensed general contractor having at least ten (10) years experience in estimating construction costs of major construction projects in the City to estimate the cost or aruount in dispute, and for disputes regarding time to complete Restoration under Section 9.4(a)(ii), also having at least the equivalent amount of experience in commercial real estate development matters. Each such estimator shall be competent, licensed, qualified by training and experience in the City, disinterested and independent. Each estimator (or if either Party fails to appoint its estimator within such twenty (20) business day period, the estimator appointed by the other Party) shall make an independent determination of the disputed amount or time for completion of Restoration, as the case may be, in accordance with the provisions hereof The estimators may share and have access to objective information in preparing their estimates, but they will otherwise act independently. Each estimator shall complete, sign and submit its written estimate of the disputed construction, replacement cost, or time for completion of Restoration, as

the case may be, within fifteen (15) business days after the appointment of both estimators, unless the Parties agree to permit a longer period of time. If the higher number estimating the cost or number of days for completion of Restoration is not more than one hundred ten percent (110%) of the lower estimate, the disputed amount shall be determined for purposes of this Lease to equal the average of the two (2) estimates.

(b) Arbitration. If the higher number estimating the cost or number of days for completion of Restoration is more than one hundred ten percent (110%) of the lower estimate, the Parties shall agree upon and appoint an independent arbitrator within thirty (30) days after the first two (2) estimates have been submitted to the Parties. The arbitrator shall have the minimum qualifications required of an estimator pursuant to Subsection (a) above, and shall also have experience acting as an arbitrator of disputes involving construction costs or construction disputes. If the Parties do not appoint such arbitrator within such thirty (30) day period, then either Party may apply to the American Arbitration Association for appointment in accordance with the rules and procedures of such organization of an independent arbitrator meeting the foregoing qualifications. The arbitrator shall consider the estimates submitted by the Parties as well as any other relevant written evidence which the Parties may choose to submit. If a Party chooses to submit any such evidence, it shall deliver a complete and accurate copy to the other Party at the same time it submits the same to the arbitrator. Neither Party shall conduct ex parte communications with the arbitrator regarding the subject matter of the arbitration. Within fifteen (15) business days after his or her appointment, the arbitrator shall conduct a hearing, at which Landlord and Tenant may each make supplemental oral and/or written presentations, with an opportunity for testimony by the estimators and questioning by the Parties and the arbitrator. Within ten (10) business days following the hearing, the arbitrator shall select the estimate submitted by one or the other of the first two (2) estimators, as the more accurate estimate of the disputed amount or time, as applicable, in the opinion of the arbitrator. The determination of the arbitrator shall be limited solely to the issue of deciding which of the estimates is closest to the actual disputed value or amount of time, as applicable. The arbitrator shall have no right to propose a middle ground or to modify either of the two estimates, or to modify any provision of this Lease.

(c) Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination by the estimators or the arbitrator, as applicable, shall be conclusive, final and binding on the Parties. Neither the estimators nor the arbitrator shall have any power to modify any of the provisions of this Lease. Subject to the provisions of this Section, the Parties will cooperate to provide all appropriate information to the estimators and the arbitrator. The estimators and the arbitrator will each report their respective determinations in writing, supported by the reasons for the determination.

(d) Conduct of Arbitration Proceeding. Any arbitration proceeding under this Section 9.12 shall be subject to California Code of Civil Procedure Sections 1280 to 1294.2 (but excluding Section 1283.05 with respect to discovery), or successor California laws then in effect relating to arbitration generally. Any such proceeding shall be conducted in the City of Oakland.

(e) Fees and Costs; Waiver. Each Party shall bear the fees, costs and expenses of the estimator it selects. The fees, costs and expenses of the arbitrator and the costs

and expenses of the arbitration proceeding, if any, shall be shared equally by Landlord and Tenant. The Parties waive any claims against the estimator appointed by the other Party, and against the arbitrator, for negligence, malpractice, or similar claims in the performance of the estimates or arbitration contemplated by this Section.

(f) Arbitration of Disputes. With respect to the arbitration provided for in this Section 9.12, the Parties agree as follows:

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS IN THIS LEASE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

DEVELOPER:	CITY:
[CCIG ENTITY]	CITY OF OAKLAND, a municipal corporation
By: _____ [NAME] [TITLE]	By _____ City Administrator

Any judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction of such arbitration in accordance with the terms of this Lease. This arbitration provision does not affect the rights of either Party to seek confirmation, cortection or vacation of the arbitration award pursuant to Califomia Code of Civil Procedure Section 1285 et seq.

9.13 Benefit of Landlord. The requirements of this Article 9 are for the benefit only of Landlord, and no otner Person shall have or acquire any claim against Landlord as a result of any failure of Landlord actually to undertake or complete any Restoration as provided in this Article 9 or to obtain the evidence, certifications and other documentation provided for herein.

9.14 Cooperation. Landlord shall cooperate with Tenant and act in a reasonable and expedited manner in connection with any Restoration by Tenant in connection with a Casualty Event, including, without limitation, an expedited review and response to all documents and requests submitted by Tenant in connection with the Restoration. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to Tenant's Restoration.

ARTICLE 10. CONDEMNATION

10.1 Obligations of Tenant. If all or any part of any of the Premises shall Condemned by any govemmental authority, other than Landlord: (a) each Party shall give the other Party notice thereof promptiy after such Party receives actual notice of such Condemnation; (b) Tenant shall, at its sole cost and expense, whether or not condemnation or other similar proceeds, if any, shall be available to pay for the estimated or actual cost of repairs, alterations, restorations, replacement and rebuilding (the "Taking Cost"), proceed diligently to Restore the portions of the Premises that were not subject to a Condemnation in accordance with Article 10; and (c) Tenant shall deposit with a Depositary such portion of the condemnation or other similar proceeds received by Tenant in connection with such Condemnation necessary to Restore the Premises; provided, however, that if at any time the Taking Cost exceeds the condemnation or similar proceeds actually deposited with the Depositary, then Tenant shah either (i) also deposit with the Depositary such cash as is sufficient to cover the difference between the Taking Cost and the condemnation or similar proceeds ("Additional Taking Cash"), or (ii) obtain payment or performance bonds in the full amount of the Additional Taking Cash to cover the payment and performance of the Restoration and naming Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees and in form reasonably satisfactory to Landlord (such bonds, together with such condemnation or similar proceeds and any interest eamed thereon, and the Additional Taking Cash, the "Taking Restoration Funds"). Tenant shall be entitied to claim, prove and receive in any condemnation proceedings such awards or other compensation for any loss or diminution in or of Tenant Interest and other loses it incurs as a result of such Condemnation and Tenant's trade fixtures and equipment located on the Premises, as may be allowed by the govemmental authority effectuating such Condemnation; provided, however, that if the govemmental authority effectuating a Condemnation is not Landlord, then Tenant's claim may not frustrate or adversely impact Landlord's separate claims for compensation in connection with such Condemnation. If multiple claims with respect to such Condemnation are barted under applicable Law, the Parties shall reasonably cooperate in consolidating their separate claims.

10.2 Effect of a Condemnation on This Lease. In the event that the entire Premises are taken or so transferred, this Lease and all of Tenant's right, title and interest thereunder shall cease on the date title to such property so taken or transferred vests in the govemmental authority effectuating the Condemnation. In the event of a Condemnation where only a portion of the Premises is taken or so transferred, on the earlier of the date title to the portion of the Premises vests in such govemmental authority, or the date on which such governmental authority takes possession of the portion of the Premises, (a) this Lease shall terminate with respect to Landlord's and Tenant's future obligations hereunder with respect to the portion of the Premises so taken, and (b) the monthly Rent due hereunder from Tenant to Landlord for the remainder of the Term shall be equitably reduced from and after such Condemnation to the extent Tenant does hot have full use of the Premises as a result of such Condemnation. If the Parties are unable to agree on the amount of the reductions within sixty (60) calendar days after such Condemnation, the amount of the reductions shall be determined in accordance with the dispute resolution procedure set forth in Section _____. Notwithstanding anything to the contrary herein, unless Landlord is the governmental authority effectuating a Condemnation, Landlord shall have no responsibility to pay to Tenant, and shall not be liable for, any condemnation or other similar proceeds claimed or sought by Tenant in connection with any Condemnation.

10.3 Rights of Landlord. In addition to the other remedies available to Landlord that are set forth elsewhere in this Lease, the following remedies shall be available to Landlord in the event of a Condemnation, unless Landlord is the governmental authority effectuating a Condemnation:

(a) Expiration or Termination of Lease Prior to Completion of Any Restoration. In any case where this Lease shall expire or be terminated prior to the completion of the Restoration, Tenant shall (i) promptly account to Landlord for all amounts spent in connection with any Restoration which was undertaken, (ii) immediately pay over or cause the Depositary to pay over to Landlord the remainder, if any, of the Taking Restoration Funds received by Tenant or held by the Depositary prior to such termination or cancellation, (iii) pay over or cause the Depositary to pay over to Landlord, within five (5) Business Days after receipt thereof, any Taking Restoration Funds received by Tenant or the Depositary subsequent to such termination or cancellation, and (iv) immediately pay over to Landlord any outstanding Additional Taking Cash that Tenant should have deposited with the Depositary prior to such expiration or termination; and Substantial Condemnation. In the event of a Substantial Condemnation, Landlord may, by giving sixty (60) calendar days' prior notice to Tenant, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease, the Term shall immediately become forfeited and void. If Landlord does not exercise its termination rights pursuant to this Section 10.3(b), Tenant shall continue to use the remaining Premises in a manner consistent with the use immediately prior to the Substantial Condemnation or any other use reasonably approved in writing by Landlord that is consistent with the _____. For purposes of this Lease, the term "Substantial Condemnation" shall mean a Condemnation that directly affects seventy percent (70%) or more of the Premises.

Landlord's rights under this Section 10.3 shall survive the expiration or termination of this Lease.

10.4 Rights of Tenant. In addition to the other remedies available to Tenant that are set forth elsewhere in this Lease, the following remedies shall be available to Tenant in the event of a Condemnation:

(a) Condemnation Adversely Affecting the Premises. In the event of a Condemnation affecting only a portion of the Premises, leaving the remainder of the Premises in such location or in such form, shape or reduced size so as not to be effectively and practicably usable for its intended purpose in the good faith opinion of a third party expert reasonably satisfactory to Landlord and Tenant, Tenant may, by giving notice to Landlord within sixty (60) calendar days after the occurrence of such Condemnation, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease, the Term shall immediately become forfeited and void. Nothing herein shall be deemed to affect Tenant's right to seek an award in condemnation proceeding as provided in Section 10.1;

(b) Substantial Condemnation. In the event of a Substantial Condemnation, Tenant may, by giving sixty (60) calendar days' prior notice to Landlord, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this

Lease. Upon such termination, this Lease shall cease, the Tenn shall immediately become forfeited and void. Nothing herein shall be deemed to affect Tenant's right to seek and award in any applicable condemnation proceeding as provided in Section 10.1;

Landlord's and Tenant's rights under this Section 10.4 shall survive the expiration or termination of this Lease.

10.5 Payment of Taking Restoration Funds to Tenant. Subject to the satisfaction by Tenant of all of the terms and conditions of this Article 10, the Depositary shall pay to Tenant from time-to-time any Taking Restoration Funds, but not more than the amount actually collected by the Depositary upon the Condemnation, together with any interest eamed thereon, after reimbursing itself therefrom, as well as Landlord, to the extent, if any, of the reasonable expenses paid or incurred by the Depositary and Landlord in the collection of such monies, to be utilized by Tenant solely for the Restoration, such payments to be made as follows:

(a) prior to commencing any Restoration, Tenant shall fumish to Landlord for its approval the estimated cost, estimated schedule and detailed plan for the completion of the Restoration, each prepared by an architect, engineer and contractor;

(b) the Taking Restoration Funds shall be paid to Tenant in installments as the Restoration progresses, subject to Section 10.5(c), based upon requisitions to be submitted by Tenant to the Depositary and Landlord in compliance with Section 10.6, showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by Tenant; provided, however, that if any Encumbrance is filed against the Premises or any part thereof in connection with the Restoration, Tenant shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged; provided further that notwithstanding the foregoing, but subject to the provisions of Section 10.5(c), the existence of any such Encumbrance shall not preclude Tenant from receiving any installment of Taking Restoration Funds so long as (i) such Encumbrance will be discharged with funds from such installment and at the time Tenant receives such installment Tenant delivers to Landlord and the Depositary a release of such Encumbrance executed by the lienor and in recordable form, or (h) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord;

(c) the amount of each installment to be paid to Tenant shall be the aggregate amount of Taking Costs theretofor incurred by Tenant minus the aggregate amount of Taking Restoration Funds theretofor paid to Tenant in connection therewith; provided, however, that all disbursements to Tenant shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depositary is sufficient to complete the Restoration; and

(d) except as provided in Section 10.3, upon completion of and payment for the Restoration by Tenant, subject to the rights of any Mortgagee, the Depositary shall pay the balance of the Taking Restoration Funds, if any, to Tenant; provided, however, that if the condemnation or other similar proceeds are insufficient to pay for the Restoration (or if there

shall be no insurance proceeds), Tenant shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 10.1(c).

10.6 Conditions of Payment. The following shall be conditions precedent to each payment made to Tenant as provided in Section 15.5:

(a) Tenant shall have furnished Landlord with estimates of costs and schedule and a detailed plan for the completion of the Restoration, as provided for in Section 10.5(a);

(b) at the time of making such payment, no Event of Default exists; and

(c) the Restoration shall be carried out in accordance with Article 10, and there shall be submitted to the Depositary and Landlord the certificate of the applicable architect or engineer stating that (i) the materials and other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 10.5(c)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's lien or other Encumbrances have been claimed, except for any mechanic's lien for claims that (A) will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (provided that a release of such Encumbrance is delivered to the Depositary in accordance with Section 10.5(b)), or (B) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord, (ii) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (iii) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Taking Restoration Funds or has been made out of the Taking Restoration Funds received by Tenant, (iv) the sum then requested does not exceed the value of the services and materials described in the certificate, (v) the work relating to such requisition has been performed in accordance with this Lease, (vi) the balance of the Taking Restoration Funds held by the Depositary or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion, and (vii) in the case of the final payment to Tenant, the Restoration has been completed in accordance with this Lease.

10.7 Payment and Performance Bonds. If Tenant obtains payment or performance bonds related to a Restoration (which Tenant may or may not obtain in its discretion), Tenant shall name Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to Landlord promptly upon obtaining them.

10.8 Benefit of Landlord. The requirements of this Article 10 are for the benefit only of Landlord, and no other Person shall have or acquire any claim against Landlord as a result of any failure of Landlord actually to undertake or complete any Restoration as provided in this Article 10 or to obtain the evidence, certifications and other documentation provided for herein.

10.9 Cooperation. Landlord shall cooperate with Tenant and act in a reasonable and expedited manner in comiection with any Restoration by Tenant in connection with a Condemnation, including, without limitation, an expedited review and response to all Documents and requests submitted by Tenant in connection with the Restoration. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to Tenant's Restoration and any restoration that may be occurring in other Landlord areas.

10.10 Waiver. Except as otherwise provided in this Article 10, the Parties intend that the provisions of this Lease shall govem their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to tenninate this Lease given Tenant in this Article 10, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the Catiforuia Code of Civil Procedure, as such Section may from time to time be amended, replaced or restated.

10.11 Landlord's Power of Eminent Domain. Tenant acknowledges Landlord's power upon payment of just compensation to exercise its power of eminent domain as to the leasehold estate created hereunder; provided, however, that the foregoing acknowledgment shall not be deemed or construed to prejudice or waive any rights of Tenant to challenge or object to any attempt by Landlord so to exercise such power or to recover any damages as may be permitted by law resulting from the exercise of such power.

ARTICLE 11. LIENS

11.1 Liens.

Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to Landlord, any lien, security interest, or encumbrance on the Premises or Tenant's leasehold estate, other than (i) this Lease, the LDDA, other permitted Subleases and Permitted Title Exceptions, (ii) liens for non-delinquent hnpositions (excluding Impositions which may be separately assessed against the interests of Subtenants), except only for Impositions being contested as permitted by Section 4, (iii) Mortgages permitted under Section 34, (iv) Mortgages encumbering the subleasehold interests of Subtenants, provided no such Mortgage encumbers Tenant's leasehold estate unless such Mortgage is permitted under Section 34, and (v) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Article 4. The provisions of this Section do not apply to liens created by Tenant on its Personal Property.

11.2 Mechanics' Liens.

Nothing in this Lease shall be deemed or construed in any way as constituting the request of Landlord, express or implied, for the performance of any labor or the fumishing of any materials for any specific improvement, alteration or repair of or to the Premises or the Improvements, or any part thereof Tenant agrees that at all times when the same may be necessary or desirable, Tenant will take such action as may be required to prevent the enforcement of any mechanic's or similar liens against the Premises, Tenant's leasehold interest,

or Landlord's fee interest in the Premises for or on the account of labor, services or materials furnished to Tenant, or at Tenant's request. Tenant shall provide such advance written notice of any Additional Construction such as shall allow Landlord from time to time to post a notice of non-responsibility on the Premises. If Tenant does not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record, it shall be a material default under this Lease, and Landlord shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Landlord for such purpose and all reasonable expenses incurred by Landlord in connection therewith shall be payable to Landlord by Tenant within thirty (30) days following written demand by Landlord. Notwithstanding the foregoing, Tenant shall have the right to contest any such lien in good faith, if, within sixty (60) days following the imposition of such lien, Tenant, at no cost to Landlord, posts a bond in the statutory amount sufficient to remove such lien from record, or posts other security reasonably acceptable to Landlord.

ARTICLE 12. ASSIGNMENT AND SUBLETTING

12.1 Assignment and Transfer.

(a) Consent of Landlord. Except as otherwise expressly permitted in Sections 12.1(c) and Sections 12.3 and 12.4, Tenant, its successors and permitted assigns shall not (i) suffer or permit any Significant Change to occur, or (ii) assign, sell or transfer all or any part of Tenant's interest in and to this Lease or leasehold either voluntarily or by operation of law (either or both (i) and (ii) above, a "Transfer"), without the prior written consent of Landlord as set forth herein and the satisfaction, or written waiver thereof by Landlord in its sole and absolute discretion, of all conditions precedent set forth in Section 12.1(b). It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no Transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Landlord of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of the Improvements that Landlord would have had, had there been no such Transfer. Without limiting the preceding provisions of this Section 12.1(a), it shall in any instance be reasonable for Landlord to withhold its consent to the extent that any such Transfer would serve to so deprive or limit Landlord with respect to its rights under this Lease.

(b) Total Transfer. Tenant shall not effect any Transfer of the entire Lease or leasehold (each an "Total Transfer"), including any Total Transfer by means of a Significant Change, without Landlord's prior written consent, which may be withheld, delayed or conditioned in Landlord's sole and absolute discretion. Notwithstanding the preceding sentence, Landlord shall not unreasonably withhold, delay or condition its consent to a Total Transfer if such Total Transfer is to a CCIG Entity and all conditions precedent set forth in Section 12.1(c) are satisfied or waived in writing by Landlord in its sole and absolute discretion.

(c) Partial Transfers. Tenant shall not effect any Transfer of less than the entire Lease or leasehold (each a "Partial Transfer"), including any Partial Transfer by means of a Significant Change, without Landlord's prior written consent, which shall not be unreasonably

withheld, delayed or conditioned by Landlord if all conditions precedent set forth in Section 12.1(d) are satisfied or waived in writing by Landlord in its sole and absolute discretion.

(d) Conditions. Notwithstanding any provision herein to the contrary, any Transfer is subject to the satisfaction in full of all of the following conditions precedent and covenants of Tenant, or the written waiver thereof by Landlord in its sole and absolute discretion, each of which is hereby agreed to be reasonable as of the Commencement Date and the date of any Proposed Transfer:

(i) Tenant provides Landlord with at least sixty (60) days prior written notice of the Proposed Transfer;

(ii) Landlord determines, in its reasonable judgruent, that the proposed transferee (A) has the financial capacity to own the Project and operate, use and maintain the Premises in accordance with the Lease and otherwise to perform all of Tenant's obligations under this Lease that are applicable to the interest in the Lease or leasehold that is the subject of the Transfer; (B) has a good reputation; and (C) has sufficient experience in the operation, use and maintenance of projects of a type and size comparable to the Project. In the case of a Partial Transfer, such qualifications of the proposed transferee shall be assessed with respect the portion of the Premises and applicable obligations under the Lease included within the proposed Partial Transfer;

(iii) any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of Landlord, must expressly assume all of the obligations: (A) of "Tenant" under this Lease and any other agreements or documents entered into by and between Landlord and Tenant relating to the Project, or the portion of the Premises that will be subsumed within the Proposed Transfer; and (B) in the case of a proposed Total Transfer, of "Developer" under the LDDA (if then in effect); and must agree to be subject to all of the conditions and restrictions to which Tenant or Developer, as applicable, is subject under such documents with respect to the Premises or portion thereof that will be subsumed within the proposed Transfer;

(iv) all instruments and other legal documents involved in effecting the Transfer shall have been submitted by Tenant to Landlord for review, including the agreement and instruments of sale, assignment, transfer, or equivalent, any Regulatory Approvals, and any necessary approvals under (or exemptions from) the Subdivision Map Act, and Landlord shah have approved such documents which approval shall not be unreasonably withheld, delayed or conditioned;

(v) Tenant shall comply with the provisions of Section 12.1(e);

(vi) there shall be no uncured Event of Default or Unmatured Event of Default on the part of Tenant under this Lease uncured or any of the other documents or obligations to be assigned to the proposed transferee, or if uncured, Tenant or the proposed transferee have made provisions to cure the Event of Default, which provisions are satisfactory to Landlord in its sole and absolute discretion;

(vii) the proposed transferee has demonstrated to Landlord's reasonable satisfaction that the proposed transferee is subject to the jurisdiction of the courts of the State of Califomia;

(viii) the Proposed Transfer is not in connection with any transaction for purposes of syndicating the Lease, such as a security, bond or certificates of participation financing as determined by Landlord in its sole and absolute discretion but expressly excluding the public trading of shares on the open market;

(ix) in the event of an approved or pemiitted Partial Transfer to a transferee that is not a CCIG Entity or an Affiliate of Developer, Tenant pays to Landlord an amount equal to a mutually agreed upon percentage of all cash and other consideration paid or payable by the transferee of such Partial Transfer to Tenant in connection with such Partial Transfer (net of any transfer tax paid or payable to City in connection with such Partial Transfer) or such other mutually agreed upon amount;

(x) Tenant deposits sufficient funds to reimburse Landlord for its reasonable legal expenses to review the Proposed Transfer pursuant to Section 12.1 m; and

(xi) Tenant has delivered to Landlord such other information and documents relating to the proposed transferee's business, experience and finances as Landlord may reasonably request

(e) Delivery of Executed Assignment. No assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise pennitted, will be effective unless and until there has been delivered to Landlord, within thirty (30) days after Tenant entered into such assignment, an executed counterpart of such assignment containing an agreement, in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes perfonnance of ah of the obligations on the assignor's part to be performed under this Lease and the other assigned documents to and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such transferee from such obligations or limit Landlord's rights or remedies under this Lease or under applicable Law). The form of such instmment of assignment shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, delayed or conditioned.

(f) No Release of Tenant's Liability or Waiver by Virtue of Consent. The consent by Landlord to any Transfer and any Transfer hereunder shall not, nor shall such consent or Transfer in any way be constmed to, (i) relieve or release Tenant from any liability or obligation arising at any time out of or with regard to the performance of any covenants or obligations to be performed by Tenant at any time hereunder or under the LDDA, or (ii) relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Landlord to any further Transfer.

(g) Notice of Significant Changes; Reports to Landlord. Tenant must promptly notify Landlord of any and ail Significant Changes. At such time or times as Landlord may reasonably request, Tenant must fumish Landlord with a statement, certified as tme and

correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective interests in Tenant, and in the event any other Persons have a beneficial interest in Tenant, their names and the extent of such interest.

(h) Determination of Whether Consent is Required. At any time Tenant may submit a request to Landlord for the approval of the terms of an assignment, transfer, sublease or encumbrance of this Lease or of a Significant Change (all of the foregoing being collectively referted to herein as a "Proposed Transfer") or for a decision by Landlord as to whether in its opinion a Proposed Transfer requires Landlord consent under the provisions of this Article 12. Within thirty (30) days after Tenant has made such a request and furuished to Landlord all documents and instruments with respect thereto as shall be reasonably requested by Landlord, Landlord shall notify Tenant in writing of Landlord's approval or disapproval of the Proposed Transfer or of Landlord's determination that the Proposed Transfer does not require Landlord's consent. If Landlord disapproves the Proposed Transfer, or determines that it requires the consent of Landlord, as applicable, it must specify in writing the grounds for its disapproval, its reason that consent is required, or both, as applicable.

(i) Scope of Prohibitions on Assignment. The prohibitions provided in this Section 12.(i) will not be deemed to prevent (i) the granting of Subleases so long as such subletting is done in accordance with Section 14.4, (ii) the granting of any Mortgage expressly permitted by this Lease subject to compliance with Section 36 and other applicable terms of this Lease; or (iii) any Permitted Transfer, as defined in Section 14.3.

(j) Prohibition on Involuntary Transfers. Neither this Lease nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against Tenant, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of Law, and possession of the whole or any part of the Premises shall not be divested from Tenant in such proceedings or by any process of Law, without the prior written consent of Landlord. Tenant hereby expressly agrees that the validity of Tenant's liabilities as a principal hereunder shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against any transferee of any of the rights or remedies reserved to Landlord pursuant to this Lease or by relief of any Transferee from any of the Transferee's obligations under this Lease or otherwise by (a) the release or discharge of any Transferee in any creditors' proceedings, receivership, bankruptcy or other proceedings, (b) the impairment, limitation or modification of the liability of any Transferee, or the estate of any Transferee, in bankruptcy, or of any remedy for the enforcement of any assignee's liability under this Lease, resulting from the operation of any present or future provision of the National Bankruptcy Act or other statute or from the decision in any court; or (c) the rejection or disaffirmance of this Lease in any such proceedings.

(k) Effect of Prohibited Transfer. Any Transfer made in violation of the provisions of this Article 12 shall be null and void ab initio and of no force and effect. Notwithstanding anything herein to the contrary, if a Transfer occurs with or without Landlord's consent, Landlord may collect from such assignee, subtenant, occupant or reconstituted Tenant, any Rent under this Lease and apply the amount collected to the Rent, but such collection by

Landlord shall not be deemed a waiver of the provisions of this Lease, nor an acceptance of such assignee, subtenant, occupant or reconstituted Tenant, as Tenant of the Premises.

(l) Processing Fee. Tenant agrees that as a condition to Landlord's consideration of any request by Tenant for approval of a Transfer (other than a Sublease under Section 14.4) that Tenant shall deliver to Landlord a nonrefundable processing fee in an amount that Landlord in its discretion determines is necessary to cover the anticipated Landlord administrative costs and expenses, including labor, in processing and investigating Tenant's request; provided such fee shall not exceed $_____ as Indexed on each Anniversary Date. Tenant agrees that unless and until said fee, and any request for such additional fee, is delivered to Landlord, Tenant shall be deemed to have made no request to Landlord to Transfer. The amount of the processing fee shall be adjusted upon each Anniversary Date, in the same percentage as the change in the last CPI Index published prior to the date of each succeeding 1 year period from the last such index published prior to the commencement of the Term; provided that in no event shall the adjusted fees be less than the theretofore existing fees.

(m) Tenant as Party is Material Consideration to Lease. Tenant and Landlord acknowledge and agree that the rights retained by and granted to Landlord pursuant to this Article constitute a material part of the consideration for entering into this Lease and constitute a material and substantial inducement to Landlord to enter into this Lease at the rental, for the terms, and upon the other covenants and conditions contained in this Lease, and that the acceptability of Tenant, and of any Transferee of any right or interest in this Lease, involves the exercise of broad discretion by Landlord in promoting the development, leasing, occupancy and operation of the Premises and other purposes of this Lease. Therefore, Tenant agrees that Landlord may condition its consent, if required hereunder, to a Proposed Transfer or other assignment, subject to such provisions as are reasonable to protect the rights and interest of Landlord hereunder and to assure promotion of the purposes of this Lease. Tenant agrees that its personal business skills and philosophy were an important inducement to Landlord for entering into this Lease and that Landlord may reasonably object to the Transfer to a proposed Transferee, as applicable, whose proposed use, while permitted under Article 3, would involve a different quality, manner or type of business skills than that of Tenant, or which would result in the imposition upon Landlord of any new or additional requirements under the provisions of any Law, including any Law regarding disabled or handicapped persons, such as the Americans With Disabilities Act of 1990.

(n) Mortgaging of Leasehold. Following Completion of Initial Improvements, Tenant shall have the right to assign, encumber or transfer its interest in this Lease, with respect to such portion of the Premises containing such completed Initial Improvements, to a Mortgagee or other purchaser at a foreclosure sale under the provisions of a Mortgage, subject to the provisions of Article 34.

12.2 Assignment of Rents.

Tenant hereby assigns to Landlord ah rents and other payments of any kind, due or to become due from any or present or future Subtenant as security for Tenant's obligation to pay Rent hereunder; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Section 38 until such time as Landlord has

terminated this Lease (subject to Landlord's agreement to enter into a New Lease with Mortgagee and all other express provisions of this Lease protecting Mortgagee's interest in this Lease), at which time the rights of Landlord in all rents and other payments assigned pursuant to this Section 12.2 shall become prior and superior in right. Such subordination shall he self-operative. However, in confirmation thereof, Landlord shall, upon the request of each Mortgagee, execute a subordination agreement in form and substance reasonably satisfactory to such Mortgagee and to Landlord. Notwithstanding the foregoing, if this Lease terminates by reason of an Event of Default, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor shall promptiy remit to Landlord the rents so collected (less the actual cost of collection) to the extent necessary to pay Landlord any Rent, including any and all Additional Rent, through the date of termination of this Lease. Such assignment shall be subject to the right of Tenant to collect such rents until the date of the happening of any Event of Default under the provisions of this Lease. Landlord shall apply any net amount collected by it from such Subtenants to the payment of Rent due under this Lease.

12.3 Permitted Transfers.

Notwithstanding the preceding provisions of this Article 12 or any other provision to the contrary in this Lease, and provided that the Transfer is done for a legitimate business purpose and not to deprive or compromise any rights of Landlord or City under the LDDA or this Lease, the following Transfers shall be permitted at any time hereunder without Landlord's consent (each, a "Permitted Transfer"):

(A) Any Transfer to a CCIG Entity;

(B) Transfers of partnership or membership interests in Tenant between Partners in Tenant, provided that such Transfers do not result in a Significant Change and furtber provided that so long as a CCIG Entity retains a Controlling interest in Tenant);

(C) Any Transfer solely and directiy resulting from the death or incapacity of an individual, and any Transfer for purposes of estate planning so long as the transferor remains in complete legal control of the transferred property;

(D) Any Transfer that results in a mere change in identity or form rather than in ownership (for example, the Transfer by the partners of a general partnership to a limited liability company where the members hold all of the interests of the limited liability company in the same proportion as they previously held in the general partnership); or

(E) Any Transfer of a limited partnership interest in Tenant.

Notwithstanding the preceding provisions of this Section 12.3, any Permitted Transfer shall comply with and remain subject to the provisions and requirements of Sections 12.1(d)(i), (iii), (v), (vi), (vh) and (viii) Section 14.1(e) and Sections 12.1(e), (f) and (g).

12.4 Subletting by Tenant.

(a) Subject to this Section 12.4, Tenant has the right to sublet all or any portion of the Premises to one or more Subtenants by written subleases from time to time without Landlord's consent. Notwithstanding the foregoing, if Tenant proposes a Sublease (other than a Sublease to an Affiliate) that is not pursuant to a bona fide arms-length transaction as reasonably determined by Landlord based upon information reasonably requested and obtained by Landlord (a "Restricted Sublease"), then such Restricted Sublease shall be subject to the Landlord's prior written consent, which shall not be unreasonably withheld or delayed, provided, however, that, without limitation, it shall be reasonable for Landlord to withhold its consent in any such event if such Restricted Sublease fails to meet any of the requirements set forth in this Section 12.4. Without limiting the preceding provisions of this paragraph, any Sublease shall:

(i) be only with such Subtenants as Tenant has reasonably determined are economically desirable and operate businesses that enhance commercial activity at the Project;

(ii) provide that it is subject to and subordinate in all respects to this Lease and the rights of Landlord hereunder, and that Subtenant shall comply with all obligations of Tenant under this Lease with respect to the Subleased Premises, including but not limited to the Community Benefits Program with respect thereto;

(iii) require Subtenant to use the portion of the Premises subject to the Sublease (the "Subleased Premises") only for the uses permitted under Article 3;

(iv) include a term that does not extend beyond the term of this Lease;

(v) require Subtenant to indemnify Landlord for any loss or damage arising from Subtenant's use or occupancy of the Subleased Premises, which indemnity shall be in form reasonably acceptable to Landlord;

(vi) require Subtenant to name Landlord as an additional insured on any liability insurance required to be carried under the Sublease, which liability insurance shall be in an amount not less than the amount of liability insurance required to be carried by Tenant under this Lease.

(vii) require Subtenant to comply with all Landlord rules, regulations, policies and procedures; and

(viii) if requested by Landlord, a provision subject to the prior rights of any Mortgagee, satisfactory to Landlord, requiring Subtenant at Landlord's option to attom to Landlord if Tenant defaults under this Lease and if the Subtenant is notified of Tenant's default and instructed to make Subtenant's rental payments to Landlord.

Tenant shall provide Landlord with copies of any and all Subleases within ten (10) days after Landlord's request.

12.5 Non-Disturbance of Subtenants, Attornment, Sublease Provisions.

(a) Conditions for Non-Disturbance Agreements. From time to time upon the request of Tenant, Landlord shall enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, Landlord will not tenninate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between Landlord and such Subtenant ("Non-Disturbance Agreements"). All Non-Disturbance Agreements shall comply with the provisions of this Section 12.5(a) and of Section 12.5(b). Landlord shall provide a Non-Disturbance Agreement to a Subtenant if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease; (ii) the term of the Sublease, including options, does not extend beyond the scheduled Term, unless Landlord approves such longer term; (iii) the Sublease contains provisions whereby the Subtenant agrees to comply with applicable provisions of Section 37.1(a), (b) and (e), Section 37.4; and 37.5, 37.6; 37.7 and 37.8; (iv) the Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant shall attom to Landlord (provided Landlord agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease), and the Sublease shall be deemed a direct lease or license agreement between the Subtenant and Landlord, except that Landlord shall not be liable to the Subtenant for any security deposit or prepaid rent or license fees previously paid by such Subtenant to Tenant unless such deposits are transferred to Landlord, except for rent or license fees for the current month, if previously paid; (v) with respect to Subleases having both Sublease Premises of more than 10,000 square feet and having a term of more than ten (10) (including options to extend the Term) or any Subleases with an Affiliate of Tenant regardless of the size of the Sublease Premises or the length of the tenn, the form and material business terms of the Sublease are reasonably approved by Landlord, in light of market conditions existing at the time such Sublease is entered into. Notwithstanding the foregoing sentence, if any such Sublease, other than a Sublease to an Affiliate of Tenant includes an adjustment of rent based on at least 95% of fair rental value appraisal after the 10th year of the Sublease term, Landlord shall not withhold its consent to entering into a non-disturbance agreement based on the rental terms of the Sublease, and (vii) if Tenant is then in default of any of its obligations under this Lease, Landlord may condition its agreement to provide a Non Disturbance Agreement on the cure of such defaults as Landlord may specify either in a notice of default given under Section 22.1 or in a notice conditionally approving Tenant's request for such Non Disturbance Agreement (and if an Event of Default or Unmatured Event of Default on the part of Tenant then exists, then Landlord may withhold or condition the giving of a Non Disturbance Agreement), and (viii) the Subtenant shall have delivered to Landlord an executed estoppel certificate, in form and substance reasonably satisfactory to Landlord, certifying: (A) that the Sublease, including all amendments, is attached thereto and is unmodified, except for such attached amendments, and is in full force and effect, as so amended, or if such Sublease is not in full force and effect, so stating, (B) the dates, if any, to which any rent and other sums payable thereunder have been paid, (C) that the Subtenant is not aware of any defaults which have not been cured, except as to defaults specified in said certificate, and (D) such other matters as Landlord may reasonably request. Landlord shall not be required to enter into a Non Disturbance Agreement with respect to any period beyond the scheduled expiration of the Tenn. Landlord shall respond to any request for a Non Disturbance Agreement within twenty (20) days after receipt of a true and

complete copy of the relevant Sublease in the form to be executed, and all relevant information requested by Landlord. Such relevant information shall include reasonable financial information establishing the ability of the proposed Subtenant to perform its contemplated obligations under such Sublease, and relevant information concerning the business character and reputation of the proposed Subtenant. Landlord agrees to cooperate, to the extent it is legally permitted to do so, in protecting the confidentiality of personal or financial information relating to any Subtenant. Nothing in this Section 12.5 shall preclude Landlord in its sole and absolute discretion from granting non-disturbance to other Subtenants.

(b) Form of Non-Disturbance Agreement. Each Non Disturbance Agreement shall be in form and substance reasonably satisfactory to Landlord. With each request for a Non Disturbance Agreement, Tenant shah submit a copy of the form, showing any requested interlineations or deletions, and Landlord shall approve or disapprove of the requested changes within twenty (20) days after receipt of such changes (such approval not to be unreasonably withheld or conditioned). Any disapproval by Landlord shall be in writing, and shall set forth the specific reasons for Landlord's disapproval. Failure by Landlord to approve or disapprove of specific interlineations, deletions or other modifications requested by a Subtenant within such twenty (20) day period shall be deemed to be approval of the requested changes (subject to Section 43.1).

ARTICLE 13. INDEMNIFICATION OF LANDLORD

13.1 Indemnification of Landlord.

Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or Landlord's interest therein, in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Premises or any part thereof; (h) any accident, injury to or death of Persons or loss or damage to property occurring immediately adjacent to the Premises (other than in the Park, it being acknowledged that the obligations of Tenant with respect thereto are set forth in Section 8.4) which is caused directiy or indirectly by Tenant or its Agents; (iii) any use, possession, occupation, operation, maintenance, or management of the Premises or any part thereof by Tenant or any of its Agents, Invitees, or Subtenants; (iv) any use, possession, occupation, operation, maintenance, management or condition of property immediately adjacent to the Premises (other than the Park, it being acknowledged that the obhgations of Tenant with respect thereto are set forth in Section 8.4) by Tenant or any of its Agents; (v) any latent, design, constmction or stmctural defect relating to the Initial Improvements located on the Premises and any Additional Improvements constmcted by or on behalf of Tenant, and any other matters relating to the condition of the Premises caused by Tenant or any of its Agents, Invitees, or Subtenants; (v) any failiire on the part of Tenant or its Agents or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, mles or regulations, or permits in connection with use or occupancy of the Premises; (vii) performance of any labor or services or the fiimishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents, Invitees or Subtenants; and (viii) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises. If any action, suit or proceeding is brought against any Indemnified Party by reason of

any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing. Notwithstanding the foregoing, the foregoing indemnity shall not apply to any and all Losses to the extent arising out of the negligence or willful misconduct of Landlord or City or any of their Agents or Employees or as to any claims for which Landlord has otherwise expressly agreed to indemnify Tenant under the LDDA. Tenant's obligation to indemnify Landlord under Section 2.4 of the LDDA and Landlord's obligation to indemnify Tenant under Section 2.5 of the LDDA and any other express obligation of Tenant to indemnify Landlord or Landlord to indemnify Tenant under the LDDA are hereby incorporated into this Lease by reference and shall survive termination of the LDDA and this Lease. Notwithstanding the foregoing, Tenant's indemnity obligation with respect to Losses which arise out of or relate in any way to the existence, use, Handling, production, transportation, disposal, storage Release of Hazardous Materials in, on, around, or under the Premises shall be governed by Section 15.2 and this Article shall not apply to such Losses.

13.2 Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnify provision of Section 13.1 or any other indemnify provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter and provided further that, in the event it is later determined that the claim made falls outside the scope of the indemnity provisions of this Agreement, Landlord shall reimburse Tenant for Tenant's reasonable attorneys fees and other costs incurred in defending such claim.

13.3 Not Limited by Insurance.

The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under Section 13.1 or any other indemnification provision of this Lease.

13.4 Survival.

Tenant's obligations under this Article 13 and any other indemnity in this Lease shall survive the expiration or sooner termination of this Lease as to occurrences prior to such termination.

13.5 Other Obligations.

The agreements to Indemnify set forth in Article 13 and elsewhere in this Lease are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to Landlord in this Lease, at common law or otherwise.

13.6 Defense.

Tenant shall be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases in which any indemnified Party has been named as a defendant, Landlord shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, however, in Landlord's reasonable judgment, within a reasonable time (but not less than fifteen (15) days following notice from Landlord alleging such failure) to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, Landlord shall have the right promptiy to use the Oakland City Attoruey or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise, or settlement, which reasonable expense shall be due and payable to Landlord ten (10) business days after receipt by Tenant of an invoice therefor.

13.7 Release of Claims Against Landlord.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the Premises for any cause arising at any time, including, without limitation, ah claims arising from the joint or concurrent negligence of Landlord or the other Inderunified Parties, but excluding any gross negligence or willful misconduct of the Indemnified Parties and further excluding any claims for which Landlord has otherwise agreed to indemnify Tenant under the LDDA.

ARTICLE 14. INSURANCE.[NOTE: CONFORM FOR CONSISTENCY WITH LLDA INSURANCE REQUIREMENTS AND CONFIRMATION WITH CITY RISK MANAGEMENT]

14.1 Property and Liabihty Coverage.

(a) Required Types and Amounts of Insurance. Tenant shall, at no cost to Landlord, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this Section 14.1(a)), the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times prior to Completion of the Initial Improvements, and during any period of Additional Construction, Tenant shall maintain, on a form reasonably approved by Landlord, builders' risk insurance in the amount of 100% of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, against all risk, "special fonn," or "difference in conditions" hazards including earthquake (subject to the provisions of Section 17.1(b)(iii)), but excluding flood coverage including as additional insureds Landlord, Tenant and Tenant's contractors and subcontractors with any deductible not to exceed One Hundred Thousand and No/100 Dollars ($100,000) (except as to earthquake insurance); provided, however, that as to earthquake insurance a separate sublimit of

the insurance required under this Section 14.1(a)(i) and the insurance required under Section 17.1(a)(vii) may be required in order to comply with the requirements of Section 17.1(b)(iii).

(ii) Property Insurance; Earthquake and Mold Insurance. Upon Substantial Completion of the Initial Improvements, and upon Substantial Completion of Additional Constmction of any Additional Improvements, Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 ("Causes of Loss - Special Form" (or its replacement), in an amount not less than 100% of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, pilings, excavations and footings on that portion of the Premises) with any deductible not to exceed One Hundred Thousand and No/100 Dollars ($100,000). Notwithstanding the foregoing, Tenant shall only be required to carry earthquake insurance if required by the senior Mortgagee and, if so required, in such amounts and with such deductibles and on such other terms as are required by such Mortgagee. Further notwithstanding the foregoing, Tenant shall only be required to carry mold insurance to the extent and with such deductible amount as is available at commercially reasonable rates. In addition to the foregoing, Tenant may insure its Personal Property in such amounts as Tenant deems appropriate; and Landlord shall have no interest in the proceeds of such Personal Property insurance, and the proceeds of such insurance shall not be subject to the provisions of Section 11.7.

(iii) Commercial General Liability Insurance. Tenant shall maintain "Commercial General Liability" insurance policies with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto located on the Premises or any part of the Premises, such insurance to afford protection in an amount not less than Ten Million Dollars ($10,000,000) per occurrence and annual aggregate covering bodily injury and broad form property damage including contractual liability (which includes coverage for the benefit of Landlord as additional insured against claims described in Section 16.1(i)), independent contractors, explosion, collapse, underground (XCU), and products and completed operations coverage. Products and completed operations coverage may be subject to a limited term of not less than ten (10) years following completion of the products or operations covered thereby.

(iv) Workers' Compensation Insurance. Only if Tenant has any employees, Worker's Compensation insurance as required by the laws of the State of California to insure employers against liability for compensation under the California Workers' Compensation Law, or any law thereafter enacted as a amendment or supplement thereto or in lieu thereof, such workers' compensation to cover all persons employed by Tenant in connection with the Premises and the Improvements thereon and to cover full liability for compensation under any such law aforesaid, based upon the death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Premises, Improvements thereon, or the operation of the Project.

(v) Boiler and Machinery Insurance. Tenant shall maintain boiler and machinery insurance covering damage to or loss or destmction of machinery and equipment

located on the Premises or in the improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment or such other coverage as Landlord may approve, which approval shall not unreasonably be withheld.

(vi) Business Automobile Insurance. Tenant shall maintain policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used by Tenant and its agents in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than Two Million And No/100 Dotiars ($2,000,000) per accident.

(vii) Business Interruption Insurance. After Corupletion of the Initial Improvements, Tenant shall maintain business interruption or rental value insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Sections 17.1(a), (ii) and (y). The amount of the insurance shall be not less than tiie aggregate of all reasonably calculated fixed operating expenses, debt service, and projected Rent. Such insurance is on an Actual Loss Sustained Basis, with a 365 day extended period of indemnity beyond the time reasonably necessary to repair or rebuild the Improvements. The aruount of such insurance shall be calculated from the date of Completion and shall be adjusted from time to time thereafter.

(viii) Professional Liability. Tenant shall maintain or require to be maintained, professional liability (errors or omissions) insurance, or owner's protective professional liability insurance, with limits not less than _____ Million Dollars ($___,000,000) each claim and in the aggregate with respect to the principal architect for the Project and not less than One Million and No/100 Dollars ($1,000,000) for each claim and aggregate, with respect to all other construction-related professional services, including, without limitation, architectural, engineering, geoteclmical, and environmental, reasonably necessary or incidental to Tenant's activities under this Lease, excluding tenant improvement and renovation projects, with any deductible not to exceed Two Hundred Fifty Thousand and No/100 Dollars ($250,000) each claim. Such coverage shall be subject to a limited term following the performance of services for such term as is customary based on prevailing industry practice.

(ix) Environmental Insurance. **[NOTE: REVIEW AND CONFORM WITH** LDDA] Tenant shall maintain all environmental insurance required by the LDDA . . . .

(x) Other Insurance. Tenant shall obtain such other insurance as is reasonably requested by City's Risk Manager and is customary for first class mixed use residential rental housing/retail developments.

(b) General Requirements. All insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best B+:XIV or better (or a comparable successor rating) and legally authorized to sell such insurance within the State of

Califomia; provided that insurance provided through a blanket program managed by an institutional investor may include layers of coverage provided by less qualified insurers if doing so would be in conformance with pmdent management practices.

(ii) As to property insurance shall name the Landlord as loss payee as its interest may appear, and as to both property and liability insurance shall name as additional insureds the following: "THE CITY OF OAKLAND, AND ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."

(iii) Shall be evaluated by Landlord and Tenant for adequacy not less frequentiy than every five (5) years from the date of Completion of the Initial Improvements. Following consultation with Tenant, Landlord may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice for comparable properties in the San Francisco-San Jose- Oakland area or in other large urban cities or counties around the country to carry insurance for facilities similar to the Premises in amounts substantially greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises. Upon application by Tenant, if the City's Risk Manager determines that insurance limits required under this Section may be decreased in light of such commercial practice and the risks associated with use of the Premises, Landlord shall notify Tenant of such determination, and Tenant shall have the right to decrease the insurance coverage required under this Lease accordingly. In such event, Tenant shall promptiy deliver to Landlord a certificate evidencing such new insurance amounts.

(iv) Shall provide that no cancellation, modification, termination or nonrenewal of such insurance for any reason shall be effective until at least thirty (30) days after mailing or otherwise sending written notice of such cancellation, modification or termination to Landlord (or not less than ten (10) days after such notice in the event of nonpayment of premiums);

(v) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to any additional insured, with respect to claims insured by such policy, and that insurance apphes separately to each insured against whom claim is made or suit is brought;

(vi) May be carried as part of a blanket policy maintained by Tenant or an Affiliate of Tenant or any of Tenant's constituent members or Affiliates of such members subject to Landlord's approval of the amount of coverage, which approval shall not unreasonably be withheld; provided that any insurance program maintained by CalPERS shall be deemed to satisfy the requirements of this Article 14.

(vii) Shall be subject to the approval of Landlord, which approval shall be limited to whether or not such insurance meets the terms of this Lease;

(viii) If any of the insurance required hereunder is provided under a claims-made fonn of policy, Tenant shall maintain such coverage continuously without lapse for a period of two (2) years; and

(ix) Shall for property insurance only, provide (if an endorsement to such effect is available at a commercially reasonable cost) that all losses payable under all such policies that are payable to Landlord shall be payable notwithstanding any act or negligence of Tenant in compliance with the tenns of the insurance policy.

(c) Certificates of Insurance; Right of Landlord to Maintain Insurance. Tenant shall furnish Landlord certificates with respect to the policies required under this Section, and provide evidence of payment of premiums (provided that such evidence need not be provided with respect to any CalPERS operated insurance program, provided that in such event Tenant shall work reasonably with Landlord to satisfy any concems Landlord may have regarding payment of premiums), within thirty (30) days after the Commencement Date. If at any time Tenant fails to maintain the insurance required pursuant to Section 17.1, or fails to deliver certificates as required pursuant to this Section, then, upon five (5) business days' written notice to Tenant, Landlord may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Landlord. Within ten (10) business days following demand, Tenant shall reimburse Landlord for all amounts so paid by Landlord, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) Insurance of Others. If Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subconfractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies include Tenant and Landlord as additional insureds, as their respective interests may appear.

14.2 Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 17.1(a)(i), (h) or (v) to the extent that such loss is reimbursed by an insurer. Notwithstanding anything to the contrary contained herein, to the extent of insurance proceeds received with respect to the loss, Tenant and Landlord each hereby waives any right of recovery against the other Party for any loss or damage to the Improvements, the Premises, the contents of same or any operation therein, whether or not such loss is caused by the fault or negligence of such other Party. With the exception of workers' compensation insurance, Landlord and Tenant shall each obtain from their respective insurers under all policies of fire, theft, commercial general liabihty, builder's risk and other insurance maintained by either of them at any time during the Term insuring or covering the Improvements, the Premises or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of one Party might have against the other Party. Tenant acknowledges that Landlord is currently self-insured so Landlord, for itself, waives any rights of recovery that would have been waived pursuant to this paragraph had Landlord been fully insured.

ARTICLE 15. HAZARDOUS MATERIALS.

15.1 Hazardous Materials Compliance.

(a) Compliance with Hazardous Materials Laws.

[NOTE: HAZARDOUS MATERIALS COMPLIANCE PROVISIONS IN GROUND LEASE STILL UNDER REVIEW BY PARTIES AND MUST BE CONFORMED FOR CONSISTENCY WITH FINAL AGREED-UPON VERSION IN CONNECTON WITH LDDA.]

Tenant shall comply and cause (i) its Agents, (ii) all Persons under any Sublease, (iii) to the extent reasonably controllable by Tenant, all Invitees or other Persons entering upon the Premises, and (iv) the Premises and the Improvements, to comply with all apphcable Hazardous Materials Laws, including, without limitation, any deed restrictions, deed notices, soils management plans or certification reports required in comection with the Remedial Action Plan or the Risk Management Plan, including any modifications or amendments to either the Remedial Action Plan or the Risk Management Plan. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Landlord, which may be given or withheld in Landlord's sole and absolute discretion, Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, except for (A) standard building materials and equipment, including, without limitation construction, landscaping and maintenance materials and equipment, that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials the Handling of which do not require a permit or license from, or that need not be reported to, a govemmental agency, and which are used in compliance with all applicable laws, (D) janitorial or office supplies or materials in such limited amounts as are customarily used for general maintenance or office purposes so long as such Handling is at all times in full compliance with all Environmental Laws, and (E) pre-existing Hazardous Materials that are required by applicable Law, tiie Remedial Action Plan or the Risk Management Plan to be Handled for Remediation purposes. Tenant shall have no obligation to remediate or manage Hazardous Materials subsurface conditions that existed as of issuance of the Certificate of Completion for Hazardous Materials Remediation for the Premises or that may migrate onto the Premises following issuance of such Certificate of Completion;, provided, however, Tenant shall be required to comply and cause (i) its Agents, (h) all Persons imder any Sublease, (iii) to the extent reasonably controllable by Tenant, all Invitees or other Persons entering upon the Premises, and (iv) the Premise and Improvements to comply with: (A) the Remediation Action Plan; (B) the Risk Management Plan, including, without limitation the following requirements: (1) long-term groundwater monitoring to monitor the concentrations of volatile organic compounds in groundwater; (2) post-construction maintenance activities to be coinpleted in a manner consistent with the Risk Management Plan: (3) restriction of groundwater for all uses including but not limited to, drinking, irrigation, and industrial uses; and (4) written disclosure of environmental conditions on the Premises to potential lessees in accordance with the deed restriction for the Premises and (C) the PPA.

(b) Notice. Except for Hazardous Materials permitted by Subsection 17.1(a) above, Tenant shall advise Landlord in writing promptiy (but in any event within five (5) business days) upon learning or receiving notice of (i) the presence of any newly discovered Hazardous Materials on, under or about the Premises during or after implementation of the Remedial Action Plan or the Risk Management Plan ("new subsurface environmental condition"), (ii) any action taken by Tenant in response to any (A) new subsurface environmental condition or (B) Hazardous Materials Claims, (iii) any Release of Hazardous Materials at the Premises caused by Hazardous Materials Handhng activities at the Premises ("new Release"), and (iv) Tenant's discovery of the presence of new Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform Landlord orally as soon as possible of any emergency or non-emergency regarding any new subsurface environmental condition or new Release. In addition, Tenant shall provide Landlord with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communication, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Section 15) and all communication with any Person relating to Hazardous Materials Claims (other than privileged communications); provided, however, such non-disclosure of such privileged communication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including without limitation, this Section 15).

(c) Landlord's Approval of Remediation. Except as required by law or to cost-effectively contain and clean up a new Release or to respond to an emergency, Tenant shall not undertake any subsurface Remediation in response to any new subsurface environmental condition or new Release unless Tenant follows the cleanup protocols for such subsurface conditions set forth in the approved Remedial Action Plan or Risk Management Plan. If Tenant proposes modifications to the Remedial Action Plan or Risk Management Plan to remediate the new subsurface environmental condition or the new Release, Tenant shall have first submitted to Landlord for Landlord's approval, which approval shall not be unreasonably withheld or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. Landlord shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, but in any event within thirty (30) days after receipt thereof If Landlord disapproves of any such Hazardous Materials Remediation plan, Landlord shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (x) in compliance with all applicable Hazardous Materials Laws, (y) to cleanup levels set forth in the approved Remedial Action Plan and/or Risk Management Plan, and (z) in accordance with any applicable orders and directives of the RWQCB and the Alameda County Department of Public Health or any other regulatory agency that asserts jurisdiction over the Premises.

(d) Relationship to LDDA.

The parties acknowledge that this Section 15.1 shall govem the obligations of Tenant with respect to Hazardous Materials after issuance of a Certificate of Completion for Hazardous Materials Remediation for the Premises, and the LDDA shall govem the obligations

of Tenant with respect to Hazardous Materials prior to issuance of a Certificate of Completion for Hazardous Materials Remediation for the Premises pursuant to the LDDA.

15.2 Hazardous Materials Indemnity.

Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to (A) any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, whether by Tenant, it Agents, Invitees or any Subtenants (other than Landlord and its Agents and Invitees); (B) any failure by Tenant, its Agents, Invitees or Subtenants (other than Landlord and its Agents and Invitees) to comply with applicable Hazardous Materials Laws, or with the Mitigation Measures; or (C) any failure by Tenant to comply with the obligations contained in Section 17.1. Notwithstanding the foregoing, in no event shall Tenant have any indemnity obligations hereunder with respect to Losses arising from or related in any way to any use, Handling, production, transportation, disposal, storage or Release of Hazardous Materials located in, on or under the Premises as of the Commencement Date of this Lease (and any increase in the concentrations thereof which may occur after the Commencement Date) except to the extent Handling or Remediation of such pre-existing Hazardous Materials is required by the approved Remedial Action Plan and/or Risk Management Plan, as the same may be amended from time to time. Further notwithstanding the foregoing, the foregoing indemnity shall not apply to any and all Losses to the extent arising out of the negligence or willful misconduct of Landlord, City or their respective agents or employees. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to Landlord hereunder and shall be due and payable from time to time immediately upon Landlord's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (a) discovery of any such Hazardous Materials on, under or about the Premises, or (b) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

ARTICLE 16. DELAY DUE TO FORCE MAJEURE

16.1 Delay Due to Force Majeure.

For all purposes of this Lease, a Party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure shall not be considered in breach of or in default in its obligations hereunder to the extent of any delay resulting from Force Majeure, provided, however, that the provisions of this Section 16.1 shall not apply to Tenant's obligation to pay Rent, including Additional Rent. A Party seeking an extension of time pursuant to the provisions of this Section16.1 shall give notice to the other Party describing with reasonable particularity (to the extent known) the facts and circumstances constituting Force Majeure within (a) a reasonable time (but not more than thirty (30) days unless the other Party's rights are not prejudiced by such delinquent notice) after knowledge of the beginning of such enforced delay or (b) promptly after the other Party's demand for performance.

ARTICLE 17. LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

17.1 Landlord May Perform in Emergency.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an imminent danger to public health or safety, as reasonably determined by Landlord, Landlord may at its sole and absolute option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, Landlord first gives Tenant such notice and opportunity to take corrective action as is reasonable under the circumstances. Nothing in this Section shall be deemed to limit Landlord's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of Landlord constitutes a Condemnation or an impairment of Tenant's contract with Landlord.

17.2 Landlord May Perform Following Tenant's Failure to Perform.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any defauh on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Landlord (other than any Imposition, with respect to which the provisions of Section 4.3 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure fohowing written notice from Landlord for a period of thirty (30) days (or, if Section 16.1(c) is applicable, which fatiure continues for five (5) business days after written notice from Landlord), and is not the subject of a contest under Section 5, then, Landlord may, at its sole and absolute option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant. Notwithstanding the foregoing, however, if within such period Tenant gives notice to Landlord that such failure is due to delay caused by Force Majeure, or is the subject of a contest under Section 5, or that cure of such failure cannot reasonably be completed within such period, then Landlord will not pay such sum or perform such obligation during the continuation of such contest or such Force Majeure delay or extended cure period, as the case may be, for so long thereafter as Tenant continues diligently to prosecute such contest or cure or the resolution of such event of Force Majeure.

17.3 Tenant's Obligation to Reimburse Landlord.

If pursuant to the provisions of Sections 16.1(c), 21.1, or 21.2, Landlord pays any sum or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Landlord within ten (10) business days following demand, as Additional Rent, the sum so paid, or the reasonable expense incurred by Landlord in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of Landlord's demand until payment is made. Landlord's rights under this Section 17 shall be in addition to its rights under any other provision of this Lease or under applicable laws.

ARTICLE 18. EVENTS OF DEFAULT; TERMINATION

18.1 Events of Default.

Subject to the provisions of Section 20.2, the occurrence of any one or more of the following events shall constitute an "Event of Default" under the terms of this Lease:

(a) Tenant fails to pay any Rent to Landlord when due, which failure continues for ten (10) days following written notice from Landlord (it being understood and agreed that the notice required to be given by Landlord under this Section 18.1(a) shall also constitute the notice required under Section 1161 of the California Code of Civil Procedures or its successor, and shall satisfy the requirements that notice be given pursuant to such Section) provided, however, Landlord shall not be required to give such notice on more than three occasions during any Lease year, and failure to pay any Rent for the remainder of such Lease Year when due shall be an immediate Event of Default for the remainder of such Lease Year without need for further notice;

(b) An Event of Default (as defined in the LDDA) on the part of Tenant as Developer, occurs under the LDDA (so long as it is in effect) with respect to Developer's development, construction, use or occupancy of the Premises, but such Event of Default under this Lease shall be deemed cured if the Event of Default as defined in the LDDA is cured pursuant thereto;

(c) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred twenty (120) days;

(d) A writ of execution is levied on the leasehold estate which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred twenty (120) days;

(e) Tenant makes a general assignment for the benefit of its creditors;

(f) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from Landlord;

(g) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from Landlord, or, if such cure cannot be reasonably completed within such five (5) business day period, if Tenant does not within such five (5) business day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(h) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation Measures) at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Landlord specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(i) Tenant suffers or permits an assignment of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease or sublets all or any portion of the Premises or Improvements in violation of this Lease; or

18.2 Special Provisions Concerning Mortgagees and Events of Default.

Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage shall not, in and of itself, constitute a default under this Lease.

18.3 Special Cure Rights.

In the case of any notice of default given by the Landlord to Tenant, Landlord shall deliver to all Investors (as "Investor" is defined below) a copy thereof concurrently with delivery to Tenant, and Investors shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary so long as Investor commences cure within such thirty (30) day period and diligently proceeds to completion) after the later to occur of (i) the expiration of such cure period or (ii) the date that Landlord has served such notice of default on Tenant, and Landlord shall accept such performance by or at the instance of the Investor as if the same had been made by Tenant. For purposes hereof, "Investor" shall mean any entity which is not an Affiliate of a Partner in Developer who acquires a limited partnership interest in Tenant or a membership interest pr partnership interest in a Partner of Tenant, and whose name and address for notices is delivered by Tenant to Landlord thirty (30) days prior to the occun ence of the Event of Default. Landlord's failure to give such notice to an Investor shall not be deemed to constitute a default on the part of Landlord under this Lease, but no such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been given to all Investors.

ARTICLE 19. REMEDIES

19.1 Landlord's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of Landlord following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by law or the terms of this Lease), Landlord shall have all rights and remedies provided in this Lease or available at law or

equity All of Landlord's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable law, the exercise of any one or more rights shall not preclude the exercise of any others.

19.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, Landlord may continue this Lease in full force and effect, as permitted by California Civil Code Section 1951.4 (or any successor provisions). Specifically, Landlord has the remedy described in California Civti Code Section 1951.4 (lessor rnay continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). In the event Landlord elects this remedy, Landlord shall have the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Landlord's rights, including the right to collect Rent, including any and all Additional Rent, when and as such sums become due, even though Tenant has breached this Lease and is no longer in possession of lhe Premises or actively managing or operating the Premises. If Tenant abandons the Premises in violation of this Lease, Landlord may (i) enter the Premises and relet the Premises, or any part thereof, to third Persons for Tenant's account without notice to Tenant, Tenant hereby waiving rights, if any, to any such notice under any applicable Law, and (ii) alter, install or modify the Improvements or any portion thereof Tenant shall be llable immediately to Landlord for all costs Landlord incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing thè Personal Property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constrncting tenant improvements required for a new tenant, and the costs of Restoration and of repairing, securing, servicing, maintaining and preserving the Premises or the Improvements, or any portion thereof Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease, provided Tenant's obligations shall in no event extend beyond the Term.

(b) No Termination. No act by Landlord allowed by this Section 19.2, nor any appointment of a receiver upon Landlord's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If Landlord elects to relet the Premises as provided hereinabove in Section 21.2(a). the rent that Landlord receives from reletting shall be applied to the payment of

(i) First, all costs incurred by Landlord in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constrncting tenant

improvements required for a new tenant, and the costs of repairing, securing and maintaining the Premises or any portion thereof;

(ii) Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of ah Impositions or otner items of Additional Rent owed from Tenant to Landlord, in addition to or other than Rent due from Tenant;

(iii) Third, Rent, including any and all Additional Rent, due and unpaid under this Lease;

(iv) After deducting the payments referred to in this Section 21.2(c), any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied to monthly installments of Rent as such amounts become due under this Lease. In no event shall Tenant be entitied to any excess rent received by Landlord. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance which Landlord incurred in reletting, remain after applying the rent received from the reletting as provided in Section 21.2(c)(ii), Tenant shall pay to Landlord, upon demand, in addition to the remaining Rent or other amounts due, all such costs.

(e) Payment of Rent. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the rent Landlord has received from any reletting which exceeds all costs and expenses of Landlord incurred in connection with Tenant's default and the reletting of all or any portion of the Premises.

19.3 Right to Terminate Lease.

(a) Damages. Landlord may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Landlord's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by Landlord other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, Landlord shall have the right to recover from Tenant all sums allowed under Califomia Civil Code Section 1951.2, including, without limitation, the following:

(i) The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease;

(ii) The worth at the time of the award of the amount by which the unpaid Rent which would have been eamed after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iv) Any other amount necessary to compensate Landlord for ah detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom; and

(v) "The worth at the time of the award", as used in Section 21.3(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of the award", as used in Section 21.3(a)(iii), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event Landlord terminates Tenant's right to possession of the Premises pursuant to this Section 19.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, Califomia Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Assign or Sublet. Upon the occurrence of an Event of Default, notwithstanding Section 14 Tenant shall have no right to sublet or assign its interest in the Premises or this Lease without Landlord's written consent, which may be given or withheld in Landlord's sole and absolute discretion, subject to the rights of Mortgagees as set forth in Section 36.

19.4 Continuation of Subleases and Other Agreements.

Subject to the terms of any Non-Disturbance Agreements entered into by Landlord in accordance with Section 11.4 hereof, Landlord shall have the right, at its sole and absolute option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises. Tenant hereby further covenants that, upon request of Landlord following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to Landlord such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in Landlord the then existing Subleases and other agreements then in force, as above specified.

ARTICLE 20. EQUITABLE RELIEF

20.1 Landlord's Equitable Relief

In addition to the other remedies provided in this Lease, Landlord shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after

the occurrence of an Event of Default, Landlord shall be entitled to any other equitable relief that may be appropriate to the circumstances of such Event of Default.

20.2 Tenant's Equitable Relief

In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after a default or threatened default by Landlord to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Tenant shall be entitled to any other equitable relief that may be appropriate to the circumstances of such Event of Default.

ARTICLE 21. NO WAIVER

21.1 No Waiver by Landlord or Tenant.

No failure by Landlord or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

21.2 No Accord or Satisfaction.

No submission by Tenant or acceptance by Landlord of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of Landlord's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Landlord had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Landlord. Landlord may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Landlord to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

ARTICLE 22. DEFAULT BY LANDLORD; TENANT'S REMEDIES

22.1 Default by Landlord; Tenant's Exclusive Remedies.

Landlord shall be deemed to be in default hereunder only if Landlord shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for

more than thirty (30) days after written notice thereof from Tenant, or, (iii) if such default cannot reasonably be cured within such thirty (30)-day period, Landlord shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default. Upon the occurrence of default by Landlord described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder, Tenant shall have the exclusive right (a) to offset or deduct only from the Rent becoming due hereunder, the amount of all actual damages incurred by Tenant as a direct result of Landlord's default, but only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease (provided that, at any time after the Total Repayment Amount has been fully paid, Tenant may bring an action for damages subject to the limitations set forth in Sections 25.1 and 25.2), or except for a default under Section 38.15, (b) to seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Landlord or its Agents in excess of that permitted pursuant to Section 25.1 or in violation of Section 25.2; provided, however, (i) in no event shall Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder or to otherwise recover or obtain from Landlord or its Agents any damages (including, without limitation, any consequential, incidental, punitive or other damages proximately arising out of a default by Landlord hereunder) or Losses other than Tenant's actual damages as described in the foregoing clause (a); (ii) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a default by Landlord hereunder; and (iii) Tenant shall have no remedy of self-help.

ARTICLE 23. TENANT'S RECOURSE AGAINST LANDLORD

23.1 No Recourse Beyond Value of Property Except as Specified.

Tenant agrees that, except for offsets against Rent set forth in Section 24 and except as otherwise specified in this Section 23.1 and except for a default under Section 38.15, Tenant's recourse against Landlord and Landlord's liability with respect to any monetary obligation of Landlord under this Lease, or any monetary claim based upon this Lease, shall not exceed an amount equal to the fair market value of Landlord's fee interest in the Premises (as encumbered by this Lease) at the time such claim is made. By Tenant's execution and delivery hereof and as part of the consideration for Landlord's obligations hereunder, Tenant expressly waives all such monetary liability in excess of the aforementioned amounts.

23.2 No Recourse Against Specified Persons.

No commissioner, officer or employee of Landlord or City will be personally liable to Tenant, or any successor in interest, for any Event of Default by Landlord, and Tenant agrees that it will have no recourse with respect to any obligation of Landlord under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

23.3 Arbitration of Certain Matters.

If a dispute arises under the terms of this Lease that expressly provides for dispute resolution in accordance with this Section 23.3, then either party may submit the matter to arbitration in accordance with the dispute resolution provisions set forth herein. Within twenty (20) business days after delivery of notice invoking the provisions of this Section, each Party shall designate, by written notice to the other Party, a person having at least ten (10) years experience in developing, leasing and managing commercial real estate projects in Oakland, including comparable mixed use residential rental housing/retail projects. Each such person shall be competent, licensed, qualified by training and experience in the City, disinterested and independent. Within ten (10) days of their appointment, the persons selected by each Party shall choose a third person meeting the foregoing quahfications, or if they caimot agree within such time then either party, on behalf of both, may request that appointment of an arbitrator be designated by the American Arbitration Association in San Francisco, Califomia, and the other party shall not raise any questions as to such person's full power and jurisdiction to entertain the application for and make the appointment. If either Party fails to appoint such person within such twenty (20) day period, the person appointed by the other Party shall be the Arbiter for purposes hereof For purposes of this Section, the arbiter appointed by the two persons selected by the Parties (or, if the other party fails to appoint such person, then the person appointed by the other Party) shall be referred to as the "Arbiter."

(i) Each party initially shall advance 50% of the required arbitration fee. Within fifteen (15) days following written notice to the Arbiter or the appointment of the arbitrator (as the case may be), each provide in writing a detailed statement supporting its case in the dispute and attach such supporting materials as it shall deem appropriate, and deliver such statement with attachments to the Arbiter and to the other Party. If a Party does not so deliver such statement or if a party fails to appear at the hearing, the Arbiter may enter a default award against such party, provided said party received actual notice of the hearing. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

(ii) The Arbiter shall issue its opinion within ten (10) business days after his or her receipt of the statements. The unsuccessful party shall pay the legal fees of the prevailing party. If the Arbiter refuses to or fails to act within such time, the American Arbitration Association shall appoint a successor arbitrator. The Arbiter's review and decision shall be limited to the disputed matter. Except as otherwise provided, the Arbiter shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the this Agreement, or any other agreement between the Landlord and Tenant, or to negotiate new agreements or provisions between the Parties. A decision of the Arbiter issued hereunder shall be final and binding upon the Landlord and Tenant, unless a party files a request for judicial relief with a court of competent jurisdiction with respect to the decision within fifteen (15) working days after the issuance of the Arbiter's decision. If any such claim is timely filed, the petitioning party shall be entitled to de novo judicial review.

(iii) The losing party in arbitration shall pay the arbitrator's fees and related costs of arbitration. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the arbitrator finds that the request was frivolous or that the

arbitration action was otherwise instituted or litigated in bad faith. Judgment upon the Arbiter's decision may be entered in any court of competent jurisdiction.

(iv) California law, including the California Arbitration Act, Code of Civil Procedure §§1280 through 1294.2 shall govern all arbitration proceedings.

ARTICLE 24. LIMITATIONS ON LIABILITY

24.1 Waiver of Consequential Damages.

As a material part of the consideration for this Lease, neither party shall be liable for, and each party hereby waives any claims against the other for any consequential damages arising out of any such party's default.

24.2 Limitation on Liability Upon Transfer.

In the event of any Transfer of Landlord's or Tenant's interest in and to the Premises, Landlord or Tenant, as the case may be, subject to the provisions hereof, (and in case of any subsequent transfers, the then transferor) will automatically be relieved from and after the date of such Transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Landlord or Tenant, as the case may be (or such transferor, as the case may be), but not from liability incurred by Landlord or Tenant, as the case may be (or such transferor, as the case may be) on account of covenants or obligations to be performed by Landlord or Tenant, as the case may be (or such transferor, as the case may be) hereunder before the date of such Transfer; provided, however, that Landlord or Tenant, as the case may be (or such subsequent transferor) has transferted to the transferee any funds in Landlord's or Tenant's possession (or in the possession of such subsequent transferor) in which Landlord or Tenant (or such subsequent transferor) has an interest, in trust, for application pursuant to the provisions hereof, and such transferee has assumed all liability for all such funds so received by such transferee from Landlord or Tenant as the case may be (or such subsequent transferor).

24.3 No Recourse Against Specified Persons.

No shareholder, board member, officer, employee, limited partner or member of Tenant or of any partner or member of Tenant will be personally liable to Landlord or any successor in interest of Landlord for any Event of Default of Tenant, and Landlord agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may became due to Landlord or any successor or for any obligation or claim based upon this Lease, against any such Person.

24.4 No Landlord Liability. Except to the extent of the gross negligence or willful misconduct of Landlord, or Landlord's Representatives, and subject to Tenant's indemnification obligations, Landlord shall not be liable or responsible in any way for:

(a) Any loss or damage whatsoever to any property belonging to Tenant or to its representatives or to any other person who may be in or upon the Premises; or

(b) Any loss, damage or injury, whether direct or indirect, to persons or property resulting from any failure, however caused, in the supply of utilities, services or facilities provided or repairs made to the Premises under any of the provisions of this Lease or otherwise.

24.5 No Liability for Actions of ORA. Neither Landlord nor Landlord's Representatives shall have any liability or responsibility for any actions taken at any time by ORA or for any losses whatsoever, whether direct or indirect, resulting from the passage, implementation or enforcement of AB 26 by any governmental agency or official.

ARTICLE 25. ESTOPPEL CERTIFICATES BY TENANT

25.1 Estoppel Certificate by Tenant.

Tenant shall execute, acknowledge and deliver to Landlord (or at Landlord's request, to a prospective purchaser or mortgagee of Landlord's interest in the Property), within fifteen (15) business days after a request, a certificate stating to the best of Tenant's knowledge after diligent inquiry (a) that this Lease is umnodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Landlord. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a tme, correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by any Landlord, any successor agency, and any prospective purchaser or mortgagee of the Premises or any part of Landlord's interest therein. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into each retail Sublease) to cause retail Subtenants under retail Subleases to execute, acknowledge and deliver to Landlord, within ten (10) business days after request, an estoppel certificate covering the matters described in clauses (a), (b), (c) and (d) above with respect to such retail Sublease.

ARTICLE 26. ESTOPPEL CERTIFICATES BY LANDLORD

26.1 Estoppel Certificate by Landlord.

Landlord shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective transferee of Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate stating to the best of Landlord's knowledge (a) that this Lease is unmodified and in fiill force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of Landlord, there are then existing any defaults under this Lease (and if

so, specifying the same) and (d) any other matter actually known to Landlord, directiy related to this Lease and reasonably requested by the requesting Party. In addition, if requested, Landlord shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Landlord that, to the best of its knowledge, such attachment is a true, cortcct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant, any successor, and any prospective subtenant, mortgagee or transferee of Tenant's interest in this Lease.

ARTICLE 27. APPROVALS BY LANDLORD

27.1 Approvals by Landlord.

Landlord represents to Tenant that the Landlord's City Administrator or his or her designee, is authorized to execute on behalf of Landlord any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Landlord hereimder, if the City Administrator determines, after consultation with, and approval as to form by, the City Attomey, that the document is necessary or proper and in Landlord's best interests. The Landlord City Administrator's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or pennits the giving by Landlord of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Landlord, the City Administrator, or his or her designee, shall be authorized to execute such instrument on behalf of Landlord, except as otherwise provided by applicable law, including the City's Charter, or the express language of this Lease.

27.2 Fees for Review.

Within thirty (30) days after Landlord's written request, Tenant shall pay Landlord, as Additional Rent, Landlord's reasonable costs, including, without limitation, Attorneys' Fees and Costs (and including fees and reasonable costs of the City Attomey) incurred in connection with the review, investigation, processing, documentation and/or approval of any Proposed Transfer or Sublease, Mortgage, estoppel certificate, Non-disturbance Agreement and Additional Construction. Tenant shall pay such reasonable costs regardless of whether or not Landlord consents to such proposal, except only in any instance where Landlord has wrongfully withheld, delayed or conditioned its consent in violation of this Lease.

ARTICLE 28. NO MERGER OF TITLE

28.1 No Merger of Titie.

There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the leasehold estate or any interest in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all Persons having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

ARTICLE 29. QUIET ENJOYMENT

29.1 Quiet Enjoyment.

Subject to the Pennitted Title Exceptions, the terms and conditions of this Lease and applicable Laws, Landlord agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietiy hold, occupy and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under Landlord. Notwithstanding the foregoing, Landlord shall have no liability to Tenant in the event any defect exists in the titie of Landlord as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to Landlord's willful misconduct) and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing titie defect shall be to obtain compensation by pursuing its rights against any title insurance company or companies issuing titie insurance policies to Tenant.

ARTICLE 30. SURRENDER OF PREMISES

30.1 End of Lease Term.

(a) Condition of Premises. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surtender to Landlord the Premises in good order and condition, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder and subject to Sections 7.2(b), 11 and 12. The Premises shall be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto subject to Section 32.1(c) and in compliance with Section 32.1(d). Tenant hereby agrees to execute all documents as Landlord may deem necessary to evidence or confirm any such other termination. The parties acknowledge that the provisions of the LDDA shall be controlling with respect to Tenant's obligations in connection with surrender of the Premises prior to issuance of Certificates of Completion with respect to the Premises thereunder.

(b) Subleases. Upon any termination of this Lease, Landlord shall have the right to terminate all Subleases hereunder except for those Subleases with respect to which Landlord has entered into Non-Disturbance Agreements as provided in Section 14.4, or which Landlord has agreed to assume pursuant to Section 21.4.

(c) Personal Property. Upon expiration or termination of this Lease, Tenant and all Subtenants shall have the right to remove their respective trade fixtures and other personal property. At Landlord's request, Tenant shall remove, at no cost to Landlord, any Personal Property belonging to Tenant which then remains on the Premises (excluding any personal property owned by Subtenants or other Persons). If the removal of such Personal Property causes damage to the Premises, Tenant shall repair such damage, at no cost to Landlord.

(d) Tenant shall surtender the Premises in compliance with all Laws, and free of all Encumbrances created, incurted, assumed or suffered to exist by Tenant or any Person claiming through it (including any Subtenant) other than Permitted Titie Exceptions and other

Encumbrances approved by Landlord in writing, and in at least a condition which is sufficient to support the following (collectively, the "Minimum Condition"):

(i) Operational capability to handle the same types of services which have been provided within the Premises for the prior five (5) Lease Years.

(ii) The following criteria shall be taken into account and considered relevant in determining whether the Minimum Condition has been met at the time of the surrender: (1) the main civil and structural works shall not exhibit any excessive signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification when originally installed, however, Landlord acknowledges that normal wear and tear of such improvements according to their age shall be permissible; (2) limited life and "wear and tear" components of the Improvements have been replaced by Tenant prior to the surrender date in accordance with good industry practice as and when they failed, wore out, or reached their design life or customary replacement frequency, as part of ongoing maintenance activities, however, Landlord acknowledges that such Improvements, may otherwise be tumed over with normal wear and tear; and (3)major electrical and mechanical components or equipment shall be in good operating condition, normal wear and tear excepted.

[DISCUSS INCLUSION OF ANY ADDITIONAL PROCEDURES, INCLUDING JOINT INSPECTION PRIOR TO TERMINATION DATE, ETC.]

ARTICLE 31. HOLD OVER

31.1 No Right to Hold Over.

Tenant shall have no right to remain in possession of all or any part of the Premises after the Termination Date of this Lease. Tenant shall have no right to holdover and no tenancy shall be created by implication or law. However, if Tenant fails to vacate and surrender possession of the Premises on or prior to the Termination Date, Tenant shall pay Landlord 200% of the higher of monthly rent immediately theretofore payable plus other rents prevailing at the date of such holding over for each month after the Termination Date or then comparable monthly rents for similar projects from the date of hold-over, in any case, always subject to all rents being increased at the sole discretion of Landlord at any time during the holding over period and upon notice to Tenant. Landlord's receipt and acceptance of such monthly Rent as adjusted in this Section 30.1 shall not be construed as Landlord's consent to any holding over by Tenant. Tenant hereby agrees to indemnify and hold harmless Landlord from and against any and all Claims incurred by Landlord as a result of Tenant remaining in possession of all or any part of the Premises after the Termination Date. Tenant shall not interpose any counterclaim in any summary or other proceeding based on holding over by Tenant. Except as provided in this Section 30.1, all other terms and conditions of this Lease shall apply during any period of holding over by Tenant without Landlord's express written consent, in its sole and absolute discretion.

31.2 No Right to Relocation Assistance. It is understood and agreed that nothing contained in this Lease shall give Tenant any right to relocation assistance or payment from

Landlord upon expiration or termination of the Term or upon the termination of any holdover tenancy by any means whatsoever. Tenant acknowledges and agrees that upon such expiration or termination, it shall not be entitled to, and expressly hereby waives, any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) or any other applicable Law with respect to any relocation of its business or activities.

31.3 Transition. During the last Lease Year of the Term, Tenant shall, without compensation, cooperate with Landlord and any proposed subsequent master lessee, tenant, assignee, licensee or the like to the Premises identified by Landlord to ensure the orderly transition of the Premises upon the Termination Date, including, without limitation, providing tours to, participating in transition meetings with, and providing relevant non-confidential information to Landlord or such subsequent party upon the reasonable request of Landlord.

ARTICLE 32. NOTICES.

32.1 Notices.

All notices, demands, consents, and requests that may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on the date that is three days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Landlord:
City of Oakland
City Hall
1 Frank H. Ogawa Plaza, 3rd. Fl.
Oakland, CA 94612
Attention: City Administrator
Reference: Oakland Army Base
Facsimile: _____
Telephone: _____
Email: _____

with a copy to:
Office of the City Attomey
Attn: _____
City Hall
One Frank H. Ogawa Plaza-6th Fl.
Oakland, CA 94612
Reference: Oakland Army Base
Facsimile: _____
Telephone: _____
Email: _____

To Tenant: [CCIG ENTITY]

_____
_____
_____
Attn: _____
Facsimile: _____
Telephone: _____
Email: _____

with a copy to:

_____
_____
_____
Attn: _____
Facsimile: _____
Telephone: _____
Email: _____

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof For convenience of the Parties, copies of notices may also be given by telefacsimile to the facsimile number set forth above or such other number as may be provided from time to time by notice given in the manner required hereunder; however, neither Party may give official or binding notice by telefacsimile.

32.2 Form and Effect of Notice.

Every notice given to a Party or other Person under this Section must state (or shall be accompanied by a cover letter that states):

(a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto; and

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 32.2.

ARTICLE 33. INSPECTION OF PREMISES BY LANDLORD

33.1 Entry.

Subject to the rights of Subtenants, Tenant shall permit Landlord and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that Landlord may have a right to perform under Article 17 and/or (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as Landlord reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions. Nothing herein shall imply any duty upon the part of Landlord to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Landlord any obligation, or liability, for the care, supervision or repair of the Premises, provided, however, Landlord shall use reasonable efforts to minimize interference with the activities and tenancies of Tenant, Subtenants and their respective Invitees. If Landlord elects to perform work on the Premises pursuant to Section 19, Landlord shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except to the extent caused solely by the gross negligence or willful misconduct of Landlord, its agents or employees, provided Landlord uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.

33.2 Exhibit for Lease.

Subject to the rights of Subtenants, Tenant shall permit Landlord and its Agents to enter the Premises during regular business hours upon reasonable prior notice (i) to exhibit the same in a reasonable manner in connection with any sale, transfer or other conveyance of Landlord's interest in the Premises, and (ii) provided that Tenant has not exercised its right of first offer pursuant to Article 40, during the last eighteen (18) months of the Term, for the purpose of leasing the Premises.

33.3 Notice, Right to Accompany.

Landlord agrees to give Tenant reasonable prior notice of Landlord's entering on the Premises except in an emergency for the purposes set forth in Sections 37.1 and 37.2. Such notice shall be not less than twenty-four (24) hours oral notice. Tenant shall have the right to have a representative of Tenant accompany Landlord or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice shall be required for Landlord's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in Sections 34.1 and 34.2.

33.4 Rights of Subtenants.

Tenant agrees to use commercially reasonable efforts (including efforts to obtain the agreement of each Subtenant (other than Landlord) to the inclusion of a provision similar to this

Section 33.4 in its Sublease) to require each Subtenant to permit Landlord to enter its premises for the purposes specified in this Section 33. If Tenant is unable to obtain such agreement after commercially reasonable efforts, Tenant shall use commercially reasonable efforts to include a right of entry for Landlord upon terms customary for comparable leases in the Central District Redevelopment Project Area.

ARTICLE 34. MORTGAGES

34.1 No Mortgage Except as Set Forth Herein.

(a) Restrictions on Financing. Except as expressly permitted in this Section 34, Tenant shall not:

(i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease; or

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrances other than as permitted by Section 13.1.

(b) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Land in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Mortgagee of Tenant.

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this Section 34 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

34.2 Leasehold Liens.

(a) Tenant's Right to Mortgage Leasehold. Subject to the terms and conditions of Article 34, at any time during the Term following Completion of Initial Improvements, and provided that no Event of Default or Unmatured Event of Default then exists, Tenant shall have the right to assign, mortgage or encumber Tenant's leasehold estate created by this Lease, solely with respect to such portion of the Premises containing such completed Initial Improvements, by way of leasehold mortgages, deeds of trust or other security instruments of any kind to the extent pennitted hereby.

(b) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder.

(c) Limitation of Number of Leasehold Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees (other than notice rights, which shall apply to all Mortgagees that have given Landlord the notice required under Section 35.9(b)) shall only apply to the most senior Mortgagee, unless such Mortgagee elects not to exercise its rights thereunder in which event such rights will apply to the next most senior Mortgagee.

34.3 Notice of Liens.

Tenant shall notify Landlord promptly of any lien or encumbrance other than the Permitted Title Exceptions of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

34.4 Limitation of Mortgages.**[SUBJECT TO FURTHER DISCUSSION]** In addition to the limitations set forth elsewhere in this Article 34, the limitations set forth in this Section 34.4 shall apply to all Mortgages.

(a) Limitations. A Mortgage may be made only after Completion of Initial Improvements and only for the purpose of refinancing completed Initial Improvements, any permanent take-out financing, acquisition financing by a transferee of Tenant's interest in this Lease, the refinancing of permitted Mortgages. With respect to any issuance of corporate debt or other securitized financings, Tenant shall not be permitted to create any structure that would create an obligation or security of Landlord. In addition, Tenant's right to enter into a Mortgage shall be subject to the following limitations:

(i) The total amount of the debt encumbering Tenant's interest shall not exceed _____;

(ii) The total debt encumbering Tenant's leasehold does not exceed ninety percent (90%) of the sum of the appraised value of such leasehold plus the value of any additional security, guaranty or credit enhancement provided by Tenant, as determined by the proposed Leasehold Mortgagee;

(iii) The interest rate under such Mortgage shall not exceed _____ per annum;

(iv) The ratio of the net operating income from the Project for the twelve (12) month period beginning on the proposed closing date for the financing to be secured by the Leasehold Mortgage to the aggregate of all principal and interest payable on all financing encumbering the Project for such period equals or exceeds 1.00 to 1.00;

(v) Tenant has received the prior written confirmation from Landlord that each such Mortgage is in compliance with this Section 34.4;

(vi) a Mortgage may not cover any property of, or secure any debt issued or guaranteed by, any Person other than Tenant for the purpose described in Section 34.4(a);

(vii) no Person other than a Bona Fide Institutional Lender shall be entitled to the benefits and protections accorded to a Mortgagee in this Lease;

(viii) no Mortgage or other instrument purporting to mortgage, pledge, encumber or create an Encumbrance on or against any or all of the interest of Tenant shall extend to or affect the fee simple interest in the Premises, Landlord's interest hereunder or its reversionary interest and estate in and to the Premises or any part thereof, or adversely affect the rights or increase the liabilities or obligations of Landlord except to the extent set forth in this Lease;

(ix) Landlord shall have no liability whatsoever for payment of the principal sum secured by any Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder;

(x) Landlord shall have no obligation to any Mortgagee except as expressly as set forth in this Lease and only with respect to such Mortgagee that has provided Landlord with written notice of its Mortgage;

(xi) each Mortgage shall provide that if an event of default under the Mortgage has occurred and is continuing and the Mortgagee gives notice of such event of default to Tenant, then the Mortgagee shall give concurrent notice of such default to Landlord;

(xii) subject to the terms of this Lease and except as specified herein, all rights acquired by a Mortgagee under any Mortgage shall be subject and subordinate to all of the provisions of this Lease and to all of the rights of Landlord hereunder;

(xiii) notwithstanding any enforcement of the security of any Mortgage, Tenant shall remain liable to Landlord for the payment of all sums owing to Landlord under this Lease and the performance and observance of all of Tenant's covenants and obligations under this Lease;

(xiv) a Mortgagee shall not, by virtue of its Mortgage, acquire any greater rights or interest in or to the Premises than Tenant has at any applicable time under this Lease, other than such rights or interest as may be granted or acquired in accordance with this Article 34; and

(xv) prior to the effective date of a Mortgage, each Mortgagee, Landlord and Tenant shall enter into a consent agreement in a form acceptable to all parties if required by Mortgagees, whereby all parties consent to the assignment of such Mortgage by the Mortgagees to an agent for the Mortgagees in connection with the financing of the Mortgage; provided that such consent agreement shall be in a customary form, include the exact rights and protections provided to the Mortgagees in this Lease, acknowledge that Tenant shall remain liable to Landlord for the payment of all sums owing to Landlord under this Lease and the performance and observance of all of Tenant's covenants and obligations under this Lease and provide that the Mortgagees shall promptly cause to be recorded in the County Recorder's Office of Alameda County a reconveyance and release of the Mortgage upon the end of its term.

(b) Statement. Landlord agrees within thirty (30) days after request by Tenant to give to any holder or proposed holder of a Mortgage a statement in recordable form as to whether such Mortgage is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Landlord from asserting, against either Tenant or such prospective Mortgagee, that such Mortgage (if done in the way described in the statement) is not permitted hereunder, but shall create no liability on Landlord, and shall conclusively estabhsh that such Mortgage is permitted hereunder and does not constitute a default by Tenant. In making a request for such statement, Tenant shall fumish Landlord true, accurate and complete copies of such of the financing documents as are required reasonably by Landlord to permit Landlord to make the determination whether such Mortgage is permitted hereby. In no event, however, shall any failure by Tenant or other party to comply with the terms of any Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

34.5 Interest Covered by Mortgage.

A Mortgage may attach to any or all of the following interests in the Premises: (i) Tenant's leasehold interest in the Premises created hereby and Tenant's interest in the Improvements or some portion thereof granted hereunder, (ii) Tenant's interest in any permitted Subleases thereon, (iii) any Personal Property of Tenant, (iv) rents, products and proceeds of the foregoing, and (v) any other rights and interests of Tenant arising under this Lease. As provided in Section 36.1(b) no Mortgage may encumber Landlord's interest in or under this Lease or Landlord's fee simple interest in the Property or Landlord's personal and other property in, on or around the Property. The Mortgagee must agree to release any interests in New Street and Improvements thereon immediately upon termination of this Lease as to New Street, as described in Section 1.1(a) hereof

34.6 Institutional Lender Only.

A Mortgage may be given only to (i) a Bona Fide Institutional Lender or (ii) any other lender that shall have been approved by Landlord in its sole and absolute discretion, subject to Landlord's receipt of substantial and adequate evidence providing Landlord with information on the structure, financial capacity, and experience of such other lender. In any instances in which Landlord's consent is so required, Landlord shall be deemed to have approved such other lender if the written notice from Tenant of the identity of such other lender specifies that no notification of disapproval within sixty (60) days after the receipt of such written notice constitutes approval, and Landlord sends no notification of disapproval within ten (10) days after written notice from Tenant to Landlord, notifying Landlord of the expiration of such 60 day period..

34.7 Rights Subject to Lease.

(a) Subject to Lease. Except as otherwise expressly provided herein, all rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, the LDDA, and to all rights of Landlord hereunder. None of such covenants, conditions and restrictions is or shall be waived by

Landlord by reason of the giving of such Mortgage, except as expressly provided in this Lease or otherwise specifically waived by Landlord in writing.

(b) Construction and Restoration Obligations. Notwithstanding any provision of this Lease to the contrary, no Mortgagee (including any such Mortgagee who obtains titie to the leasehold or any part thereof as a result of foreclosure proceedings or action in lieu thereof) shall be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements unless expressly assuming such obligation under Section 36.10(c). Any other Person who thereafter obtains title to the leasehold or any interest therein from or through such Mortgagee, or any other purchaser at foreclosure sale (other than a Mortgagee), shall be required to Restore in accordance with the requirements of this Lease. Whether or not a Mortgagee elects to Restore, nothing in this Lease shall be construed to permit any such Mortgagee to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or authorized herein or in the LDDA, as hereafter amended or extended from time to time. If Mortgagee obtains titie to the leasehold and chooses not to complete or Restore the Improvements, it shall so notify Landlord in writing of its election within ninety (90) days following its acquisition of the tenancy interest in this Lease and shall use commercially reasonable efforts seh its tenancy interest to a purchaser that shall be obligated to Restore the Improvements to the extent this Lease obligates the Tenant to so Restore. Mortgagee shall use good faith efforts to cause such sale to occur within six (6) montiis following the Mortgagee's written notice to Landlord of its election not to Restore, provided that any such purchaser shall be subject to Landlord's reasonable prior written approval, which approval shall not be unreasonably withheld so long as such purchaser provides evidence satisfactory to Landlord in its reasonable discretion showing that such purchaser possesses the qualifications, experience and financial capacity to Restore in accordance with the requirements of this Lease. In the event Mortgagee agrees to Restore the Improvements, all such work shall be perforrued in accordance with all the requirements set forth in this Lease, and Mortgagee must submit evidence reasonably satisfactory to Landlord that it has the qualifications, experience and financial responsibility necessary to perform such obligations.

34.8 Required Provisions of any Mortgage.

Tenant agrees to have any Mortgage provide: (a) that the Mortgagee shall by registered or certified mail give written notice to Landlord of the occurrence of any event of default as defined under the Mortgage; (b) that Landlord shall be given notice at the tirue any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be consistent with the provisions of this Lease, unless Landlord may agree otherwise in its sole and absolute discretion..

34.9 Notices to Mortgagee.

(a) Copies of Notices. Landlord shall give a copy of each notice Landlord gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of Landlord's consent to an assignment of any interest in this Lease or to a Significant Change, to any Mortgagee that has given to Landlord written notice substantially in the form provided in Subsection (b). Copies of such notices shall be given to Mortgagees at the same time as notices are given to Tenant by Landlord, addressed to such Mortgagee at the address last furuished to

Landlord. Landlord shall acknowledge in writing its receipt of the name and address of a Mortgagee so delivered to Landlord. Landlord's failure to give such notice to a Mortgagee shall not be deemed to constitute a default by Landlord under this Lease, but no such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Any such notices to Mortgagee shall be given in the same manner as provided in Section 36.

(b) Notice From Mortgagee to Landlord. The Mortgagee under any Mortgage shall be entitled to receive notices from time to time given to Tenant by Landlord under this Lease in accordance with Subsection (a) above provided such Mortgagee shall have delivered a notice to Landlord in substantially the following form:

> "The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City of Oakland, as Landlord, and _____ as Tenant (the "Lease"), of Tenant's interest in the Lease demising the parcels, a legal description of which is attached hereto as Exhibit ___ and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to Tenant by Landlord be sent to the undersigned at the following address: _____."

34.10 Mortgagee's Right to Cure.

If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. Each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay the Rents due hereunder, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease; provided, however, that no such action shall constitute an assumption by such Mortgagee of the obligations of Tenant under this Lease. Each Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Tenant. In the case of any notice of default given by Landlord to Tenant, the Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary so long as Mortgagee commences cure within such thirty (30) day period and diligentiy proceeds to completion) after the later to occur of (i) the expiration of such cure period, or (ii) the date that Landlord has served such notice of default upon Mortgagee, and Landlord shall accept such performance by or at the instance of the Mortgagee as if the same had

been made by Tenant. The time in which Mortgagee may cure is herein called the "Mortgagee Cure Period."

(b) Foreclosure. Anything contained in this Lease to the contrary notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, Landlord shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to each Mortgagee, a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver if Mortgagee deems it advisable), or (y) notified Landlord of its intention to institute foreclosure proceedings (or to commence actions to obtain possession of the Premises through appointment of a receiver or otherwise) or otherwise acquire Tenant's interest under the Lease, and thereafter promptiy commences and prosecutes such proceedings with diligence and dispatch subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings or Force Majeure. The period from the date Mortgagee so notifies Landlord until a Mortgagee acquires and succeeds to the interest of Tenant under this Lease or some other party acquires such interest through Foreclosure is herein called the "Foreclosure Period." A Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee to the extent not cured prior to Foreclosure. The foregoing provisions of this Subsection (b) are subject to the following: (i) no Mortgagee shati be obligated to continue possession or to continue Foreclosure after the defaults or Events of Default hereunder referred to shall have been cured (and the Landlord shall accept such cure or performance of such obligation by any party, including Tenant); (ii) nothing herein contained shall preclude Landlord, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) such Mortgagee shall agree with Landlord in writing to comply during the Foreclosure Period with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such Mortgagee (except to the extent related to Hazardous Materials or Restoration), including but not limited to the payment of all sums due and owing hereunder (except for monetary obligations related to Hazardous Materials or Restoration) and the use restrictions set forth in Section 3.1. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (iii) of the preceding sentence, Mortgagee shall have the right at any time to notify Landlord that it has relinquished possession of the Premises or that it will not institute Foreclosure or, if such Foreclosure has commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Landlord, and, thereupon, Landlord shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease unless such Event of Default has been cured. Upon any such termination, the provisions of this Section 34.10(b) shall apply. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (i) have fully cured any Event of Default due to a default in the payment of money, except for monetary obligations related to

Restoration or Hazardous Materials (ii) continue to pay currently such monetary obligations as and when the same become due, and (iii) perform all other obligations of Tenant under this Lease to the extent that they are susceptible of being performed by Mortgagee.

(c) Construction.

(i) Subject to Section 36.7(b), if a default of Tenant occurs following any damage or destruction but prior to Restoration of the Improvements, Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Mortgagee expressly assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to Restore, in the manner provided in this Lease, the Improvements on the Premises or the part thereof to which the lien or title of such Mortgagee relates, and submitted evidence satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligation.

(ii) Upon assuming Tenant's obligations to Restore in accordance with Subsection (c)(i) above, Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date of Tenant stopped work on the Restoration to the date of such assumption plus an additional one hundred twenty (120) days.

(d) New Lease. In the event of the termination of this Lease before the expiration of the Term, including, without limitation, the termination of this Lease by the Landlord on account of an Event of Default or the rejection of this Lease by a trustee of Tenant in bankruptcy or by Tenant as a debtor-in-possession, except (i) by Total Condemnation, or (ii) as the result of damage or destruction as provided in Section 12, Landlord shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The Mortgagee shall thereupon have the option to obtain a new Lease and in the event the LDDA is still in effect, the assignment of Tenant's rights and obligations thereunder, in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, Landlord shall enter into a new lease of the Premises with the most senior Mortgagee giving notice within such period or its designee, provided that the Mortgagee assumes Tenant's obligations as Sublandlord under any Subleases then in effect (unless Landlord entered into such Sublease in violation of (f) below) to the extent such assumption is necessary in order to continue such Subleases in effect; and

(ii) Such new Lease, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (except for any requirements or conditions which Tenant has satisfied prior to the termination). Such new lease shall have the

same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. Such new Lease shall require the Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease that would, at the time of the execution of the new lease, be due under this Lease if this Lease had not been terminated and to perfonn as soon as reasonably practicable and any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee other than obligations of Tenant with respect to construction of the Initial Improvements, which obligations shall be performed by Mortgagee in accordance with Section __, or with respect to Restoration, shall be performed by Mortgagee in accordance with Section 36.10(c). Upon the execution of such new Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable Attomeys' Fees and Costs incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such new Lease. The provisions of this Section 34.10(d) shall survive any termination of this Lease (except as otherwise expressly set out in the first sentence of Section 34.10(d)), and shall constitute a separate agreement by the Landlord for the benefit of and enforceable by the Mortgagee.

(iii) Simultaneously with the execution and delivery of the new lease, the Landlord shall confirm and acknowledge that Mortgagee has titie to the Improvements for the term of the new lease by such means as is customary or may be reasonably required by a reputable title insurance company to insure the leasehold estate created by the new lease; provided, however, that Landlord shall have no responsibility for exceptions to titie or titie defects that affected titie to the Improvements on or after the Commencement Date of this Lease except to the extent created by the actions of City or Landlord.

(e) Nominee. Any rights of a Mortgagee under this Section 34.10 may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee; provided, however, that a Mortgagee may acquire titie to the Lease through a wholly owned (directiy or indirectiy) subsidiary of Mortgagee.

(f) Subleases. Effective upon the commencement of the term of any new Lease executed pursuant to Subsection 36.10(d), any Sublease then in effect shall be assigned and transferred without recourse by Landlord to Mortgagee and all monies collected by or for the benefit of Landlord from the Sublessees shall be paid to Mortgagee, or at Mortgagee's option, shall offset Rent. Between the date of tennination of this Lease and commencement of the term of the new Lease, Landlord shall not (1) enter into any new subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee if Mortgagee enters into a new Lease, (2) cancel or materially modify any of the existing subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor or any other agreements affecting the Premises, or (3) accept any cancellation, tennination or surrender of any of the above without the written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed. Effective upon the commencement of the tenn of the new Lease, Landlord shall also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, all Personal Property.

(g) Limited to Permitted Mortgagees. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of Bona Fide Institutional Lenders that are the holders of the Mortgages permitted hereunder

(h) Consent of Mortgagee. No material amendment, termination or cancellation of this Lease shall be effective as against a Mortgagee unless a copy of the same shall have been delivered to such Mortgagee and such Mortgagee shall have approved the material amendment, termination or cancellation in writing. No merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Mortgagee.

(i) Limitation on Liability of Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Mortgagee, or its designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes the owner of the leasehold estate created hereby, and then only for so long as it remains the owner of the leasehold estate and only with respect to the obligations arising during such period of ownership. In no event will Mortgagee have personal liabihty under this Lease or a new lease under Section 36.10(d) greater than Mortgagee's interest in this Lease or such new lease under Section 36.10(d), and the Landlord will have no recourse against Mortgagee's assets other than its interest herein or therein.

34.11 Assignment by Mortgagee.

Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in heu of, foreclosure or other appropriate proceedings in the nature thereof, or any Transfer of this Lease by Mortgagee after acquisition of the leasehold estate through foreclosure or deed in heu thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Landlord shall recognize the Mortgagee or other transferee in connection therewith as the Tenant hereunder. The right of such transferee or the right of the transferee of such Mortgagee (but not the right of the Mortgagee) thereafter to assign or transfer this Lease or such new Lease shall be subject to the restrictions of Section 14. After acquisition of the Premises by foreclosure or transfer in lieu of foreclosure, all accrued and unpaid Rent shall be payable by such transferee as provided and subject to the limitations set forth in this Lease. In the event Mortgagee subsequentiy assigns or ttansfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or ttansfers its interest under any new lease obtained pursuant to Section 38.10(d), and in connection with any such assignment or transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such assignment of transfer, then such mortgage or deed of trust shall be considered a pennitted Mortgage, and Mortgagee shall be entitied to receive the benefit and enforce the provisions of this Section 33 and any other provisions of this Lease intended for the benefit of a permitted Mortgagee who holds a pennitted Mortgage.

34.12 Transfer of Mortgage.

Landlord hereby consents to a transfer or encumbrance by Mortgagee, absolutely or as collateral security for performance of its obligations, of its Mortgage or any interest therein, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such transfer the new holder or pledgee of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

34.13 Appointment of Receiver.

In the event of any default under a Mortgage, the holder of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Mortgagee accelerates the maturity of all indebtedness secured by its Mortgage.

34.14 Landlord's Right to Purchase Leasehold Mortgage.

(a) If (i) any event of default by Tenant has occurred under a Mortgage and is continuing and (ii) the Mortgagee recognized by Landlord pursuant to Section 36.2(c) is entitled, pursuant to any intercreditor artangements then in force and effect, to declare all or part of the indebtedness secured by a Mortgage to be immediately due and payable (or, in the case of a Mortgage that is a lease, to terminate the lease), then commencing on the date that is 10 calendar days after the date on which such Mortgagee shall serve notice upon Landlord in writing ("Lender's Notice") with a copy to all other Mortgagees that such Mortgagee intends and is entitled to, pursuant to the intercreditor arrangements then in force and effect, commence proceedings to foreclose the Mortgage or, in the case of a Mortgagee that is a Lessor to terminate the lease (stating the calculation of the purchase price pursuant to Section 36.14(c)), Landlord shall have the right and option for 30 calendar days (the "Landlord's Option") to purchase from all Mortgagees their Mortgages (or, in the case of a Mortgagee that is a Lessor, to purchase its interest in the Lease), upon the terms and subject to the conditions contained in this Section 34.14.

(b) Landlord's Option shall be exercised by written notice served upon Tenant and all Mortgagees within such 30-day period. Time shall be of the essence as to the exercise of Landlord's Option. If Landlord's Option is duly and timely exercised, Landlord shall purchase ati Mortgages (or, in the case of a Mortgagee that is a Lessor, such Mortgagee's interest in the Lease) and all Mortgagees shall assign their Mortgages (and any Mortgagee that is a Lessor shall assign its interest in the Lease) to Landlord (or its designee) on the date which is 60 calendar days after the date on which a Lender's Notice is served upon Landlord. The closing shall take place at a mutually convenient time and place.

(c) The purchase price payable by Landlord shall be 100% of the aggregate amounts secured by or due under such Mortgages or leases (including principal, interest, fees, premiums, and other costs and expenses (including attorneys' fees) and any other amounts secured thereby or due thereunder) as of the closing date of the purchase. The purchase price shall be paid in full in cash at closing by wire transfer or other immediately available funds. The purchase price shall be paid by Landlord to each respective Mortgagee, to be applied by the

Mortgagee to the amounts secured by the Mortgage owed to such Mortgagee (or to amounts owed to a Mortgagee that is a Lessor under the applicable lease), subject to the priorities of lien of such Mortgages (or leases, as applicable).

(d) At the closing and upon payment in full of the purchase price specified in Section 36.14(c), each Mortgagee shall assign its Mortgage (or, in the case of a Mortgagee that is a Lessor, its interest in the Lease) to Landlord, together with any security interest held by it in Tenant's leasehold interest in the Premises, without recourse, representations, covenants or warranties of any kind, provided that such Mortgages (or leases) and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by Landlord to all Mortgagees (rather than the indebtedness theretofore secured thereby) payable on demand, with interest and upon the other items referred to in this Section 36414(d). Each such assignment shati be in form for recordation or filing, as the case may be. Landlord shah be responsible for paying any Taxes payable to any govemmental authority upon such assignment. Such assignment shall be made subject to such state of titie of the Premises as shall exist at the date of exercise of Landlord's Option.

(e) Any Mortgage (or lease between a Lessor and Tenant) shall contain an agreement of the Mortgagee to be bound by the provisions of this Section 34.14.

(f) Landlord shall have the right to receive (and each Mortgage, or lease between a Lessor and a Tenant, shati contain an agreement of the Mortgagee to deliver) all notices of default under any Mortgage or lease between a Lessor and a Tenant contemporaneously with the delivery of such notices to Tenant, but Landlord shati not have the right to cure any default under any such Mortgage or lease, except to the extent provided in this Section 34.14.

ARTICLE 35. NO JOINT VENTURE

35.1 No Joint Venture.

Nothing contained in this Lease shall be deemed or constmed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other Person, or cause Landlord to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

ARTICLE 36. REPRESENTATIONS AND WARRANTIES

36.1 Representations and Warranties of Tenant.

Tenant represents, warrants and covenants to Landlord as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence; Good Standing. Tenant is a limited liability company duly organized and validly existing under the laws of the State of Califomia, and duly registered and authorized to conduct business in the State of Califomia. Tenant has the requisite power and

authority to own its property and conduct its business as presentiy conducted. Tenant is in good standing in the State Califoruia.

(b) Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder No consent, authorization or approval of, and no notice to or filing with, any goverumental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to Landlord in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by Landlord and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (I) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant or its business, or (C) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any hen or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to Landlord in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for bortowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder, and (iv) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

The representations and warranties herein shall survive any termination of this Lease to the extent specified in this Lease.

36.2 Landlord Warranties.

Landlord warrants that it is duly authorized and existing under the laws of the State of Califomia as a municipal corporation, that Landlord, upon approval of its City Council, has full right, power and authority to enter into this Lease and to carty out the actions contemplated by this Lease. Upon Tenant's request, Landlord will give Tenant a copy of a resolution or ordinance adopted by City authorizing Landlord to enter into this Lease.

ARTICLE 37. SPECIAL PROVISIONS [NOTE: CONFORM WITH COMMUNITY BENEFITS PROGRAM REQUIREMENTS]

37:1 Non-Discrimination.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or appticant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in ah business, social, or other establishments or organizations operated by Tenant.

(b) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts entered into by Tenant relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of Subsection (a) above.

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in Oakland or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a govemmental entity pursuant to state or local law authorizing such registration.

(d) Additional Requirements.

(i) Tenant shall state in all sohcitations or advertisements for employees placed by or on behalf of the Tenant that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

(ii) If apphcable, Tenant will send to each labor union or representative of workers with whom Tenant has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Tenant

commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

37.2 Mitigation Measures.

In order to mitigate the significant environmental impacts of this Lease and operation of the Premises, Tenant agrees that the operation of the Project shall be in accordance with the Mitigation Measures attached to this Lease as Exhibit ___, which are to be performed on the part of the project sponsor. As appropriate, Tenant shall incorporate such Mitigation Measures and Improvement into any contract for the operation of the Initial Improvements.

37.3 Local Employment, Apprenticeship, and Local/Small Local Business Enterprise Program.

Tenant shall abide by the provisions of the Landlord's local employment, apprenticeship, and local and small local business programs, as described in Exhibit ____. Tenant shall take commercially reasonable measures to assure that its contractors and subcontractors doing work at the Premises abide by said programs, to the extent required by Exhibit ___.

37.4 Living Wage Requirements.

This Lease is subject to the Living Wage Ordinance codified in Chapter 2.28 of the Oakland Municipal Code and its implementing regulations as a "City Financial Assistance Recipient" or "CFAR". The Ordinance requires, among other things that, unless specific exemptions apply or a waiver is granted, all covered CFARs must pay a minimum level of compensation to their covered employees of at least $9.66 per hour if health benefits or at least $1.25 per hour are offered, or $11.11 per hour if no health benefits are offered. This wage rate shall be adjusted annually pursuant to the terms of the Ordinance. Tenant agrees to abide by the requirements of the Living Wage Ordinance to pay the specified minimum compensation to its covered employees, to offer the required compensated and uncompensated leave time to its covered employees, to provide the required notices to its covered employees, to submit the required documentation to the Landlord, and to satisfy ah other applicable requirements. Tenant shall include language in any construction contract or subcontract for work on any work required to be covered under the terms of the Ordinance requiring that the contractor or subcontractor comply with Living Wage requirements for its covered employees. Tenant shall submit a copy of such contracts to the City's Office of Contract Compliance.

37.5 Alcohol, Firearms, Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no advertising of alcohol, firearms, cigarettes or tobacco products shall be allowed on the Premises, except only as incidental to an allowed retail use such as advertising in markets or stores that sell such products if allowed by law. The foregoing prohibition shall include the placement of the name of a company producing, selling or distributing alcohol, firearms, cigarettes or tobacco products or the name of any alcohol, firearms, or cigaretre or tobacco product in any promotion of any event or product or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of drinking, using firearms, or

using cigarettes and tobacco products or to encourage people not to drink, use firearms, or smoke or to stop smoking.

37.6 Waiver of Relocation Assistance Rights.

If Tenant holds over in possession of the Premises following the expiration of this Lease under Section 33.1, Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as provided in Section 11 relating to Condemnation, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

37.7 Campaign Contributions Limits.

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires City Council approval. The City of Oakland Campaign Reform Act prohibits developers that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either one hundred eighty (180) days after completion of, or termination of, contract negotiations.

Tenant must sign and date an Acknowledgement of Campaign Contributions Limits Form attached hereto as Exhibit ___ and incorporated herein.

37.8 First Source Employment Referral Services.

Simultaneously with execution of this Lease, Tenant shall enter into a Memorandum of Understanding with the City for First Source Referral in the form attached hereto as Exhibit ___.

37.9 Other Requirements.

Tenant shall operate and maintain the Premises in accordance with: (1) all applicable federal, state and local requirements for access for disabled persons; (2) the City's Equal Benefits Ordinance; and (3) environmental sustainability measures to the extent that such features are equivalent or lower in cost than comparable non-sustainable alternatives, when measured over their respective life-cycles.

ARTICLE 38. GENERAL

38.1 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., Oakland, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next working day.

(c) Days for Perfonnance. All periods for performance or notices specified herein in tenns of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to the provisions of Section 20 relating to Force Majeure.

38.2 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and Sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

(e) Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof

38.3 Successors and Assigns.

This Lease is binding upon and will inure to the benefit of the successors and assigns of Landlord, Tenant and any Mortgagee. Where the term "Tenant," "Landlord" or "Mortgagee" is used in this Lease, it means and includes their respective successors and assigns, including, as to any Mortgagee, any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Landlord as a Party or the holder of the right or obligation to give approvals or consents, if Landlord or a comparable public body which has succeeded to Landlord's rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Landlord for purposes of this Lease.

38.4 No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in Section 36 with regard to Mortgagees.

38.5 Real Estate Commissions.

Landlord is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease. Tenant and Landlord each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to Indemnify the other Party from any Losses arising out of such claim.

38.6 Counterparts.

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

38.7 Entire Agreement.

This Lease (including the Exhibits), and the LDDA for so long as such agreements are in effect, constitute the entire agreement between the Parties with respect to the subject matter set forth therein, and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior of other agreement shall be permitted to contradict or vary the terms of this Lease.

38.8 Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties.

38.9 Governing Law; Selection of Forum.

This Lease shall be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for Landlord's entering into this Lease, Tenant agrees

that all actions or proceedings arising directly or indirectiy under this Lease may, at the sole option of Landlord, be litigated in courts having situs within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

38.10 Recordation.

This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as Exhibit ___. Promptiy upon Landlord's request following the expiration of the Term or any other termination of this Lease, Tenant shall deliver to Landlord a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to Landlord and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. Landlord may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

38.11 Extensions by Landlord.

Upon the request of Tenant, Landlord may, by written instrnment, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of Landlord's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for perfonnance hereunder.

38.12 Further Assurances.

The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease. The City Administrator of the Landlord is authorized to execute on behalf of the Landlord any closing or similar documents and any contracts, agreements, memoranda or similar documents with Tenant, State, regional and local entities or enter into any tolling agreement with any Person that are necessary or proper to achieve the purposes and objectives of this Lease, if the City Administrator determines that the document or agreement is necessary or proper and is in the Landlord's best interests.

38.13 Attorneys' Fees.

Except as provided in Sections 11.11 or 25.3 with regard to an arbitration proceeding, if either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto conceming the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account

of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of Oakland in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

If Tenant utilizes services of in-house counsel, then, for purposes of this Lease, the reasonable fees of such in-house counsel shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the in-house counsel services were rendered and practiced in the City of San Francisco and full-service law firms.

38.14 Lease Effectiveness.

Notwithstanding any provision herein to the contrary, this Lease shall only become effective on the date the Parties duly execute and deliver this Lease upon Close of Escrow in accordance with the LDDA. Such date will be inserted by Landlord as the Commencement Date on the cover page and on page 1 hereof, provided, however, that Landlord's failure to insert the Commencement Date shall not invalidate this Lease. Where used in this Lease or in any of its exhibits, references to "the effective date of this Lease," "the date of this Lease," the "reference date of this Lease" or "Lease Date" will mean the Commencement Date determined as set forth above and shown on the first page hereof

38.15 Severability; Survival.

If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other Person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frusttate the fundamental purposes of this Lease. Except as otherwise set forth herein, the rights and obligations of the Tenant, the Landlord and the City under this Lease shall survive any termination of the LDDA.

38.16 Cooperation in the event of Legal Challenge. In the event of any Legal Challenge, Landlord and Tenant shall cooperate and coordinate with one another in the defense against such Legal Challenge.

38.17 Incident Management, Notifications and Reports. Tenant shall immediately notify Landlord of all emergencies, and promptly notify Landlord of all material accidents and incidents occurring on or at the Premises, and of all material claims made by or against Tenant,

or potential material claims that Tenant reasonably expects to make against, or to be made against it by, third parties in connection with its use and occupancy of the Premises. In addition, within 30 calendar days following the end of each calendar quarter of each Lease Year, Tenant shall deliver to Landlord a quarterly report of all such occurrences, including the following details in a format specified by Landlord: (a) type of incident (e.g., bodily injury, death or property damage) and summary of each such incident; (b) classification of incident (e.g., machinery, right-of-way or other); (c) number of incidents by type and classification; (d) costs to correct incidents by type and classification; (e) claims made by Tenant and revenue received by type and classification; and (f) claims made against Tenant and losses incurred or losses claimed by type and classification.

38.18 Environmental Reports. Tenant shall provide all reports and

38.19 Other Reports.

(a) Tenant shall deliver to Landlord small and local business utilization in construction and professional services reports as required under applicable adopted Landlord policy.

(b) Tenant shall deliver to Landlord reports that demonstrate Tenant's compliance or non-compliance with the Living Wage Requirements and MAPLA as required under applicable adopted Landlord policy.

(c) Tenant shall deliver to Landlord quarterly Living Wages and Labor Standards at Landlord-Assisted Businesses reports as required under applicable adopted Landlord policy.

(d) Tenant shall provide to Landlord such other reports reasonably requested by Landlord.

ARTICLE 39. DEFINITION OF CERTAIN TERMS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them below in this Section.

AB 26 means the provisions of California Assembly Bill 26 adopted into law June 28, 2011, and any successor statute thereto, as may be amended from time to time.

Additional Construction means the construction, installation, reconstruction, replacement, addition, expansion, Restoration, alteration or modification of any Additional Improvements.

Additional Improvements means any and all buildings, structures, fixtures, and other improvements, including but not limited to any work of improvement as defined in California Civil Code Section 3106, constructed, installed, erected, built, placed or performed (or to be so done) upon or within the Premises at any time, excluding the Initial Improvements.

Additional Rent means any and all sums, other than Base Rent, that may become due or be payable by Tenant at any time pursuant to this Lease.

Affiliate means any Person directly or indirectiy Controlling, Controlled by or under Common Control with another Person.

Agency means the former Redevelopment Agency of the City of Oakland.

Agents means, when used with reference to either Party to this Lease, the members, officers, directors, commissioners, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

Aimiversary Date means each anniversary of the start of a Lease Year (starting with the Commencement Date) or, for purposes of Section 2.2(a)(ii), each anniversary of the start of a Lease Year or a Pre-Lease Year, as applicable.

Annual Gross Tariff Revenues means, for any Lease Year or portion thereof during the Term, the following items detennined on a cash basis: all commodity tariffs, dockage or wharfage fees, rail service fees, and any and all other fees, charges, revenues and other consideration paid or payable to Tenant or Tenant Affiliate (in their capacity as a private port or otherwise) by a commodities shipper or other third party (whether pursuant to private contract between Tenant or Tenant Affiliate and such shipper or other third party, published tariffs or otherwise) for or in connection with the importing, exporting, shipping, transporting, berthing, or handling of commodities to, at or from the Premises.

Annual Reconciliation Statement as defined in Section 2.3(b)(iii).

Arbiter as defined in Section 25.3.

Attorneys' Fees and Costs means reasonable attorneys' fees (including fees from attorneys in the Office of the City Attorney of Oakland), costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Award means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

Billboard Agreement means that certain Billboard Franchise and Lease Agreement, dated _____, 2012, between City and Developer, regarding the installation and use of advertising billboards on or adjacent to the Premises.

Bona Fide Institutional Lender 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 be Bona Fide Institutional Lenders and who is not an Affiliate of Tenant: (i) a savings

bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a govemmental agency, a real estate investment tmst, 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 $500 million in the aggregate (or the equivalent in foreign curtcncy), 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 tmst company, an insurance company, a govemmental agency, or a real estate investment tmst, is regularly engaged in the financial services business, or (ii) any special account, managed fiind, department, agency or Special Affiliate of any of the foregoing, or (iii) any person acting in a fiduciary capacity for any of the foregoing. For purposes hereof, (I) acting in a "fiduciary capacity" shall be deemed to include acting as a tmstee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document, (2) a lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if promptiy 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, and (3) "Special Affiliate" means any Person directiy or indirectly Specially Controlling, Specially Controlled by, or under common Special Control, through one or more other persons, with the person in question.

Business Day means any day that is neither a Saturday, a Sunday, nor a day observed as a holiday by either the City or the State of Califomia or the United States govemment.

Casualty Event as defined in Section 11.1(b).

Casualty Notice as defined in Section 11.4(a)(i).

CCIG Entity means CCIG Oakland Global, LLC, a Califomia limited liability company, or any entity Controlled by or under Common Control with CCIG Oakland Global, LLC.

Certificate of Completion means a certificate of occupancy or equivalent certificate of completion issued by City with respect to the Completion of Initial Improvements.

City means the City of Oakland, a municipal corporation.

City Administrator means the City Administrator of City or his or her designee.

Closing Date as defined in the LDDA.

Commencement Date as defined in Section 1.2(a), subject to the provisions of Section 38.14.

Commercial General Liability Insurance as defined in Section 16.(a)(iii).

Community Benefits or Community Benefits Program means those benefits to the community required to be provided by Developer and the Project with respect to this Lease

pursuant to City's community jobs policy and other City policies and programs, as set forth in Exhibit __ attached to this Lease.

Completion of Initial Improvements means completion of construction and installation of all Initial Improvements on all or any portion of the Premises in accordance with the terms of this Lease. The fact of Completion of Initial Improvements shall be conclusively evidenced by the issuance by City of a certificate of occupancy or equivalent certificate of completion with respect to such Initial Improvements.

Completion Date means the date of Completion of Initial Improvements.

Completion Guaranty **[DISCUSS]** means tiie Completion Guaranty with respect to the Initial Improvements, given by _____ to City, dated _____, 20___, a copy of which is attached as Exhibit ___ to this Lease.

Condemnation means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settiement of a condemnation action.

Condemnation Date means the earlier of (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when titie to the condemned property (or any part thereof) vests in the condemning authority.

Condemned Land Value as defined in Section 12.4(b).

Construction Bonds as defined in Section 8.1(f).

Construction Documents as defined in Section 10.4.

Conttol means: (1) the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the profits or capital of another Person; or (2) the power to direct the affairs or management of another Person, whether by contract or operation of Law or otherwise, and Controlled and Controlling have correlative meanings. Common Control means that two Persons are both Controlled by the same other Person.

CPI means the Consumer Price Index for All Urban Consumers, All Items for the San Francisco-Oakland-San Jose CMSA (Base year 1982-84 = 100) pubhshed by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made in the revised CPI which would produce results equivalent, as nearly as possible, to those which would be obtained hereunder if the CPI were not so revised. If the 1982-84 average shall no longer be used as an index of 100, such change shall constitute a substantial revision. If the CPI becomes unavailable to the pubhc because publication is discontinued, or otherwise, Landlord shati substitute therefor a comparable index based upon changes in the cost of living or purchasing

power of the consumer dollar published by a governmental agency, major bank, other financial institution, university or recognized financial publisher.

Default Rate as defined in Section 2.5.

Depositary means a savings bank, a savings and loan association or a commercial bank or trnst company which would qualify as a Bona Fide Institutional Lender, designated by Tenant and approved by Landlord to serve as depositary pursuant to this Lease, provided that such Depositary shall have an office, branch, agency or representative located in the State of Cahfornia.

Development Agreement means a development agreement with respect to all or any portion of the Project as may be finally approved by City at any time pursuant to California Government Code sections 65864 *et seq.* and applicable provisions of City's Municipal Code or ordinances pertaining to development agreements and executed by City and Developer.

Disabled Access Laws means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. Section 12101 et seq. and disabled access laws under the Landlord's building code.

Encumbrance means any mortgage, deed of trnst, claim, levy, lien, judgment, execution, pledge, charge, security interest, restriction, covenant, condition, reservation, rights of way, liens, encumbrances, certificate of pending litigation, judgment or certificate of any court, and other matters of any nature whatsoever, whether arising by operation of Law or otherwise created, affecting the Premises.

Event of Default as defined in Section 20.1.

Excess Coverage as defined in Section 16.1(a)(iv).

Exercise Notice as defined in Section 1.2(b)(ti).

Exhibit as defined in Section 38.2(a).

Final Constrnction Documents means plans and specifications sufficient for the processing of an application for a huilding permit in accordance with applicable Laws.

Force Majeure means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, fires, floods, earthquakes, tidal waves, terrorist acts, strikes, freight embargoes, delays of subcontractors and unusually severe weather and, in the case of Tenant, any delay resulting from a defect in Landlord's titie to the Premises. Force Majeure does not include failure to obtain financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, to Restore if appropriate, and to complete performance of the hindered act.

Foreclosure means a foreclosure of a Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to court order or pursuant to a power of sale contained in the Mortgage), deed or volimtary assignment or other conveyance in lieu thereof.

Foreclosure Period as defined in Section 35.10(b).

GAAP means generally accepted accounting principles consistently applied.

Gross Building Area means the total floor areas of the buildings on the Premises, including basements, mezzanines, and penthouses included within the principal outside faces of the exterior walls and excluding architectural setbacks or projections and unenclosed areas.

Guaranty is defined in the LDDA.

Handle when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material ("Handling" will have a correlative meaning).

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local govemmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under CERCLA or under Section 25281 or Section 25316 of the Califomia Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the Califomia Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of a stmcture, or are naturally occurring substances on, in or about the Premises and petroleum, including cmde oil or any fraction, and natural gas or natural gas liquids.

Hazardous Material Claims means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Material Laws, together with any and all Losses made or threatened by any third party against City or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any stmctures or other Improvements, the loss or restriction of the use of all or any portion of the Premises, and attomeys' fees and consultants' fees and experts' fees and costs.

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or enviromnental conditions in, on, under or about the Premises, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions.

Impositions means all taxes, assessments, liens, levies, charges, fees, or expenses of every description, levied, assessed, confirmed or imposed on or with respect to the Premises, any

of the Improvements or Personal Property located on or within the Premises, this Lease, Tenant's leasehold estate, any Sublease, any subleasehold estate, any Transfer, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments (including but not limited to any taxes or assessments for a Special District encompassing all or any portion of the Premises), liens, levies, charges, fees, or expenses, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied, assessed, confirmed or imposed in lieu of or in substitution of any of the foregoing of every character.

Improvements means, collectively, the Initial hnprovements and Additional Improvements.

Indemnified Parties means Landlord, City, including, but not limited to, all of their boards, commissions, departments, agencies and other subdivisions, including, without hmitation; all of the Agents of Landlord or the City, and all of their respective heirs, legal representatives, successors and assigns, and each of them.

Indemnify means indemnify, protect and hold harmless.

Indexed means the product of the number to be Indexed multiplied by the percentage increase, if any, in the CPI from the first day of the month in which the Commencement Date, or such other date specified in this Lease as the start of a particular period, occurred to the first day of the most recent month for which the CPI is available at any given time.

Initial Improvements means the site and vertical improvements to the Property as set forth in the Scope of Development on Exhibit __ to this Lease, to be constructed and installed by or on behalf of Developer in accordance with this Lease.

Initial Improvements Construction Contract means one or more contracts entered into between Developer and one or more contractors for the construction and installation of the Initial Improvements in accordance with this Lease.

Investigate or Investigation when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

Invitees when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

Landlord means the City of Oakland.

Landlord Representative as defined in Section 2.2(h).

Late Charge as defined in Section 2.6.

Law or Laws means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, including, without limitation, Hazardous Materials Laws, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies, courts or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon.

LDDA as defined in Recital C.

Leasable Square Feet means those portions of the Premises designed for occupancy and exclusive use of Tenant and its Subtenants, including storage areas, that produces rental income, and expressly excluding stairs, escalators, elevator shafts, flues, pipe shafts, vertical ducts, balconies, mechanical rooms, public access areas, and other areas set aside for the provision of facilities or services to the floor or building where such facilities are not for the exclusive use of occupiers of the floor or building.

Lease means this Ground Lease, as it may be amended from time to time in accordance herewith.

Lease Year means a period of twelve (12) consecutive months during the Term, commencing on the Commencement Date and continuing for each twelve (12) consecutive calendar months thereafter.

Leasehold estate means Tenant's leasehold estate created by this Lease.

Legal Challenge means any action or proceeding before any court, tribunal, arbitration or other judicial, adjudicative or legislation-making body, including any administrative appeal, brought by a third party, who is not an Affiliate or related to Developer, which (i) seeks to challenge the validity of any action taken by the City in connection with the Project, including the City's approval, execution and delivery of this Agreement , the Ground Lease, and its performance thereunder, including any challenge under the Califomia Environmental Quality Act, the performance of any action required or pennitted to be performed by the City hereunder, or any findings upon which any of the foregoing are predicated, or (ii) seeks to challenge the validity of any other Regulatory Approval.

Letter of Credit means a letter of credit issued by a Bona Fide Institutional Lender for or on behalf of Tenant and in favor of Landlord to secure any or all obligations of Tenant to Landlord under this Lease, in each instance in such amount, form and substance satisfactory to Landlord.

Loss or Losses when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings,

judgments and awards and costs and expenses, (including, without limitation, reasonable Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Major Damage or Destruction means damage to or destruction of all or any portion of the Improvements on the Premises to the extent that the hard costs of Restoration will exceed seventy five percent (75%) of the hard costs to replace such Improvements on the Premises in their entirety, except that during the last five years of the Term, the percentage figure shall be: (1) in the fifth remaining year of the Term- 25%; (2) in the fourth through second years of the Term- 10%, and (3) in the final year of the Term- 5%. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

Memorandum of Lease means the Memorandum of this Lease, between Landlord and Tenant, recorded in the Official Records.

Minor Alterations as defined in Section 9.2.

MMRP or Mitigation Measures as defined in the LDDA.

Mortgage means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of Tenant's leasehold interest under this Lease that is recorded in the Official Records.

Mortgagee means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

Mortgagee Cure Period as defined in Section 36.10(a).

Net Awards and Payments as defined in Section 11.4.

NNN Pass-Throughs as defined in Section 2.2(b)(i)(B)(3).

Non-Affiliate Mortgage means a Mortgage that is held by a Non-Affiliate Mortgagee.

Non-Affiliate Mortgagee means the holder of a Mortgage, which holder (A) is not an Affiliate of Tenant, or (B) is a Bona Fide Institutional Lender.

Non-Disturbance Agreements as defined in Section 14.4(a).

North Gateway means the ___± acres of real property, comprising a portion of the former Oakland Army Base and located in the vicinity of the West Gateway, commonly referred to as the North Gateway and depicted on Exhibit __ attached to this Lease.

Official Records means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the County of Alameda.

ORA or Agency means the former Redevelopment Agency of the City of Oakland.

Outside Lease Date means January 1, 2016.

Partial Condemnation as defined in Section 13.1(b), 13.3.

Partner shall mean [CCIG constituent partners in Developer]

Party means City, Landlord or Tenant, as a party to this Lease; Parties means City, Landlord and Tenant, as Parties to this Lease.

Permitted Title Exceptions as defined in Section 1.1(b).

Permitted Transfers as defined in Section 14.3.

Permitted Uses as defined in Section 3.1.

Person means any individual, partnership, corporation (including, but not limited to, any business trust), limited habihty company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or potitical subdivision thereof

Personal Property means all fixtures, furniture, fiimishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with ah present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

Phase as defined in Recital C. [NOTE: only for the particular Phase covered by the particular Lease]

Port means the Port of Oakland.

Pre-Completion Period means the period between the Effective Date of the LDDA and the Certificate of Completion for the Project.

Pre-Lease Year means, in the event that the Commencement Date of this Lease is after the Outside Lease Date, each 12-month period (or part thereof) between the Outside Lease Year and the Commencement Date.

Premises as defined in Section 1.1.

Project as defined in Recital C. [NOTE: only for the particular Phase covered by the particular Lease]

Property as defined in Section 1.1.

Proposed Transfer as defined in Section 14.1(h).

PUD means a plamed unit development with respect to all or any portion of the Project as may be finally approved by City at any time pursuant to applicable provisions of City's Municipal Code or ordinances pertaining to planned unit developments.

Refinancing as defined in Section 36.14(a

Regulatory Approval means any authorization, approval or permit required by any governmental agency having jurisdiction over the Premises, including, but not limited to, the City, BCDC, the RWQCB, DTSC, or Alameda County Department of Public Health.

Release when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constmcted under this Lease or the LDDA by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof

Remedial Action Plan or RAP as defined in the LDDA.

Remediate or Remediation when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, transport, dispose, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in Cahfomia Health and Safety Code Section 25322 and "remove" or "removal" in Califomia Health and Safety Code Section 25323.

Rent means, collectively, Base Rent and Additional Rent. For purposes of this Lease, Rent includes all unpaid sums that are payable as Rent, but that are unpaid when eamed and/or accme for payment at a later time in accordance with the provisions of this Lease.

Restoration means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable; provided that Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the Restoration so long as the Improvements, as Restored, constitute a first-class Project. In connection with any Restoration, the Project and the other Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Project as so redesigned is a first-class Project similar to the original Project, subject to the provisions of Section 11 relating to Additional Constmction. All Restoration shall be conducted in accordance with the provisions of Section 9. ("Restore" and "Restored" shall have correlative meanings.)

Retail Uses means _____.

Risk Management Plan or RMP as defined in the LDDA.

RWQCB shall mean the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

Schedule of Performance as defined in the LDDA.

Schematic Drawings means conceptual drawings in sufficient detail to describe a development proposal.

Scope of Development means the scope and schedule of work for the Initial Improvements as set forth on Exhibit __ attached to this Lease.

Significant Change means (a) any dissolution, merger, consolidation or other reorganization, or any issuance or transfer of beneficial interests in Tenant, directly or indirectiy, in one or more transactions, that results in a change in the identity of the Persons Controlling Tenant, or (b) the sale of fifty percent (50%) or more of Tenant's assets, capital or profits, or the assets, capital or profits of any Person Controlling Tenant other than a sale to an Affiliate, provided that a Significant Change will not include any change in the identity of Persons Controlling Tenant or sale of fifty percent (50%) or more of assets, capital or profits in a Person Controlling Tenant as a result of (i) the sale or transfer of shares of a publicly traded company; or (ii) the merger, consolidation or other reorganization of a Person Controlling Tenant or the sale of all or substantially all of the assets of a Person Controlling Tenant in a transaction where the surviving entity in any such merger, consolidation or other reorganization or the purchaser of the assets of such Person has a net worth, calculated in accordance with GAAP, following such transaction, that is at least 150% of the net worth of the Person Confrolling Tenant prior to such transaction.

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).

Special District means any community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982 (California Govemment Code sections 53311 *et seq.*) or otherwise, special assessment district, facilities assessment district, landscaping and lighting district, and any other infrastructure financing or infrastructure maintenance financing district or device established at any time upon the approval of City with respect to all or any portion of the Project.

State means the State of Califoruia.

Sublease means any lease, sublease, license, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

Substantial Condemnation as defined in Section 12.3(a).

Subtenant means any Person leasing, occupying or having the riglit to occupy any portion of the Premises under and by virtue of a Sublease.

Tax Fiscal Year means the fiscal year for real property taxes, which is currently July 1 to June 30. Liens for secured property taxes attach on January 1st preceding the Tax Fiscal Year for which taxes are levied. Secured property taxes are levied on the first business day of September and are payable in two equal installments: the first is due on November 1st and delinquent with penalties after December 10th; the second is due February Ist and delinquent with penalties after April 10th.

Tenant means _____ [Developer to identify JV party], a _____, and its permitted successors and assigns.

Tenant's Accounting as defined in Section 2.12(b).

Tenant's Books and Records means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash joumals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises.

Term as defined in Section 1.2.

Tertnination Date means _____, 20__ **[INSERT DATE THAT IS 66 YEARS AFTER LEASE COMMENCEMENT DATE]** or such eariier date upon which this Lease is terminated or such later date to which this Lease is extended pursuant to subsequent mutual written agreement of the Parties.

Total Condemnation as defined in Section 12.2.

Transfer as defined in Section 14.1.

Tmck Operations Site means that certain real property owned by City, located in the vicinity of the Property, and more particularly described and generally depicted on Exhibits ____ and ____, respectively.

Uninsured Casualty as defined in Section 11.4(a)(i).

Unmatured Event of Default means a circumstance which, with notice or the passage of time would constitute an Event of Default.

Work as defined in Sections 10.7, 10.8.

Worth at the Time of the Award as defined in Section 23.3(a)(v).

ARTICLE 40. RIGHT OF FIRST REFUSAL

In the event: (i) Landlord is compelled by applicable Law to sell or transfer to a third party Landlord's titie to all or any portion of the Premises (the "Offered Interest"); (ii) Landlord receives and intends to accept a bona fide offer from such a third party to purchase or acquire the Offered Interest (the "Offer"); and (iii) applicable Law does not prohibit or prevent the

implementation of this Article 40, then Tenant shall have the right of first refusal to meet the Offer and purchase the Offered Interest pursuant to the provisions of this Article 40. Landlord shall promptiy provide written notice of the Offer to Tenant ("Landlord's Notice"), which shall include a true and coruplete copy of the Offer. Tenant shall have thirty (30) days after receipt of Landlord's Notice in which to provide written notice to Landlord of Tenant's election to purchase the Offered Interest ("Tenant's Notice"). If Tenant provides Tenant's Notice within such thirty (30)-day period, Landlord and Tenant shall proceed with the purchase and sale of the Offered Interest pursuant to the provisions hereof at the same purchase price and upon substantially the same other terms and conditions of the Offer, as may be amended by agreement of Landlord and Tenant. Notwithstanding any provision to the contrary in the Offer, the closing date for Tenant's purchase of the Offered Interest shall not be sooner than forty-five (45) days after the date of Tenant's Notice. If Tenant does not provide Tenant's Notice within the thirty (30)-day period as provided above, Landlord may sell the Offered Interest to such third party in accordance with the terms and conditions of the Offer, free and clear of Tenant's right of first refusal hereunder. Notwithstanding the preceding provisions, if Tenant does not provide Tenant's Notice with respect to a particular Offer, but the sale of the Offered Interest to the third party does not close in accordance with the Offer, Tenant's right of first refusal hereunder shall be reinstated and Landlord shall again comply with all of the provisions of this Article 40 before any other sale of the Offered Interest. If the Offered Interest sold at any time during the Term by Landlord to Tenant or to a third party includes less than the entire Premises, Tenant's right of first refusal hereunder shall remain effective as to the remaining unsold portion of in the Property. Tenant's right of first refusal under this Article 40 shall not apply to any sale or transfer of an Offered Interest by Landlord to any spouse, issue, or spouse of any issue, of Landlord (each, a "family member"), or the trustee of any trust or any other entity un which any family member(s) owns a majority of the beneficial interests (a "family entity"), but shall apply to any Offer thereafter received by such family member or such trustee or family entity. Tenant's right of first refusal hereunder shall expire on the expiration or termination of the Term. If an Offered Interest purchased by Tenant pursuant to this Article 40 includes the entire Premises, this Lease shall terminate on the closing date of such purchase. In the event Landlord receives and intends to accept a bona fide third party offer ("Offer") to purchase or acquire titie to all or any portion of the Property or any interest therein ("Offered Interest"), Tenant shall have the right of first refusal to meet the Offer and purchase the Offered Interest pursuant to the provisions of this Article 40. Landlord shall promptly provide written notice of the Offer to Tenant ("Landlord's Notice"), which shall include a true and complete copy of the Offer. Tenant shall have thirty (30) days after receipt of Landlord's Notice in which to provide written notice to Landlord of Tenant's election to purchase the Offered Interest ("Tenant's Notice"). If Tenant provides Tenant's Notice within such thirty (30)-day period, Landlord and Tenant shall proceed with the purchase and sale of the Offered Interest pursuant to the provisions hereof at the same purchase price and upon substantially the same other terms and conditions of the Offer, as may be amended by agreement of Landlord and Tenant. Notwithstanding any provision to the contrary in the Offer, the closing date for Tenant's purchase of the Offered Interest shall not be sooner than forty-five (45) days after the date of Tenant's Notice. In the event the Offered Interest is not then a separate legal parcel(s), Landlord agrees to cooperate with Tenant in subdividing the Offered Interest into one or more legal parcel(s) prior to the closing of Tenant's purchase of the Offered Interest, and the closing date for Tenant's purchase shall be extended until the completion of such subdivision process. If Tenant does not provide Tenant's Notice

within the thirty (30)-day period as provided above, Landlord may sell the Offered Interest to such third party in accordance with the terms and conditions of the Offer, free and clear of Tenant's right of first refusal hereunder. Notwithstanding the preceding provisions, if Tenant does not provide Tenant's Notice with respect to a particular Offer, but the sale of the Offered Interest to the third party in accordance with the Offer does not close within one hundred eighty (180) days after the date of Landlord's Notice, Tenant's right of first refusal hereunder shall be reinstated and Landlord shall again comply with all of the provisions of this Article 40 before any sale of the Offered Interest. If the Offered Interest sold at any time during the Term by Landlord to Tenant or to a third party includes less than the entire Property or less than Landlord's entire interest therein, Tenant's right of first refusal hereunder shall remain effective as to the remaining unsold portion of (or, as applicable, Landlord's remaining unsold interest in) the Property. Tenant's right of first refusal hereunder shall expire on the expiration or earlier termination of the Term. The purchase by Tenant of an Offered Interest pursuant to this Article 40, and the ownership and use and occupancy of the Premises thereafter, shall be and remain subject to the provisions of this Lease.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

TENANT:

[CCIG ENTITY]

By: _____
[NAME]
[TITLE]

LANDLORD:

CITY OF OAKLAND,
a municipal corporation

By _____
City Administrator

APPROVED AS TO FORM:

BARBARA PARKER, City Attomey

By:_____
Dianne M. Millner
Deputy City Attomey

Landlord Resolution No. _____
City Resolution No. _____

LIST OF LEASE EXHIBITS [SUBJECT TO MODIFICATION BASED ON FINAL LEASE TERMS]

Exhibit	Description
EXHIBIT __	Description of Premises
EXHIBIT __	Site Plan
EXHIBIT __	List of Permitted Exceptions
EXHIBIT __	Scope of Development
EXHIBIT __	List of Mitigation Measures
EXHIBIT __	Local Employment, Apprenticeship, and Small/Local Smati Business Programs
EXHIBIT __	Acknowledgement of Campaign Contributions Limits Forms
EXHIBIT __	Form of Memorandum of Lease
EXHIBIT __	Prevailing Wage Ordinance

EXHIBIT ____

TO

GROUND LEASE FOR WEST GATEWAY

DESCRIPTION OF PREMISES

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR WEST GATEWAY

SITE PLAN

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR WEST GATEWAY

LIST OF PERMITTED EXCEPTIONS

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR WEST GATEWAY

SCOPE OF DEVELOPMENT

[See Attached]

[NOTE: SUBJECT TO FINALIZATION AND LIMITED TO IMPROVEMENTS WITHIN PARTICULAR PHASE COVERED BY LEASE]

SCOPE OF DEVELOPMENT

(Private Improvements)

1. Uses. The purpose of this Agreement is to provide for the development of the Lease Property into a new facility that supports the international, national, regional and local movement of goods by way of the seaport, railroad and roadway networks. Once constructed, the Private Improvements will include the following uses:

- o trade and logistics facilities (warehouse, distribution and related facilities), including, but not limited to, general purpose warehouses, cold and refrigerated storage, trailer and container cargo storage and movement, chassis pools, container freight stations, deconsohdation facilities, truck terminals, and regional distribution centers ("Trade & Logistics");

- o either (1) a ship-to-rail terminal designed for the export of non-containerized bulk goods and import of oversized or overweight cargo (the "Bulk Terminal") ("Option A") if the Pubhc Improvements are funded by TCIF Funds, or (2) office or research and development facilities/trade and logistics facilities ("Option B"), at the Developer's option but only if the Public Improvements are not funded by TCIF Funds;

- o ancillary circulation, utihty and rail improvements designed to supplement the Public Improvements consistent with the Master Plan (collectively, "Support Improvements"); and

- o five billboards.

In the event that the AMS Site is included in the Lease Property, the Project will also include 15 acres of truck service uses, including parking, fueling stations, weighing stations, training and certification facilities, maintenance facilities, chassis pool and related retail (collectively, "Ancillary Maritime Uses").

2. Location and Density of Uses. The Private Improvement uses would be located in the following Phases and in the following densities:

a. East Gateway (approximately 29.6 acres). The East Gateway would be developed with Trade & Logistics uses and related Support Improvements. New facilities shall be developed with a minimum of 250,000 square feet of Floor Area (defined below) at an aggregate minimum FAR (defined below) of 0.29 ("Minimum East Gateway Project") and up to a maximum Floor Area of 442,560 square feet at any pennissible FAR.

b. Central Gateway (approximately 42.6 acres). The Central Gateway would be developed with Trade & Logistics uses and related Support Improvements. New facilities would be developed with a minimum of 300,000 square feet of Floor Area at an aggregate minimum FAR of 0.29 ("Minimum Central Gateway Project") and up to a maximum Floor Area of 537,000 square feet of new facilities at any permissible FAR. In the event that the AMS Site is included in the Lease Property, the Central Gateway would (a) include an additional fifteen (15) acres and up to an additional 37,673 square feet of Floor Area of Ancillary Maritime Uses. [*Confirm if/how AMS Site included/excluded from minimum project/calculation of FAR*]

c. West Gateway (approximately 34.1 (Option A) or 11 (Option B) acres). Under Option A, the West Gateway will be improved with Bulk Terminal uses, Rail Improvement uses and related Support Improvements, including the repurposing of the existing 146,460 square foot warehouse and the construction of new rail improvements, equipment yards and temporary structures. The "Minimum West Gateway Project" shall mean wharf repair and Rail Improvements consistent with the Master Plan and a functioning Bulk Terminal with appropriate tenant improvements and equipment capable of servicing one or more export products. Under Option B, the West Gateway portion of the Lease Property will be improved with up to a maximum Floor Area of 175,000 square feet of new office or research and development uses and related Support Improvements. The Option B scenario does not include a minimum project.

d. Billboards. The billboards include the following:

Number	Billboard Location	Size	Sides	Display Type
1	Bay Bridge 500' East of Toll Plaza (West Gateway) – South Line, East & West Face	20'H x 60'W	2	LED
2	Bay Bridge 1000' East of Toll Plaza – South Line, West Face (West Gateway)	20'H x 60'W	1	Backlit
3	I-880 West Grand 500' North of Maritime (Central Gateway) – West Line, North & South Face	14'H x 48'W	2	LED
4	I-880 West Grand South of Maritime (East Gateway) – West Line, North & South Face	14'H x 48'W	2	Backlit
5	I-880 West Grand 500' South of Maritime (East Gateway) – West Line, North & South Face	14'H x 48'W	2	LED

Notes:

Backlit Display: Static translucent sign lit from behind, traditionally has two ad faces (front and back).

LED Display: Changeable digital sign comprised of LED bulbs, can have as many as 12 rotating digital ads.

As used in this Attachment, the tertn "Floor Area" means _____ _____, and FAR means _____

So long as the minimum projects defined herein are achieved and the aggregate maximum allowed Floor Area is not exceeded, the Developer shall be entitied to transfer Floor

Area between the Phases upon written notice to the City. In such an event, the Parties shall memorialize the transfer in writing by means of an amendment to the applicable Ground Leases.

3. Timing for Commencement and Completion of Minimum Projects. The following times shall be included in the apphcable Lease for each Phase. All times provided shall be subject to Force Majeure as defined in the applicable Lease. All times provided shall be subject to the Outside Date.

1. West Gateway: The Minimum West Gateway Project shall obtain the first building permit and commence construction within six (6) months after the effective date of the applicable Ground Lease and shall be Complete within two years after issuance of the first building permit.

2. East Gateway: The Minimum East Gateway Project shall (i) obtain the first building permit for a minimum of 150,000 square feet of Floor Area with a minimum FAR of 0.29 and commence construction within twelve (12) months of the effective date of the applicable Ground Lease, (ii) be Complete within four (4) years trom the issuance of the first building permit.

3. The Minimum Central Gateway Project shall (i) obtain the first building permit for a minimum of 150,000 square feet of Floor Area with a minimum FAR of 0.29 and commence construction within twelve (12) months of the effective date of the applicable Ground Lease, (ii) be Complete within four (4) years from the issuance of the first building permit.

4. With respect to East and Central Gateways only, any amount built in one Phase in excess of minimum requirement may be credited against the other Phase.

5. With respect to the East and Central Gateways only, an additional 150,000 square feet of Floor Area at a minimum FAR of 0.29 shall be complete on either or both the East Gateway or Central Gateway within six (6) years of the issuance of the first building permit on either the East Gateway or Central Gateway.

6. For the purposes of this Attachment, "Complete" shall mean that a foundation/slab is in place under a building permit and active, on-going construction.

[Note for inclusion in Lease terms: completion guarantees to be provided building by building as they are constructed. With respect to failure to comply with minimum project, the City's remedy shall be the applicable liquidated damages and a termination right limited to the unimproved portion of the applicable Phase – lease continues with respect to improved land (including completed structures and under active construction).]

EXHIBIT ____

TO

GROUND LEASE FOR WEST GATEWAY

LIST OF MITIGATION MEASURES

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR WEST GATEWAY

LOCAL EMPLOYMENT, APPRENTICESHIP, AND SMALL/LOCAL SMALL BUSINESS PROGRAMS

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR WEST GATEWAY

ACKNOWLEDGEMENT OF CAMPAIGN CONTRIBUTIONS LIMITS FORMS

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR WEST GATEWAY

FORM OF MEMORANDUM OF LEASE

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR WEST GATEWAY

PREVAILING WAGE ORDINANCE

[See Attached]

ARMY BASE GATEWAY REDEVELOPMENT PROJECT

GROUND LEASE
FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]

between

THE CITY OF OAKLAND

"City" or "Landlord"

and

[PROLOGIS/CCIG TO IDENTIFY JOINT VENTURE ENTITY]

"Developer" or "Tenant"

Dated as of _____, 20_____

GROUND LEASE
FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]

THIS GROUND LEASE (this "Lease") is entered into on _____ ___, 2012 by and between the CITY OF OAKLAND, a municipal corporation and successor agency to the former Redevelopment Agency of the City of Oakland (the "City" or "Landlord"), and [Developer to identify JV party] (the "Developer" or "Tenant") (each individually referred to as a "Party" and collectively referred to as the "Parties").

RECITALS

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. These Recitals refer to and use certain capitalized terms that are defined in Section 39 of this Lease.

B. The City is the owner of that certain real property located in a portion of the former Oakland Army Base, comprised of approximately _____ acres [42.6± for Central Gateway; 29.6± for East Gateway] of land, improvements, and appurtenances, and commonly referred to by the Parties as [the Central Gateway or East Gateway, as applicable].

C. The City and Developer have executed that certain Lease Disposition and Development for the Army Base Gateway Redevelopment Project, dated _____, 2012 (the "LDDA"), which provides, among other things, for the execution and delivery by the Parties, upon satisfaction of conditions precedent set forth therein, of a lease by City to Developer of [the Central Gateway or East Gateway, as applicable] (the "Phase"), and the development thereon of certain Private Improvements, as defined and described therein (and defined and described herein as the "Initial Improvements"), including but not limited to [brief description of end use facilities in particular phase covered by particular Lease; e.g., warehouse/logistics/R&D, etc.] (the "Project").

D. All conditions precedent to the execution and delivery of this Lease, as set forth in the LDDA, have been satisfied or waived by the Parties in accordance with the LDDA.

E. This Lease is being made in conformance with and pursuant to the authority given to the City in the City Charter. The conveyance by ground lease of the [Central Gateway or East Gateway, as applicable] to the Developer was authorized by Council Ordinance No._____ C.M.S.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and mutual obligations contained in this Lease, and in reliance on the Developer's representations and warranties set forth herein, the City and Developer agree as follows:

ARTICLE I. PREMISES; TERM

L I Premises.

(a) Lease of Premises; Description. For the Rent and subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the real property in the City of Oakland, Califomia, located in the [Central Gateway or East Gateway, as applicable], as more particularly described on Exhibit ___ attached hereto ([for Central Gateway Lease, if goes into effect before West Gateway Lease] the "Central Gateway Property" [or, for East Gateway Lease] the "Property" [FOR CENTRAL GATEWAY LEASE, IF IT GOES INTO EFFECT BEFORE WEST GATEWAY LEASE, ADD FOLLOWING: and in the North Gateway and adjacent real property, as more particularly described on Exhibit ___ attached hereto (the "Railroad R/O/W Property," and, together with the "Cenfral Gateway Property, the "Property")]. The Property includes the land, and all Improvements thereto existing as of the Commencement Date, together with all rights, privileges and licenses appurtenant to the Property and owned by Landlord. The Property is depicted on the Site Plan attached hereto as Exhibit ___. The Property and all other Improvements now and hereafter located on the Property, including the Initial Improvements and any Additional Improvements hereafter constructed on the Property (subject to Article 6), are referred to in this Lease as the "Premises." [FOR CENTRAL GATEWAY LEASE, IF GOES INTO EFFECT BEFORE WEST GATEWAY LEASE, ADD FOLLOWING: Notwithstanding tiie preceding provisions, from and following the effective date of the West Gateway Lease, and provided that tiie West Gateway Lease includes the Railroad R/O/W Property, the Railroad R/O/W Property, without the necessity of any further action by the Parties, shall be deemed excluded from the Property and the Premises under this Lease and this Lease shati be deemed terminated as to the Railroad R/O/W Property, excepting any provisions of this Lease that are stated to survive the termination of this Lease.] Notwithstanding any provision herein to the contrary, the Property and the Premises do not include and dedicated public rights of way within any Phase.

(b) Permitted Titie Exceptions. The leasehold interest granted by Landlord to Tenant pursuant to Subsection 1.1(a) is subject to (i) the matters reflected in Exhibit ___ (the "Permitted Title Exceptions"); (ii) all deed restrictions in the EDC Deed and the CRUP, as those terms are used in the LDDA; (iii) any Regulatory Approvals required by law to be recorded against the Property as a result of the development and activities permitted by the LDDA and this Lease; and (iv) other matters as Tenant shall cause or suffer to arise subject to the terms and conditions of this Lease.

(c) "AS IS WITH ALL FAULTS". TENANT AGREES THAT THE PREMISES ARE BEING LEASED BY LANDLORD, AND ARE HEREBY ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, "AS IS, WITH ALL FAULTS." TENANT ACKNOWLEDGES AND AGREES THAT NEITHER LANDLORD, CITY, NOR ANY OF THE OTHER INDEMNIFIED PARTIES, NOR ANY AGENT OF ANY OF THEM, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE OR OPERATION OF THE PROJECT, THE COMPLIANCE OF THE PREMISES OR THE

PROJECT WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR, EXCEPT AS MAY BE SPECIFICALLY PROVIDED IN THIS LEASE OR THE LDDA, WITH RESPECT TO ANY OTHER MATTER PERTAINING TO THE PREMISES OR THE PROJECT.

As part of its agreement to accept the Premises in its "As Is With All Faults" condition, effective upon Close of Escrow (as defined in the LDDA) of the Property, the Tenant, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge, the Landlord, the City, and their Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Tenant may now have or that may arise an account of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Premises, including, without limitation, any Hazardous Materials in, on, under, or above, or about the Premises (including, but not limited to, soils and groundwater conditions)(other than Landlord's obligation to pay [or reimburse Tenant] for certain environmental remediation costs as expressly set forth in the LDDA, and (ii) any Laws applicable to such conditions, including without limitation, Hazardous Material Laws.

In connection with the foregoing release, the Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Tenant agrees that the release contemplated by this Section includes unknown claims. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

DEVELOPER:	CITY:
[ENTITY TO BE IDENTIFIED BY PROLOGIS/CCIG]	CITY OF OAKLAND, a municipal corporation
By: _____	By _____ City Administrator
By: _____	
By: _____ [NAME] [TITLE]	

(d) No Subdivision of Property. Notwithstanding any provision herein to the contrary, Developer shall have no right to subdivide the Property or the Premises without Landlord's prior written consent in its sole and absolute discretion.

1.2 Term of Lease.

Subject to the Parties' execution of this Lease, the effectiveness of this Lease shall commence on the date written on the cover page of this Lease (the "Commencement Date") and Landlord shall deliver to Tenant possession of the Premises on the Commencement Date. The Lease shall expire on the date that is sixty-six (66) years thereafter ("Term"), unless earlier terminated by subsequent mutual written agreement of the Parties or otherwise in accordance with this Lease. The period from the Commencement Date until the final expiration, or any such earlier termination, of this Lease is referred to as the "Term." This Lease shall be terminated upon and concurrently with termination of the LDDA for any reason prior to issuance of a Certificate of Completion, other than as to any provisions herein which expressly survive termination of this Lease.

1.3 Definitions.

All initially capitalized terms used herein are defined in Section 39 or have the meanings given them when first defined. All initially capitalized terms or acronyms used, but not defined in this Lease, shall have the same meanings as in the LDDA.

1.4 Relationship of Lease to LDDA.

This Lease establishes the rights and obligations of Tenant and Landlord during the Term, but does not serve to relieve or release the Parties from any of their respective rights, obligations and liabilities arising at any time under the LDDA. In the event of any inconsistency between this Lease and the LDDA with respect to the Premises or the lease, development, use or occupancy thereof, this Lease shall.

1.5 Grant of Foundation Easement and Right to Enter.

Landlord hereby grants to Tenant an easement in Landlord's property located underneath the Premises for the purpose of installation, repair and maintenance of foundation systems, elevator pits, sump pits, utilities, sub-base materials and other materials or structures which are part of or necessary to the Improvements to be constructed by Tenant on the Premises and for the purpose of performing the environmental remediation work pursuant to the LDDA necessary to comply with the Environmental Remediation Requirements (as defined in the LDDA), including but not limited to implementation of the RAP and RMP (as those terms are defined in the LDDA). Such easement shall be appurtenant to and run with the Premises and this Lease, and shall terminate upon expiration or earlier termination of this Lease. Tenant shall ensure that any contaminated soil or groundwater that is excavated, disturbed or uncovered during the installation of any foundation pilings or other structural support elements pursuant to this easement shall be managed and disposed of off-site in accordance with the RAP, the RMP, all other Environmental Remediation Requirements, the provisions of Article ____, as well as applicable provisions of local, state and federal law, including implementing as necessary special handling procedures and disposal offsite of excavated, disturbed or uncovered soil classified as hazardous waste as applicable.

1.6 Reserved Easements. [DISCUSS THESE PROVISIONS FROM PORT LEASE]

(a) Landlord reserves to itself the following rights (which shall not be deemed obligations):

(i) The right to grant to others in the future, easements, licenses, and permits for construction, maintenance, repair, replacement, relocation, and reconstruction, and related temporary access easements, and other easements, in each case, necessary for any utility facilities over, under, through, across, or on the Premises.

(ii) The right to operate, maintain, repair, and improve [storm drain mainlines that convey storm water runoff from areas outside of the Premises, through the Premises, and out to the San Francisco Bay.]

(iii) The right, including the right to grant others, to enter upon the Premises and perform such work as may reasonably be necessary to operate, maintain, repair, improve or access any of the reserved easement areas, to exercise any of Landlord's other rights under this Lease, or in the event of an emergency or as otherwise provided in this Lease.

(b) Prior to exercising any of its rights under Section 1.6(a), Landlord shall give reasonable notice thereof to Tenant (except in the event of an emergency in the opinion of Landlord acting reasonably). Subject to Tenant's reasonable cooperation with Landlord, the easements reserved for the benefit of Landlord (or its licensees or permittees) in this Section 1.6 shall not unreasonably interfere with Tenant's operations of the Premises.

(c) In connection with exercising its reserved easements in this Section 1.6, Landlord shall repair, at no cost to Tenant or its Subtenants, any damage directly caused by work performed by Landlord in connection with the reserved easement, or its licensee's or permittee's (but excluding the repair of any damage caused or exacerbated by Tenant's or its Subtenant's acts or omissions) within thirty (30) calendar days after Landlord's receipt of notice of such damage, provided that if such repair reasonably cannot be completed within thirty(30) calendar days, such period shall be extended as reasonably necessary so long as Landlord dihgentiy completes such repairs.

ARTICLE 2. RENT

2.1 Tenant's Covenant to Pay Rent.

During the Term of this Lease, Tenant shall pay Rent for the Premises to Landlord in the amounts, at the times and in the manner provided in this Article 2 and elsewhere in this Lease.

2.2 Base Rent.

(a) Amount and Time of Payment. Not later than thirty (30) days after the end of each quarter of each Lease Year, Tenant shall pay to Landlord the following amounts ("Base Rent"):

(i) Lease Years 1-10. For each of the first ten (10) Lease Years, Tenant shall pay an amount ("Initial Base Rent") equal to the product of $0.0267 per square foot per month multiplied by the total square footage of the Premises, as such total square footage

may be adjusted pursuant to Section 1.1(a). **[FOR CENTRAL GATEWAY LEASE, IF GOES INTO EFFECT BEFORE WEST GATEWAY LEASE, REPLACE PREVIOUS SENTENCE WITH FOLLOWING:]** For each of the first ten (10) Lease Years, Tenant shall pay an amount ("Initial Base Rent") equal to the sum of (A) the product of $0.0267 per square foot per month multiplied by the total square footage of that portion of the Premises containing the Central Gateway Property, as such total square footage may be adjusted pursuant to Section 1.1(a); plus (B) subject to the provisions of Section 1.1(a), the product of $0.03 per square foot per month multiplied by the total square footage of that portion of the Premises containing the Railroad R/O/W Property] The Parties acknowledge and agree that, as of the Commencement Date, the total square footage of the Premises is _____ square feet and the Initial Base Rent is $_____. **[FOR CENTRAL GATEWAY LEASE, IF GOES INTO EFFECT BEFORE WEST GATEWAY LEASE,, REPLACE PREVIOUS SENTENCE WITH FOLLOWING:** The Parties acknowledge and agree that, as of the Commencement Date: (1) the total square footage of that portion of the Premises containing the Central Gateway Property is _____ square feet and the Initial Base Rent attributable to such portion of the Premises is $_____; (2) the total square footage of that portion of the Premises containing the Railroad R/O/W Property is _____ square feet and the Initial Base Rent attributable to that portion of the Premises is $_____; and (3) the total Initial Base Rent is $_____.] Notwithstanding the first sentence of Section 2.2(a), Tenant shall pay the Base Rent for the first Lease Year on or before the Commencement Date.

(ii) Lease Years 11-15. For each of the eleventh (11th) through the fifteenth (15th) Lease Years, Tenant shall pay an amount (the "First Adjusted Base Rent") equal to the Initial Base Rent as increased pursuant to this paragraph. To calculate the First Adjusted Base Rent, the Initial Base Rent shall be increased by the cumulative and annually compounded percentage increase in the CPI during each of the first 10 Lease Years (disregarding any decrease in the CPI during such period), based upon an Indexed comparison of the last CPI published prior to each Anniversary Date during the first 10 Lease Years (in each such instance, a "New CPI") to the CPI published one year prior to the New CPI; provided, however, that, (A) in the event that the Commencement Date of this Lease is after the Outside Lease Date, the Initial Base Rent shall be increased by the cumulative and annually compounded percentage increase in the CPI during each Pre-Lease Year and each of the first 10 Lease Years (disregarding any decrease in the CPI during such period), based upon an Indexed comparison of the last CPI published prior to each Anniversary Date during such period (in each such instance, a "New CPI") to the CPI published one year prior to the New CPI; and (B) subject to such cumulative and annually compounded increase, the calculated annual percentage increase in the Base Rent for any such Lease Year or Pre-Lease Year, as applicable, shall be not less than two percent (2%) greater nor more than three percent (3%) greater than the calculated Base Rent for the immediately preceding Lease Year or Pre-Lease Year, as applicable. By way of example, but not in modification or limitation, of the foregoing, an example calculation of First Adjusted Base Rent is set forth on Schedule ___.

(iii) Remaining Term. During each Lease Year following the First Adjustment Period (the "Remaining Term"), Tenant shall pay an amount (the "Remaining Term Base Rent") equal to the First Adjusted Base Rent, subject to increase every five (5) Lease Years during the Remaining Term (each a "5-Year Period") pursuant to this paragraph. Effective upon the start of each successive 5-Year Period, the Remaining Term Base Rent shall be increased by

the cumulative and annually compounded percentage increase in the CPI during each of the immediately preceding five (5) Lease Years (disregarding any decrease in the CPI during such period), based upon an Indexed comparison of the last CPI published prior to each Anniversary Date during the preceding 5-Year Period (in each such instance, a "New CPI") to the CPI published one (1) year prior to the New CPI; provided, however, that, subject to such cumulative and annually compounded, increase, the calculated annual percentage increase in the Remaining Term Base Rent for any such Lease Year shall be not less than two percent (2%) greater nor more than three percent (3%) greater than the calculated Remaining Term Base Rent for the immediately preceding Lease Year. By way of example, but not in modification or limitation, of the foregoing, an example calculation of adjusted Remaining Term Base Rent is set forth on Schedule ___.

(b) Fair Market Rent Adjustment

(i) Timing and Amount. In addition to the adjustments to Base Rent set forth in Section 2.2(a), the Base Rent shall be adjusted as set forth in this Section 2.2(b). Effective as of the first day of the twentieth (20th) Lease Year and as of the first day of the fortieth (40th) Lease Year (each, the "FMR Adjustment Date"), the Base Rent then in effect (each, the "Pre-FMR Adjustment Base Rent") shall be adjusted to an amount (the "FMR Adjusted Base Rent") equal to ninety-five percent (95%) of the Fair Market Rent (as defined in and determined in accordance with Section 2.2(b)(ii)) of the Property as of the applicable FMR Adjustment Date. Notwithstanding the preceding provisions of this Section 2.2(b)(i) or any other provision of this Lease to the contrary,

(A) in no event shall the FMR Adjusted Base Rent under this Section 2.2(h) be less than the Pre-FMR Adjustment Base Rent in effect as of the applicable FMR Adjustment Date;

(B) in no event shall the FMR Adjusted Base Rent under this Section 2.2(b) be greater than an amount equal to the Initial Base Rent as increased each Lease Year, on a cumulative and annually compounded basis, at the rate of five percent (5%) for each Lease Year prior to the FMR Adjustment Date. **[FOR CENTRAL GATEWAY LEASE, IF GOES INTO EFFECT BEFORE WEST GATEWAY LEASE, REPLACE PREVIOUS SENTENCE WITH FOLLOWING:** in no event shall the FMR Adjusted Base Rent under this Section 2.2(b) be greater than the sum of (A) an amount equal to the Initial Base Rent for that portion of the Premises containing the West Gateway as increased each Lease Year, on a cumulative and annually compounded basis, at the rate of five percent (5%) for each Lease Year prior to the FMR Adjustment Date; plus (B) an amount equal to the Initial Base Rent for that portion of the Premises containing the Railroad R/O/W Property as increased each Lease Year, on a cumulative and annually compounded basis, at the rate of five percent (5%) for each Lease Year prior to the FMR Adjustment Date.]

(C) in the event that the FMR Adjusted Base Rent as of the applicable FMR Adjustment Date, determined in accordance with this Section 2.2(b), is less than the Pre-FMR Adjustment Base Rent in effect as of the applicable FMR Adjustment Date, then the Base Rent for the 5-Year Period commencing on the applicable FMR Adjustment Date shall remain equal to the Pre-FMR Adjustment Base Rent in effect as of the applicable FMR

Adjustment Date, without giving effect to any CPI adjustment under Section 2.2(a)(iii) during such 5-Year Period.

The Parties agree that the Base Rent adjustment set forth in Section 2.2(a)(iii) will continue to apply to the start of each 5-Year Period during the Remaining Term, subject to the terms of this Section 2.2(b).

(ii) Agreement on Fair Market Rent. The Fair Market Rent shall be determined in the manner specified in this Section 2.2(b)(ii) and, as and to the extent applicable, Section 2.2(b)(iii). The process for determining the Fair Market Rent shall begin one (1) year prior to the applicable FMR Adjustment Date (each, the "FMR Determination Initiation Date"). Upon the applicable FMR Determination Initiation Date, Landlord and Tenant shall attempt in good faith to agree upon Fair Market Rent for the Property. Landlord and Tenant shall have ninety (90) days from the applicable FMR Determination Initiation Date to agree on the Fair Market Rent ("Negotiation Period") as of the applicable FMR Adjustment Date. As used herein, "Fair Market Rent" means the annual fair market rental value of the Property, which shall be calculated by (i) determining the value of the fee interest in the Property in accordance with the provisions of this Section as of the applicable FMR Adjustment Date, taking into account the permitted uses of the Property as specified in Article 3 of this Lease (the "Fair Market Value"), and (ii) applying an appropriate rate of return to the Fair Market Value, taking into account in determining such rate of return the effect, if any, of the remaining Term of this Lease. If the Parties reach an agreement as to the Fair Market Rent, they shall promptly execute a written instrument to evidence such agreement, and such written instrument shall constitute a conclusive determination of Fair Market Rent for the applicable FMR Adjustment Date.

(iii) Appraisal: Arbitration. If the Parties have not agreed on the Fair Market Rent during the Negotiation Period, the Fair Market Rent shall be determined by the appraisal and arbitration procedure set forth below.

(A) Appointment of Appraisers: Appraisal Instructions. Each Party shall appoint one (1) appraiser within thirty (30) days after the end of the Negotiation Period. Upon selecting its appraiser, each Party shall promptly notify the other Party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in Alameda County, disinterested and independent, and shall be a member in good standing of the Appraisal Institute (MAI), or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding professional designations. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing commercial real estate development sites in the Alameda County. If either Party fails to appoint its appraiser within such 30 day period, the appraiser appointed by the other Party shall individually determine the Fair Market Rent in accordance with the provisions hereof. Each appraiser shall make an independent determination of the Fair Market Rent. The Tenant shall provide to each appraiser a current inventory of buildings and vacant space in the Project, lease abstracts for each Sub-Tenant, a current income statement detailing all income and expense data for the Project, and other Project information as may be necessary to make a determination of Fair Market Rent. Each appraiser shall share with the other the indicators of value that will be used to determine Fair Market Rent including but not necessarily limited to land value data, rental rates,

capitalization rates, and rates of retum on ground leases, but each appraiser shall independentiy determine the appropriate assumptions to make based on the provisions of this Section of this Ground Lease and each appraiser's own assessment of the market. Neither of the appraisers shati have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither Party shall communicate with the appraiser appointed by the other Party regarding the instmctions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instmctions in this Section or the interpretation of this Lease, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instmctions or interpretative guidance received trom the Party appointing such appraiser. There shall not be any arbitration or adjudication of the instmctions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the Fair Market Rent to the Parties within sixty (60) days after the appointment of the last of such appraisers. If the higher appraised Fair Market Rent is not more than one hundred ten percent (110%) of the lower appraised Fair Market Rent, then the Fair Market Rent shall be the average of such two (2) Fair Market Rent figures.

(B) Arbitration. If the higher appraised Fair Market Rent is more than one hundred ten percent (110%) of the lower appraised Fair Market Rent, then the Parties shall agree upon and appoint an independent arbitrator within thirty (30) days after both of the first two (2) appraisals have been submitted to the Parties. The arbitrator shall have the minimum quahfications as required of an appraiser pursuant to paragraph (i) above, and shall also have experience acting as an arbitrator of disputes involving commercial real estate, including ground leases and rental valuation. If the Parties do not appoint such arbitrator within such 30-day period, then either Party may apply to the Superior Court of the State of Califomia in and for the County of Alameda for appointment of an arbitrator meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the mles and procedures of such organization of an independent arbitrator meeting the foregoing qualifications. Such arbitrator shall consider the appraisals submitted by the Parties as well as any other relevant written evidence which the Parties may choose to submit. If a Party chooses to submit any such evidence, it shall deliver a complete and accurate copy to the other Party at the same time it submits the same to the arbitrator. Neither Party shall conduct ex parte communications with the arbitrator regarding the subject matrer of the arbitration. Within thirty (30) days after his or her appointment, the arbitrator shall conduct a hearing, at which Landlord and Tenant may each make supplemental oral and/or writren presentations, with an opportunity for testimony by the appraisers and questioning by the Parties and the arbitrator. Within thirty (30) days following the hearing, the arbitrator shall select the appraised Fair Market Rent determined by one or the other of the first two (2) appraisers that is closer to the rent that, in the opinion of the arbitrator, is the Fair Market Rent, and such Fair Market Rent amount selected by the arbitrator shall be the Fair Market Rent for the applicable Lease Year under this Section. The determination of the arbitrator shall be limited solely to the issue of deciding which of the appraisals of the two appraisers is closer to the actual Fair Market Rent. The arbitrator shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Lease.

(C) Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Fair Market Rent by appraisal or arbitration shall be conclusive, final and binding on the Parties. Neither the appraisers nor the arbitrator shall have any power to modify any of the provisions of this Lease and must base their decision on the definitions, standards, assumptions, instmctions and other provisions contained in this Lease. Subject to the provisions of this Section, the Parties shall cooperate to provide all appropriate information to the appraisers and the arbitrator. The appraisers (but not the arbitrator) can utilize the services of special experts, including experts to determine property condition, market rates, leasing commissions, renovation costs and similar matters. The appraisers and the arbitrator shall each produce their determination in writing, supported by the reasons for the determination.

(D) Conduct of Arbitration Proceeding. Any arbitration proceeding in connection with the determination of such Fair Market Rent shall be subject to California Code of Civil Procedures Sections 1280 to 1294.2 (but excluding Section 1283.05) with respect to discovery) or successor California laws then in effect relating to arbitration generally. Any such proceeding shall be conducted in the City of Oakland. Any judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction of such arbitration in accordance with the terms of this Lease. This arbitration provision does not affect the rights of either Party to seek confirmation, correction or vacation of the arbitration award pursuant to California Code of Civil Procedure Section 1285 et. seq.

(E) Fees and Coast: Waiver. Each Party shall bear the fees, costs and expenses of the appraiser it selects under Subsection (b)(i) and of any experts and consultants used by the appraiser. The fees, costs and expenses of the arbitrator and the costs and expenses of the arbitration proceeding, if any, under Subsection (b)(ii) shall be shared equally by Landlord and Tenant. Each Party waives any claims against the appraiser appointed by the other Party, and against the arbitrator, for negligence, malpractice or similar claims in the performance of the appraisals or arbitration contemplated by this Section.

(F) ARBITRATION OF DISPUTES. With respect to the arbitration provided for in this Section 2.2(b)(iii), the Parties agree as follows:

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS IN THIS LEASE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OF JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE

AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

_____ _____

Landlord's Initials Tenant's Initials

2.3 Manner of Payment.

Tenant shall pay all Rent to Landlord, in lawful money of the United States of America, to the Treasurer of the City or his or her designee as provided herein at the address for notices to Landlord specified in this Lease, or to such other person or at such other place as Landlord may from time to time designate by notice to Tenant. Rent shall be payable at the times specified in this Lease without prior notice or demand; provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Rent shall be due thirty (30) business days following the giving by Landlord of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable. If this Lease terminates as a result of Tenant's default, including Tenants' insolvency, any Rent or other amounts due hereunder shall be immediately due and payable upon termination.

2.4 No Abatement or Setoff

Tenant shall pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, deduction, or counterclaim, except as provided in Sections 10, 11, 24.1, 34 (as to a Mortgagee), and any other provision of this Lease which expressly provides for such abatement, setoff, deduction, offset, or counterclaim. Notwithstanding the provisions of Section 4.L in the event that Tenant has submitted to City an application for a building permit for the Initial Improvements and such application has been deemed complete by City, and if City thereafter takes longer than sixty (60) days to complete its plan check and processing and to issue such building permit based upon such complete application, Base Rent hereunder with respect to such portion of the Premises containing such Initial Improvements shall be abated for the period between the expiration of such sixty (60)-day period and the date upon which such building permit is issued by City.

2.5 Interest on Delinquent Rent.

If any Base Rent or is not paid within ten (10) days following the date it is due, or if any Additional Rent is not paid within thirty (30) days following written demand for payment of such Additional Rent, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the "Default Rate") equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date

payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar law. Payment of interest shall not excuse or cure any default by Tenant.

2.6 Late Charges.

Tenant acknowledges and agrees that late payment by Tenant to Landlord of Rent will cause Landlord increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of Landlord's rights or remedies hereunder and regardless of whether such late payment results in an Event of Defauh, Tenant shall pay a late charge (the "Late Charge") equal to one and one-half percent (1-1/2%) of all Rent or any portion thereof which remains unpaid more than ten (10) days after Landlord's notice to Tenant of such failure to pay Rent when due, provided, however, that if Tenant fails to pay Rent when due on more than two (2) occurrences in any Lease Year, the Late Charge will be assessed as to any subsequent payments in such Lease Year remaining unpaid more than ten (10) days after they are due, without the requirement that Landlord give any notice of such payment failure. Tenant shall also pay reasonable Attorneys' Fees and Costs incurred by Landlord by reason of Tenant's failure to pay any Rent within the time periods described above. The Parties agree that such Late Charge represents a fair and reasonable estimate of the cost which Landlord will incur by reason of a late payment by Tenant.

2.7 Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and Tenant's obligations of every kind and nature relating to the Premises that may arise or become due under this Lease, whether foreseen or unforeseen, which are payable by Tenant to Landlord pursuant to this Lease, shall be deemed Additional Rent. Landlord shall have the same rights, powers and remedies, whether provided by law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Rent.

2.8 Net Lease.

It is the purpose of this Lease and intent of Landlord and Tenant that, except as specifically stated to the contrary in Section 2.5, all Rent shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, except as may be provided in this Lease or the LDDA, Landlord shall not be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, except as otherwise expressly provided in Sections 4.1(b) and 4.1(c). Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Landlord would otherwise be or become liable by reason of Landlord's estate or interests in the Premises and any Improvements, any rights or interests of Landlord in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling,

renovation, use or occupancy of the Premises, any Improvements, or any portion thereof Except as may be specifically and expressly stated to the contrary in Section 2.5, no occurtence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferted upon it by any existing or future Law to tenninate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occun ence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

2.9 Security Deposit.

(a) Cash Deposit or Letter of Credit. On or before the Master Lessee shall cause to be deposited with Landlord, in cash, or, at the election of Tenant, a Letter of Credit from a Bona Fide Institutional Lender with such term and in form and substance reasonably satisfactory to Landlord, and in any case for the sole benefit of Landlord, in the amount of $_____, which the Parties agree is in an amount equal to three (3) months Initial Base Rent (the "Security Deposit"), which shall secure and guaranty the full and faithful performance and observance by Tenant at all times during the Term of all the covenants, terms and conditions herein contained to be performed, suffered or observed by Tenant under this Lease, including, without limitation, the payment of Rent and any other amounts due to Landlord hereunder, reasonable amounts necessary to remedy any default by Tenant hereunder, to repair and clean the Premises at the end of the Term, or to reimburse Landlord for the actual costs incurted by Landlord in connection with exercising its rights hereunder (collectively, for purposes of this Section 2.9, "Tenant's Lease Obligations"). Landlord shall not be required to keep the Security Deposit separate or segregated fonn its general funds or in any-interest bearing account or investment, and Tenant shall not be entitled to any interest on the Security Deposit.

(b) Renewal of Letter of Credit. Subject to the provisions of Section 2.10(a), if the Security Deposit is in the form of a Letter of Credit and such Letter of Credit is for a term less than the entire Term of this Lease, Tenant shall cause such Letter of Credit to be renewed, re-issued, amended or replaced at least ninety (90) days prior to its expiration in order to assure that there is no lapse in the effectiveness of the Letter of Credit or the Security Deposit. If Tenant shall fail to comply with its obligations under the preceding sentence, then Landlord may draw upon the whole of the then-posted Letter of Credit and hold the proceeds of the Letter of Credit as and for the Security Deposit

(c) Application and Replenishment. If Tenant is in default in respect to any of Tenant's Lease Obligations, Landlord may (but shall not be required to) use, apply, draw upon, or retain the whole or any part of the Security Deposit to the extent required for the payment of any Rent or other amounts owed Landlord under this Lease, or the reimbursement of the actual costs reasonably incurred by the Landlord in connection with exercising its rights under this Lease. It is agreed that the sums represented by the Security Deposit shall be deposited or posted for the sale benefit of Landlord as an advance guaranty payment of the Rent and other sums and Tenant's Lease Obligations due by Tenant hereunder, but does not in any way represent a measure of Landlord's damages and in no event shall Tenant be entitled to a refiind or particular

application of the Security Deposit or to cancel or terminate a Letter of Credit posted as the Security Deposit. Neither the application by Landlord of all or any portion of the Security Deposit, nor Landlord's demand for or acceptance of money to restore the Security Deposit, shall result in any waiver of Landlord's right under this Lease and applicable Law to declare Tenant in default of this Lease or to terminate or declare a forfeiture of this Lease. Tenant's payment of the Security Deposit shall not limit Tenant's liability to Landlord for the payment of amounts due to Landlord by Tenant in excess of the amount of the Security Deposit. Whenever and as often as Landlord draws upon the Security Deposit, Tenant shall, within ten (10) Business Days after Landlord's request therefor, restore the Security Deposit to its original amount.

(d) Refund of Balance. Subject to any deductions made by Landlord in accordance with this Lease (or a good faith estimate of such amounts), Landlord shall refund the balance of the Security Deposit, if any, to Tenant at its last address known to Landlord within sixty (60) calendar days of the later of the expiration or earlier termination of the Term.

(e) Waiver. The Parties agree that the Security Deposit can be held and applied against future damages, including, without limitation, future Rent damages, and Tenant waives application of the provisions of California Civil Code §1950.7, or any similar, related, or successor provision of law, for all purposes with respect to this Lease, including, without limitation, with respect to the time periods by which the Security Deposit must be returned to Tenant.

2.10 Books and Records and Audit.

(a) Books and Records. Tenant shall keep all Tenant's Books and Records according to GAAP. Tenant shall maintain a separate set of accounts, including bank accounts limited to the Premises, to allow a determination of expenses incurred and revenues generated directly from the Premises. If Tenant operates all or any portion of the Premises through a Subtenant or Agent, Tenant shall cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

(b) Audit. Tenant agrees to make all of Tenant's Books and Records available to Landlord, or to any Landlord or City auditor, or to any auditor or representative designated by Landlord (hereinafter collectively referred to as "Landlord Representative"), for the purpose of examining Tenant's Books and Records, to determine the accuracy of Tenant's reports, statements and accounting under this Lease (collectively, "Tenant's Accounting"), for a period of three (3) years after such Tenant Accounting was delivered to the Landlord. If Landlord wishes to audit Tenant's Books and Records, Landlord shall give Tenant thirty (30) days' written notice of its intention to audit. Landlord shall complete its audit as soon as reasonably possible. Tenant shall cooperate with the Landlord representative during the course of any audit. Any audit by Landlord shall be at Landlord's own expense, except as hereinafter provided. Tenant shall keep such Books and Records for seven (7) years and maintain them and/or make them available in Oakland to Landlord's representative. All Tenant's Accounting provided by Tenant to Landlord hereunder shall be deemed conclusively approved by Landlord after the expiration of the three (3) year period following delivery of Tenant's Accounting, unless an audit is made within said three (3)-year period and Landlord claims that errors or omissions have occurred. In such event, Tenant shall retain the Books and Records and make them

available until those matters are resolved. If Tenant operates the Premises through a Subtenant or Agent, Tenant shall require such Subtenant or Agent to provide the Landlord with the foregoing audit right with respect to the books and records of such Subtenant or Agent. If any such audit reveals that Tenant has misstated any amount shown in any Tenant's Accounting, and such misstatement has resulted in any underpayment of Rent by Tenant, Tenant shall pay Landlord, promptiy upon demand, the difference between the amount Tenant has paid and the amount it should have paid to Landlord and as further subject to interest as set forth in Section 2.5. In addition, if such misstatement results in an underpayment of Rent in any audit period of three percent (3%) or more, Tenant shall pay the cost of the audit. At Landlord's option, any overpayments revealed by an audit may be either refunded to Tenant, applied to any other amounts then due and unpaid, or applied to Base Rent due subsequent to the audit.

2.11 Public Disclosure.

Tenant acknowledges that under the Califomia Public Records Act and the City's Sunshine Ordinance both as they may be amended or modified, or any similar public records disclosure law hereinafter enacted that by its terms applies to this Agreement (collectively, the "Disclosure Laws"), all Tenant's Books and Records and documents maintained by Tenant (or maintained for Tenant by Tenant's Agents) relating to the operation of the Premises and delivered or required to be delivered by Tenant to Landlord may be considered public records and, to the extent required by the Disclosure Laws, will be made available to the public upon request. Landlord shall not in any way be liable or responsible for the disclosure of any such information, books or records or portions thereof if the disclosure is made pursuant to a request under the Disclosure Laws.

ARTICLE 3. USES

3.1 Uses within Premises.

Tenant shall use and operate the Premises in accordance with the Project parameters set forth in the Scope of Development attached hereto as Exhibit ___ and otherwise in accordance with the LDDA and the Community Benefits Program and as further required or permitted in this Article 3. Subject to the preceding sentence, Tenant shall use the Premises solely for the following uses (collectively, the "Pemiitted Uses"), [**NOTE:** Permitted Uses will need to be specified for each of East Gateway and Central Gateway] and Tenant shall not allow any changes or additions to the Permitted Uses without the prior written consent of the Landlord in its sole and absolute discretion, or changes in its use or operation of the Premises that would be inconsistent with the Scope of Development without the prior written consent of Landlord in its sole and absolute discretion:

[**NOTE:** Use descriptions below may need to be modified or may not be necessary in light of use descriptions to be contained in final version of Scope of Development.]

(a) Warehouse and Logistics Facilities. [**NOTE:** Further detail needed] High through-put warehouse and logistics facilities, with _____± total Leasable Square Feet, for the processing of import/export containers and commodities and including major retailer distribution centers.

(b) R&D and Office. [NOTE: Further detail needed] Not less than ____± total Leasable Square Feet of research and development facilities. Administrative office use for management of the Premises, the size of which shall be as reasonably determined by Tenant in light of the intended use and size of the Project.

(c) Bulk and Manifest Intermodal. [NOTE: Further detail needed]

(d) Private Rail. [NOTE: Further detail needed]

(e) Tmck Parking and Services. [NOTE: Further detail needed] ± acres for tmck parking and services.

(f) Waterfront Open Space. [NOTE: Further detail needed]____± acres of open space along the waterfront frontage of the Premises, including [describe any facilities or other improvements].

(g) Recycling Facilities. [NOTE: Further detail needed] Recycling facilities comprised of _____.

(h) Other Pennitted Uses. [NOTE: REVIEW AND DISCUSS] Any other uses permitted by Landlord in its sole and absolute discretion, which may include, without limitation, storage of maintenance equipment and supphes used in connection with the operation or maintenance of the Premises for all Permitted Uses; public access, circulation and open space; within public access and open space areas, without limiting anything else in this Lease, and to the extent permitted by, and in accordance with, all Laws and Regulatory Approvals, programming of exhibitions and toumaments, live concerts and musical performances, theater performances and other forms of live entertainment, public ceremonies, fairs, markets, shows, sporting events or other public or private exhibitions and activities related thereto; children's play area; and other uses reasonably related or incidental to any of the Permitted Uses hereunder.

3.2 Advertising and Signs.

Tenant shall have the right to install signs and advertising within the interior of any retail, restaurant, office, entertainment or _____buildings located on the Premises; provided, however, that no advertising promoting the sale or use of alcohol, guns/firearms or tobacco shall be allowed. Any proposed signs or advertisements on the exterior of the Premises, including without limitation, on any awnings, canopies, flags, banners, LED or other electronic display devices, sails or vessels shall be subject to Landlord's approval, not to be unreasonably withheld, conditioned or delayed. It shall be reasonable for the Landlord to prohibit general advertising (i.e. signs not directiy advertising the person or business located at or on the Premises), or any signs that would violate Tenant's limitations on use as set forth in Section 3.3 hereof All signs shall comply with applicable Laws regulating signs aiid advertising. Tenant shall have no right to install or use any billboard advertising except as may be provided in the Billboard Agreement.

3.3 Limitations on Uses by Tenant.

(a) Prohibited Activities. Tenant shall not conduct or permit on the Premises any of the following activities:

(i) any activity that creates waste or a public or private nuisance, but without limitation on any right given to Tenant to alter, modify, repair, restore or constmct the Improvements in accordance with all Laws and Regulatory Approvals;

(ii) any activity that is not within the Permitted Use or previously approved by the Landlord in writing;

(iii) any activity that will cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

(iv) any activity or object that will materially overload or cause damage to the Premises;

(v) any activity that constitutes waste or nuisance to owners or occupants of adjacent properties. Such prohibited activities do not include activities that are necessary and integral to the operation the Project, but otherwise include, without limitation, adult entertainment on a commercial basis, medical cannabis, illegal dmg distribution, the preparation, manufacture or mixing of anything that might emit any objectionable odors other than ordinary cooking odors, noises or lights onto adjacent properties with such intensity as to constitute a nuisance, or the use of amplified music, sound or light apparatus (other than customary indoor lighting) with such intensity as to constitute a nuisance. This Section shall not be constmed to limit any right given Tenant to alter, modify, repair, Restore, or constmct Improvements in accordance with all Laws and Regulatory Approvals;

(vi) any activity that will in any way unlawfully injure, obstmct or interfere with the rights of other tenants, owners or occupants of adjacent properties, including rights of ingress and egress;

(vii) any auction, distress, fire, bankmptcy or going out of business sale on the Premises without the prior written consent of Landlord; and

(viii) any private membership clubs or private membership eating or drinking establishments without the prior written consent of Landlord which may be given or withheld by Landlord in its sole and absolute discretion.

(b) Land Use Restrictions. Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Landlord's reversionary interest in the Premises, or obtain changes in applicable land use laws or conditional use authorizations or other permits for any uses not provided for hereunder, in each instance without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion, and subject to the provisions of Article 6. Notwithstanding the foregoing, nothing in this Lease shall prohibit Tenant from obtaining final condominium map approval and a final Subdivision Public Report from the Califomia Department of Real Estate or filing a condominium plan with the City of Oakland; provided, however, that Developer acknowledges it may not actually convert the Premises to condominiums without first obtaining all necessary govemmental approvals and the consent, in their sole and absolute discretion, of the City under this Agreement.

3.4 Premises Must Be Used.

Tenant shall use the Premises continuously during the Term in accordance with the Scope of Development, the Regulatory Approvals, and the Permitted Uses and shall not allow the Premises or any portion thereof to remain unoccupied or unused (subject to customary vacancies, re-tenanting, and periodic repairs and maintenance, casualty damage or condemnation) without the prior written consent of Landlord, which consent may be withheld in Landlord's discretion. Notwithstanding the foregoing, Tenant will not be in violation of this Section 3.4 so long as Tenant is using commercially reasonable efforts to lease vacant space in the Premises or, if a subtenant has vacated a portion of the Premises but the sublease remains in effect, if Tenant is diligentiy pursuing legal remedies Tenant has under such sublease, or, if a retail subtenant that is continuing to pay rent ceases operations in the Premises with the right to do so under its sublease. Except as expressly set forth in this Lease, or as otherwise permitted in advance in writing by Landlord in its sole and absolute discretion, all Permitted Uses of the Premises shall be income-generating uses.

ARTICLE 4. TAXES AND OTHER IMPOSITIONS

4.1 Payment of Possessory Interest, Taxes and Other Impositions.

(a) Possessory Interest Taxes. Tenant shall pay or cause to be paid, prior to delinquency, all Impositions comprised of possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or Tenant's leasehold estate (but excluding any such taxes separately assessed, levied or imposed on any Subtenant), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)). Subject to the provisions of Section 4.3, all such taxes shall be paid directiy to the City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 4.3.

Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the applicable governmental Assessor. Tenant further acknowledges that any Sublease or Transfer permitted under this Lease may constitute a change in ownership, within the meaning of the Califomia Revenue and Taxation Code, and therefore may result in a transfer tax and reassessment of any possessory interest created hereunder in accordance with applicable Law.

Notwithstanding the preceding provisions of this Section 4.1(a) or any other provision in this Lease to the contrary, City shall pay or waive any City transfer tax payable with respect to the Parties' initial entry into this Lease.

(b) Other Impositions. Without limiting the provisions of Section 4.1(a), Tenant shall pay or cause to be paid all other Impositions, to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)), which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any Subtenant). Subject to the provisions of Article 5, Tenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. The foregoing or any other provision in this Lease notwithstanding, Tenant shall not be responsible for any Impositions arising from or related to, Landlord's fee ownership interest in the Property or premises (including, without limitation, any real property taxes or assessments), the Landlord's interest as landlord under this Lease or any transfer thereof, including but not limited to, Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Landlord's fee interest or a transfer thereof

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which the Termination Date occurs shall be apportioned and prorated between Tenant and Landlord on a daily basis.

(d) Proof of Compliance. Within a reasonable time following Landlord's written request which Landlord may give at any time and give from time to time, Tenant shall deliver to Landlord copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Landlord, evidencing the timely payment of such Impositions.

4.2 Landlord's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 5.L, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency, Landlord, at its sole and absolute option, may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, Landlord shall give Tenant written notice specifying a date at least ten (10) business days following the date such notice is given after which Landlord intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify Landlord that it is contesting such Imposition pursuant to Section 5.1, then Landlord may thereafter pay such Imposition, and the amount so paid by Landlord (including any interest and penalties thereon paid by Landlord), together with interest at the Default Rate computed from the date Landlord makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to Landlord within ten (10) business days following demand.

4.3 Right of Tenant to Contest Impositions and Liens.

Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other Person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Landlord. Tenant shall give notice to Landlord within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, penalties or other charges which may accme as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to Landlord in any instance where Landlord's interest in the Premises may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administtative agency conducting such proceedings. If Landlord is a necessary party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by or in the name of Landlord or any owner of the Premises, Landlord, at the request of Tenant and at no cost to Landlord, with counsel selected and engaged by Tenant, subject to Landlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Landlord, at its own expense and at its sole and absolute option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by or in the name of Landlord or any owner of the Premises. Except as provided in the preceding sentence, Landlord shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attomeys' Fees and Costs, in connection with any such proceeding, and without limiting Article 13 hereof, Tenant shall Indemnify Landlord for any such fines, penalties, costs, expenses or fees, including Attomeys' Fees and Costs, which Landlord may be legally obligated to pay.

4.4 Landlord's Right to Contest Impositions.

At its own cost and after notice to Tenant of its intention to do so, Landlord may but in no event shall be obligated to contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require Landlord to pay any Imposition as long as it contests the vahdity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. Landlord shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest.

ARTICLE 5. COMPLIANCE WITH LAWS

5.1 Compliance with Laws and Other Requirements.

During the Term, Tenant shall comply, at no cost to Landlord, (i) with all applicable Laws (including Regulatory Approvals), (ii) with the requirements of all policies of insurance required to be maintained pursuant to Article 14 of this Lease, and (iii) with the LDDA (so long as the LDDA remains in effect). The foregoing sentence shall not be deemed to limit Landlord's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, except with respect to subsurface Hazardous Materials conditions, the remediation and residual management of which shall be governed exclusively by the approved Remedial Action Plan, the Risk Management Plan requirements as they relate to the Premises, including any amendments or modifications to either of them, as they may be modified, and state and federal regulatory agencies that may validly assert jurisdiction over the Site. In particular, Tenant acknowledges that the Permitted Uses under Section 3.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including but not limited to, building permits, nor do such uses limit Landlord's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to Landlord, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises. This Section 5.1 shall not apply to compliance with Laws (including Regulatory Approvals) which relate to Hazardous Materials, such compliance being governed exclusively by Article 15 hereof, or to contests of any Imposition or other lien, such contests being exclusively governed by Article 5 hereof Notwithstanding anything to the contrary herein, Tenant shall not be in default hereunder for failure to comply with any Laws or insurance requirements if Tenant is contesting such Laws (including Regulatory Approvals), or insurance requirements diligently and in good faith by appropriate proceedings and at no cost to Landlord, provided that Tenant shall indemnify Landlord against and hold Landlord harmless from any Losses resulting from such contest and provided that such contest does not result in the loss or suspension of the insurance coverage required to be maintained by Tenant hereunder.

(a) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section 5.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises or the Improvements, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Landlord, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. Except as provided in Articles 9 or 10, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Landlord. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution,

reduction or suspension of payment of Rent, or to compel Landlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation, except to the extent provided in Article 10, or Sections 17.1 or 17.2.

(b) Proof of Compliance. Upon request by Landlord, Tenant shall promptiy provide Landlord with evidence of its comphance with any of the obligations required under this Section.

5.2 Regulatory Approvals.

(a) City Approvals. Tenant understands and agrees that Landlord is entering into this Lease in its proprietary capacity as the holder of fee title to the Property, and not in its capacity as a regulatory agency of the City. Tenant understands that the entry by the Landlord into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including the Landlord itself in its regulatory capacity. By entering into this Lease, the Landlord is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

(b) Approval of Other Agencies; Conditions. Tenant understands that the Project and Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any alterations or Additional Constmction to the Premises, may require that approvals, authorizations or permits be obtained from governmental agencies with jurisdiction. Tenant shall be solely responsible for obtaining Regulatory Approvals as further provided in this Section. In any instance where Landlord will be required to act as a co-permittee, and in instances where modifications are sought to the Remedial Action Plan and/or the Risk Management Plan, or where Tenant proposes Additional Constmction which requires Landlord's approval under Section 6, Tenant shall not apply for any Regulatory Approvals (other than a building permit from the Landlord) without first obtaining the approval of Landlord, which approval will not be unreasonably withheld, conditioned or delayed. Throughout the permit process for any Regulatory Approval, Tenant shati consult and coordinate with Landlord in Tenant's efforts to obtain such Regulatory Approval, and Landlord shall cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approval, provided that Landlord shall have no obligation to make expenditures or incur expenses other than administrative expenses. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any other regulatory agency than Landlord, if Landlord is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of Landlord whether on or off the Premises, unless in each instance Landlord has previously approved such conditions in writing in Landlord's sole and absolute discretion. No such approval by Landlord shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, Landlord shall join, where required, in any application by Tenant for a required Regulatory Approval, and in executing such pennit, provided that Landlord shall have no obligation to join in any such application or execute the permit if the Landlord does not approve the conditions imposed by the regulatory agency under such permit as provided herein. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be home by Tenant. Tenant shall be responsible for complying, at no cost to Landlord or the City, with any and all

conditions imposed by any regulatory agency as part of a Regulatory Approval. With the consent of Landlord (which shall not be unreasonably withheld or delayed), Tenant shall have the right to appeal or contest in any manner permitted by law any condition imposed upon any such Regulatory Approval. Tenant shall pay and discharge any fines, penalties or corrective actions imposed as a resuh of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval and Landlord shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Article 13, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which Landlord may be liable in connection with Tenant's failure to comply with any Regulatory Approval.

ARTICLE 6. IMPROVEMENTS

6.1 Initial Improvements.

Tenant shall constmct or cause to be constmcted the Initial Improvements in accordance with this Section 6.1 in the manner and within the times set forth in the Scope of Development and the Constmction Documents for the Initial Improvements. Landlord acknowledges that the extent and scope of any City design review for the Initial Improvements may be governed by the provisions of the PUD and the Development Agreement.

(a) Constmction Documents.

Tenant shall prepare and submit to Landlord, for review and written approval hereunder, reasonably detailed Schematic Drawings, and following Landlord's approval of such Schematic Drawings, Preliminary and Final Constmction Documents which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings, Preliminary and Final Constmction Documents are referred to as "Constmction Documents"). Landlord may waive the submittal requirement of Schematic Drawings for a particular Initial Improvement if it determines in its discretion that the scope of such Initial Improvement does not warrant such initial review. Constmction Documents shall be prepared by a qualified architect or stmctural engineer duly licensed in California. Landlord shall approve or disapprove Constmction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval shall state in writing the reasons for disapproval. If Landlord deems the Constmction Documents incomplete, Landlord shall notify Tenant of such fact within twenty-one (21) days after submission and shall indicate which portions of the Constmction Documents it deems to be incomplete. If Landlord notifies Tenant that the Constmction Documents are incomplete, such notification shall constitute a disapproval of such Constmction Documents. If Landlord disapproves Constmction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Constmction Documents in accordance with the provisions of this Section 6.1(a), Landlord shall review the revised or supplemented Constmction Documents to detennine whether the revisions satisfy the objections or deficiencies cited in Landlord's previous notice of rejection, and Landlord shall approve or disapprove the revisions to the Constmction Documents within fifteen (15) days after resubmission. If Landlord fails to approve or disapprove Constmction Documents (including Constmction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 6.1, such failure shall not constitute an Event of Defauh under this Lease on the part of Landlord, but

such Construction Documents shall be deemed approved by the Landlord in its proprietary capacity, provided that Tenant first provides Landlord with at least ten (10) days prior written notice that Tenant intends to deem said Construction Documents so approved.

(b) Progress Meetings; Coordination. From time to time at the request of either Party during the preparation of Construction Documents, Landlord and Tenant shati hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. Landlord and Tenant shall communicate and consult inforrually as frequentiy as is necessary to ensure that the formal submittal of any Construction Documents to Landlord can receive prompt and speedy consideration.

(c) Landlord Approval of Construction Documents.

Upon receipt by Tenant of a disapproval of Construction Documents from Landlord, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses Landlord's written objections. Tenant shall resubmit such revised portions to Landlord as soon as possible after receipt of the notice of disapproval. Landlord shall approve or disapprove such revised portions in the same manner as provided in Section 6.1 for approval of Construction Documents (and any proposed changes therein) initially submitted to Landlord. If Tenant desires to make any substantial change in the Final Construction Documents after Landlord has approved them, then Tenant shall submit the proposed change to Landlord for its reasonable approval. Landlord shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to Landlord. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period.

(d) Construction Permits. Tenant, at its cost, shall be responsible for applying for and diligently pursuing the issuance of, and thereafter compliance with, all permits and other Regulatory Approvals, including any required environmental certification, allowing construction and development of the Initial Improvements (the "Construction Pennits"). Upon request by Landlord, Tenant shall provide to Landlord copies of all Construction Permits.

(e) Construction Schedule and Reports. All construction with respect to the Project shall be accomplished expeditiously, diligentiy, and within the timeframes set forth within the Scope and Schedule of Performance. During periods of construction, Tenant shall submit to Landlord written progress reports when and as reasonably requested by Landlord.

(f) Conditions to Commencement of Construction. Notwithstanding any provision herein to the contrary, Tenant shall not commence construction of any Initial Improvements until all of the following conditions have been satisfied or waived by Landlord:

(i) Landlord shall have approved the Final Construction Documents;

(ii) Tenant shall have obtained all Construction Permits;

(iii) Tenant shall have entered into the Initial Improvements Construction Contract;

(iv) [DISCUSS] The Completion Guaranty with respect to such Initial Improvements shall be in full force and effect **[DISCUSS POSSIBILITY OF PARTIAL RELEASES FROM COMPLETION GUARANTY]**; and

(v) If requested by Landlord, Tenant shall have submitted to Landlord the following bonds (or equivalent security acceptable to Landlord in its sole and absolute discretion) issued by a licensed surety, naming the City as co-obligee or assignee, and in a form reasonably satisfactory to City (the "Construction Bonds"):

(A) A performance bond in an amount not less than one hundred percent (100%) of the cost of construction of the Initial Improvements, based upon the Initial Improvements Construction Contract, as security for the faithful performance of such construction; and

(B) A labor and material payment bond in an amount not less than one hundred percent (100%) of the cost of construction of the Project pursuant to the Construction Contract, as security for payment to persons performing labor and furnishing materials in comection with such construction.

(g) Construction Standards. All construction of the Initial Improvements shall be accomplished in accordance with the Construction Documents and good construction and engineering practices and applicable Laws.

(h) Safety Matters. Tenant shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury, damage, disruption or inconvenience to the Premises and Improvements and surtounding property, or the risk of injury to members of the public, caused by or resulting from such construction. Tenant shall make adequate provision for the safety and convenience of all persons affected by such construction, including erecting construction barricades substantially enclosing the area of such construction and maintaining them until construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions. Dust, noise and other effects of such work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas.

(i) Costs of Construction. Tenant shall bear and pay all costs and expenses of construction of the Initial hnprovements, whether onsite or offsite, including, without limitation, the cost of comections to existing utility lines in adjacent rights-of-way, and any and all cost overruns. Without limiting the preceding provisions, Tenant shall be responsible for performing all site preparation work necessary for construction of the Initial Improvements. Such preparation shall include, without limitation, all Remediation and Handling of Hazardous Materials (subject to the terms of Article 15, disabled access, tenant improvements, demolition of existing structures, grading and all structure and substructure work, public access improvements, and tenant improvements.

(j) Rights of Access. During any period of construction, Landlord and its Agents shall have the right to enter areas in which construction is being performed, on

reasonable prior notice during customary construction hours, subject to the rights of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Landlord to conduct such inspections or any liability in connection therewith.

(k) Prevailing Wages. In accomplishing construction of the Initial Iruproveruents, Tenant shall comply with City's prevaihng wage policy and City's community jobs policy included within the Community Benefits Program. Tenant shall also comply with any applicable, mandatory prevailing wage law of the State of Califoruia.

(l) As-Buih Plans and Specifications.

Tenant shall furuish to Landlord one set of as-built plans and specifications with respect to the Initial Improvements within one hundred twenty (120) days following completion. If Tenant fails to provide such as-built plans and specifications to Landlord within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from Landlord, Landlord will thereafter have the right to cause an architect or surveyor selected by Landlord to prepare as-built plans and specifications showing such Additional Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to Landlord as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in comection with Additional Construction under applicable regulations adopted by Landlord in its regulatory capacity.

6.2 Landlord's Right to Approve Additional Construction.

(a) Construction Requiring Approval. Tenant shall have the right, froru time to time during the Term, to perform Additional Construction in accordance with the provisions of this Section 6.2, provided that Tenant shall not, without Landlord's prior written approval (which approval shall not be unreasonably withheld or delayed) do any of the following:

(i) Construct additional buildings or other additional structures, other than to replace or restore those previously existing;

(ii) Increase the bulk or height of any Iruprovements beyond the bulk or height approved for the then-existing Improvement (other than changes in the bulk or height of equipment penthouses);

(iii) Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law);

(iv) Decrease the Gross Building Area or the Leasable Area of the Premises after Completion by more than 5%;

(v) Materially increase [**NOTE:** provide parameter of "material increase"?] the Gross Building Area of the Premises; or

(vi) Perform Additional Construction involving replacement or reconstruction that materially alters the exterior architectural design of any Improvements for any replacement construction. In connection with any replacement or restoration, Tenant shall use materials of at least equal quality, durability, and appearance to the materials originally installed, as reasonably determined by Landlord.

The parties acknowledge that, without limiting what constitutes the Landlord's reasonable approval under this Section 8.2(a), it shall be reasonable for Landlord to withhold its consent under this Paragraph 9.1(a) if the proposed Additional Construction would (i) violate any Regulatory Approvals or applicable Laws or (ii) upon completion of the Additional Construction, result in a change of use of Project which would materially adversely impact the Project or payment to Landlord or City of any amounts hereunder.

(b) Notice by Tenant. At least thirty (30) days before commencing any Additional Construction which in Tenant's good faith judgment, requires Landlord's approval, Tenant shall notify Landlord of such proposed Additional Construction. Such notice shall be accompanied by Final Construction Documents for such Additional Construction. Within twenty (20) days after receipt of such notice from Tenant, Landlord shall have the right to object to any such Additional Construction, to the extent that such Additional Construction requires Landlord's approval.

(c) Permits. Tenant acknowledges that Landlord's approval of Additional Construction (or the fact that Tenant is not required to obtain Landlord's approval) does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from goverumental agencies having jurisdiction, including, where applicable, from the Landlord itself in its regulatory capacity, including, without limitation, building permits.

(d) Other Requirements. The requirements set forth in Sections 6.1(a)-(f) also shall apply to any and all Additional Construction requiring Landlord's approval, subject to the following modifications:

(i) Construction Schedule. All Additional Construction shall be accomplished expeditiously and diligentiy, subject to Force Majeure;

(ii) Conditions to Commencement of Construction. Tenant shall have submitted to Landlord in writing its good faith estimate of the anticipated total construction costs of the Additional Construction. If such good faith estimate exceeds One Million and No/100 Dollars ($1,000,000), Tenant shall also submit evidence reasonably satisfactory to Landlord of Tenant's ability to pay such costs as and when due.

(iii) As-Built Plans and Specifications. Tenant shall only be required to furuish to Landlord as-built plans and specifications with respect to 'Additional Construction costing One Hundred Thousand Dollars ($100,000) as Indexed, or more.

6.3 Minor Alterations.

Landlord's approval hereunder shall not be required for (a) the installation, repair or replacement of fiimishings, fixtures, equipment or decorative Improvements or repair or replacement of wom out or obsolete components of the Improvements which do not materially affect the stmctural integrity of the Improvements unless otherwise required under Section 6.2(a)(i)-(vi), (b) recarpeting, repainting the interior or exterior of the Premises, groundskeeping, or similar alterations, or (c) any other Additional Constmction which does not require a building pemiit (collectively, "Minor Alterations").

6.4 Tenant Improvements.

Landlord's approval hereunder shall not be required for the installation of tenant improvements and finishes (excluding retail storefronts or facades) to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing shall not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a building permit from the City, acting in its regulatory capacity.

6.5 Titie to Improvements.

During the Term of this Lease, Tenant shall own all of the Improvements, including all Additional Constmction and all appurtenant fixtures, machinery and equipment installed therein (except for frade fixtures and other personal property of Subtenants). During the Term, for federal income tax purposes, Tenant shall be the "tax owner" of the Improvements, including all Additional Constmction, and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants) and shall be entitied to depreciation deductions and any tax credits with respect to the Improvement, including all Additional Constmction and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants). At the expiration or earlier termination of this Lease, titie to the Improvements, including appurtenant fixtures (but excluding trade fixtures and other personal property of Tenant and its Subtenants other than Landlord), will vest in Landlord without furtlier action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant shati promptly cause the repair of such damage at no cost to Landlord.

ARTICLE 7. MANAGEMENT; REPAIR AND MAINTENANCE

7.1 Management and Operating Covenants.

Following Completion of the Initial Improvements, Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with standards for the maintenance and operation of comparable [logistics or R&D/office as applicable] projects located [NOTE: DISCUSS] in military base reuse and port areas elsewhere in the State of Califomia, subject to the provisions of Articles 9 and 10 relating to damage and

destruction and Condemnation. Tenant shall be exclusively responsible, at no cost to Landlord, for the management and operation of the Improvements.

7.2 Tenant's Duty to Maintain.

Except as otherwise provided in this Article 7, and Sections 10 and 11 hereof, throughout the Term of this Lease, Tenant shall maintain and repair, at no cost to Landlord, the Premises, in the condition and repair required under Section 6.1, and in compliance with all applicable Laws and the requirements of this Lease. Tenant shall promptiy make (or cause others to make) all necessary repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen. Tenant shall make such repairs with materials, apparatus and facihties as originally installed and approved by Landlord under the LDDA or this Lease, or, if not originally subject to Landlord approval or not commercially available, with materials, apparatus and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Tenant shall be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Initial Improvements.

7.3 Costs of Repairs, Etc.

(a) No Obligation of Landlord; Waiver of Rights. As between Landlord and Tenant, Tenant shall be solely responsible for the condition, operation, repair, maintenance and management of the Premises, including any and all Improvements, from and after the Commencement Date. Landlord shall have no obligation to make repairs or replacements of any kind or maintain the Premises, any Improvements or any portion thereof Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or replacements at Landlord's expense, or (except as provided in Section 13) abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Landlord's expense as may be provided by Sections 1932(1), 1941 and 1942 of the Califomia Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

(b) Notice. Tenant shall deliver to Landlord, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any govemmental authority (other than Landlord) having responsibility for the enforcement of any apphcable Laws (including Disabled Access Laws or Hazardous Materials Laws), asserting that the Project is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Article 14, asserting that the requirements of such insurance policy or policies are not being met.

ARTICLE 8. UTILITY SERVICES

8.1 Utility Services.

Landlord, in its proprietary capacity as owner of the Property and landlord under this Lease, shall not be required to provide any utility services to the Premises or any portion of the Premises. Tenant and its Subtenants shall be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which the

Premises are put (it being acknowledged that City is the sole and exclusive provider to the Premises of certain pubhc utility services). Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Landlord under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Landlord relating to this Lease, any Losses arising from or in connection with City's provision of (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

ARTICLE 9. DAMAGE OR DESTRUCTION

9.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Article 9.

(b) Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or exttaordinary, foreseen or unforeseen (a "Casualty Event"), and such Casualty Event (i) could materially impair use or operation of any material portion of the hnprovements for their intended purposes for a period of thirty (30) days or longer, or (ii) exceeds in an individual instance tne amount of Two Hundred and Fifty Thousand And No/100 Dollars ($250,000.00) or aggregate amount, together with any other Casualty Event occurring during the preceding 5-Year Period, of Seven Hundred Fifty Thousand And No/100 Dollars ($750,000.00).tnen Tenant shall promptiy, but not more than ten (10) days after the occurrence of the Casualty Event, give written notice thereof to Landlord describing with as much specificity as is reasonable, given the ten-day time constraint, the nature and extent of such damage or destruction; provided, hoyever, that Tenant shall provide Landlord with a supplemental and more detailed written report describing such matters with specificity within ninety (90) days after the occurtence of the damage or destruction. The provisions of this Section 8.1(b) are in addition to, and not in lieu of, the incident management provisions of Section 38.17.

(c) Waiver. The Parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly,

Landlord and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the Califomia Civil Code, as such Sections may from time to time be amended, replaced, or restated.

9.2 Rent after Damage or Destmction.

If there is any damage to or destmction of the Premises, including the Improvements thereon, this Lease shall not terminate except as otherwise specifically provided in Section 11.4. In the event of any damage or destmction to the Improvements that does not result in a termination of this Lease, and at all times before completion of Restoration, Tenant shall pay to Landlord all Rent at the times and in the manner described in this Lease.

9.3 Tenant's Obligation to Restore.

Except at the option of Tenant during the last five (5) years of the Term as set forth below [or as permitted under Section 9.7 below], if ah or any portion of the Improvements are damaged or destroyed , then Tenant shall, subject to Section 9.4 hereof, within a reasonable period of time (allowing for securing necessary Regulatory Approvals), commence and diligentiy, subject to Force Majeure, Restore the Improvements to the condition they were in immediately before such damage or destmction, to the extent possible in accordance with then applicable Laws (including, but not limited to, any required code upgrades), without regard to the amount or availability of insurance proceeds. All Restoration performed by Tenant shall be in accordance with the procedures set forth in Section 6 relating to Additional Construction and shall be at Tenant's sole expense. If insurance proceeds are available for such Restoration, then Tenant shall deposit all insurance proceeds received by Tenant in comection with a casualty event with a Depositary to Restore the Premises, which Depositary shall be authorized to make disbursement therefrom in accordance with Section 10.5; provided, however, that if at any time the estimated or actual cost to Restore ("Casualty Cost") exceeds the net insurance proceeds actually deposited with the Depositary, then Tenant shall either (i) also deposit with the Depositary such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds ("Additional Casualty Cash"), or (ii) obtain payment or performance bonds in the full amount of the Additional Casualty Cash to cover the payment and performance of the Restoration and naming Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees and in form reasonably satisfactory to Landlord (such bonds, together with such net insurance proceeds and any interest earned thereon, and the Additional Casualty Cash, the "Casualty Restoration Funds"). In the event Tenant shall elect not to Restore the Premises during the last 5 years of the Term, Tenant shall have the right to terminate this Lease with respect to that portion of the Premises containing the Improvements so damaged or destroyed upon written notice to Landlord which shall be delivered if at all within sixty (60) days of written notice of the Casualty Event to Landlord, in which event, the Tenant may use all available insurance proceeds to raze those improvements on the Premises designated by Landlord and shall then cause the Depositary to tum over the balance of any available insurance proceeds to Landlord. If Tenant obtains payment or performance bonds related to a Restoration (which Tenant may or may not obtain in its discretion), Tenant shall name Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to Landlord promptiy upon obtaining them.

9.4 Rights of Landlord. In addition to the other remedies available to Landlord that are set forth elsewhere in this Lease, the following remedies shall be available to Landlord in the event of a Casualty Event:

(a) Expiration or Termination of Lease Prior to Completion of Any Restoration. In any case where this Lease shall expire or be terminated prior to the completion of the Restoration, Tenant shall (i) promptly account to Landlord for all amounts spent in connection with any Restoration which was undertaken, (ii) immediately pay over or cause the Depositary to pay over to Landlord the remainder, if any, of the Casualty Restoration Funds received by Tenant or held by the Depositary prior to such termination or cancellation, (iii) pay over or cause the Depositary to pay over to Landlord, within five (5) business days after receipt thereof, any Casualty Restoration Funds received by Tenant or the Depositary subsequent to such termination or cancellation, and (iv) immediately pay over to Landlord any outstanding Additional Casualty Cash that Tenant should have deposited with the Depositary prior to such termination or cancellation. Upon completion of and payment for the Restoration, Landlord shall return to Tenant any unused portion of the Casualty Restoration Funds.

(b) Failure to Restore Following a Casualty Event.

(i) If, in the event of a Casualty Event, (A) Tenant fails or neglects to commence the diligent Restoration of the Premises or the portion thereof so damaged or destroyed, or (B) having so commenced such Restoration, Tenant fails to diligently complete the same in accordance with the terms of this Lease, then Landlord may, by giving sixty (60) calendar days' prior notice to Tenant, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease and the Term shall immediately become forfeited and void.

(ii) If, in the event of a Casualty Event, (A) Tenant fails or neglects to commence the diligent Restoration of the Premises or the portion thereof so damaged or destroyed, (B) having so commenced such Restoration, Tenant fails to diligently complete the same in accordance with the terms of this Lease, or (C) prior to the completion of any such Restoration by Tenant, this Lease shall expire or be terminated in accordance with the terms of this Lease, then Landlord may, but shall not be required to, complete such Restoration at Tenant's expense and shall be entitled to be paid out of the Casualty Restoration Funds for the relevant Restoration costs incurred by Landlord. Upon completion of and payment for the Restoration, Landlord shall return to Tenant any unused portion of the Casualty Restoration Funds. Tenant's obligations under this Section 9.4 shall survive the expiration or termination of this Lease.

9.5 Payment of Casualty Restoration Funds to Tenant. Subject to the satisfaction by Tenant of all of the terms and conditions of this Article 9, the Depositary shall pay to Tenant from time-to-time any Casualty Restoration Funds it holds, but not more than the amount actually collected by the Depositary upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as Landlord, to the extent, if any, of the reasonable expenses paid or incurred by the Depositary and Landlord in the collection of such monies, to be utilized by Tenant solely for the Restoration, such payments to be made as follows:

(a) prior to commencing any Restoration, Tenant shall furnish to Landlord for its approval the estimated cost, estimated schedule and detailed construction and design plan for the completion of the Restoration, each prepared by an architect, engineer and general contractor;

(b) the Casualty Restoration Funds held by the Depositary shall be paid to Tenant in installments as the Restoration progresses, subject to Section 9.5(c), based upon requisitions to be submitted by Tenant to the Depositary and Landlord in compliance with Section 9.6, showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by Tenant; provided, however, that if any Encumbrance is filed against the Premises or any part thereof in connection with the Restoration, Tenant shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged in accordance with this Lease; provided further that notwithstanding the foregoing, but subject to the provisions of Section 9.5(c), the existence of any such Encumbrance shall not preclude Tenant from receiving any installment of Casualty Restoration Funds held by the Depositary so long as (i) such Encumbrance will be discharged with funds from such installment and at the time Tenant receives such installment Tenant delivers to Landlord and the Depositary a release of such Encumbrance executed by the lienor and in recordable form, or (ii) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord;

(c) the amount of each installment to be paid to Tenant shall be the aggregate amount of Casualty Costs theretofor incurred by Tenant minus the aggregate amount of Casualty Restoration Funds theretofor paid to Tenant in connection therewith; provided, however, that all disbursements to Tenant shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depositary is sufficient to complete the Restoration; and

(d) except as provided in Section 9.4, upon completion of and payment for the Restoration by Tenant, subject to the rights of any Mortgagee, the Depositary shall pay the balance of the Casualty Restoration Funds it holds, if any, to Tenant; provided, however, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), Tenant shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 9.3.

9.6 Conditions of Payment. The following shall be conditions precedent to each payment made to Tenant as provided in Section 9.5:

(a) Tenant shall have furnished Landlord with estimates of costs and schedule and a detailed construction plan for the completion of the Restoration, as provided for in Section 9.5(a);

(b) at the time of making such payment, no Event of Default exists; and

(c) the Restoration shall be carried out in accordance with Article 9, and there shall be submitted to the Depositary and Landlord the certificate of the applicable architect or engineer stating that (i) the materials and other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 15.3(c)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's hen or other Encumbrances have been claimed; except for any mechanic's lien for claims that (A) will be discharged, by bonding or otherwise, with finds to be received pursuant to such requisition (provided that a release of such Encumbrance is delivered to the Depositary in accordance with Section 9.5(b)), or (B) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord, (ii) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or fumished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (iii) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Casualty Restoration Funds or has been made out of the Casualty Restoration Funds received by Tenant, (iv) the sum then requested does not exceed the value of the services and materials described in the certificate, (v) the work relating to such requisition has been performed in accordance with this Lease, (vi) the balance of the Casualty Restoration Funds held by the Depositary or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion, and (vii) in the case of the final payment to Tenant, the Restoration has been completed in accordance with this Lease.

9.7 Tenant's Election to Restore or Terminate. [DISCUSS]

(a) Uninsured Casualty or Major Damage or Destmction. If an event of Major Damage or Destmction occurs during the last ten (10) years of the Term, or if an event of Uninsured Casualty occurs at any time during the Term, then at the time Tenant provides Landlord with the ninety (90) day report described in Section 9.1(b) above, Tenant shall also provide Landlord with written notice (the "Casualty Notice") either (1) electing to commence and complete Restoration of the Improvements, or (2) electing to terminate this Lease (subject to the conditions of Section 11.4(b)). For purposes hereof, "Uninsured Casualty" will mean an event of damage or destmction for which the costs of Restoration (including the cost of any required code upgrades) exceeds One Million and No/100 Dollars ($1,000,000), as Indexed, (or Three Million and No/100 Dollars ($3,000,000)) as Indexed for mold damage if Tenant does not obtain property insurance covering mold damage plus, in all cases, the amount of any applicable policy deductible (except in the case of damage or destmction caused by earthquake, if Tenant is obligated to carry earthquake insurance pursuant to Section 14.1(a)(ii), the amount of the policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake damage under Tenant's property insurance policy maintained under Section 14.1(a)(ii) hereof as of the date of casualty, or the actual amount of the policy deductible) and which is not covered by available insurance proceeds payable under the policies of insurance that Tenant is required to carry under Section 14 hereof (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required to be

maintained hereunder). Proceeds of insurance shall not be deemed "available" for purposes of this Article 9 to the extent that a Mortgagee, pursuant to the tenns of its Mortgage if approved by Landlord under Section 34.8, retains or requires the application of such proceeds for purposes other than Restoration. Tenant shall provide Landlord with the Casualty Notice no later than ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Tenant elects to Restore the Improvements, all of the provisions of Section 9 that are applicable to Additional Construction of the Improvements shall apply to such Restoration of the Improvements to the condition they were in prior to such Major Damage or Destruction as if such Restoration were Additional Construction.

(b) Other Circumstances Allowing Termination. Notwithstanding the foregoing or subsequent provisions of this Article 9, Tenant shall not be required to Restore the Improvements and may elect to terminate this Lease in accordance with this Article 9 if (A) the Laws then existing would not allow Tenant to Restore the Improvements; (B) all necessary goverumental approvals required for the Restoration of the Improvements cannot be obtained, within eighteen months (18) from the date of the damage or destruction; provided that Tenant is proceeding as promptly as reasonably practicable and is using all commercially reasonable efforts to obtain such approvals within such time; or (C) in the case of Major Damage and Destruction occurring prior to the last ten (10) years of the Term, if Tenant reasonably anticipates, based upon a schedule of performance for such Restoration prepared with due diligence by Tenant in consultation with a licensed general contractor experienced is similar construction projects in Oakland and approved by Landlord, that at the time of completion of the Restoration, less than ten (10) years would remain in the Term. If Tenant elects to terminate based on any of the immediately foregoing determinations and Landlord reasonably disputes Tenant's determination, Landlord may submit the matter to arbitration, as set forth in Section 12.9 hereof.

(c) Conditions to Termination. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 9.4(a) above, Tenant shall do all of the following:

(i) Tenant in its election to terminate described in Section 9.4(a) shall provide Landlord with a statement of the cost of Restoration, and the amount by which the cost of Restoration plus the amount of any applicable policy deductible (subject to the limitations on the policy deductible for damage or destruction caused by earthquake or flood as set forth in Section 9.4(a)(i) above) exceeds insurance proceeds payable (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder), accompanied by supporting evidence reasonably acceptable to Landlord, such as at least two (2) bids from experienced general contractors, and supporting documentation from Tenant's insurer as to the amount of the policy deductible, and the coverage available for the event of damage and destruction; and

(ii) Tenant shall pay or cause to be paid the following amounts from casualty insurance proceeds upon the later of making the election to terminate or promptly following receipt of such proceeds in the following order of priority:

(A) first, to Landlord (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the actual costs incurted for any work required to alleviate any threat to the public safety and welfare or damage to the environment, including without limitation, any demolition or hauling of rubble or debris;

(B) second, to each Non-Affiliate Mortgagee demanding payment thereof in accordance with its Non-Affiliate Mortgage and applicable Law (in order of lien priority and not pro rata), that portion of the remaining casualty insurance proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction in an amount not to exceed the aggregate amounts then owed to the Non-Affiliate Mortgagee and secured by all Non-Affiliate Mortgages under the loan documents therefor;

(C) third, to Landlord and Tenant in equal amounts until the outstanding balance of the Total Repayment Amount has been paid in full; and

(D) all remaining insurance proceeds to Landlord.

(d) Upon Termination. Tenant shall deliver possession of the Premises to Landlord and quitclaim to Landlord all right, titie and interest in the Premises and any remaining Improvements.

(e) Landlord's Election Upon Notice of Termination. Notwithstanding the foregoing, if Tenant elects to terminate this Lease solely due to an Uninsured Casualty under circumstances permitted by Section 9.4(a) then Landlord may, upon such occurrence during the Term, by notice in writing given to Tenant within sixty (60) days after Tenant's Casualty Notice, elect any of the following: (i) terminate the Lease and accept the surtender of the Premises in their then-existing condition, or (ii) in the event of an Uninsured Casualty, continue the Lease in effect, and pay the amount by which the cost of Restoration (including the cost of any required code upgrades) will exceed the net available proceeds of any insurance payable under the policies of insurance that Tenant is required to carry under Article 14 hereof (or which would have been payable but for Tenant's default in its obligation to maintain such insurance) by more than One Million and No/100 Dollars ($1,000,000), as Indexed annually plus the amount of any applicable policy deductible (except that in the case of damage or destruction caused by earthquake, the amount of the policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake damage under Tenant's property insurance policy maintained under Section 14.1(a)(ti) hereof as of the date of casualty, or the actual amount of the pohcy deductible) and require Tenant to Restore the Premises in accordance with Section 11.4(b). During the last 10 years of the Term, Landlord will not have the right to elect to pay the incremental cost and cause Tenant to Restore unless Tenant agrees to do so, in its sole discretion.

9.8 Effect of Termination.

If Tenant elects to terminate the Lease under Section 9.4(a) above, and Landlord elects not to continue the Lease in effect if allowed under Section 9.4(d), then, on the date that Tenant shall have fully complied with all other provisions of Section 9.4(b) to the satisfaction of Landlord, this Lease shall terminate (except that, for purposes of payment of Rent, the effective

date of termination shall be the date of the event of damage or destruction). Upon such termination, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination, subject to payment to Landlord of accrued and unpaid Rent (i.e. Rent payable on dates occurring on or prior to the date of termination), through the date of the event of damage or destruction; provided, however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination. In addition, tennination of this Lease under this Section 9 shall not limit the right of a Mortgagee to a New Lease under Section 34 unless such Mortgagee has agreed otherwise. The rights of any Mortgagee hereunder, and any rights of Tenant or Landlord to receive insurance proceeds in accordance with the provisions of this Lease will survive the termination of this Lease. At Landlord's request following any termination, Tenant shall deliver to Landlord a duly executed and acknowledged quitclaim deed suitable for recordation and in form and content satisfactory to Landlord.

9.9 Distribution Upon Lease Termination.

If Tenant is obligated to and fails to Restore the Improvements as provided herein and this Lease is terminated, all insurance proceeds held by Landlord, Tenant and, subject to Article 34, any Mortgagee, or not yet collected, shati be paid to and retained by Landlord; subject to the rights of any Mortgagee under a Mortgage to such insurance proceeds if approved by Landlord under Section 34.8.

9.10 Use of Insurance Proceeds.

(a) Restoration. Except in the event of termination of this Lease, all all-risk coverage insurance proceeds, earthquake and flood proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Landlord or Tenant by reason of damage to or destruction of any Improvements, if any (other than business or rental interruption insurance), must be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the conttary in this Section 9, and subject to the rights of any Mortgagee.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in tiiis Section 9, and if Tenant Restores tiie Improvements and there is a Mortgage encumbering the Lease, then any insurer paying compensation in excess of One Million and No/100 Dollars ($1,000,000), as Indexed (or any lesser amount if required by any Mortgagee), under any all-risk or earthquake insurance policy required to be carried hereunder shall pay such proceeds to the Mortgagee that is the holder of any Mortgage which is the most senior lien against the Improvements or an insurance trustee reasonably acceptable to Landlord designated by such Mortgagee, for purposes of Restoration only. If there is no Mortgage encumbering the Lease, then the insurance proceeds shall be paid to a tmstee (which shall be a bank or trust company) designated by Landlord within twenty (20) days after written request by Tenant, having an office in Oakland. Unless agreed otherwise by the Parties, and subject to the requirements of any Mortgagee, the insurer shall pay insurance proceeds of One Million and No/100 Dollars ($1,000,000) as Indexed or less directiy to Tenant for purposes of Restoration in accordance with this Lease. If the funds are paid to a trustee in accordance herewith, the trustee shall hold all insurance proceeds in an interest-bearing federally insured account (with interest added to the proceeds). However, such trustee or Mortgagee shall pay to Tenant, from time to

time as the work of rebuilding, Restoration and repair shall progress, in amounts designated by certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such repairs, rebuilding and Restoration. If there is no Mortgage encumbering the Lease and a trustee is holding the proceeds, the Landlord shall instruct the trustee to pay Tenant the cost of any emergency repairs necessitated by the event of damage or destruction in advance of the actual Restoration within thirty (30) days of such request. The trustee or Mortgagee, as the case may be, shall be required to make such payments upon satisfaction that the amount necessary to provide for Restoration or repair of any buildings and other Improvements destroyed or damaged, which may exceed the amount received upon such policies, has been provided by the insured for such purposes and its application for such purposes is assured. Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptiy in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. Provided that no uncured Event of Default (or unmatured Event of Default) that has not been waived by Landlord shall exist on the date such damage is repaired, the Improvements shall have been Restored in accordance with the provisions of this Section 9 and all sums due under this Lease shall have then been paid in full, any excess of monies received from insurance remaining with the trustee or Mortgagee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant.

9.11 No Release of Tenant's Obligations.

No damage to or destruction of the Premises or Improvements or any part thereof for fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided herein.

9.12 Arbitration of Disputes.

(a) Estimators. In the event Landlord and Tenant cannot mutually agree upon the cost of Restoration or the cost of replacing the Improvements under Section 9.4(a)(i) or if Landlord disputes Tenant's determination allowing for termination under Section 9.4(a)(ii), such disputes shall be determined in the manner provided in this Section 9.12. Either Party may invoke the provisions of this Section 9.12 at any time that a dispute as to any such amount exists, by delivering written notice to the other Party. Within twenty (20) business days after delivery of notice invoking the provisions of this Section, each Party shall designate, by written notice to the other Party, a licensed general contractor having at least ten (10) years experience in estimating construction costs of major construction projects in the City to estimate the cost or amount in dispute, and for disputes regarding time to complete Restoration under Section 9.4(a)(ii), also having at least the equivalent amount of experience in commercial real estate development matters. Each such estimator shall be competent, licensed, qualified by training and experience in the City, disinterested and independent. Each estimator (or if either Party fails to appoint its estimator within such twenty (20) business day period, the estimator appointed by the other Party) shall make an independent detennination of the disputed amount or time for completion of Restoration, as the case may be, in accordance with the provisions hereof The estimators may share and have access to objective information in preparing their estimates, but they will otherwise act independentiy. Each estimator shall complete, sign and submit its

written estimate of the disputed construction, replacement cost, or time for completion of Restoration, as the case may be, within fifteen (15) business days after the appointment of both estimators, unless the Parties agree to permit a longer period of time. If the higher number estimating the cost or number of days for completion of Restoration is not more than one hundred ten percent (110%) of the lower estimate, the disputed amount shall be determined for purposes of this Lease to equal the average of the two (2) estimates.

(b) Arbitration. If the higher number estimating the cost or number of days for completion of Restoration is more than one hundred ten percent (110%) of the lower estimate, the Parties shall agree upon and appoint an independent arbitrator within thirty (30) days after the first two (2) estimates have been submitted to the Parties. The arbitrator shall have the minimum qualifications required of an estimator pursuant to Subsection (a) above, and shall also have experience acting as an arbitrator of disputes involving construction costs or construction disputes. If the Parties do not appoint such arbitrator within such thirty (30) day period, then either Party may apply to the American Arbitration Association for appointment in accordance with the rules and procedures of such organization of an independent arbitrator meeting the foregoing qualifications. The arbitrator shall consider the estimates submitted by the Parties as well as any other relevant written evidence which the Parties may choose to submit. If a Party chooses to submit any such evidence, it shall deliver a complete and accurate copy to the other Party at the same time it submits the same to the arbitrator. Neither Party shall conduct ex parte communications with the arbitrator regarding the subject matter of the arbitration. Within fifteen (15) business days after his or her appointinent, the arbitrator shall conduct a hearing, at which Landlord and Tenant may each make supplemental oral and/or written presentations, with an opportunity for testimony by the estimators and questioning by the Parties and the arbitrator. Within ten (10) business days following the hearing, the arbitrator shall select the estimate submitted by one or the other of the first two (2) estimators, as the more accurate estimate of the disputed amount or time, as applicable, in the opinion of the arbitrator. The determination of the arbitrator shall be limited solely to the issue of deciding which of the estimates is closest to the actual disputed value or amount of time, as applicable. The arbitrator shall have no right to propose a middle ground or to modify either of the two estimates, or to modify any provision of this Lease.

(c) Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended trom time to time), the determination by the estimators or the arbitrator, as applicable, shall be conclusive, final and binding on the Parties. Neither the estimators nor the arbitrator shall have any power to modify any of the provisions of this Lease. Subject to the provisions of this Section, the Parties will cooperate to provide all appropriate information to the estimators and the arbitrator. The estimators and the arbitrator will each report their respective determinations in writing, supported by the reasons for the determination.

(d) Conduct of Arbitration Proceeding. Any arbitration proceeding under this Section 9.12 shall be subject to Califoruia Code of Civil Procedure Sections 1280 to 1294.2 (but excluding Section 1283.05 with respect to discovery), or successor Califoruia laws then in effect relating to arbitration generally. Any such proceeding shall be conducted in the City of Oakland.

(e) Fees and Costs; Waiver. Each Party shall bear the fees, costs and expenses of the estimator it selects. The fees, costs and expenses of the arbitrator and the costs and expenses of the arbitration proceeding, if any, shall be shared equally by Landlord and Tenant. The Parties waive any claims against the estimator appointed by the other Party, and against the arbitrator, for negligence, malpractice, or similar claims in the performance of the estimates or arbitration contemplated by this Section.

(f) Arbitration of Disputes. With respect to the arbitration provided for in this Section 9.12, the Parties agree as follows:

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS IN THIS LEASE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

DEVELOPER:	CITY:
[ENTITY TO BE IDENTIFIED BY PROLOGIS/CCIG]	CITY OF OAKLAND, a municipal corporation
By: _____	By _____ City Administrator
By: _____	
By: _____ [NAME] [TITLE]	

Any judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction of such arbitration in accordance with the terms of this Lease. This arbitration provision does not affect the rights of either Party to seek confirmation, correction or vacation of the arbitration award pursuant to Califomia Code of Civil Procedure Section 1285 et seq.

9.13 Benefit of Landlord. The requirements of this Article 9 are for the benefit only of Landlord, and no other Person shall have or acquire any claim against Landlord as a result of any failure of Landlord actually to undertake or complete any Restoration as provided in this Article

9 or to obtain the evidence, certifications and other documentation provided for herein.

9.14 Cooperation. Landlord shall cooperate with Tenant and act in a reasonable and expedited manner in connection with any Restoration by Tenant in connection with a Casualty Event, including, without limitation, an expedited review and response to all documents and requests submitted by Tenant in connection with the Restoration. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to Tenant's Restoration.

ARTICLE 10. CONDEMNATION

10.1 Obligations of Tenant. If all or any part of any of the Premises shall Condemned by any governmental authority, other than Landlord: (a) each Party shall give the other Party notice thereof promptly after such Party receives actual notice of such Condemnation; (b) Tenant shall, at its sole cost and expense, whether or not condemnation or other similar proceeds, if any, shall be available to pay for the estimated or actual cost of repairs, alterations, restorations, replacement and rebuilding (the "Taking Cost"), proceed diligently to Restore the portions of the Premises that were not subject to a Condemnation in accordance with Article 10; and (c) Tenant shall deposit with a Depositary such portion of the condemnation or other similar proceeds received by Tenant in connection with such Condemnation necessary to Restore the Premises; provided, however, that if at any time the Taking Cost exceeds the condemnation or similar proceeds actually deposited with the Depositary, then Tenant shall either (i) also deposit with the Depositary such cash as is sufficient to cover the difference between the Taking Cost and the condemnation or similar proceeds ("Additional Taking Cash"), or (ii) obtain payment or performance bonds in the full amount of the Additional Taking Cash to cover the payment and performance of the Restoration and naming Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees and in form reasonably satisfactory to Landlord (such bonds, together with such condemnation or similar proceeds and any interest earned thereon, and the Additional Taking Cash, the "Taking Restoration Funds"). Tenant shall be entitled to claim, prove and receive in any condemnation proceedings such awards or other compensation for any loss or diminution in or of Tenant Interest and other loses it incurs as a result of such Condemnation and Tenant's trade fixtures and equipment located on the Premises, as may be allowed by the governmental authority effectuating such Condemnation; provided, however, that if the governmental authority effectuating a Condemnation is not Landlord, then Tenant's claim may not frustrate or adversely impact Landlord's separate claims for compensation in connection with such Condemnation. If multiple claims with respect to such Condemnation are barred under applicable Law, the Parties shall reasonably cooperate in consolidating their separate claims.

10.2 Effect of a Condemnation on This Lease. In the event that the entire Premises are taken or so transferred, this Lease and all of Tenant's right, title and interest thereunder shall cease on the date title to such property so taken or transferred vests in the governmental authority effectuating the Condemnation. In the event of a Condemnation where only a portion of the Premises is taken or so transferred, on the earlier of the date title to the portion of the Premises vests in such governmental authority, or the date on which such governmental authority takes possession of the portion of the Premises, (a) this Lease shall terminate with respect to Landlord's and Tenant's future obligations hereunder with respect to the portion of the Premises so taken, and (b) the monthly Rent due hereunder from Tenant to Landlord for the remainder of

the Term shall be equitably reduced from and after such Condemnation to the extent Tenant does not have full use of the Premises as a result of such Condemnation. If the Parties are unable to agree on the amount of the reductions within sixty (60) calendar days after such Condemnation, the amount of the reductions shall be determined in accordance with the dispute resolution procedure set forth in Section _____. Notwithstanding anything to the contrary herein, unless Landlord is the govemmental authority effectuating a Condemnation, Landlord shall have no responsibility to pay to Tenant, and shall not be liable for, any condenmation or other similar proceeds claimed or sought by Tenant in connection with any Condemnation.

10.3 Rights of Landlord. In addition to the other remedies available to Landlord that are set forth elsewhere in this Lease, the following remedies shall be available to Landlord in the event of a Condemnation, unless Landlord is the governmental authority effectuating a Condemnation:

(a) Expiration or Termination of Lease Prior to Completion of Any Restoration. In any case where this Lease shall expire or be terminated prior to the completion of the Restoration, Tenant shall (i) promptly account to Landlord for all amounts spent in connection with any Restoration which was undertaken, (ii) immediately pay over or cause the Depositary to pay over to Landlord the remainder, if any, of the Taking Restoration Funds received by Tenant or held by the Depositary prior to such termination or cancellation, (iii) pay over or cause the Depositary to pay over to Landlord, within five (5) Business Days after receipt thereof, any Taking Restoration Funds received by Tenant or the Depositary subsequent to such termination or cancellation, and (iv) immediately pay over to Landlord any outstanding Additional Taking Cash that Tenant should have deposited with the Depositary prior to such expiration or termination; and Substantial Condemnation. In the event of a Substantial Condemnation, Landlord may, by giving sixty (60) calendar days' prior notice to Tenant, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease, the Term shall immediately become forfeited and void. If Landlord does not exercise its termination rights pursuant to this Section 10.3(b), Tenant shall continue to use the remaining Premises in a manner consistent with the use immediately prior to the Substantial Condemnation or any other use reasonably approved in writing by Landlord that is consistent with the _____. For purposes of this Lease, the term "Substantial Condemnation" shall mean a Condemnation that directiy affects seventy percent (70%) or more of the Premises.

Landlord's rights under this Section 10.3 shall survive the expiration or termination of this Lease.

10.4 Rights of Tenant. In addition to the other remedies available to Tenant that are set forth elsewhere in this Lease, the following remedies shall be available to Tenant in the event of a Condemnation:

(a) Condemnation Adversely Affecting the Premises. In the event of a Condemnation affecting only a portion of the Premises, leaving the remainder of the Premises in such location or in such form, shape or reduced size so as not to be effectively and practicably usable for its intended purpose in the good faith opinion of a third party expert reasonably satisfactory to Landlord and Tenant, Tenant may, by giving notice to Landlord within sixty (60)

calendar days after the occurrence of such Condemnation, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease, the Term shall immediately become forfeited and void. Nothing herein shall be deemed to affect Tenant's right to seek an award in condemnation proceeding as provided in Section 10.1;

(b) Substantial Condemnation. In the event of a Substantial Condemnation, Tenant may, by giving sixty (60) calendar days' prior notice to Landlord, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease, the Term shall immediately become forfeited and void. Nothing herein shall be deemed to affect Tenant's right to seek and award in any applicable condemnation proceeding as provided in Section 10.1;

Landlord's and Tenant's rights under this Section 10.4 shall survive the expiration or termination of this Lease.

10.5 Payment of Taking Restoration Funds to Tenant. Subject to the satisfaction by Tenant of all of the terms and conditions of this Article 10, the Depositary shall pay to Tenant from time-to-time any Taking Restoration Funds, but not more than the amount actually collected by the Depositary upon the Condemnation, together with any interest eamed thereon, after reimbursing itself therefrom, as well as Landlord, to the extent, if any, of the reasonable expenses paid or incurred by the Depositary and Landlord in the collection of such monies, to be utilized by Tenant solely for the Restoration, such payments to be made as follows:

(a) prior to commencing any Restoration, Tenant shall fumish to Landlord for its approval the estimated cost, estimated schedule and detailed plan for the completion of the Restoration, each prepared by an architect, engineer and contractor;

(b) the Taking Restoration Funds shall be paid to Tenant in installments as the Restoration progresses, subject to Section 10.5(c), based upon requisitions to be submitted by Tenant to the Depositary and Landlord in comphance with Section 10.6, showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by Tenant; provided, however, that if any Encumbrance is filed against the Premises or any part thereof in connection with the Restoration, Tenant shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged; provided further that notwithstanding the foregoing, but subject to the provisions of Section 10.5(c), the existence of any such Encumbrance shall not preclude Tenant from receiving any installment of Taking Restoration Funds so long as (i) such Encumbrance will be discharged with funds from such installment and at the time Tenant receives such installment Tenant delivers to Landlord and the Depositary a release of such Encumbrance executed by the lienor and in recordable form, or (ii) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord;

(c) the amount of each installment to be paid to Tenant shall be the aggregate amount of Taking Costs theretofor incurred by Tenant minus the aggregate amount of Taking Restoration Funds theretofor paid to Tenant in comection therewith; provided, however, that all disbursements to Tenant shall be made based upon an architect's or engineer's certificate for

payment in accordance with industry standards, and disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depositary is sufficient to complete the Restoration; and

(d) except as provided in Section 10.3, upon completion of and payment for the Restoration by Tenant, subject to the rights of any Mortgagee, the Depositary shall pay the balance of the Taking Restoration Funds, if any, to Tenant; provided, however, that if the condemnation or other similar proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), Tenant shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 10.1(c).

10.6 Conditions of Payment. The following shall be conditions precedent to each payment made to Tenant as provided in Section 15.5:

(a) Tenant shall have furnished Landlord with estimates of costs and schedule and a detailed plan for the completion of the Restoration, as provided for in Section 10.5(a);

(b) at the time of making such payment, no Event of Default exists; and

(c) the Restoration shall be carried out in accordance with Article 10, and there shall be submitted to the Depositary and Landlord the certificate of the applicable architect or engineer stating that (i) the materials and other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 10.5(c)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's lien or other Encumbrances have been claimed, except for any mechanic's lien for claims that (A) will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (provided that a release of such Encumbrance is delivered to the Depositary in accordance with Section 10.5(b)), or (B) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord, (ii) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (iii) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Taking Restoration Funds or has been made out of the Taking Restoration Funds received by Tenant, (iv) the sum then requested does not exceed the value of the services and materials described in the certificate, (v) the work relating to such requisition has been performed in accordance with this Lease, (vi) the balance of the Taking Restoration Funds held by the Depositary or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion, and (vii) in the case of the final payment to Tenant, the Restoration has been completed in accordance with this Lease.

10.7 Payment and Performance Bonds. If Tenant obtains payment or performance bonds related to a Restoration (which Tenant may or may not obtain in its discretion), Tenant shall name Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to Landlord promptiy upon obtaining them.

10.8 Benefit of Landlord. The requirements of this Article 10 are for the benefit only of Landlord, and no other Person shall have or acquire any claim against Landlord as a result of any failure of Landlord actually to undertake or complete any Restoration as provided in this Article 10 or to obtain the evidence, certifications and other documentation provided for herein.

10.9 Cooperation. Landlord shall cooperate with Tenant and act in a reasonable and expedited manner in connection with any Restoration by Tenant in connection with a Condemnation, including, without limitation, an expedited review and response to all Documents and requests submitted by Tenant in comection with the Restoration. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to Tenant's Restoration and any restoration that may be occurring in other Landlord areas.

10.10 Waiver. Except as otherwise provided in this Article 10, the Parties intend that the provisions of this Lease shall govem their respective rights and obhgations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this Article 10, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the Califomia Code of Civil Procedure, as such Section may from time to time be amended, replaced or restated.

10.11 Landlord's Power of Eminent Domain. Tenant acknowledges Landlord's power upon payment of just compensation to exercise its power of eminent domain as to the leasehold estate created hereunder; provided, however, that the foregoing acknowledgment shall not be deemed or constmed to prejudice or waive any rights of Tenant to challenge or object to any attempt by Landlord so to exercise such power or to recover any damages as may be permitted by law resulting from the exercise of such power.

ARTICLE 11. LIENS

11.1 Liens.

Tenant shall not create or permit the attachment of, and shall promptiy following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to Landlord, any lien, security interest, or encumbrance on the Premises or Tenant's leasehold estate, other than (i) this Lease, the LDDA, otiier permitted Subleases and Permitted Titie Exceptions, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants), except only for Impositions being contested as permitted by Section 4, (iii) Mortgages permitted under Section 34, (iv) Mortgages encumbering the subleasehold interests of Subtenants, provided no such Mortgage encumbers Tenant's leasehold estate unless such Mortgage is permitted under Section 34, and (v) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as

permitted by Article 4. The provisions of this Section do not apply to liens created by Tenant on its Personal Property.

11.2 Mechanics' Liens.

Nothing in this Lease shall be deemed or construed in any way as constituting the request of Landlord, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant will take such action as may be required to prevent the enforcement of any mechanic's or similar liens against the Premises, Tenant's leasehold interest, or Landlord's fee interest in the Premises for or on the account of labor, services or materials furnished to Tenant, or at Tenant's request. Tenant shall provide such advance written notice of any Additional Construction such as shall allow Landlord from time to time to post a notice of non-responsibility on the Premises. If Tenant does not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record, it shall be a material default under this Lease, and Landlord shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Landlord for such purpose and all reasonable expenses incurred by Landlord in connection therewith shall be payable to Landlord by Tenant within thirty (30) days following written demand by Landlord. Notwithstanding the foregoing, Tenant shall have the right to contest any such lien in good faith, if, within sixty (60) days following the imposition of such lien, Tenant, at no cost to Landlord, posts a bond in the statutory amount sufficient to remove such lien from record, or posts other security reasonably acceptable to Landlord.

ARTICLE 12. ASSIGNMENT AND SUBLETTING

12.1 Assignment and Transfer.

(a) Consent of Landlord. Except as otherwise expressly permitted in Sections 12.1(c) and Sections 12.3 and 12.4, Tenant, its successors and permitted assigns shall not (i) suffer or permit any Significant Change to occur, or (ii) assign, sell or transfer all or any part of Tenant's interest in and to this Lease or leasehold either voluntarily or by operation of law (either or both (i) and (ii) above, a "Transfer"), without the prior written consent of Landlord as set forth herein and the satisfaction, or written waiver thereof by Landlord in its sole and absolute discretion, of all conditions precedent set forth in Section 12.1(b). It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no Transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Landlord of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of the Improvements that Landlord would have had, had there been no such Transfer. Without limiting the preceding provisions of this Section 12.1(a), it shall in any instance be reasonable for Landlord to withhold its consent to the extent that any such Transfer would serve to so deprive or limit Landlord with respect to its rights under this Lease.

(b) Total Transfer. Tenant shall not effect any Transfer of the entire Lease or leasehold (each an "Total Transfer"), including any Total Transfer by means of a Significant Change, without Landlord's prior written consent, which may be withheld, delayed or conditioned in Landlord's sole and absolute discretion. Notwithstanding the preceding sentence, Landlord shall not unreasonably withhold, delay or condition its consent to a Total Transfer if such Total Transfer is to a Prologis Entity and all conditions precedent set forth in Section 12.1(c) are satisfied or waived in writing by Landlord in its sole and absolute discretion.

(c) Partial Transfers. Tenant shall not effect any Transfer of less than the entire Lease or leasehold (each a "Partial Transfer"), including any Partial Transfer by means of a Significant Change, without Landlord's prior written consent, which shall not be unreasonably withheld, delayed or conditioned by Landlord if all conditions precedent set forth in Section 12.1(d) are satisfied or waived in writing by Landlord in its sole and absolute discretion.

(d) Conditions. Notwithstanding any provision herein to the contrary, any Transfer is subject to the satisfaction in full of all of the following conditions precedent and covenants of Tenant, or the written waiver thereof by Landlord in its sole and absolute discretion, each of which is hereby agreed to be reasonable as of the Commencement Date and the date of any Proposed Transfer:

(i) Tenant provides Landlord with at least sixty (60) days prior written notice of the Proposed Transfer;

(ii) Landlord determines, in its reasonable judgment, that the proposed transferee (A) has the financial capacity to own the Project and operate, use and maintain the Premises in accordance with the Lease and otherwise to perform all of Tenant's obligations under this Lease that are applicable to the interest in the Lease or leasehold that is the subject of the Transfer; (B) has a good reputation; and (C) has sufficient experience in the operation, use and maintenance of projects of a type and size comparable to the Project. In the case of a Partial Transfer, such qualifications of the proposed transferee shall be assessed with respect the portion of the Premises and applicable obligations under the Lease included within the proposed Partial Transfer;

(iii) any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of Landlord, must expressly assume all of the obligations: (A) of "Tenant" under this Lease and any other agreements or documents entered into by and between Landlord and Tenant relating to the Project, or the portion of the Premises that will be subsumed within the Proposed Transfer; and (B) in the case of a proposed Total Transfer, of "Developer" under the LDDA (if then in effect); and must agree to be subject to all of the conditions and restrictions to which Tenant or Developer, as applicable, is subject under such documents with respect to the Premises or portion thereof that will be subsumed within the proposed Transfer;

(iv) all instmments and other legal documents involved in effecting the Transfer shall have been submitted by Tenant to Landlord for review, including the agreement and instruments of sale, assignment, transfer, or equivalent, any Regulatory Approvals, and any necessary approvals under (or exemptions from) the Subdivision Map Act, and Landlord shall

have approved such documents which approval shall not be unreasonably withheld, delayed or conditioned;

(v) Tenant shall comply with the provisions of Section 12.1(e);

(vi) there shall be no uncured Event of Default or Unmatured Event of Default on the part of Tenant under this Lease uncured or any of the other documents or obligations to be assigned to the proposed transferee, or if uncured, Tenant or the proposed transferee have made provisions to cure the Event of Default, which provisions are satisfactory to Landlord in its sole and absolute discretion;

(vii) the proposed transferee has demonstrated to Landlord's reasonable satisfaction that the proposed transferee is subject to the jurisdiction of the courts of the State of California;

(viii) the Proposed Transfer is not in connection with any transaction for purposes of syndicating the Lease, such as a security, bond or certificates of participation financing as determined by Landlord in its sole and absolute discretion but expressly excluding the public trading of shares on the open market;

(ix) in the event of an approved or pennitted Partial Transfer to a transferee that is not a Prologis Entity or an Affiliate of Developer, Tenant pays to Landlord an amount equal to a mutually agreed upon percentage of all cash and other consideration paid or payable by the transferee of such Partial Transfer to Tenant in connection with such Partial Transfer (net of any transfer tax paid or payable to City in connection with such Partial Transfer) or such other mutually agreed upon amount;

(x) Tenant deposits sufficient funds to reimburse Landlord for its reasonable legal expenses to review the Proposed Transfer pursuant to Section 12.1 m; and

(xi) Tenant has delivered to Landlord such other information and documents relating to the proposed transferee's business, experience and finances as Landlord may reasonably request

(e) Delivery of Executed Assignment. No assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise pennitted, will be effective unless and until there has been delivered to Landlord, within thirty (30) days after Tenant entered into such assignment, an executed counterpart of such assignment containing an agreement, in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on the assignor's part to be performed under this Lease and the other assigned documents to and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such transferee from such obligations or limit Landlord's rights or remedies under this Lease or under applicable Law). The form of such instrument of assignment shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, delayed or conditioned.

(f) No Release of Tenant's Liability or Waiver by Virtue of Consent. The consent by Landlord to any Transfer and any Transfer hereunder shall not, nor shall such consent or Transfer in any way be construed to, (i) relieve or release Tenant from any liability or obligation arising at any time out of or with regard to the performance of any covenants or obligations to be performed by Tenant at any time hereunder or under the LDDA, or (ii) relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Landlord to any further Transfer.

(g) Notice of Significant Changes; Reports to Landlord. Tenant must promptiy notify Landlord of any and all Significant Changes. At such time or times as Landlord may reasonably request, Tenant must furnish Landlord with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective interests in Tenant, and in the event any other Persons have a beneficial interest in Tenant, their names and the extent of such interest.

(h) Determination of Whether Consent is Required. At any time Tenant may submit a request to Landlord for the approval of the terms of an assignment, transfer, sublease or encumbrance of this Lease or of a Significant Change (all of the foregoing being collectively referred to herein as a "Proposed Transfer") or for a decision by Landlord as to whether in its opinion a Proposed Transfer requires Landlord consent under the provisions of this Article 12. Within thirty (30) days after Tenant has made such a request and furnished to Landlord all documents and instruments with respect thereto as shall be reasonably requested by Landlord, Landlord shall notify Tenant in writing of Landlord's approval or disapproval of the Proposed Transfer or of Landlord's determination that the Proposed Transfer does not require Landlord's consent. If Landlord disapproves the Proposed Transfer, or determines that it requires the consent of Landlord, as applicable, it must specify in writing the grounds for its disapproval, its reason that consent is required, or both, as applicable.

(i) Scope of Prohibitions on Assignment. The prohibitions provided in this Section 12.(i) will not be deemed to prevent (i) the granting of Subleases so long as such subletting is done in accordance with Section 14.4, (ii) the granting of any Mortgage expressly permitted by this Lease subject to compliance with Section 36 and other applicable terms of this Lease; or (iii) any Permitted Transfer, as defined in Section 14.3.

(j) Prohibition on Involuntary Transfers. Neither this Lease nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against Tenant, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of Law, and possession of the whole or any part of the Premises shall not be divested from Tenant in such proceedings or by any process of Law, without the prior written consent of Landlord. Tenant hereby expressly agrees that the validity of Tenant's liabilities as a principal hereunder shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against any transferee of any of the rights or remedies reserved to Landlord pursuant to this Lease or by relief of any Transferee from any of the Transferee's obligations under this Lease or otherwise by (a) the release or discharge of any Transferee in any creditors' proceedings, receivership, bankruptcy or other proceedings, (b) the impairment, limitation or modification of the liability of any Transferee, or the estate of any Transferee, in bankruptcy, or

of any remedy for the enforcement of any assignee's liability under this Lease, resulting from the operation of any present or future provision of the National Bankruptcy Act or other statute or from the decision in any court; or (c) the rejection or disaffirmance of this Lease in any such proceedings.

(k) Effect of Prohibited Transfer. Any Transfer made in violation of the provisions of this Article 12 shall be null and void ab initio and of no force and effect. Notwithstanding anything herein to the contrary, if a Transfer occurs with or without Landlord's consent, Landlord may collect from such assignee, subtenant, occupant or reconstituted Tenant, any Rent under this Lease and apply the amount collected to the Rent, but such collection by Landlord shall not be deemed a waiver of the provisions of this Lease, nor an acceptance of such assignee, subtenant, occupant or reconstituted Tenant, as Tenant of the Premises.

(l) Processing Fee. Tenant agrees that as a condition to Landlord's consideration of any request by Tenant for approval of a Transfer (other than a Sublease under Section 14.4) that Tenant shall deliver to Landlord a nonrefundable processing fee in an amount that Landlord in its discretion detemrines is necessary to cover the anticipated Landlord administrative costs and expenses, including labor, in processing and investigating Tenant's request; provided such fee shall not exceed $_____ as Indexed on each Anniversary Date. Tenant agrees that unless and until said fee, and any request for such additional fee, is delivered to Landlord, Tenant shall be deemed to have made no request to Landlord to Transfer. The amount of the processing fee shall be adjusted upon each Amiversary Date, in the same percentage as the change in the last CPI Index published prior to the date of each succeeding 1 year period from the last such index published prior to the commencement of the Term; provided that in no event shall the adjusted fees be less than the theretofore existing fees.

(m) Teriant as Party is Material Consideration to Lease. Tenant and Landlord acknowledge and agree that the rights retained by and granted to Landlord pursuant to this Article constitute a material part of the consideration for entering into this Lease and constitute a material and substantial inducement to Landlord to enter into this Lease at the rental, for the terms, and upon the other covenants and conditions contained in this Lease, and that the acceptability of Tenant, and of any Transferee of any right or interest in this Lease, involves the exercise of broad discretion by Landlord in promoting the development, leasing, occupancy and operation of the Premises and other purposes of this Lease. Therefore, Tenant agrees that Landlord may condition its consent, if required hereunder, to a Proposed Transfer or other assignment, subject to such provisions as are reasonable to protect the rights and interest of Landlord hereunder and to assure promotion of the purposes of this Lease. Tenant agrees that its personal business skills and philosophy were an important inducement to Landlord for entering into this Lease and that Landlord may reasonably object to the Transfer to a proposed Transferee, as applicable, whose proposed use, while permitted under Article 3, would involve a different quality, manner or type of business skills than that of Tenant, or which would result in the imposition upon Landlord of any new or additional requirements under the provisions of any Law, including any Law regarding disabled or handicapped persons, such as the Americans With Disabilities Act of 1990.

(n) Mortgaging of Leasehold. Following Completion of Initial Improvements, Tenant shall have the right to assign, encumber or ttansfer its interest in this

Lease, with respect to such portion of the Premises containing such completed Initial Improvements, to a Mortgagee or other purchaser at a foreclosure sale under the provisions of a Mortgage, subject to the provisions of Article 34.

12.2 Assignment of Rents.

Tenant hereby assigns to Landlord all rents and other payments of any kind, due or to become due from any or present or future Subtenant as security for Tenant's obligation to pay Rent hereunder; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Section 38 until such time as Landlord has terminated this Lease (subject to Landlord's agreement to enter into a New Lease with Mortgagee and all other express provisions of this Lease protecting Mortgagee's interest in this Lease), at which time the rights of Landlord in all rents and other payments assigned pursuant to this Section 12.2 shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, Landlord shall, upon the request of each Mortgagee, execute a subordination agreement in form and substance reasonably satisfactory to such Mortgagee and to Landlord. Notwithstanding the foregoing, if this Lease terminates by reason of an Event of Default, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor shall promptiy remit to Landlord the rents so collected (less the actual cost of collection) to the extent necessary to pay Landlord any Rent, including any and all Additional Rent, through the date of termination of this Lease. Such assignment shall be subject to the right of Tenant to collect such rents until the date of the happening of any Event of Default under the provisions of this Lease. Landlord shall apply any net amount collected by it from such Subtenants to the payment of Rent due under this Lease.

12.3 Permitted Transfers.

Notwithstanding the preceding provisions of this Article 12 or any other provision to the contrary in this Lease, and provided that the Transfer is done for a legitimate business purpose and not to deprive or compromise any rights of Landlord or City under the LDDA or this Lease, the following Transfers shall be permitted at any time hereunder without Landlord's consent (each, a "Permitted Transfer"):

(A) Any Transfer to a Prologis Entity;

(B) Transfers of partnership or membership interests in Tenant between Partners in Tenant, provided that such Transfers do not result in a Significant Change and further provided that so long as a Prologis Entity retains a Confrolling interest in Tenant);

(C) Any Transfer solely and directiy resulting from the death or incapacity of an individual, and any Transfer for purposes of estate planning so long as the transferor remains in complete legal control of the transferred property;

(D) Any Transfer that results in a mere change in identity or form rather than in ownership (for example, the Transfer by the partners of a general partnership

to a limited liability company where the members hold all of the interests of the limited liability company in the same proportion as they previously held in the general partnership); or

(E) Any Transfer of a limited partnership interest in Tenant.

Notwithstanding the preceding provisions of this Section 12.3, any Permitted Transfer shall comply with and remain subject to the provisions and requirements of Sections 12.1(d)(i), (iii), (v), (vi), (vii) and (viii) Section 14.1(e) and Sections 12.1(e), (f) and (g).

12.4 Subletting by Tenant.

(a) Subject to this Section 12.4, Tenant has the right to sublet all or any portion of the Premises to one or more Subtenants by written subleases from time to time without Landlord's consent. Notwithstanding the foregoing, if Tenant proposes a Sublease (other than a Sublease to an Affiliate) that is not pursuant to a bona fide arms-length fransaction as reasonably determined by Landlord based upon information reasonably requested and obtained by Landlord (a "Restricted Sublease"), then such Restricted Sublease shall be subject to the Landlord's prior written consent, which shall not be unreasonably withheld or delayed, provided, however, that, without limitation, it shall be reasonable for Landlord to withhold its consent in any such event if such Restricted Sublease fails to meet any of the requirements set forth in this Section 12.4. Without limiting the preceding provisions of this paragraph, any Sublease shall:

(i) be only with such Subtenants as Tenant has reasonably determined are economically desirable and operate businesses that enhance commercial activity at the Project;

(ii) provide that it is subject to and subordinate in all respects to this Lease and the rights of Landlord hereunder, and that Subtenant shall comply with all obllgations of Tenant under this Lease with respect to the Subleased Premises, including but not limited to the Community Benefits Program with respect thereto;

(iii) require Subtenant to use the portion of the Premises subject to the Sublease (the "Subleased Premises") only for the uses permitted under Article 3;

(iv) include a term that does not extend beyond the term of this Lease;

(v) require Subtenant to indemnify Landlord for any loss or damage arising from Subtenant's use or occupancy of the Subleased Premises, which indenmity shall be in form reasonably acceptable to Landlord;

(vi) require Subtenant to name Landlord as an additional insured on any liability insurance required to be carried under the Sublease, which liability insurance shall be in an amount not less than the amount of liability insurance required to be carried by Tenant under this Lease.

(vii) require Subtenant to comply with all Landlord rules, regulations, policies and procedures; and

(viii) if requested by Landlord, a provision subject to the prior rights of any Mortgagee, satisfactory to Landlord, requiring Subtenant at Landlord's option to attom to Landlord if Tenant defaults under this Lease and if the Subtenant is notified of Tenant's default and instructed to make Subtenant's rental payments to Landlord.

Tenant shall provide Landlord with copies of any and all Subleases within ten (10) days after Landlord's request.

12.5 Non-Disturbance of Subtenants, Attornment, Sublease Provisions.

(a) Conditions for Non-Disturbance Agreements. From time to time upon the request of Tenant, Landlord shall enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, Landlord will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directiy between Landlord and such Subtenant ("Non-Disturbance Agreements"). All Non-Disturbance Agreements shall comply with the provisions of this Section 12.5(a) and of Section 12.5(b). Landlord shall provide a Non-Disturbance Agreement to a Subtenant if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease; (ii) the term of the Sublease, including options, does not extend beyond the scheduled Term, unless Landlord approves such longer term; (iii) the Sublease contains provisions whereby the Subtenant agrees to comply with applicable provisions of Section 37.1(a); (b) and (e), Section 37.4; and 37.5, 37.6; 37.7 and 37.8; (iv) the Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant shall attom to Landlord (provided Landlord agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease), and the Sublease shall be deemed a direct lease or license agreement between the Subtenant and Landlord, except that Landlord shall not be liable to the Subtenant for any security deposit or prepaid rent or license fees previously paid by such Subtenant to Tenant unless such deposits are transferred to Landlord, except for rent or license fees for the current month, if previously paid; (v) with respect to Subleases having both Sublease Premises of more than 10,000 square feet and having a term of more than ten (10) (including options to extend the Term) or any Subleases with an Affihate of Tenant regardless of the size of the Sublease Premises or the length of the term, the form and material business terms of the Sublease are reasonably approved by Landlord, in light of market conditions existing at the time such Sublease is entered into. Notwithstanding the foregoing sentence, if any such Sublease, other than a Sublease to an Affihate of Tenant includes an adjustment of rent based on at least 95% of fair rental value appraisal after the 10th year of the Sublease term, Landlord shall not withhold its consent to entering into a non-disturbance agreement based on the rental terms of the Sublease, and (vii) if Tenant is then in default of any of its obligations under this Lease, Landlord may condition its agreement to provide a Non Disturbance Agreement on the cure of such defaults as Landlord may specify either in a notice of default given under Section 22.1 or in a notice conditionally approving Tenant's request for such Non Disturbance Agreement (and if an Event of Default or Unmatured Event of Default on the part of Tenant then exists, then Landlord may withhold or condition the giving of a Non Disturbance Agreement), and (viii) the Subtenant shall have delivered to Landlord an executed estoppel certificate, in form and substance reasonably satisfactory to Landlord, certifying: (A) that the Sublease, including all

amendments, is attached thereto and is unmodified, except for such attached amendments, and is in full force and effect, as so amended, or if such Sublease is not in full force and effect, so stating, (B) the dates, if any, to which any rent and other sums payable thereunder have been paid, (C) that the Subtenant is not aware of any defaults which have not been cured, except as to defaults specified in said certificate, and (D) such other matters as Landlord may reasonably request. Landlord shall not be required to enter into a Non Disturbance Agreement with respect to any period beyond the scheduled expiration of the Term. Landlord shall respond to any request for a Non Disturbance Agreement within twenty (20) days after receipt of a tme and complete copy of the relevant Sublease in the form to be executed, and all relevant information requested by Landlord. Such relevant information shall include reasonable financial information establishing the ability of the proposed Subtenant to perform its contemplated obligations under such Sublease, and relevant information conceming the business character and reputation of the proposed Subtenant. Landlord agrees to cooperate, to the extent it is legally permitted to do so, in protecting the confidentiality of personal or financial information relating to any Subtenant. Nothing in this Section 12.5 shall preclude Landlord in its sole and absolute discretion from granting non-disturbance to other Subtenants.

(b) Form of Non-Disturbance Agreement. Each Non Disturbance Agreement shall be in form and substance reasonably satisfactory to Landlord. With each request for a Non Disturbance Agreement, Tenant shall submit a copy of the form, showing any requested interlineations or deletions, and Landlord shall approve or disapprove of the requested changes within twenty (20) days after receipt of such changes (such approval not to be unreasonably withheld or conditioned). Any disapproval by Landlord shall be in writing, and shall set forth the specific reasons for Landlord's disapproval. Failure by Landlord to approve or disapprove of specific interlineations, deletions or other modifications requested by a Subtenant within such twenty (20) day period shall be deemed to be approval of the requested changes (subject to Section 43.1).

ARTICLE 13. INDEMNIFICATION OF LANDLORD

13.1 Indemnification of Landlord.

Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or Landlord's interest therein, in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to or death of Persons or loss or damage to property occurring immediately adjacent to the Premises (other than in the Park, it being acknowledged that the obligations of Tenant with respect thereto are set forth in Section 8.4) which is caused directiy or indirectiy by Tenant or its Agents; (iii) any use, possession, occupation, operation; maintenance, or management of the Premises or any part thereof by Tenant or any of its Agents, Invitees, or Subtenants; (iv) any use, possession, occupation, operation, maintenance, management or condition of property immediately adjacent to the Premises (other than the Park, it being acknowledged that the obligations of Tenant with respect thereto are set forth in Section 8.4) by Tenant or any of its Agents; (v) any latent, design, constmction or stmctural defect relating to the Initial Improvements located on the Premises and any Additional Improvements constructed by or on behalf of Tenant, and any other matters

relating to the condition of the Premises caused by Tenant or any of its Agents, Invitees, or Subtenants; (v) any failure on the part of Tenant or its Agents or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, rules or regulations, or permits in connection with use or occupancy of the Premises; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents, Invitees or Subtenants; and (viii) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises. If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing. Notwithstanding the foregoing, the foregoing indemnity shall not apply to any and all Losses to the extent arising out of the negligence or willful misconduct of Landlord or City or any of their Agents or Employees or as to any claims for which Landlord has otherwise expressly agreed to indenmify Tenant under the LDDA. Tenant's obligation to indemnify Landlord under Section 2.4 of the LDDA and Landlord's obligation to indemnify Tenant under Section 2.5 of the LDDA and any other express obligation of Tenant to indemnify Landlord or Landlord to indemnify Tenant under the LDDA are hereby incorporated into this Lease by reference and shall survive termination of the LDDA and this Lease. Notwithstanding the foregoing, Tenant's indemnity obhgation with respect to Losses which arise out of or relate in any way to the existence, use, Handling, production, transportation, disposal, storage Release of Hazardous Materials in, on, around, or under the Premises shall be governed by Section 15.2 and this Article shall not apply to such Losses.

13.2 Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 13.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter and provided further that, in the event it is later determined that the claim made falls outside the scope of the indemnity provisions of this Agreement, Landlord shall reimburse Tenant for Tenant's reasonable attorneys fees and other costs incurred in defending such claim.

13.3 Not Limited by Insurance.

The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under Section 13.1 or any other indemnification provision of this Lease.

13.4 Survival.

Tenant's obligations under this Article 13 and any other indemnity in this Lease shall survive the expiration or sooner termination of this Lease as to occurrences prior to such tennination.

13.5 Other Obligations.

The agreements to Indemnify set forth in Article 13 and elsewhere in this Lease are in addition to, and in no way shall be construed to limit or replace, any other obhgations or liabilities which Tenant may have to Landlord in this Lease, at commnon law or otherwise.

13.6 Defense.

Tenant shall be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases in which any Indemnified Party has been named as a defendant, Landlord shall be entitled to participate in such defense, compromise, or settiement at its own expense. If Tenant shall fail, however, in Landlord's reasonable judgment, within a reasonable time (but not less than fifteen (15) days following notice from Landlord alleging such failure) to take reasonable and appropriate action to defend, compromise, or settie such suit or claim, Landlord shall have the right promptiy to use the Oakland City Attomey or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise, or settlement, which reasonable expense shati be due and payable to Landlord ten (10) business days after receipt by Tenant of an invoice therefor.

13.7 Release of Claims Against Landlord.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the Premises for any cause arising at any time, including, without limitation, all claims arising from the joint or concurrent negligence of Landlord or the other Indemnified Parties, but excluding any gross negligence or willful misconduct of the Indemnified Parties and further excluding any claims for which Landlord has otherwise agreed to indenmify Tenant under the LDDA.

ARTICLE 14. INSURANCE.[**NOTE: CONFORM FOR CONSISTENCY WITH** LLDA **INSURANCE REQUIREMENTS** AND **CONFIRMATION WITH CITY RISK MANAGEMENT]**

14.1 Property and Liability Coverage.

(a) Required Types and Amounts of Insurance. Tenant shall, at no cost to Landlord, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this Section 14.1(a)), the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times prior to Completion of the Initial Improvements, and during any period of Additional Constmction, Tenant shall maintain, on a form reasonably approved by Landlord, builders' risk insurance in the amount of 100% of the completed value of all new construction, insuring all new constmction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, against all risk, "special form," or "difference in conditions" hazards including earthquake (subject to the provisions of Section 17.1(b)(ii)), but excluding flood coverage including as additional insureds Landlord, Tenant and Tenant's contractors and subcontractors with any deductible not to exceed One Hundred Thousand and No/100 Dollars ($100,000) (except as to earthquake insurance); provided, however, that as to earthquake insurance a separate sublimit of the insurance required under this Section 14.1(a)(i) and the insurance required under Section 17.1(a)(vii) may be required in order to comply with the requirements of Section 17.1(b)(ih).

(ii) Property Insurance; Earthquake and Mold Insurance. Upon Substantial Completion of the Initial Improvements, and upon Substantial Completion of Additional Construction of any Additional Improvements, Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 ("Causes of Loss - Special Form" (or its replacement), in an amount not less than 100% of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, pilings, excavations and footings on that portion of the Premises) with any deductible not to exceed One Hundred Thousand and No/100 Dollars ($100,000). Notwithstanding the foregoing, Tenant shall only be required to carry earthquake insurance if required by the senior Mortgagee and, if so required, in such amounts and with such deductibles and on such other terms as are required by such Mortgagee. Further notwithstanding the foregoing, Tenant shall only be required to carry mold insurance to the extent and with such deductible amount as is available at commercially reasonable rates. In addition to the foregoing, Tenant may insure its Personal Property in such amounts as Tenant deems appropriate; and Landlord shall have no interest in the proceeds of such Personal Property insurance, and the proceeds of such insurance shall not be subject to the provisions of Section 11.7.

(iii) Commercial General Liability Insurance. Tenant shall maintain "Commercial General Liability" insurance policies with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto located on the Premises or any part of the Premises, such insurance to afford protection in an amount not less than Ten Million Dollars ($10,000,000) per occurrence and annual aggregate covering bodlly injury and broad form property damage including contractual liability (which includes coverage for the benefit of Landlord as additional insured against claims described in Section 16.1(i)), independent contractors, explosion, collapse, underground (XCU), and products and completed operations coverage. Products and completed operations coverage may be subject to a limited term of not less than ten (10) years following completion of the products or operations covered thereby.

(iv) Workers' Compensation Insurance. Only if Tenant has any employees, Worker's Compensation insurance as required by the laws of the State of Califomia

to insure employers against liability for compensation under the California Workers' Compensation Law, or any law thereafter enacted as a amendment or supplement thereto or in lieu thereof, such workers' compensation to cover all persons employed by Tenant in connection with the Premises and the Improvements thereon and to cover full liability for compensation under any such law aforesaid, based upon the death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Premises, Improvements thereon, or the operation of the Project.

(v) Boiler and Machinery Insurance. Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment or such other coverage as Landlord may approve, which approval shall not unreasonably be withheld.

(vi) Business Automobile Insurance. Tenant shall maintain policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used by Tenant and its agents in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than Two Million And No/100 Dollars ($2,000,000) per accident.

(vii) Business Interruption Insurance. After Completion of the Initial Improvements, Tenant shall maintain business interruption or rental value insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Sections 17.1(a), (ii) and (y). The amount of the insurance shall be not less than the aggregate of all reasonably calculated fixed operating expenses, debt service, and projected Rent. Such insurance is on an Actual Loss Sustained Basis, with a 365 day extended period of indemnity beyond the time reasonably necessary to repair or rebuild the Improvements. The amount of such insurance shall be calculated from the date of Completion and shall be adjusted from time to time thereafter.

(viii) Professional Liability. Tenant shall maintain or require to be maintained, professional liability (errors or omissions) insurance, or owner's protective professional liability insurance, with limits not less than _____ Million Dollars ($___,000,000) each claim and in the aggregate with respect to the principal architect for the Project and not less than One Million and No/100 Dollars ($1,000,000) for each claim and aggregate, with respect to all other construction-related professional services, including, without limitation, architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to Tenant's activities under this Lease, excluding tenant improvement and renovation projects, with any deductible not to exceed Two Hundred Fifty Thousand and No/100 Dollars ($250,000) each claim. Such coverage shall be subject to a limited term following the performance of services for such term as is customary based on prevailing industry practice.

(ix) Environmental Insurance. **[NOTE: REVIEW AND CONFORM WITH LDDA]** Tenant shall maintain all environmental insurance required by the LDDA . . . .

(x) Other Insurance. Tenant shall obtain such other insurance as is reasonably requested by City's Risk Manager and is customary for first class mixed use residential rental housing/retail developments.

(b) General Requirements. All insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best B+:XIV or better (or a comparable successor rating) and legally authorized to sell such insurance within the State of California; provided that insurance provided through a blanket program managed by an institutional investor may include layers of coverage provided by less qualified insurers if doing so would be in conformance with prudent management practices.

(ii) As to property insurance shall name the Landlord as loss payee as its interest may appear, and as to both property and liability insurance shall name as additional insureds the following: "THE CITY OF OAKLAND, AND ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."

(iii) Shall be evaluated by Landlord and Tenant for adequacy not less frequentiy than every five (5) years from the date of Completion of the Initial Improvements. Following consultation with Tenant, Landlord may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice for comparable properties in the San Francisco-San Jose- Oakland area or in other large urban cities or counties around the country to carry insurance for facilities similar to the Premises in amounts substantially greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises. Upon application by Tenant, if the City's Risk Manager detennines that insurance limits required under this Section may be decreased in light of such commercial practice and the risks associated with use of the Premises, Landlord shall notify Tenant of such determination, and Tenant shall have the right to decrease the insurance coverage required under this Lease accordingly. In such event, Tenant shall promptiy deliver to Landlord a certificate evidencing such new insurance amounts.

(iv) Shall provide that no cancellation, modification, termination or nonrenewal of such insurance for any reason shall be effective until at least thirty (30) days after mailing or otherwise sending written notice of such cancellation, modification or termination to Landlord (or not less than ten (10) days after such notice in the event of nonpayment of premiums);

(v) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to any additional insured, with respect to claims insured by such policy, and that insurance applies separately to each insured against whom claim is made or suit is brought;

(vi) May be carried as part of a blanket policy maintained by Tenant or an Affiliate of Tenant or any of Tenant's constituent members or Affiliates of such members

subject to Landlord's approval of the amount of coverage, which approval shall not unreasonably be withheld; provided that any insurance program maintained by CalPERS shall be deemed to satisfy the requirements of this Article 14.

(vii) Shall be subject to the approval of Landlord, which approval shall be limited to whether or not such insurance meets the terms of this Lease;

(viii) If any of the insurance required hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously without lapse for a period of two (2) years; and

(ix) Shall for property insurance only, provide (if an endorsement to such effect is available at a commercially reasonable cost) that all losses payable under all such policies that are payable to Landlord shall be payable notwithstanding any act or negligence of Tenant in compliance with the terms of the insurance policy.

(c) Certificates of Insurance; Right of Landlord to Maintain Insurance. Tenant shall fumish Landlord certificates with respect to the policies required under this Section, and provide evidence of payment of premiums (provided that such evidence need not be provided with respect to any CalPERS operated insurance program, provided that in such event Tenant shall work reasonably with Landlord to satisfy any concems Landlord may have regarding payment of premiums), within thirty (30) days after the Commencement Date. If at any time Tenant fails to maintain the insurance required pursuant to Section 17.1, or fails to deliver certificates as required pursuant to this Section, then, upon five (5) business days' written notice to Tenant, Landlord may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Landlord. Within ten (10) business days following demand, Tenant shall reimburse Landlord for all amounts so paid by Landlord, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) Insurance of Others. If Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies include Tenant and Landlord as additional insureds, as their respective interests may appear.

14.2 Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 17.1(a)(i), (ii) or (y) to the extent that such loss is reimbursed by an insurer. Notwithstanding anything to the contrary contained herein, to the extent of insurance proceeds received with respect to the loss, Tenant and Landlord each hereby waives any right of recovery against the other Party for any loss or damage to the Improvements, the Premises, the contents of same or any operation therein, whether or not such loss is caused by the fault or negligence of such other Party. With the exception of workers' compensation insurance, Landlord and Tenant shall each obtain from their respective insurers under all policies of fire, theft, commercial

general liability, builder's risk and other insurance maintained by either of them at any time during the Term insuring or covering the Improvements, the Premises or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of one Party might have against the other Party. Tenant acknowledges that Landlord is currentiy self-insured so Landlord, for itself, waives any rights of recovery that would have been waived pursuant to this paragraph had Landlord been fully insured.

ARTICLE 15. HAZARDOUS MATERIALS.

15.1 Hazardous Materials Compliance.

(a) Compliance with Hazardous Materials Laws.

[NOTE: HAZARDOUS MATERIALS COMPLIANCE PROVISIONS IN GROUND LEASE STILL UNDER REVIEW BY PARTIES AND MUST BE GONFORMED FOR CONSISTENCY WITH FINAL AGREED-UPON VERSION IN CONNECTON WITH LDDA.]

Tenant shall comply and cause (i) its Agents, (ii) all Persons under any Sublease, (iii) to the extent reasonably controllable by Tenant, all Invitees or other Persons entering upon the Premises, and (iv) the Premises and the Improvements, to comply with all apphcable Hazardous Materials Laws, including, without limitation, any deed restrictions, deed notices, soils management plans or certification reports required in comection with the Remedial Action Plan or the Risk Management Plan, including any modifications or amendments to either the Remedial Action Plan or the Risk Management Plan. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Landlord, which may be given or withheld in Landlord's sole and absolute discretion, Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, except for (A) standard building materials and equipment, including, without limitation construction, landscaping and maintenance materials and equipment, that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials the Handling of which do not require a permit or license from, or that need not be reported to, a govemmental agency, and which are used in compliance with all applicable laws, (D) janitorial or office supplies or materials in such limited amounts as are customarily used for general maintenance or office purposes so long as such Handling is at all times in full compliance with all Environmental Laws, and (E) pre-existing Hazardous Materials that are required by applicable Law, the Remedial Action Plan or the Risk Management Plan to be Handled for Remediation purposes. Tenant shall have no obhgation to remediate or manage Hazardous Materials subsurface conditions that existed as of issuance of the Certificate of Completion for Hazardous Materials Remediation for the Premises or that may migrate onto the Premises following issuance of such Certificate of Completion;, provided, however, Tenant shall be required to comply and cause (i) its Agents, (ii) all Persons under any Sublease, (iii) to the extent reasonably controllable by Tenant, all Invitees or other Persons entering upon the Premises, and (iv) the Premise and Improvements to comply with: (A) the Remediation Action Plan; (B) the Risk Management Plan, including, without limitation the following requirements: (1) long-term groundwater monitoring to monitor the concentrations of volatile organic compounds in

groundwater; (2) post-construction maintenance activities to be completed in a manner consistent with the Risk Management Plan: (3) restriction of groundwater for all uses including but not limited to, drinking, irrigation, and industrial uses; and (4) writren disclosure of environmental conditions on the Premises to potential lessees in accordance with the deed restriction for the Premises and (C) the PPA.

(h) Notice. Except for Hazardous Materials permitted by Subsection 17.1(a) above, Tenant shall advise Landlord in writing promptiy (but in any event within five (5) business days) upon leaming or receiving notice of (i) the presence of any newly discovered Hazardous Materials on, under or about the Premises during or after implementation of the Remedial Action Plan or the Risk Management Plan ("new subsurface environmental condition"), (ii) any action taken by Tenant in response to any (A) new subsurface environmental condition or (B) Hazardous Materials Claims, (iii) any Release of Hazardous Materials at the Premises caused by Hazardous Materials Handling activities at the Premises ("new Release"), and (iv) Tenant's discovery of the presence of new Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform Landlord orally as soon as possible of any emergency or non-emergency regarding any new subsurface environmental condition or new Release. In addition, Tenant shall provide Landlord with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communication, so long as any non-disclosure of such privtieged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Section 15) and all communication with any Person relating to Hazardous Materials Claims (other than privileged communications); provided, however, such non-disclosure of such privilleged commmication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including without limitation, this Section 15).

(c) Landlord's Approval of Remediation. Except as required by law or to cost-effectively contain and clean up a new Release or to respond to an emergency, Tenant shall not undertake any subsurface Remediation in response to any new subsurface environmental condition or new Release unless Tenant follows the cleanup protocols for such subsurface conditions set forth in the approved Remedial Action Plan or Risk Management Plan. If Tenant proposes modifications to the Remedial Action Plan or Risk Management Plan to remediate the new subsurface environmental condition or the new Release, Tenant shall have first submitted to Landlord for Landlord's approval, which approval shall not be unreasonably withheld or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. Landlord shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, but in any event within thirty (30) days after receipt thereof. If Landlord disapproves of any such Hazardous Materials Remediation plan, Landlord shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any inipairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (x) in compliance with all applicable Hazardous Materials Laws, (y) to cleanup levels set forth in the approved Remedial Action Plan and/or Risk Management Plan, and (z) in accordance with any applicable orders and directives of the RWQCB and the Alameda County Department of Public Health or any other regulatory agency that asserts jurisdiction over the Premises.

(d) Relationship to LDDA.

The parties acknowledge that this Section 15.1 shall govern the obligations of Tenant with respect to Hazardous Materials after issuance of a Certificate of Completion for Hazardous Materials Remediation for the Premises, and the LDDA shall govern the obligations of Tenant with respect to Hazardous Materials prior to issuance of a Certificate of Completion for Hazardous Materials Remediation for the Premises pursuant to the LDDA.

15.2 Hazardous Materials Indemnity.

Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to (A) any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, whether by Tenant, it Agents, Invitees or any Subtenants (other than Landlord and its Agents and Invitees); (B) any failure by Tenant, its Agents, Invitees or Subtenants (other than Landlord and its Agents and Invitees) to comply with applicable Hazardous Materials Laws, or with the Mitigation Measures; or (C) any failure by Tenant to comply with the obligations contained in Section 17.1. Notwithstanding the foregoing, in no event shall Tenant have any indemnity obligations hereunder with respect to Losses arising from or related in any way to any use, Handling, production, transportation, disposal, storage or Release of Hazardous Materials located in, on or under the Premises as of the Commencement Date of this Lease (and any increase in the concentrations thereof which may occur after the Commencement Date) except to the extent Handling or Remediation of such pre-existing Hazardous Materials is required by the approved Remedial Action Plan and/or Risk Management Plan, as the same may be amended from time to time. Further notwithstanding the foregoing, the foregoing indemnity shall not apply to any and all Losses to the extent arising out of the negligence or willful misconduct of Landlord, City or their respective agents or employees. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to Landlord hereunder and shall be due and payable from time to time immediately upon Landlord's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (a) discovery of any such Hazardous Materials on, under or about the Premises, or (b) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

ARTICLE 16. DELAY DUE TO FORCE MAJEURE

16.1 Delay Due to Force Majeure.

For all purposes of this Lease, a Party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure shall not be considered in breach of or in default in its obligations hereunder to the extent of any delay resulting from Force Majeure, provided, however, that the provisions of this Section 16.1 shall not apply to Tenant's obligation to pay Rent, including Additional Rent. A Party seeking an extension of time pursuant to the provisions of this Section16.1 shall give notice to the other Party describing with reasonable particularity (to the extent known) the facts and circumstances constituting Force Majeure within (a) a reasonable time (but not more than thirty (30) days unless the other Party's rights are not prejudiced by such

delinquent notice) after knowledge of the beginning of such enforced delay or (b) promptly after the other Party's demand for performance.

ARTICLE 17. LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

17.1 Landlord May Perform in Emergency.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an imminent danger to public health or safety, as reasonably determined by Landlord, Landlord may at its sole and absolute option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, Landlord first gives Tenant such notice and opportunity to take corrective action as is reasonable under the circumstances. Nothing in this Section shall be deemed to limit Landlord's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of Landlord constitutes a Condemnation or an impairment of Tenant's contract with Landlord.

17.2 Landlord May Perform Following Tenant's Failure to Perform.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Landlord (other than any Imposition, with respect to which the provisions of Section 4.3 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following written notice from Landlord for a period of thirty (30) days (or, if Section 16.1(c) is applicable, which failure continues for five (5) business days after written notice from Landlord), and is not the subject of a contest under Section 5, then, Landlord may, at its sole and absolute option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant. Notwithstanding the foregoing, however, if within such period Tenant gives notice to Landlord that such failure is due to delay caused by Force Majeure, or is the subject of a contest under Section 5, or that cure of such failure cannot reasonably be completed within such period, then Landlord will not pay such sum or perform such obligation during the continuation of such contest or such Force Majeure delay or extended cure period, as the case may be, for so long thereafter as Tenant continues diligently to prosecute such contest or cure or the resolution of such event of Force Majeure.

17.3 Tenant's Obligation to Reimburse Landlord.

If pursuant to the provisions of Sections 16.1(c), 21.1, or 21.2, Landlord pays any sum or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Landlord within ten (10) business days following demand, as Additional Rent, the sum so paid, or the reasonable expense incurred by Landlord in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such

period, computed from the date of Landlord's demand until payment is made. Landlord's rights under this Section 17 shall be in addition to its rights under any other provision of this Lease or under applicable laws.

ARTICLE 18. EVENTS OF DEFAULT; TERMINATION

18.1 Events of Default.

Subject to the provisions of Section 20.2, the occurrence of any one or more of the following events shall constitute an "Event of Default" under the terms of this Lease:

(a) Tenant fails to pay any Rent to Landlord when due, which failure continues for ten (10) days following written notice from Landlord (it being understood and agreed that the notice required to be given by Landlord under this Section 18.1(a) shall also constitute the notice required under Section 1161 of the California Code of Civil Procedures or its successor, and shall satisfy the requirements that notice be given pursuant to such Section) provided, however, Landlord shall not be required to give such notice on more than three occasions during any Lease year, and failure to pay any Rent for the remainder of such Lease Year when due shall be an immediate Event of Default for the remainder of such Lease Year without need for further notice;

(b) An Event of Default (as defined in the LDDA) on the part of Tenant as Developer, occurs under the LDDA (so long as it is in effect) with respect to Developer's development, construction, use or occupancy of the Premises, but such Event of Default under this Lease shall be deemed cured if the Event of Default as defined in the LDDA is cured pursuant thereto;

(c) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred twenty (120) days;

(d) A writ of execution is levied on the leasehold estate which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred twenty (120) days;

(e) Tenant makes a general assignment for the benefit of its creditors;

(f) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from Landlord;

(g) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from Landlord, or, if such cure cannot be reasonably completed within such five (5) business day period, if Tenant does not within such five (5) business day period commence

such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(h) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation Measures) at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Landlord specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(i) Tenant suffers or permits an assignment of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease or sublets all or any portion of the Premises or Improvements in violation of this Lease; or

18.2 Special Provisions Concerning Mortgagees and Events of Default.

Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage shall not, in and of itself, constitute a default under this Lease.

18.3 Special Cure Rights.

In the case of any notice of default given by the Landlord to Tenant, Landlord shall deliver to all Investors (as "Investor" is defined below) a copy thereof concurrently with delivery to Tenant, and Investors shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary so long as Investor commences cure within such thirty (30) day period and diligentiy proceeds to completion) after the later to occur of (i) the expiration of such cure period or (ii) the date that Landlord has served such notice of default on Tenant, and Landlord shall accept such performance by or at the instance of the Investor as if the same had been made by Tenant. For purposes hereof, "Investor" shall mean any entity which is not an Affiliate of a Partner in Developer who acquires a limited partnership interest in Tenant or a membership interest pr partnership interest in a Partner of Tenant, and whose name and address for notices is delivered by Tenant to Landlord thirty (30) days prior to the occurtence of the Event of Default. Landlord's failure to give such notice to an Investor shall not be deemed to constitute a default on the part of Landlord under this Lease, but no such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been given to all Investors.

ARTICLE 19. REMEDIES

19.1 Landlord's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of Landlord following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by law or the terms of this Lease), Landlord shall have all rights and remedies provided in this Lease or available at law or equity All of Landlord's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable law, the exercise of any one or more rights shall not preclude the exercise of any others.

19.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurtence of an Event of Default hereunder, Landlord may continue this Lease in full force and effect, as permitted by Califomia Civil Code Section 1951.4 (or any successor provisions). Specifically, Landlord has the remedy described in Califomia Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). In the event Landlord elects this remedy, Landlord shall have the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Landlord's rights, including the right to collect Rent, including any and all Additional Rent, when and as such sums become due, even though Tenant has breached this Lease and is no longer in possession of the Premises or actively managing or operating the Premises. If Tenant abandons the Premises in violation of this Lease, Landlord may (i) enter the Premises and relet the Premises, or any part thereof, to third Persons for Tenant's account without notice to Tenant, Tenant hereby waiving rights, if any, to any such notice under any applicable Law, and (ii) alter, install or modify the Improvements or any portion thereof Tenant shall be liable immediately to Landlord for all costs Landlord incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attomeys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurted by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of Restoration and of repairing, securing, servicing, maintaining and preserving the Premises or the Improvements, or any portion thereof Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease, provided Tenant's obligations shall in no event extend beyond the Term.

(b) No Termination. No act by Landlord allowed by this Section 19.2, nor any appointment of a receiver upon Landlord's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If Landlord elects to relet the Premises as provided hereinabove in Section 21.2(a), the rent that Landlord receives from reletting shall be apphed to the payment of

(i) First, all costs incurred by Landlord in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attomeys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Landlord in comection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of repairing, securing and maintaining the Premises or any portion thereof;

(ii) Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to Landlord, in addition to or other than Rent due from Tenant;

(iii) Third, Rent, including any and all Additional Rent, due and unpaid under this Lease;

(iv) After deducting the payments referred to in this Section 21.2(c), any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied to monthly installments of Rent as such amounts become due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance which Landlord incurred in reletting, remain after applying the rent received from the reletting as provided in Section 21.2(c)(ii), Tenant shall pay to Landlord, upon demand, in addition to the remaining Rent or other amounts due, all such costs.

(d) Payment of Rent. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the rent Landlord has received from any reletting which exceeds all costs and expenses of Landlord incurred in comection with Tenant's default and the reletting of all or any portion of the Premises.

19.3 Right to Terminate Lease.

(a) Damages. Landlord may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Landlord's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by Landlord other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, Landlord shall have the right to recover from Tenant all sums allowed under Califomia Civil Code Section 1951.2, including, without limitation, the following:

(i) The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease;

(ii) The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom; and

(v) "The worth at the time of the award", as used in Section 21.3(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of the award", as used in Section 21.3(a)(iii), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event Landlord terminates Tenant's right to possession of the Premises pursuant to this Section 19.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Assign or Sublet. Upon the occurrence of an Event of Default, notwithstanding Section 14 Tenant shall have no right to sublet or assign its interest in the Premises or this Lease without Landlord's written consent, which may be given or withheld in Landlord's sole and absolute discretion, subject to the rights of Mortgagees as set forth in Section 36.

19.4 Continuation of Subleases and Other Agreements.

Subject to the terms of any Non-Disturbance Agreements entered into by Landlord in accordance with Section 11.4 hereof, Landlord shall have the right, at its sole and absolute option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises. Tenant hereby further covenants that, upon request of Landlord following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to Landlord such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in Landlord the then existing Subleases and other agreements then in force, as above specified.

ARTICLE 20. EQUITABLE RELIEF

20.1 Landlord's Equitable Relief

In addition to the other remedies provided in this Lease, Landlord shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Landlord shall be entitled to any other equitable relief that may be appropriate to the circumstances of such Event of Default.

20.2 Tenant's Equitable Relief

In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after a default or threatened default by Landlord to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Tenant shall be entitled to any other equitable relief that may be appropriate to the circumstances of such Event of Default.

ARTICLE 21. NO WAIVER

21.1 No Waiver by Landlord or Tenant.

No failure by Landlord or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

21.2 No Accord or Satisfaction.

No submission by Tenant or acceptance by Landlord of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of Landlord's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Landlord had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Landlord. Landlord may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Landlord to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

ARTICLE 22. DEFAULT BY LANDLORD; TENANT'S REMEDIES

22.1 Default by Landlord; Tenant's Exclusive Remedies.

Landlord shall be deemed to be in default hereunder only if Landlord shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, (iii) if such default cannot reasonably be cured within such thirty (30)-day period, Landlord shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default. Upon the occurrence of default by Landlord described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder, Tenant shall have the exclusive right (a) to offset or deduct only from the Rent becoming due hereunder, the amount of all actual damages incurred by Tenant as a direct result of Landlord's default, but only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease (provided that, at any time after the Total Repayment Amount has been fully paid, Tenant may bring an action for damages subject to the limitations set forth in Sections 25.1 and 25.2), or except for a default under Section 38.15, (b) to seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Landlord or its Agents in excess of that permitted pursuant to Section 25.1 or in violation of Section 25.2; provided, however, (i) in no event shall Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder or to otherwise recover or obtain from Landlord or its Agents any damages (including, without limitation, any consequential, incidental, punitive or other damages proximately arising out of a default by Landlord hereunder) or Losses other than Tenant's actual damages as described in the foregoing clause (a); (ii) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a default by Landlord hereunder; and (iii) Tenant shall have no remedy of self-help.

ARTICLE 23. TENANT'S RECOURSE AGAINST LANDLORD

23.1 No Recourse Beyond Value of Property Except as Specified.

Tenant agrees that, except for offsets against Rent set forth in Section 24 and except as otherwise specified in this Section 23.1 and except for a default under Section 38.15, Tenant's recourse against Landlord and Landlord's liability with respect to any monetary obligation of Landlord under this Lease, or any monetary claim based upon this Lease, shall not exceed an amount equal to the fair market value of Landlord's fee interest in the Premises (as encumbered by this Lease) at the time such claim is made. By Tenant's execution and delivery hereof and as part of the consideration for Landlord's obligations hereunder, Tenant expressly waives all such monetary liability in excess of the aforementioned amounts.

23.2 No Recourse Against Specified Persons.

No commissioner, officer or employee of Landlord or City will be personally liable to Tenant, or any successor in interest, for any Event of Default by Landlord, and Tenant agrees that it will have no recourse with respect to any obligation of Landlord under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

23.3 Arbitration of Certain Matters.

If a dispute arises under the terms of this Lease that expressly provides for dispute resolution in accordance with this Section 23.3, then either party may submit the matter to arbitration in accordance with the dispute resolution provisions set forth herein. Within twenty (20) business days after delivery of notice invoking the provisions of this Section, each Party shall designate, by written notice to the other Party, a person having at least ten (10) years experience in developing, leasing and managing commercial real estate projects in Oakland, including comparable mixed use residential rental housing/retail projects. Each such person shall be competent, licensed, qualified by training and experience in the City, disinterested and independent. Within ten (10) days of their appointment, the persons selected by each Party shall choose a third person meeting the foregoing qualifications, or if they cannot agree within such time then either party, on behalf of both, may request that appointment of an arbitrator be designated by the American Arbitration Association in San Francisco, Califomia, and the other party shall not raise any questions as to such person's full power and jurisdiction to entertain the application for and make the appointment. If either Party fails to appoint such person within such twenty (20) day period, the person appointed by the other Party shall be the Arbiter for purposes hereof For purposes of this Section, the arbiter appointed by the two persons selected by the Parties (or, if the other party fails to appoint such person, then the person appointed by the other Party) shall be referred to as the "Arbiter."

(i) Each party initially shall advance 50% of the required arbitration fee. Within fifteen (15) days following written notice to the Arbiter or the appointinent of the arbitrator (as the case may be), each provide in writing a detailed statement supporting its case in the dispute and attach such supporting materials as it shall deem appropriate, and deliver such statement with attachments to the Arbiter and to the other Party. If a Party does not so deliver such statement or if a party fails to appear at the hearing, the Arbiter may enter a default award against such party, provided said party received actual notice of the hearing. In order to obtain a default award, tiie complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

(ii) The Arbiter shall issue its opinion within ten (10) business days after his or her receipt of the statements. The unsuccessful party shall pay the legal fees of the prevailing party. If the Arbiter refuses to or fails to act within such time, the American Arbitration Association shall appoint a successor arbitrator. The Arbiter's review and decision shall be limited to the disputed matter. Except as otherwise provided, the Arbiter shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the this Agreement, or any other agreement between the Landlord and Tenant, or to negotiate new agreements or provisions between the Parties. A decision of the Arbiter issued hereunder shall be

final and binding upon the Landlord and Tenant, unless a party files a request for judicial relief with a court of competent jurisdiction with respect to the decision within fifteen (15) working days after the issuance of the Arbiter's decision. If any such claim is timely filed, the petitioning party shall be entitled to de novo judicial review.

(iii) The losing party in arbitration shall pay the arbitrator's fees and related costs of arbitration. Each party shall pay its own atrorneys' fees provided that fees may be awarded to the prevailing party if the arbitrator finds that the request was trivolous or that the arbitration action was otherwise instituted or litigated in bad faith. Judgment upon the Arbiter's decision may be entered in any court of competent jurisdiction.

(iv) Califomia law, including the Califomia Arbitration Act, Code of Civil Procedure §§1280 through 1294.2 shall govern all arbitration proceedings.

ARTICLE 24. LIMITATIONS ON LIABILITY

24.1 Waiver of Consequential Damages.

As a material part of the consideration for this Lease, neither party shaft be liable for, and each party hereby waives any claims against the other for any consequential damages arising out of any such party's default.

24.2 Limitation on Liability Upon Transfer.

In the event of any Transfer of Landlord's or Tenant's interest in and to the Premises, Landlord or Tenant, as the case may be, subject to the provisions hereof, (and in case of any subsequent transfers, the then transferor) will automatically be reheved from and after the date of such Transfer of all liability with regard to the performance of any covenants or obhgations contained in this Lease thereafter to be perforined on the part of Landlord or Tenant, as the case may be (or such transferor, as the case may be), but not from hability incurred by Landlord or Tenant, as the case may be (or such transferor, as the case may be) on account of covenants or obligations to be performed by Landlord or Tenant, as the case may be (or such fransferor, as the case may be) hereunder before the date of such Transfer; provided, however, that Landlord or Tenant, as the case may be (or such subsequent transferor) has transferred to the transferee any funds in Landlord's or Tenant's possession (or in the possession of such subsequent transferor) in which Landlord or Tenant (or such subsequent transferor) has an interest, in trust, for application pursuant to the provisions hereof, and such transferee has assumed all liability for all such funds so received by such transferee from Landlord or Tenant as the case may be (or such subsequent transferor).

24.3 No Recourse Against Specified Persons.

No shareholder, board member, officer, employee, hmited partner or member of Tenant or of any partner or member of Tenant will be personally liable to Landlord or any successor in interest of Landlord for any Event of Defauh of Tenant, and Landlord agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may became due to Landlord or any successor or for any obligation or claim based upon this Lease, against any such Person.

24.4 No Landlord Liability. Except to the extent of the gross negligence or willful misconduct of Landlord, or Landlord's Representatives, and subject to Tenant's indemnification obligations, Landlord shall not be liable or responsible in any way for:

(a) Any loss or damage whatsoever to any property belonging to Tenant or to its representatives or to any other person who may be in or upon the Premises; or

(b) Any loss, damage or injury, whether direct or indirect, to persons or property resulting from any failure, however caused, in the supply of utilities, services or facilities provided or repairs made to the Premises under any of the provisions of this Lease or otherwise.

24.5 No Liability for Actions of ORA. Neither Landlord nor Landlord's Representatives shall have any liability or responsibility for any actions taken at any time by ORA or for any losses whatsoever, whether direct or indirect, resulting from the passage, implementation or enforcement of AB 26 by any govemmental agency or official.

ARTICLE 25. ESTOPPEL CERTIFICATES BY TENANT

25.1 Estoppel Certificate by Tenant.

Tenant shall execute, acknowledge and deliver to Landlord (or at Landlord's request, to a prospective purchaser or mortgagee of Landlord's interest in the Property), within fifteen (15) business days after a request, a certificate stating to the best of Tenant's knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, tiiat this Lease is in full force and effect, as modified, and stating the modifications or, if tiiis Lease is not in fiill force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Landlord. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, as apphcable, including all modifications thereto. Any such certificate may be relied upon by any Landlord, any successor agency, and any prospective purchaser or mortgagee of the Premises or any part of Landlord's interest therein. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into each retail Sublease) to cause retail Subtenants under retail Subleases to execute, acknowledge and deliver to Landlord, within ten (10) business days after request, an estoppel certificate covering the matters described in clauses (a), (b), (c) and (d) above with respect to such retail Sublease.

ARTICLE 26. ESTOPPEL CERTIFICATES BY LANDLORD

26.1 Estoppel Certificate by Landlord.

Landlord shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective ttansferee of

Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate stating to the best of Landlord's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in fiill force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of Landlord, there are tiien existing any defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to Landlord, directiy related to this Lease and reasonably requested by the requesting Party. In addition, if requested, Landlord shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Landlord that, to the best of its knowledge, such atrachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant, any successor, and any prospective subtenant, mortgagee or transferee of Tenant's interest in this Lease.

ARTICLE 27. APPROVALS BY LANDLORD

27.1 Approvals by Landlord.

Landlord represents to Tenant that the Landlord's City Administrator or his or her designee, is authorized to execute on behalf of Landlord any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Landlord hereunder, if the City Administrator determines, after consultation with, and approval as to form by, the City Atromey, that the document is necessary or proper and in Landlord's best interests. The Landlord City Administrator's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by Landlord of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Landlord, the City Administrator, or his or her designee, shall be authorized to execute such instrument on behalf of Landlord, except as otherwise provided by apphcable law, including the City's Charter, or the express language of this Lease.

27.2 Fees for Review.

Within thirty (30) days after Landlord's written request, Tenant shall pay Landlord, as Additional Rent, Landlord's reasonable costs, including, without limitation, Atromeys' Fees and Costs (and including fees and reasonable costs of the City Attomey) incurred in comection with the review, investigation, processing, documentation and/or approval of any Proposed Transfer or Sublease, Mortgage, estoppel certificate, Non-disturbance Agreement and Additional Construction. Tenant shall pay such reasonable costs regardless of whether or not Landlord consents to such proposal, except only in any instance where Landlord has wrongfully withheld, delayed or conditioned its consent in violation of this Lease.

ARTICLE 28. NO MERGER OF TITLE

28.1 No Merger of Title.

There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the leasehold estate or any interest in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all Persons having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

ARTICLE 29. QUIET ENJOYMENT

29.1 Quiet Enjoyment.

Subject to the Permitted Titie Exceptions, the terms and conditions of this Lease and applicable Laws, Landlord agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietiy hold, occupy and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under Landlord. Notwithstanding the foregoing, Landlord shall have no liability to Tenant in the event any defect exists in the title of Landlord as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to Landlord's willful misconduct) and, except as otherwise expressly provided for under the tenns and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing titie defect shall be to obtain compensation by pursuing its rights against any titie insurance company or companies issuing titie insurance policies to Tenant.

ARTICLE 30. SURRENDER OF PREMISES

30.1 End of Lease Term.

(a) Condition of Premises. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender to Landlord the Premises in good order and condition, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder and subject to Sections 7.2(b), 11 and 12. The Premises shall be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto subject to Section 32.1(c) and in compliance with Section 32.1(d). Tenant hereby agrees to execute all documents as Landlord may deem necessary to evidence or confirm any such other termination. The parties acknowledge that the provisions of the LDDA shall be controlling with respect to Tenant's obligations in connection with surrender of the Premises prior to issuance of Certificates of Completion with respect to the Premises thereunder

(b) Subleases. Upon any termination of this Lease, Landlord shall have the right to terminate all Subleases hereunder except for those Subleases with respect to which Landlord has entered into Non-Disturbance Agreements as provided in Section 14.4, or which Landlord has agreed to assume pursuant to Section 21.4.

(c) Personal Property. Upon expiration or termination of this Lease, Tenant and all Subtenants shall have the right to remove their respective trade fixtures and other personal property. At Landlord's request, Tenant shall remove, at no cost to Landlord, any Personal Property belonging to Tenant which then remains on the Premises (excluding any personal property owned by Subtenants or other Persons). If the removal of such Personal Property causes damage to the Premises, Tenant shall repair such damage, at no cost to Landlord.

(d) Tenant shall surrender the Premises in compliance with all Laws, and free of all Encumbrances created, incurred, assumed or suffered to exist by Tenant or any Person claiming through it (including any Subtenant) other than Permitted Title Exceptions and other Encumbrances approved by Landlord in writing, and in at least a condition which is sufficient to support the following (collectively, the "Minimum Condition"):

(i) Operational capability to handle the same types of services which have been provided within the Premises for the prior 5 Lease Years.

(ii) The following criteria shall be taken into account and considered relevant in determining whether the Minimum Condition has been met at the time of the surrender: (1) the main civil and structural works shall not exhibit any excessive signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification when originally installed, however, Landlord acknowledges that normal wear and tear of such improvements according to their age shall be permissible; (2) limited life and "wear and tear" components of the Improvements have been replaced by Tenant prior to the surrender date in accordance with good industry practice as and when they failed, wore out, or reached their design life or customary replacement frequency, as part of ongoing maintenance activities, however, Landlord acknowledges that such Improvements, may otherwise be tumed over with normal wear and tear; and (3) major electrical and mechanical components or equipment shall be in good operating condition, normal wear and tear excepted.

[DISCUSS INCLUSION OF ANY ADDITIONAL PROCEDURES, INCLUDING JOINT INSPECTION PRIOR TO TERMINATION DATE, ETC.]

ARTICLE 31. HOLD OVER

31.1 No Right to Hold Over

Tenant shall have no right to remain in possession of all or any part of the Premises after the Termination Date of this Lease. Tenant shall have no right to holdover and no tenancy shall be created by implication or law. However, if Tenant fails to vacate and surrender possession of the Premises on or prior to the Termination Date, Tenant shall pay Landlord 200% of the higher of monthly rent immediately theretofore payable plus other rents prevailing at the date of such holding over for each month after the Termination Date or then comparable monthly rents for similar projects from the date of hold-over, in any case, always subject to all rents being increased at the sole discretion of Landlord at any time during the holding over period and upon notice to Tenant. Landlord's receipt and acceptance of such monthly Rent as adjusted in this Section 30.1 shall not be construed as Landlord's consent to any holding over by Tenant. Tenant

hereby agrees to indemnify and hold harmless Landlord from and against any and all Claims incurred by Landlord as a result of Tenant remaining in possession of all or any part of the Premises after the Termination Date. Tenant shall not interpose any counterclaim in any summary or other proceeding based on holding over by Tenant. Except as provided in this Section 30.1, all other terms and conditions of this Lease shall apply during any period of holding over by Tenant without Landlord's express written consent, in its sole and absolute discretion.

31.2 No Right to Relocation Assistance. It is understood and agreed that nothing contained in this Lease shall give Tenant any right to relocation assistance or payment from Landlord upon expiration or termination of the Term or upon the termination of any holdover tenancy by any means whatsoever. Tenant acknowledges and agrees that upon such expiration or termination, it shall not be entitled to, and expressly hereby waives, any relocation assistance or payment pursuant to the provisions of Titie 1, Division 7, Chapter 16, of the Government Code of the State of Califomia (Sections 7260 et seq.) or any other applicable Law with respect to any relocation of its business or activities.

31.3 Transition. During the last Lease Year of the Term, Tenant shall, without compensation, cooperate with Landlord and any proposed subsequent master lessee, tenant, assignee, licensee or the like to the Premises identified by Landlord to ensure the orderly transition of the Premises upon the Termination Date, including, without limitation, providing tours to, participating in transition meetings with, and providing relevant non-confidential information to Landlord or such subsequent party upon the reasonable request of Landlord.

ARTICLE 32. NOTICES

32.1 Notices.

All notices, demands, consents, and requests that may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on the date that is three days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Landlord: City of Oakland
City Hall
1 Frank H. Ogawa Plaza, 3rd. Fl.
Oakland, CA 94612
Attention: City Administrator
Reference: Oakland Army Base
Facsimile: _____
Telephone: _____
Email: _____

with a copy to: Office of the City Attorney

Attn: _____
City Hall
One Frank H. Ogawa Plaza-6th Fl.
Oakland, CA 94612
Reference: Oakland Army Base
Facsimile: _____
Telephone: _____
Email: _____

To Tenant: [ENTITY TO BE IDENTIFIED BY PROLOGIS/CCIG]

_____
_____
_____
Attn: _____
Facsimile: _____
Telephone: _____
Email: _____

with a copy to:

_____
_____
_____
Attn: _____
Facsimile: _____
Telephone: _____
Email: _____

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof For convenience of the Parties, copies of notices may also be given by telefacsimile to the facsimile number set forth above or such other number as may be provided from time to time by notice given in the manner required hereunder; however, neither Party may give official or binding notice by telefacsimile.

32.2 Form and Effect of Notice.

Every notice given to a Party or other Person under this Section must state (or shall be accompanied by a cover letter that states):

(a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto; and

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 32.2.

ARTICLE 33. INSPECTION OF PREMISES BY LANDLORD

33.1 Entry.

Subject to the rights of Subtenants, Tenant shall permit Landlord and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that Landlord may have a right to perform under Article 17 and/or (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as Landlord reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions. Nothing herein shall imply any duty upon the part of Landlord to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Landlord any obligation, or liability, for the care, supervision or repair of the Premises, provided, however, Landlord shall use reasonable efforts to minimize interference with the activities and tenancies of Tenant, Subtenants and their respective Invitees. If Landlord elects to perform work on the Premises pursuant to Section 19, Landlord shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except to the extent caused solely by the gross negligence or willful misconduct of Landlord, its agents or employees, provided Landlord uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.

33.2 Exhibit for Lease.

Subject to the rights of Subtenants, Tenant shall permit Landlord and its Agents to enter the Premises during regular business hours upon reasonable prior notice (i) to exhibit the same in a reasonable manner in comection with any sale, transfer or other conveyance of Landlord's interest in the Premises, and (ii) provided that Tenant has not exercised its right of first offer pursuant to Article 40, during the last eighteen (18) months of the Term, for the purpose of leasing the Premises.

33.3 Notice, Right to Accompany.

Landlord agrees to give Tenant reasonable prior notice of Landlord's entering on the Premises except in an emergency for the purposes set forth in Sections 37.1 and 37.2. Such notice shall be not less than twenty-four (24) hours oral notice. Tenant shall have the right to have a representative of Tenant accompany Landlord or its Agents on any entry into the

Premises. Notwithstanding the foregoing, no notice shall be required for Landlord's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in Sections 34.1 and 34.2.

33.4 Rights of Subtenants.

Tenant agrees to use commercially reasonable efforts (including efforts to obtain the agreement of each Subtenant (other than Landlord) to the inclusion of a provision similar to this Section 33.4 in its Sublease) to require each Subtenant to permit Landlord to enter its premises for the purposes specified in this Section 33. If Tenant is unable to obtain such agreement after commercially reasonable efforts, Tenant shall use commercially reasonable efforts to include a right of entry for Landlord upon terms customary for comparable leases in the Central District Redevelopment Project Area.

ARTICLE 34. MORTGAGES

34.1 No Mortgage Except as Set Forth Herein.

(a) Restrictions on Financing. Except as expressly permitted in this Section 34, Tenant shall not:

(i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease; or

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrances other than as permitted by Section 13.1.

(b) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any hen or encumbrance on Landlord's fee interest in the Land in comection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Mortgagee of Tenant.

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this Section 34 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

34.2 Leasehold Liens.

(a) Tenant's Right to Mortgage Leasehold. Subject to the tenns and conditions of Article 34, at any time during the Term following Completion of Initial Improvements, and provided that no Event of Default or Unmatured Event of Default then exists, Tenant shall have the right to assign, mortgage or encumber Tenant's leasehold estate created by this Lease, solely with respect to such portion of the Premises containing such completed Initial

Improvements, by way of leasehold mortgages, deeds of trust or other security instruments of any kind to the extent pennitted hereby.

(b) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder.

(c) Limitation of Number of Leasehold Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees (other than notice rights, which shall apply to all Mortgagees that have given Landlord the notice required under Section 35.9(b)) shall only apply to the most senior Mortgagee, unless such Mortgagee elects not to exercise its rights thereunder in which event such rights will apply to the next most senior Mortgagee.

34.3 Notice of Liens.

Tenant shall notify Landlord promptly of any lien or encumbrance other than the Permitted Title Exceptions of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

34.4 Limitation of Mortgages.**[SUBJECT TO FURTHER DISCUSSION]** In addition to the limitations set forth elsewhere in this Article 34, the limitations set forth in this Section 34.4 shall apply to all Mortgages.

(a) Limitations. A Mortgage may be made only after Completion of Initial Improvements and only for the purpose of refinancing completed Initial Improvements, any permanent take-out financing, acquisition financing by a transferee of Tenant's interest in this Lease, the refinancing of permitted Mortgages. With respect to any issuance of corporate debt or other securitized financings, Tenant shall not be permitted to create any structure that would create an obligation or security of Landlord. In addition, Tenant's right to enter into a Mortgage shall be subject to the following limitations:

(i) The total amount of the debt encumbering Tenant's interest shall not exceed _____;

(ii) The total debt encumbering Tenant's leasehold does not exceed ninety percent (90%) of the sum of the appraised value of such leasehold plus the value of any additional security, guaranty or credit enhancement provided by Tenant, as determined by the proposed Leasehold Mortgagee;

(iii) The interest rate under such Mortgage shall not exceed _____ per annum;

(iv) The ratio of the net operating income from the Project for the twelve (12) month period beginning on the proposed closing date for the financing to be secured

by the Leasehold Mortgage to the aggregate of all principal and interest payable on all financing encumbering the Project for such period equals or exceeds 1.00 to 1.00;

(v) Tenant has received the prior written confirmation from Landlord that each such Mortgage is in compliance with this Section 34.4;

(vi) a Mortgage may not cover any property of, or secure any debt issued or guaranteed by, any Person other than Tenant for the purpose described in Section 34.4(a);

(vii) no Person other than a Bona Fide Institutional Lender shall be entitled to the benefits and protections accorded to a Mortgagee in this Lease;

(viii) no Mortgage or other instrument purporting to mortgage, pledge, encumber or create an Encumbrance on or against any or all of the interest of Tenant shall extend to or affect the fee simple interest in the Premises, Landlord's interest hereunder or its reversionary interest and estate in and to the Premises or any part thereof, or adversely affect the rights or increase the liabilities or obligations of Landlord except to the extent set forth in this Lease;

(ix) Landlord shall have no liabihty whatsoever for payment of the principal sum secured by any Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder;

(x) Landlord shall have no obligation to any Mortgagee except as expressly as set forth in this Lease and only with respect to such Mortgagee that has provided Landlord with written notice of its Mortgage;

(xi) each Mortgage shall provide that if an event of default imder the Mortgage has occurred and is continuing and the Mortgagee gives notice of such event of default to Tenant, then the Mortgagee shall give concurrent notice of such default to Landlord;

(xii) subject to the terms of this Lease and except as specified herein, all rights acquired by a Mortgagee under any Mortgage shall be subject and subordinate to all of the provisions of this Lease and to all of the rights of Landlord hereunder;

(xiii) notwithstanding any enforcement of the security of any Mortgage, Tenant shall remain liable to Landlord for the payment of all sums owing to Landlord under this Lease and the performance and observance of all of Tenant's covenants and obligations under this Lease;

(xiv) a Mortgagee shall not, by virtue of its Mortgage, acquire any greater rights or interest in or to the Premises than Tenant has at any applicable time under this Lease, other than such rights or interest as may be granted or acquired in accordance with this Article 34; and

(xv) prior to the effective date of a Mortgage, each Mortgagee, Landlord and Tenant shall enter into a consent agreement in a form acceptable to all parties if

required by Mortgagees, whereby all parties consent to the assignment of such Mortgage by the Mortgagees to an agent for the Mortgagees in comection with the financing of the Mortgage; provided that such consent agreement shall be in a customary form, include the exact riglits and protections provided to the Mortgagees in this Lease, acknowledge that Tenant shall remain liable to Landlord for the payment of all sums owing to Landlord under this Lease and the performance and observance of all of Tenant's covenants and obligations under this Lease and provide that the Mortgagees shall promptiy cause to be recorded in the County Recorder's Office of Alameda County a reconveyance and release of the Mortgage upon the end of its term.

(b) Statement. Landlord agrees within thirty (30) days after request by Tenant to give to any holder or proposed holder of a Mortgage a statement in recordable form as to whether such Mortgage is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Landlord from asserting, against either Tenant or such prospective Mortgagee, that such Mortgage (if done in the way described in the statement) is not permitted hereunder, but shati create no liability on Landlord, and shall conclusively establish that such Mortgage is permitted hereunder and does not constitute a default by Tenant. In making a request for such statement, Tenant shall fumish Landlord tme, accurate and complete copies of such of the financing documents as are required reasonably by Landlord to permit Landlord to make the determination whether such Mortgage is permitted hereby. In no event, however, shall any failure by Tenant or other party to comply with the terms of any Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

34.5 Interest Covered by Mortgage.

A Mortgage may attach to any or all of the following interests in the Premises: (i) Tenant's leasehold interest in the Premises created hereby and Tenant's interest in the Improvements or some portion thereof granted hereunder, (ii) Tenant's interest in any permitted Subleases thereon, (iii) any Personal Property of Tenant, (iv) rents, products and proceeds of the foregoing, and (v) any other rights and interests of Tenant arising under this Lease. As provided in Section 36.1(b) no Mortgage may encumber Landlord's interest in or under this Lease or Landlord's fee simple interest in the Property or Landlord's personal and other property in, on or around the Property. The Mortgagee must agree to release any interests in New Stteet and Improvements thereon immediately upon tennination of this Lease as to New Street, as described in Section 1.1(a) hereof

34.6 Institutional Lender Only.

A Mortgage may be given only to (i) a Bona Fide Institutional Lender or (ii) any other lender that shall have been approved by Landlord in its sole and absolute discretion, subject to Landlord's receipt of substantial and adequate evidence providing Landlord with information on the stmcture, financial capacity, and experience of such other lender. In any instances in which Landlord's consent is so required, Landlord shati be deemed to have approved such other lender if the written notice from Tenant of the identity of such other lender specifies that no notification of disapproval within sixty (60) days after the receipt of such written notice constitutes approval,

and Landlord sends no notification of disapproval within ten (10) days after written notice from Tenant to Landlord, notifying Landlord of the expiration of such 60 day period..

34.7 Rights Subject to Lease.

(a) Subject to Lease. Except as otherwise expressly provided herein, all rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, the LDDA, and to all rights of Landlord hereunder. None of such covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Mortgage, except as expressly provided in this Lease or otherwise specifically waived by Landlord in writing.

(b) Construction and Restoration Obligations. Notwithstanding any provision of this Lease to the contrary, no Mortgagee (including any such Mortgagee who obtains title to the leasehold or any part thereof as a result of foreclosure proceedings or action in lieu thereof) shall be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements unless expressly assuming such obligation under Section 36.10(c). Any other Person who thereafter obtains title to the leasehold or any interest therein from or through such Mortgagee, or any other purchaser at foreclosure sale (other than a Mortgagee), shall be required to Restore in accordance with the requirements of this Lease. Whether or not a Mortgagee elects to Restore, nothing in this Lease shall be construed to permit any such Mortgagee to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or authorized herein or in the LDDA, as hereafter amended or extended from time to time. If Mortgagee obtains title to the leasehold and chooses not to complete or Restore the Improvements, it shall so notify Landlord in writing of its election within ninety (90) days following its acquisition of the tenancy interest in this Lease and shall use commercially reasonable efforts sell its tenancy interest to a purchaser that shall be obligated to Restore the Improvements to the extent this Lease obligates the Tenant to so Restore. Mortgagee shall use good faith efforts to cause such sale to occur within six (6) months following the Mortgagee's written notice to Landlord of its election not to Restore, provided that any such purchaser shall be subject to Landlord's reasonable prior written approval, which approval shall not be unreasonably withheld so long as such purchaser provides evidence satisfactory to Landlord in its reasonable discretion showing that such purchaser possesses the qualifications, experience and financial capacity to Restore in accordance with the requirements of this Lease. In the event Mortgagee agrees to Restore the Improvements, all such work shall be performed in accordance with all the requirements set forth in this Lease, and Mortgagee must submit evidence reasonably satisfactory to Landlord that it has the qualifications, experience and financial responsibility necessary to perform such obligations.

34.8 Required Provisions of any Mortgage.

Tenant agrees to have any Mortgage provide: (a) that the Mortgagee shall by registered or certified mail give written notice to Landlord of the occurrence of any event of default as defined under the Mortgage; (b) that Landlord shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be consistent with the provisions of this Lease, unless Landlord may agree otherwise in its sole and absolute discretion.

34.9 Notices to Mortgagee.

(a) Copies of Notices. Landlord shall give a copy of each notice Landlord gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of Landlord's consent to an assignment of any interest in this Lease or to a Significant Change, to any Mortgagee that has given to Landlord written notice substantially in the form provided in Subsection (b). Copies of such notices shall be given to Mortgagees at the same time as notices are given to Tenant by Landlord, addressed to such Mortgagee at the address last fumished to Landlord. Landlord shall acknowledge in writing its receipt of the name and address of a Mortgagee so delivered to Landlord. Landlord's failure to give such notice to a Mortgagee shall not be deemed to constitute a default by Landlord under this Lease, but no such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Any such notices to Mortgagee shall be given in the same manner as provided in Section 36.

(b) Notice From Mortgagee to Landlord. The Mortgagee under any Mortgage shall be entitled to receive notices from time to time given to Tenant by Landlord under this Lease in accordance with Subsection (a) above provided such Mortgagee shall have delivered a notice to Landlord in substantially the following form:

> "The undersigned does hereby certify that it is a Mortgagee, as such term is defmed in that certain Lease entered into by and between the City of Oakland, as Landlord, and _____ as Tenant (the "Lease"), of Tenant's interest in the Lease demising the parcels, a legal description of which is attached hereto as Exhibit ___ and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to Tenant by Landlord be sent to the undersigned at the following address: _____."

34.10 Mortgagee's Right to Cure.

If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. Each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay the Rents due hereunder, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease; provided, however, that no such action shall constitute an assumption by such Mortgagee of the obligations of Tenant under this Lease. Each Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Mortgagee shall be as effective to prevent a tennination of this Lease as the same would

have been if done by Tenant. In the case of any notice of default given by Landlord to Tenant, the Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary so long as Mortgagee commences cure within such thirty (30) day period and diligently proceeds to completion) after the later to occur of (i) the expiration of such cure period, or (ii) the date that Landlord has served such notice of default upon Mortgagee, and Landlord shall accept such performance by or at the instance of the Mortgagee as if the same had been made by Tenant. The time in which Mortgagee may cure is herein called the "Mortgagee Cure Period."

(b) Foreclosure. Anything contained in this Lease to the contrary notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, Landlord shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to each Mortgagee, a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver if Mortgagee deems it advisable), or (y) notified Landlord of its intention to institute foreclosure proceedings (or to commence actions to obtain possession of the Premises through appointment of a receiver or otherwise) or otherwise acquire Tenant's interest under the Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings or Force Majeure. The period from the date Mortgagee so notifies Landlord until a Mortgagee acquires and succeeds to the interest of Tenant under this Lease or some other party acquires such interest through Foreclosure is herein called the "Foreclosure Period." A Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee to the extent not cured prior to Foreclosure. The foregoing provisions of this Subsection (b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue Foreclosure after the defaults or Events of Default hereunder referred to shall have been cured (and the Landlord shall accept such cure or performance of such obligation by any party, including Tenant); (ii) nothing herein contained shall preclude Landlord, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) such Mortgagee shall agree with Landlord in writing to comply during the Foreclosure Period with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such Mortgagee (except to the extent related to Hazardous Materials or Restoration), including but not limited to the payment of all sums due and owing hereunder (except for monetary obligations related to Hazardous Materials or Restoration) and the use restrictions set forth in Section 3.1. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (iii) of the preceding sentence, Mortgagee shall have the right at any time to notify Landlord that it has relinquished possession of the Premises or that it will not institute Foreclosure or, if such Foreclosure has commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Landlord, and, thereupon, Landlord shall be entitled to seek the termination of this Lease

and/or any other available remedy as provided in this Lease unless such Event of Default has been cured. Upon any such termination, the provisions of this Section 34.10(b) shall apply. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (i) have fully cured any Event of Default due to a default in the payment of money, except for monetary obligations related to Restoration or Hazardous Materials (ii) continue to pay currently such monetary obligations as and when the same become due, and (iii) perform all other obligations of Tenant under this Lease to the extent that they are susceptible of being performed by Mortgagee.

(c) Construction.

(i) Subject to Section 36.7(b), if a default of Tenant occurs following any damage or destruction but prior to Restoration of the Improvements, Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Mortgagee expressly assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to Restore, in the manner provided in this Lease, the Improvements on the Premises or the part thereof to which the lien or title of such Mortgagee relates, and submitted evidence satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligation.

(ii) Upon assuming Tenant's obligations to Restore in accordance with Subsection (c)(i) above, Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date of Tenant stopped work on the Restoration to the date of such assumption plus an additional one hundred twenty (120) days.

(d) New Lease. In the event of the termination of this Lease before the expiration of the Term, including, without limitation, the termination of this Lease by the Landlord on account of an Event of Default or the rejection of this Lease by a trustee of Tenant in bankruptcy or by Tenant as a debtor-in-possession, except (i) by Total Condemnation, or (ii) as the result of damage or destruction as provided in Section 12, Landlord shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The Mortgagee shall thereupon have the option to obtain a new Lease and in the event the LDDA is still in effect, the assignment of Tenant's rights and obligations thereunder, in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, Landlord shall enter into a new lease of the Premises with the most senior Mortgagee giving notice within such period or its designee, provided that the Mortgagee assumes Tenant's obligations as Sublandlord under any

Subleases then in effect (unless Landlord entered into such Sublease in violation of (f) below) to the extent such assumption is necessary in order to continue such Subleases in effect; and

(ii) Such new Lease, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (except for any requirements or conditions which Tenant has satisfied prior to the termination). Such new lease shall have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the titie to the Premises. Such new Lease shall require the Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease that would, at the time of the execution of the new lease, be due under this Lease if this Lease had not been terminated and to perform as soon as reasonably practicable and any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee other than obhgations of Tenant with respect to construction of the Initial Improvements, which obligations shall be performed by Mortgagee in accordance with Section __, or with respect to Restoration, shall be performed by Mortgagee in accordance with Section 36.10(c). Upon the execution of such new Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable Attorneys' Fees and Costs incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such new Lease. The provisions of this Section 34.10(d) shall survive any termination of this Lease (except as otherwise expressly set out in the first sentence of Section 34.10(d)), and shall constitute a separate agreement by the Landlord for the benefit of and enforceable by the Mortgagee.

(iii) Simultaneously with the execution and delivery of the new lease, the Landlord shall confirm and acknowledge that Mortgagee has titie to the Improvements for the term of the new lease by such means as is customary or may be reasonably required by a reputable titie insurance company to insure the leasehold estate created by the new lease; provided, however, that Landlord shall have no responsibility for exceptions to titie or titie defects that affected titie to the Improvements on or after the Commencement Date of this Lease except to the extent created by the actions of City or Landlord.

(e) Nominee. Any rights of a Mortgagee under this Section 34.10 may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee; provided, however, that a Mortgagee may acquire titie to the Lease through a wholly owned (directiy or indirectly) subsidiary of Mortgagee.

(f) Subleases. Effective upon the commencement of the term of any new Lease executed pursuant to Subsection 36.10(d), any Sublease then in effect shall be assigned and transferred without recourse by Landlord to Mortgagee and all monies collected by or for the benefit of Landlord from the Sublessees shall be paid to Mortgagee, or at Mortgagee's option, shall offset Rent. Between the date of termination of this Lease and commencement of the term of the new Lease, Landlord shall not (1) enter into any new subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee if Mortgagee enters into a new Lease, (2) cancel or materially modify

any of the existing subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor or any other agreements affecting the Premises, or (3) accept any cancellation, termination or surrender of any of the above without the written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed. Effective upon the commencement of the term of the new Lease, Landlord shall also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, all Personal Property.

(g) Limited to Permitted Mortgagees. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of Bona Fide Institutional Lenders that are the holders of the Mortgages permitred hereunder

(h) Consent of Mortgagee. No material amendment, termination or cancellation of this Lease shall be effective as against a Mortgagee unless a copy of the same shall have been delivered to such Mortgagee and such Mortgagee shall have approved the material amendment, termination or cancellation in writing. No merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Mortgagee.

(i) Limitation on Liability of Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Mortgagee, or its designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes the owner of the leasehold estate created hereby, and then only for so long as it remains the owner of the leasehold estate and only with respect to the obligations arising during such period of ownership. In no event will Mortgagee have personal liabitity under this Lease or a new lease under Section 36.10(d) greater than Mortgagee's interest in this Lease or such new lease under Section 36.10(d), and the Landlord will have no recourse against Mortgagee's assets other than its interest herein or therein.

34.11 Assignment by Mortgagee.

Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, or any Transfer of this Lease by Mortgagee after acquisition of the leasehold estate through foreclosure or deed in lieu thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Landlord shall recognize the Mortgagee or other transferee in connection therewith as the Tenant hereunder. The right of such transferee or the right of the transferee of such Mortgagee (but not the right of the Mortgagee) thereafter to assign or transfer this Lease or such new Lease shall be subject to the restrictions of Section 14. After acquisition of the Premises by foreclosure or transfer in lieu of foreclosure, all accrued and unpaid Rent shall be payable by such transferee as provided and subject to the limitations set forth in this Lease. In the event Mortgagee subsequentiy assigns or transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new lease obtained pursuant to Section 38.10(d), and in connection with any such assignment or transfer, Mortgagee takes back a mortgage or deed of

trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such assignment of ttansfer, then such mortgage or deed of trust shall be considered a permitted Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Section 33 and any other provisions of this Lease intended for the benefit of a permitted Mortgagee who holds a permitted Mortgage.

34.12 Transfer of Mortgage.

Landlord hereby consents to a transfer or encumbrance by Mortgagee, absolutely or as collateral security for performance of its obligations, of its Mortgage or any interest therein, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such transfer the new holder or pledgee of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

34.13 Appointment of Receiver.

In the event of any default under a Mortgage, the holder of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Mortgagee accelerates the maturity of all indebtedness secured by its Mortgage.

34.14 Landlord's Right to Purchase Leasehold Mortgage.

(a) If (i) any event of default by Tenant has occurred under a Mortgage and is continuing and (ii) the Mortgagee recognized by Landlord pursuant to Section 36.2(c) is entitled, pursuant to any intercreditor arrangements then in force and effect, to declare all or part of the indebtedness secured by a Mortgage to be immediately due and payable (or, in the case of a Mortgage that is a lease, to terminate the lease), then commencing on the date that is 10 calendar days after the date on which such Mortgagee shall serve notice upon Landlord in writing ("Lender's Notice") with a copy to all other Mortgagees that such Mortgagee intends and is entitled to, pursuant to the intercreditor arrangements then in force and effect, commence proceedings to foreclose the Mortgage or, in the case of a Mortgagee that is a Lessor to terminate the lease (stating the calculation of the purchase price pursuant to Section 36.14(c)), Landlord shall have the right and option for 30 calendar days (the "Landlord's Option") to purchase from all Mortgagees their Mortgages (or, in the case of a Mortgagee that is a Lessor, to purchase its interest in the Lease), upon the terms and subject to the conditions contained in this Section 34.14.

(b) Landlord's Option shall be exercised by written notice served upon Tenant and all Mortgagees within such 30-day period. Time shall be of the essence as to the exercise of Landlord's Option. If Landlord's Option is duly and timely exercised, Landlord shall purchase all Mortgages (or, in the case of a Mortgagee that is a Lessor, such Mortgagee's interest in the Lease) and all Mortgagees shall assign their Mortgages (and any Mortgagee that is a Lessor shall assign its interest in the Lease) to Landlord (or its designee) on the date which is 60 calendar days after the date on which a Lender's Notice is served upon Landlord. The closing shall take place at a mutually convenient time and place.

(c) The purchase price payable by Landlord shall be 100% of the aggregate amounts secured by or due under such Mortgages or leases (including principal, interest, fees, premiums, and other costs and expenses (including attorneys' fees) and any other amounts secured thereby or due thereunder) as of the closing date of the purchase. The purchase price shall be paid in full in cash at closing by wire transfer or other immediately available funds. The purchase price shall be paid by Landlord to each respective Mortgagee, to be applied by the Mortgagee to the amounts secured by the Mortgage owed to such Mortgagee (or to amounts owed to a Mortgagee that is a Lessor under the applicable lease), subject to the priorities of lien of such Mortgages (or leases, as applicable).

(d) At the closing and upon payment in full of the purchase price specified in Section 36.14(c), each Mortgagee shall assign its Mortgage (or, in the case of a Mortgagee that is a Lessor, its interest in the Lease) to Landlord, together with any security interest held by it in Tenant's leasehold interest in the Premises, without recourse, representations, covenants or warranties of any kind, provided that such Mortgages (or leases) and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by Landlord to all Mortgagees (rather than the indebtedness theretofore secured thereby) payable on demand, with interest and upon the other items referred to in this Section 36414(d). Each such assignment shall be in form for recordation or filing, as the case may be. Landlord shall be responsible for paying any Taxes payable to any governmental authority upon such assignment. Such assignment shall be made subject to such state of title of the Premises as shall exist at the date of exercise of Landlord's Option.

(e) Any Mortgage (or lease between a Lessor and Tenant) shall contain an agreement of the Mortgagee to be bound by the provisions of this Section 34.14.

(f) Landlord shall have the right to receive (and each Mortgage, or lease between a Lessor and a Tenant, shall contain an agreement of the Mortgagee to deliver) all notices of default under any Mortgage or lease between a Lessor and a Tenant contemporaneously with the delivery of such notices to Tenant, but Landlord shall not have the right to cure any default under any such Mortgage or lease, except to the extent provided in this Section 34.14.

ARTICLE 35. NO JOINT VENTURE

35.1 No Joint Venture.

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other Person, or cause Landlord to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

ARTICLE 36. REPRESENTATIONS AND WARRANTIES

36.1 Representations and Warranties of Tenant.

Tenant represents, warrants and covenants to Landlord as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence; Good Standing. Tenant is a limited liability company duly organized and validly existing under the laws of the State of California, and duly registered and authorized to conduct business in the State of California. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State California.

(b) Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to Landlord in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by Landlord and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (I) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instmment to which Tenant is a party or by which Tenant is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant or its business, or (C) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to Landlord in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankmptcy Code, (iii) there has been no event that has materially adversely

affected Tenant's ability to meet its Lease obligations hereunder, and (iv) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

The representations and wartanties herein shall survive any termination of this Lease to the extent specified in this Lease.

36.2 Landlord Warranties.

Landlord warrants that it is duly authorized and existing under the laws of the State of Califomia as a municipal corporation, that Landlord, upon approval of its City Council, has fiill right, power and authority to enter into this Lease and to carry out the actions contemplated by this Lease. Upon Tenant's request, Landlord will give Tenant a copy of a resolution or ordinance adopted by City authorizing Landlord to enter into this Lease.

ARTICLE 37. SPECIAL PROVISIONS [NOTE: CONFORM WITH COMMUNITY BENEFITS PROGRAM REQUIREMENTS]

37.1 Non-Discrimination.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts entered into by Tenant relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of Subsection (a) above.

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in Oakland or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a govemmental entity pursuant to state or local law authorizing such registration.

(d) Additional Requirements.

(i) Tenant shall state in all solicitations or advertisements for employees placed by or on behalf of the Tenant that all qualified applicants will receive

consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

(ii) If applicable, Tenant will send to each labor union or representative of workers with whom Tenant has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Tenant commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

37.2 Mitigation Measures.

In order to mitigate the significant environmental impacts of this Lease and operation of the Premises, Tenant agrees that the operation of the Project shall be in accordance with the Mitigation Measures atrached to this Lease as Exhibit ___, which are to be performed on the part of the project sponsor. As appropriate, Tenant shall incorporate such Mitigation Measures and Improvement into any contract for the operation of the Initial Improvements.

37.3 Local Employment, Apprenticeship, and Local/Small Local Business Enterprise Program.

Tenant shall abide by the provisions of the Landlord's local employment, apprenticeship; and local and small local business programs, as described in Exhibit ____. Tenant shall take commercially reasonable measures to assure that its contractors and subcontractors doing work at the Premises abide by said programs, to the extent required by Exhibit ___.

37.4 Living Wage Requirements.

This Lease is subject to the Living Wage Ordinance codified in Chapter 2.28 of the Oakland Municipal Code and its implementing regulations as a "City Financial Assistance Recipient" or "CFAR". The Ordinance requires, among other things that, unless specific exemptions apply or a waiver is granted, all covered CFARs must pay a minimum level of compensation to their covered employees of at least $9.66 per hour if health benefits or at least $1.25 per hour are offered, or $11.11 per hour if no health benefits are offered. This wage rate shall be adjusted annually pursuant to the terms of the Ordinance. Tenant agrees to abide by the requirements of the Living Wage Ordinance to pay the specified minimum compensation to its covered employees, to offer the required compensated and uncompensated leave time to its covered employees, to provide the required notices to its covered employees, to submit the required documentation to the Landlord, and to satisfy all other applicable requirements. Tenant shall include language in any construction contract or subcontract for work on any work required to be covered under the terms of the Ordinance requiring that the contractor or subcontractor comply with Living Wage requirements for its covered employees. Tenant shall submit a copy of such contracts to the City's Office of Contract Compliance.

37.5 Alcohol, Firearms, Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no advertising of alcohol, firearms, cigaretres or tobacco products shall be allowed on the Premises, except only as incidental to an allowed retail

use such as advertising in markets or stores that sell such products if allowed by law. The foregoing prohibition shall include the placement of the name of a company producing, selling or distributing alcohol, firearms, cigarettes or tobacco products or the name of any alcohol, firearms, or cigarette or tobacco product in any promotion of any event or product or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of drinking, using firearms, or using cigarettes and tobacco products or to encourage people not to drink, use firearms, or smoke or to stop smoking.

37.6 Waiver of Relocation Assistance Rights.

If Tenant holds over in possession of the Premises following the expiration of this Lease under Section 33.1, Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as provided in Section 1.1 relating to Condemnation, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

37.7 Campaign Contributions Limits.

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires City Council approval. The City of Oakland Campaign Reform Act prohibits developers that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either one hundred eighty (180) days after completion of, or termination of, conttact negotiations.

Tenant must sign and date an Acknowledgement of Campaign Contributions Limits Form attached hereto as Exhibit ___ and incorporated herein.

37.8 First Source Employment Referral Services.

Simultaneously with execution of this Lease, Tenant shall enter into a Memorandum of Understanding with the City for First Source Referral in the form attached hereto as Exhibit ___.

37.9 Other Requirements.

Tenant shall operate and maintain the Premises in accordance with: (1) all applicable federal, state and local requirements for access for disabled persons; (2) the City's Equal Benefits Ordinance; and (3) environmental sustainability measures to the extent that such features are equivalent or lower in cost than comparable non-sustainable alternatives, when measured over their respective life-cycles.

ARTICLE 38. GENERAL

38.1 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., Oakland, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next working day.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to the provisions of Section 20 relating to Force Majeure.

38.2 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and Sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall define or lhnit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

(e) Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obhgation specifically provides to the contrary.

(f) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof

38.3 Successors and Assigns.

This Lease is binding upon and will inure to the benefit of the successors and assigns of Landlord, Tenant and any Mortgagee. Where the term "Tenant," "Landlord" or "Mortgagee" is used in this Lease, it means and includes their respective successors and assigns, including, as to any Mortgagee, any ttansferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Landlord as a Party or the holder of the right or obligation to give approvals or consents, if Landlord or a comparable public body which has succeeded to Landlord's rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Landlord for purposes of this Lease.

38.4 No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in Section 36 with regard to Mortgagees.

38.5 Real Estate Commissions.

Landlord is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease. Tenant and Landlord each represents that it engaged no broker, agent or finder in connection with this ttansaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to Indenmify the other Party from any Losses arising out of such claim.

38.6 Counterparts.

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

38.7 Entire Agreement.

This Lease (including the Exhibits), and the LDDA for so long as such agreements are in effect, constitute the entire agreement between the Parties with respect to the subject matter set forth therein, and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior of other agreement shall be pennitted to contradict or vary the terms of this Lease.

38.8 Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instmment executed by the Parties.

38.9 Governing Law; Selection of Fomm.

This Lease shall be govemed by, and interpreted in accordance with, the laws of the State of Califomia. As part of the consideration for Landlord's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectiy under this Lease may, at the sole option of Landlord, be litigated in courts having situs within the State of Califomia, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

38.10 Recordation.

This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as Exhibit ___. Promptiy upon Landlord's request following the expiration of the Term or any other termination of this Lease, Tenant shall deliver to Landlord a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to Landlord and the City Attomey, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. Landlord may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

38.11 Extensions by Landlord.

Upon the request of Tenant, Landlord may, by written instmment, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of Landlord's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

38.12 Further Assurances.

The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease. The City Administrator of the Landlord is authorized to execute on behalf of the Landlord any closing or similar documents and any contracts, agreements, memoranda or similar documents with Tenant, State, regional and local entities or enter into any tolling agreement with any Person that are necessary or proper to achieve the

purposes and objectives of this Lease, if the City Administrator determines that the document or agreement is necessary or proper and is in the Landlord's best interests.

38.13 Attorneys' Fees.

Except as provided in Sections 11.11 or 25.3 with regard to an arbitration proceeding, if either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of Oakland in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

If Tenant utilizes services of in-house counsel, then, for purposes of this Lease, the reasonable fees of such in-house counsel shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the in-house counsel services were rendered and practiced in the City of San Francisco and full-service law firms.

38.14 Lease Effectiveness.

Notwithstanding any provision herein to the contrary, this Lease shall only become effective on the date the Parties duly execute and deliver this Lease upon Close of Escrow in accordance with the LDDA. Such date will be inserted by Landlord as the Commencement Date on the cover page and on page 1 hereof, provided, however, that Landlord's failure to insert the Commencement Date shall not invalidate this Lease. Where used in this Lease or in any of its exhibits, references to "the effective date of this Lease," "the date of this Lease," the "reference date of this Lease" or "Lease Date" will mean the Commencement Date determined as set forth above and shown on the first page hereof

38.15 Severability; Survival.

If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other Person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes

of this Lease. Except as otherwise set forth herein, the rights and obligations of the Tenant, the Landlord and the City under this Lease shall survive any termination of the LDDA.

38.16 Cooperation in the event of Legal Challenge. In the event of any Legal Challenge, Landlord and Tenant shall cooperate and coordinate with one another in the defense against such Legal Challenge.

38.17 Incident Management, Notifications and Reports. Tenant shall immediately notify Landlord of all emergencies, and promptiy notify Landlord of all material accidents and incidents occurring on or at the Premises, and of all material claims made by or against Tenant, or potential material claims that Tenant reasonably expects to make against, or to be made against it by, third parties in connection with its use and occupancy of the Premises. In addition, within 30 calendar days following the end of each calendar quarter of each Lease Year, Tenant shall deliver to Landlord a quarterly report of all such occurrences, including the following details in a format specified by Landlord: (a) type of incident (e.g., bodily injury, death or property damage) and summary of each such incident; (b) classification of incident (e.g., machinery, right-of-way or other); (c) number of incidents by type and classification; (d) costs to cortect incidents by type and classification; (e) claims made by Tenant and revenue received by type and classification; and (f) claims made against Tenant and losses incurred or losses claimed by type and classification.

38.18 Environmental Reports. Tenant shall provide all reports and [redacted]

38.19 Other Reports.

(a) Tenant shall deliver to Landlord small and local business utilization in construction and professional services reports as required under applicable adopted Landlord policy.

(b) Tenant shall deliver to Landlord reports that demonstrate Tenant's compliance or non-comphance with the Living Wage Requirements and MAPLA as required under applicable adopted Landlord pohcy.

(c) Tenant shall deliver to Landlord quarterly Living Wages and Labor Standards at Landlord-Assisted Businesses reports as required under applicable adopted Landlord policy.

(d) Tenant shall provide to Landlord such other reports reasonably requested by Landlord.

ARTICLE 39. DEFINITION OF CERTAIN TERMS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them below in this Section.

AB 26 means the provisions of Califomia Assembly Bill 26 adopted into law June 28, 2011, and any successor statute thereto, as may be amended from time to time.

Additional Constmction means the construction, installation, reconstmction, replacement, addition, expansion, Restoration, alteration or modification of any Additional Improvements.

Additional Improvements means any and all buildings, stmctures, fixtures, and other improvements, including but not limited to any work of improvement as defmed in Califomia Civil Code Section 3106, constmcted, installed, erected, built, placed or performed (or to be so done) upon or within the Premises at any time, excluding the Initial Improvements.

Additional Rent means any and all sums, other than Base Rent, that may become due or be payable by Tenant at any time pursuant to this Lease.

Affiliate means any Person directly or indirectiy Controlling, Controlled by or under Common Control with another Person.

Agency means the former Redevelopment Agency of the City of Oakland.

Agents means, when used with reference to either Party to this Lease, the members, officers, directors, commissioners, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

Aimiversary Date means each anniversary of the start of a Lease Year (starting with the Commencement Date) or, for purposes of Section 2.2(a)(ii), each anniversary of the start of a Lease Year or a Pre-Lease Year, as apphcable.

Amual Reconciliation Statement as defined in Section 2.3(b)(iii).

Arbiter as defined in Section 25.3.

Attomeys' Fees and Costs means reasonable attorneys' fees (including fees from attomeys in the Office of the City Attorney of Oakland), costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or altemative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Award means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

Billboard Agreement means that certain Billboard Franchise and Lease Agreement, dated _____, 2012, between City and Developer, regarding the installation and use of advertising billboards on or adjacent to the Premises.

Bona Fide Institutional Lender 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 be Bona Fide Institutional Lenders and who is not an Affihate of Tenant: (i) a savings

bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, 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 $500 million 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 goverumental agency, or a real estate investment trust, is regularly engaged in the financial services business, or (ii) any special account, managed fund, department, agency or Special Affiliate of any of the foregoing, or (iii) any person acting in a fiduciary capacity for any of the foregoing. For purposes hereof, (1) 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, (2) a lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender 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, and (3) "Special Affiliate" means any Person directiy or indirectiy Specially Controlling, Specially Controlled by, or under common Special Control, through one or more other persons, with the person in question.

Business Day means any day that is neither a Saturday, a Sunday, nor a day observed as a holiday by either the City or the State of Califomia or the United States government.

Casualty Event as defined in Section 11.1(b).

Casualty Notice as defined in Section 11.4(a)(i).

Central Gateway means the ___± acres of real property, comprising a portion of the former Oakland Army Base and located adjacent to the West Gateway, commonly referred to as the Central Gateway and depicted on Exhibit__ atrached to this Lease.

Certificate of Completion means a certificate of occupancy or equivalent certificate of completion issued by City with respect to the Completion of Initial Improvements.

City means the City of Oakland, a municipal corporation.

City Administrator means the City Administrator of City or his or her designee.

Closing Date as defined in the LDDA.

Commencement Date as defined in Section 1.2(a), subject to the provisions of Section 38.14.

Commercial General Liability Insurance as defined in Section 16.(a)(iii).

Community Benefits or Community Benefits Program means those benefits to the community required to be provided by Developer and the Project with respect to this Lease

pursuant to City's community jobs policy and other City policies and programs, as set forth in Exhibit __ atrached to this Lease.

Completion of Initial Improvements means completion of construction and installation of all Initial Improvements on all or any portion of the Premises in accordance with the terms of this Lease. The fact of Completion of Initial Improvements shall be conclusively evidenced by the issuance by City of a certificate of occupancy or equivalent certificate of completion with respect to such Initial Improvements.

Completion Date means the date of Completion of Initial Improvements.

Completion Guaranty [DISCUSS] means the Completion Guaranty with respect to the Initial Improvements, given by _____ to City, dated _____, 20___, a copy of which is attached as Exhibit ___ to this Lease.

Condemnation means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

Condemnation Date means the earlier of (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

Condemned Land Value as defined in Section 12.4(h).

Constmction Bonds as defined in Section 8.1(f).

Construction Documents as defined in Section 10.4.

Control means: (1) the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the profits or capital of another Person; or (2) the power to direct the affairs or management of another Person, whether by contract or operation of Law or otherwise, and Controlled and Controlling have correlative meanings. Common Control means that two Persons are both Controlled by the same other Person.

CPI means the Consumer Price Index for All Urban Consumers, All Items for the San Francisco-Oakland-San Jose CMSA (Base year 1982-84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made in the revised CPI which would produce results equivalent, as nearly as possible, to those which would be obtained hereunder if the CPI were not so revised. If the 1982-84 average shall no longer be used as an index of 100, such change shall constitute a substantial revision. If the CPI becomes unavailable to the public because pubhcation is discontinued, or otherwise, Landlord shall substitute therefor a comparable index based upon changes in the cost of living or purchasing

power of the consumer dollar published by a govemmental agency, major bank, other financial institution, university or recognized financial publisher.

Default Rate as defined in Section 2.5.

Depositary means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as a Bona Fide Institutional Lender, designated by Tenant and approved by Landlord to serve as depositary pursuant to this Lease, provided that such Depositary shall have an office, branch, agency or representative located in the State of Califomia.

Development Agreement means a development agreement with respect to all or any portion of the Project as may be finally approved by City at any time pursuant to Califomia Govemment Code sections 65864 *et seq.* and applicable provisions of City's Municipal Code or ordinances pertaining to development agreements and executed by City and Developer.

Disabled Access Laws means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. Section 12101 et seq. and disabled access laws under the Landlord's building code.

Encumbrance means any mortgage, deed of trust, claim, levy, lien, judgment, execution, pledge, charge, security interest, restriction, covenant, condition, reservation, rights of way, liens, encumbrances, certificate of pending litigation, judgment or certificate of any court, and other matters of any nature whatsoever, whether arising by operation of Law or otherwise created, affecting the Premises.

Event of Default as defined in Section 20.1.

Excess Coverage as defined in Section 16.1(a)(iv).

Exercise Notice as defined in Section 1.2(b)(ii).

Exhibit as defined in Section 38.2(a).

Final Construction Documents means plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws.

Force Majeure means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control, including, but not restricted to, acts of God or of the public enemy, acts of the govemment, acts of the other Party, fires, floods, earthquakes, tidal waves, terrorist acts, strikes, freight embargoes, delays of subcontractors and unusually severe weather and, in the case of Tenant, any delay resulting froin a defect in Landlord's titie to the Premises. Force Majeure does not include failure to obtain financing or have adequate fiinds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, to Restore if appropriate, and to complete performance of the hindered act.

Foreclosure means a foreclosure of a Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to court order or pursuant to a power of sale contained in the Mortgage), deed or voluntary assignment or other conveyance in lieu thereof.

Foreclosure Period as defined in Section 35.10(b).

GAAP means generally accepted accounting principles consistently applied.

Gross Building Area means the total floor areas of the buildings on the Premises, including basements, mezzanines, and penthouses included within the principal outside faces of the exterior walls and excluding architectural setbacks or projections and unenclosed areas.

Guaranty is defined in the LDDA.

Handle when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material ("Handling" will have a correlative meaning).

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under CERCLA or under Section 25281 or Section 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the Catifornia Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of a stmcture, or are naturally occurring substances on, in or about the Premises and petroleum, including cmde oil or any fraction, and natural gas or natural gas liquids.

Hazardous Material Claims means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Material Laws, together with any and all Losses made or threatened by any third party against City or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any stmctures or other Improvements, the loss or restriction of the use of all or any portion of the Premises, and attorneys' fees and consultants' fees and experts' fees and costs.

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions.

Impositions means all taxes, assessments, liens, levies, charges, fees, or expenses of every description, levied, assessed, confirmed or imposed on or with respect to the Premises, any

of the Improvements or Personal Property located on or within the Premises, this Lease, Tenant's leasehold estate, any Sublease, any subleasehold estate, any Transfer, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments (including but not limited to any taxes or assessments for a Special District encompassing all or any portion of the Premises), liens, levies, charges, fees, or expenses, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied, assessed, confirmed or imposed in lieu of or in substitution of any of the foregoing of every character.

Improvements means, collectively, the Initial Improvements and Additional Improvements.

Indemnified Parties means Landlord, City, including, but not limited to, all of their boards, commissions, departments, agencies and other subdivisions, including, without limitation; all of the Agents of Landlord or the City, and all of their respective heirs, legal representatives, successors and assigns, and each of them.

Indemnify means indemnify, protect and hold harmless.

Indexed means the product of the number to be Indexed multiplied by the percentage increase, if any, in the CPI from the first day of the month in which the Commencement Date, or such other date specified in this Lease as the start of a particular period, occurred to the first day of the most recent month for which the CPI is available at any given time.

Initial Improvements means the site and vertical improvements to the Property as set forth in the Scope of Development on Exhibit __ to this Lease, to be constructed and installed by or on behalf of Developer in accordance with this Lease.

Initial Improvements Construction Contract means one or more contracts entered into between Developer and one or more contractors for the construction and installation of the Initial Improvements in accordance with this Lease.

Investigate or Investigation when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

Invitees when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

Landlord means the City of Oakland.

Landlord Representative as defined in Section 2.2(h).

Late Charge as defined in Section 2.6.

Law or Laws means any one or more present and future laws, ordinances, mles, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, including, without limitation, Hazardous Materials Laws, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all mles and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies, courts or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon.

LDDA as defined in Recital C.

Leasable Square Feet means those portions of the Premises designed for occupancy and exclusive use of Tenant and its Subtenants, including storage areas, that produces rental income, and expressly excluding stairs, escalators, elevator shafts, flues, pipe shafts, vertical ducts, balconies, mechanical rooms, public access areas, and other areas set aside for the provision of facilities or services to the floor or building where such facilities are not for the exclusive use of occupiers of the floor or building.

Lease means this Ground Lease, as it may be amended from time to time in accordance herewith.

Lease Year means a period of twelve (12) consecutive months during the Term, commencing on the Commencement Date and continuing for each twelve (12) consecutive calendar months thereafter.

Leasehold estate means Tenant's leasehold estate created by this Lease.

Legal Challenge means any action or proceeding before any court, tribunal, arbitration or other judicial, adjudicative or legislation-making body, including any administrative appeal, brought by a third party, who is not an Affiliate or related to Developer, which (i) seeks to challenge the validity of any action taken by the City in connection with the Project, including the City's approval, execution and delivery of this Agreement , the Ground Lease, and its performance thereunder, including any challenge under the Califomia Environmental Quality Act, the performance of any action required or permitted to be performed by the City hereunder, or any findings upon which any of the foregoing are predicated, or (ii) seeks to challenge the validity of any other Regulatory Approval.

Letter of Credit means a letter of credit issued by a Bona Fide Institutional Lender for or on behalf of Tenant and in favor of Landlord to secure any or all obligations of Tenant to Landlord under this Lease, in each instance in such amount, form and substance satisfactory to Landlord.

Loss or Losses when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings,

judgments and awards and costs and expenses, (including, without limitation, reasonable Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Major Damage or Destruction means damage to or destruction of all or any portion of the Improvements on the Premises to the extent that the hard costs of Restoration will exceed seventy five percent (75%) of the hard costs to replace such Improvements on the Premises in their entirety, except that during the last five years of the Term, the percentage figure shall be: (1) in the fifth remaining year of the Term- 25%; (2) in the fourth through second years of the Term- 10%, and (3) in the final year of the Term- 5%. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

Memorandum of Lease means the Memorandum of this Lease, between Landlord and Tenant, recorded in the Official Records.

Minor Alterations as defined in Section 9.2.

MMRP or Mitigation Measures as defined in the LDDA.

Mortgage means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of Tenant's leasehold interest under this Lease that is recorded in the Official Records.

Mortgagee means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

Mortgagee Cure Period as defined in Section 36.10(a).

Net Awards and Payments as defined in Section 11.4.

NNN Pass-Throughs as defined in Section 2.2(b)(i)(B)(3).

Non-Affiliate Mortgage means a Mortgage that is held by a Non-Affiliate Mortgagee.

Non-Affiliate Mortgagee means the holder of a Mortgage, which holder (A) is not an Affiliate of Tenant, or (B) is a Bona Fide Institutional Lender.

Non-Disturbance Agreements as defined in Section 14.4(a).

North Gateway means the ___± acres of real property, comprising a portion of the former Oakland Army Base and located in the vicinity of the West Gateway, commonly referred to as the North Gateway and depicted on Exhibit __ attached to this Lease.

Official Records means, with respect to the recordation of Mortgages and other documents and instmments, the Official Records of the County of Alameda.

ORA or Agency means the former Redevelopment Agency of the City of Oakland.

Outside Lease Date means January I, 2016.

Partial Condemnation as defined in Section 13.1(b), 13.3.

Partner shall mean [Prologis or CCIG constituent partners in Developer]

Party means City, Landlord or Tenant, as a party to this Lease; Parties means City, Landlord and Tenant, as Parties to this Lease.

Permitted Titie Exceptions as defined in Section 1.1(b).

Permitted Transfers as defined in Section 14.3.

Permitted Uses as defined in Section 3.1.

Person means any individual, partnership, corporation (including, but not limited to, any business tmst), limited liability company, joint stock company, tmst, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

Personal Property means all fixtures, furniture, fiimishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

Phase as defined in Recital C. [NOTE: only for the particular Phase covered by the particular Lease]

Port means the Port of Oakland.

Pre-Completion Period means the period between the Effective Date of the LDDA and the Certificate of Completion for the Project.

Pre-Lease Year means, in the event that the Commencement Date of this Lease is after the Outside Lease Date, each 12-month period (or part thereof) between the Outside Lease Year and the Commencement Date.

Premises as defined in Section 1.1.

Project as defined in Recital C. [NOTE: only for the particular Phase covered by the particular Lease]

Prologis Entity means Prologis Corporation, a _____ corporation qualified to transact business in California, or any entity Controlled by or under Common Control with such corporation or any investment fund established and Controlled by any of the foregoing.

Property as defined in Section 1.1.

Proposed Transfer as defined in Section 14.1(h).

PUD means a planned unit development with respect to all or any portion of the Project as may be finally approved by City at any time pursuant to applicable provisions of City's Municipal Code or ordinances pertaining to planned unit developments.

Refinancing as defined in Section 36.14(a

Regulatory Approval means any authorization, approval or permit required by any governmental agency having jurisdiction over the Premises, including, but not limited to, the City, BCDC, the RWQCB, DTSC, or Alameda County Department of Public Health.

Release when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Lease or the LDDA by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof

Remedial Action Plan or RAP as defined in the LDDA.

Remediate or Remediation when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, transport, dispose, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

Rent means, collectively, Base Rent and Additional Rent. For purposes of this Lease, Rent includes all unpaid sums that are payable as Rent, but that are unpaid when earned and/or accrue for payment at a later time in accordance with the provisions of this Lease.

Restoration means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable; provided that Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the Restoration so long as the Improvements, as Restored, constitute a first-class Project. In connection with any Restoration, the Project and the other Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Project as so redesigned is a first-class Project similar to the original Project, subject to the provisions of Section 11 relating to Additional Construction. All Restoration shall be conducted in accordance with the provisions of Section 9. ("Restore" and "Restored" shall have correlative meanings.)

Retail Uses means _____.

Risk Management Plan or RMP as defined in the LDDA.

RWQCB shall mean the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

Schedule of Performance as defined in the LDDA.

Schematic Drawings means conceptual drawings in sufficient detail to describe a development proposal.

Scope of Development means the scope and schedule of work for the Initial Improvements as set forth on Exhibit __ attached to this Lease.

Significant Change means (a) any dissolution, merger, consolidation or other reorganization, or any issuance or transfer of beneficial interests in Tenant, directiy or indirectiy, in one or more transactions, that results in a change in the identity of the Persons Controlling Tenant, or (b) the sale of fifty percent (50%) or more of Tenant's assets, capital or profits, or the assets, capital or profits of any Person Controlling Tenant other than a sale to an Affiliate, provided that a Significant Change will not include any change in the identity of Persons Controlling Tenant or sale of fifty percent (50%) or more of assets, capital or profits in a Person Controlling Tenant as a result of (i) the sale or transfer of shares of a publicly traded company; or (ii) the merger, consolidation or other reorganization of a Person Controlling Tenant or the sale of all or substantially all of the assets of a Person Controlling Tenant in a transaction where the surviving entity in any such merger, consolidation or other reorganization or the purchaser of the assets of such Person has a net worth, calculated in accordance with GAAP, following such transaction, that is at least 150% of the net worth of the Person Controlling Tenant prior to such transaction.

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 cortelative meanings).

Special District means any community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982 (Califomia Govemment Code sections 53311 *et seq.*) or otherwise, special assessment district, facilities assessment district, landscaping and lighting district, and any other infrastmcture financing or infrastmcture maintenance financing district or device established at any time upon the approval of City with respect to all or any portion of the Project.

State means the State of Califomia.

Sublease means any lease, sublease, license, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

Substantial Condemnation as defined in Section 12.3(a).

Subtenant means any Person leasing, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

Tax Fiscal Year means the fiscal year for real property taxes, which is currently July 1 to June 30. Liens for secured property taxes attach on January 1st preceding the Tax Fiscal Year for which taxes are levied. Secured property taxes are levied on the first business day of September and are payable in two equal installments: the first is due on November 1st and delinquent with penalties after December 10th; the second is due February 1st and delinquent with penalties after April 10th.

Tenant means _____ [Developer to identify JV party], a _____, and its permitted successors and assigns.

Tenant's Accounting as defined in Section 2.10(b).

Tenant's Books and Records means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises.

Term as defined in Section 1.2.

Termination Dale means _____, 20__ **[INSERT DATE THAT IS 66 YEARS AFTER LEASE COMMENCEMENT DATE]** or such eariier date upon which this Lease is terminated or such later date to which this Lease is extended pursuant to subsequent mutual written agreement of the Parties.

Total Condemnation as defined in Section 12.2.

Transfer as defined in Section 14.1.

Truck Operations Site means that certain real property owned by City, located in the vicinity of the Property, and more particularly described and generally depicted on Exhibits____ and ____, respectively.

Uninsured Casualty as defined in Section 11.4(a)(i).

Unmatured Event of Default means a circumstance which, with notice or the passage of time would constitute an Event of Default.

West Gateway means the ___± acres of real property, comprising a portion of the former Oakland Army Base and located adjacent to the Central Gateway, commonly referred to as the West Gateway and depicted on Exhibit__ attached to this Lease.

West Gateway Lease means a written ground lease between City, as landlord, and Developer or Developer Affiliate, as tenant, covering all or a portion of the West Gateway.

Work as defined in Sections 10.7, 10.8.

Worth at the Time of the Award as defined in Section 23.3(a)(v).

ARTICLE 40. RIGHT OF FIRST REFUSAL

In the event: (i) Landlord is compelled by applicable Law to sell or transfer to a third party Landlord's titie to all or any portion of the Premises (the "Offered Interest"); (ii) Landlord receives and intends to accept a bona fide offer from such a third party to purchase or acquire the Offered Interest (the "Offer"); and (iii) applicable Law does not prohibit or prevent the implementation of this Article 40, then Tenant shall have the right of first refusal to meet the Offer and purchase the Offered Interest pursuant to the provisions of this Article 40. Landlord shall promptiy provide written notice of the Offer to Tenant ("Landlord's Notice"), which shall include a true and complete copy of the Offer. Tenant shall have thirty (30) days after receipt of Landlord's Notice in which to provide written notice to Landlord of Tenant's election to purchase the Offered Interest ("Tenant's Notice"). If Tenant provides Tenant's Notice within such thirty (30)-day period, Landlord and Tenant shall proceed with the purchase and sale of the Offered Interest pursuant to the provisions hereof at the sarue purchase price and upon substantially the same other terms and conditions of the Offer, as may be amended by agreement of Landlord and Tenant. Notwithstanding any provision to the conttary in the Offer, the closing date for Tenant's purchase of the Offered Interest shall not be sooner than forty-five (45) days after the date of Tenant's Notice. If Tenant does not provide Tenant's Notice within the thirty (30)-day period as provided above, Landlord ruay sell the Offered Interest to such third party in accordance with the terms and conditions of the Offer, free and clear of Tenant's right of first refusal hereunder. Notwithstanding the preceding provisions, if Tenant does not provide Tenant's Notice with respect to a particular Offer, but the sale of the Offered Interest to the third party does not close in accordance with the Offer, Tenant's right of first refusal hereumder shall be reinstated and Landlord shall again comply with all of the provisions of this Article 40 before any other sale of the Offered Interest. If the Offered Interest sold at any time during the Term by Landlord to Tenant or to a third party includes less than the entire Premises, Tenant's right of first refusal hereunder shall remain effective as to the remaining unsold portion of in the Property. Tenant's right of first refusal under this Article 40 shall not apply to any sale or ttansfer of an Offered Interest by Landlord to any spouse, issue, or spouse of any issue, of Landlord (each, a "family member"), or the trustee of any trust or any other entity un which any faruily member(s) owns a majority of the beneficial interests (a "family entity"), but shall apply to any Offer thereafter received by such family member or such trustee or faruily entity. Tenant's right of first refusal hereunder shall expire on the expiration or termination of the Term. If an Offered Interest purchased by Tenant pursuant to this Article 40 includes the entire Premises, this Lease shall terminate on the closing date of such purchase. In the event Landlord receives and intends to accept a bona fide third party offer ("Offer") to purchase or acquire title to all or any portion of the Property or any interest therein ("Offered Interesf'), Tenant shall have the right of first refusal to meet the Offer and purchase the Offered Interest pursuant to the provisions of this Article 40. Landlord shall promptiy provide written notice of the Offer to Tenant ("Landlord's Notice"), which shall include a true and complete copy of the Offer. Tenant

shall have thirty (30) days after receipt of Landlord's Notice in which to provide written notice to Landlord of Tenant's election to purchase the Offered Interest ("Tenant's Notice"). If Tenant provides Tenant's Notice within such thirty (30)-day period, Landlord and Tenant shall proceed with the purchase and sale of the Offered Interest pursuant to the provisions hereof at the same purchase price and upon substantially the same other terms and conditions of the Offer, as may be amended by agreement of Landlord and Tenant. Notwithstanding any provision to the contrary in the Offer, the closing date for Tenant's purchase of the Offered Interest shall not be sooner than forty-five (45) days after the date of Tenant's Notice. In the event the Offered Interest is not then a separate legal parcel(s), Landlord agrees to cooperate with Tenant in subdividing the Offered Interest into one or more legal parcel(s) prior to the closing of Tenant's purchase of the Offered Interest, and the closing date for Tenant's purchase shall be extended untti the completion of such subdivision process. if Tenant does not provide Tenant's Notice within the thirty (30)-day period as provided above, Landlord may sell the Offered Interest to such third party in accordance with the terms and conditions of the Offer, free and clear of Tenant's right of first refusal hereunder. Notwithstanding the preceding provisions, if Tenant does not provide Tenant's Notice with respect to a particular Offer, but the sale of the Offered Interest to the third party in accordance with the Offer does not close within one hundred eighty (180) days after the date of Landlord's Notice, Tenant's right of first refusal hereunder shall be reinstated and Landlord shall again comply with all of the provisions of this Article 40 before any sale of the Offered Interest. If the Offered Interest sold at any time during the Term by Landlord to Tenant or to a third party includes less than the entire Property or less than Landlord's entire interest therein, Tenant's right of first refusal hereunder shall remain effective as to the remaining unsold portion of (or, as applicable, Landlord's remaining unsold interest in) the Property. Tenant's right of first refusal hereunder shall expire on the expiration or earlier termination of the Term. The purchase by Tenant of an Offered Interest pursuant to this Article 40, and the ownership and use and occupancy of the Premises thereafter, shall be and remain subject to the provisions of this Lease.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

TENANT:

[ENTITY TO BE IDENTIFIED BY PROLOGIS/CCIG]

By: _____

By: _____

By: _____
[NAME]
[TITLE]

LANDLORD:

CITY OF OAKLAND,
a municipal corporation

By _____
City Administrator

APPROVED AS TO FORM:

BARBARA PARKER, City Attorney

By:_____
Dianne M. Millner
Deputy City Attorney

Landlord Resolution No. _____
City Resolution No. _____
_____
_____
_____
_____
_____

LIST OF LEASE EXHIBITS [SUBJECT TO MODIFICATION BASED ON FINAL LEASE TERMS]

Exhibit	Description
EXHIBIT __	Description of Premises
EXHIBIT __	Site Plan
EXHIBIT __	List of Permitted Exceptions
EXHIBIT __	Scope of Development
EXHIBIT __	List of Mitigation Measures
EXHIBIT __	Local Employment, Apprenticeship, and Small/Local Small Business Programs
EXHIBIT __	Acknowledgement of Campaign Contributions Limits Forms
EXHIBIT __	Form of Memorandum of Lease
EXHIBIT __	Prevailing Wage Ordinance

EXHIBIT ____

TO

GROUND LEASE FOR

[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]

DESCRIPTION OF PREMISES

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR

[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]

SITE PLAN

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR

[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]

LIST OF PERMITTED EXCEPTIONS

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR

[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]

SCOPE OF DEVELOPMENT

[See Attached]

[NOTE: SUBJECT TO FINALIZATION AND LIMITED TO IMPROVEMENTS WITHIN PARTICULAR PHASE COVERED BY LEASE]

SCOPE OF DEVELOPMENT

(Private Improvements)

1. Uses. The purpose of this Agreement is to provide for the development of the Lease Property into a new facility that supports the international, national, regional and local movement of goods by way of the seaport, railroad and roadway networks. Once constructed, the Private Improvements will include the following uses:

- o trade and logistics facilities (warehouse, distribution and related facilities), including, but not limited to, general purpose warehouses, cold and refrigerated storage, trailer and container cargo storage and movement, chassis pools, container freight stations, deconsolidation facilities, tmck terminals, and regional distribution centers ("Trade & Logistics");

- o either (1) a ship-to-rail terminal designed for the export of non-containerized bulk goods and import of oversized or overweight cargo (the "Bulk Terminal") ("Option A") if the Public Improvements are funded by TCIF Funds, or (2) office or research and development facilities/trade and logistics facillties ("Option B"), at the Developer's option bul only if the Public Improvements are not funded by TCIF Funds;

- o ancillary circulation, utility and rail improvements designed to supplement the Public Improvements consistent with the Master Plan (collectively, "Support Improvements"); and

- o five billboards.

In the event that the AMS Site is included in the Lease Property, the Project will also include 15 acres of tmck service uses, including parking, fueling stations, weighing stations, training and certification facilities, maintenance facihties, chassis pool and related retail (collectively, "Ancillary Maritime Uses").

2. Location and Density of Uses. The Private Improvement uses would be located in the following Phases and in the following densities:

a. East Gateway (approximately 29.6 acres). The East Gateway would be developed with Trade & Logistics uses and related Support Improvements. New facilities shall be developed with a minimum of 250,000 square feet of Floor Area (defined below) at an aggregate minimum FAR (defined below) of 0.29 ("Minimum East Gateway Project") and up to a maximum Floor Area of 442,560 square feet at any permissible FAR.

b. Central Gateway (approximately 42.6 acres). The Central Gateway would be developed with Trade & Logistics uses and related Support Improvements. New facilities would be developed with a minimum of 300,000 square feet of Floor Area at an aggregate minimum FAR of 0.29 ("Minimum Central Gateway Project") and up to a maximum Floor Area of 537,000 square feet of new facilities at any permissible FAR. In the event that the AMS Site is included in the Lease Property, the Central Gateway would (a) include an additional fifteen (15) acres and up to an additional 37,673 square feet of Floor Area of Ancillary Maritime Uses. [*Confirm if/how AMS Site included/excluded from minimum project/calculation of FAR*]

c. West Gateway (approximately 34.1 (Option A) or 11 (Option B) acres). Under Option A, the West Gateway will be improved with Bulk Terminal uses, Rail Improvement uses and related Support Improvements, including the repurposing of the existing 146,460 square foot warehouse and the construction of new rail improvements, equipment yards and temporary structures. The "Minimum West Gateway Project" shall mean wharf repair and Rall Improvements consistent with the Master Plan and a functioning Bulk Terminal with appropriate tenant improvements and equipment capable of servicing one or more export products. Under Option B, the West Gateway portion of the Lease Property will be improved with up to a maximum Floor Area of 175,000 square feet of new office or research and development uses and related Support Improvements. The Option B scenario does not include a minimum project.

d. Billboards. The billboards include the following:

Number	Billboard Location	Size	Sides	Display Type
1	Bay Bridge 500' East of Toll Plaza (West Gateway) – South Line, East & West Face	20'H x 60'W	2	LED
2	Bay Bridge 1000' East of Toll Plaza – South Line, West Face (West Gateway)	20'H x 60'W	1	Backlit
3	1-880 West Grand 500' North of Maritime (Central Gateway) – West Line, North & South Face	14'H x 48'W	2	LED
4	1-880 West Grand South of Maritime (East Gateway) – West Line, North & South Face	14'H x 48'W	2	Backlit
5	1-880 West Grand 500' South of Maritime (East Gateway) – West Line, North & South Face	14'H x 48'W	2	LED

Notes:

Backlit Display: Static translucent sign lit from behind, traditionally has two ad faces (front and back).

LED Display: Changeable digital sign comprised of LED bulbs, can have as many as 12 rotating digital ads.

As used in this Attachment, the term "Floor Area" means _____ _____, and FAR means _____

So long as the minimum projects defined herein are achieved and the aggregate maximum allowed Floor Area is not exceeded, the Developer shall be entitled to transfer Floor

Area between the Phases upon written notice to the City. In such an event, the Parties shall memorialize the transfer in writing by means of an amendment to the applicable Ground Leases.

3. Timing for Commencement and Completion of Minimum Projects. The following times shall be included in the applicable Lease for each Phase. All times provided shall be subject to Force Majeure as defined in the applicable Lease. All times provided shall be subject to the Outside Date.

1. West Gateway: The Minimum West Gateway Project shall obtain the first building permit and commence construction within six (6) months after the effective date of the applicable Ground Lease and shall be Complete witiin two years after issuance of the first building permit.

2. East Gateway: The Minimum East Gateway Projecl shall (i) obtain the first building permit for a minimum of 150,000 square feet of Floor Area with a minimum FAR of 0.29 and commence construction within twelve (12) months of the effective date of the applicable Ground Lease, (ii) be Complete within four (4) years from the issuance of the first building permit.

3. The Minimum Central Gateway Project shall (i) obtain the first building permit for a minimum of 150,000 square feel of Floor Area with a minimum FAR of 0.29 and commence construction within twelve (12) months of the effective date of the applicable Ground Lease, (ii) be Complete within four (4) years from the issuance of the first building permit.

4. With respect to East and Central Gateways only, any amount built in one Phase in excess of minimum requirement may be credited against the other Phase.

5. With respect lo the East and Central Gateways only, an additional 150,000 square feet of Floor Area at a minimum FAR of 0.29 shall be complete on either or both the East Gateway or Central Gateway within six (6) years of the issuance of the first building permit on either the East Gateway or Central Gateway.

6. For the purposes of this Atrachment, "Complete" shall mean that a foundation/slab is in place under a building permit and active, on-going construction.

[Note for inclusion in Lease terms: completion guarantees to be provided building by building as they are constructed. With respect to failure to comply with minimum project, the City's remedy shall be the applicable liquidated damages and a termination right limited to the unimproved portion of the applicable Phdse – lease continues with respect to improved land (including completed structures and under active construction).]

EXHIBIT ____

TO

GROUND LEASE FOR

[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]

LIST OF MITIGATION MEASURES

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR

[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]

LOCAL EMPLOYMENT, APPRENTICESHIP, AND SMALL/LOCAL SMALL BUSINESS PROGRAMS

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR

[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]

ACKNOWLEDGEMENT OF CAMPAIGN CONTRIBUTIONS LIMITS FORMS

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR

[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]

FORM OF MEMORANDUM OF LEASE

[See Attached]

EXHIBIT ____

TO

GROUND LEASE FOR

[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]

PREVAILING WAGE ORDINANCE

[See Attached]

BILLBOARD FRANCHISE AND LEASE AGREEMENT

Between

THE CITY OF OAKLAND

And

_____.

Dated

_____ 2012

BILLBOARD FRANCHISE AND LEASE AGREEMENT

THIS BILLBOARD FRANCHISE AND LEASE AGREEMENT ("**Agreement**"), dated _____, 2012, by and between THE **CITY OF OAKLAND**, a municipal corporation, and successor agency to the former Redevelopment Agency of the City of Oakland, a municipal corporation, herein referred to as "City" or "Landlord", and _____, herein referred to as "Developer" or "Tenant".

W I T N E S S E T H:

WHEREAS, City owns certain sites located in a portion of the former Oakland Army Base, as more particularly described and depicted in **Exhibit A** attached hereto and incorporated herein by this reference (collectively, the "Premises");

WHEREAS, City desires to use the Premises for the purpose of installing certain advertising structures and selling outdoor advertising space thereon, and generating revenue for City; and

WHEREAS, Developer desires to lease the Premises, obtain the necessary permits to construct new outdoor advertising structures (hereinafter referred to as "Advertising Structures") on the Premises for the purpose of selling outdoor advertising space; and

WHEREAS, City and Developer wish to enter into this Agreement regarding the Premises that will allow Developer to install certain Advertising Structures on the Premises, sell outdoor advertising space on such Advertising Structures, and provide for a sharing of revenue derived from such sales, pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, for the better promotion of civic purposes and commerce, and for and in consideration of the faithful performance of Landlord and Tenant of the terms, covenants and conditions hereof and of the payments herein provided to be made by Tenant, Landlord and Tenant hereby agree as follows:

1. Lease and Description of the Premises; Condition Precedent to Landlord's Obligation to Deliver Site.

1.1. Lease and Description: Landlord hereby leases to Tenant and Tenant hereby accepts the lease of the Premises, solely for the purpose hereinafter specified, with

rights of access across the real property surrounding the Premises and more particularly described and depicted on **Exhibit B** attached hereto and incorporated herein by this reference ("Access Areas"). To the extent possible, Tenant shall utilize best efforts to access the Premises from public streets and rights-of-way and to avoid disruption to activities and operations occurring in or adjacent to the Access Area or the land adjacent to the Premises.

Tenant acknowledges and agrees that upon not less than sixty (60) days' prior written notice to Tenant, Landlord shall have the right to relocate all or any portion of the Premises to another part of land owned by Landlord and in the vicinity of the Premises, provided, that the relocation premises will be substantially the same in size, accessibility and visibility, as the Premises described in this Agreement. Furthermore, upon not less than sixty (60) days' prior written notice to Tenant, Landlord shall have the right to relocate the Access Areas, provided that the new Access Areas will be substantially the same in size and accessibility, as the Access Areas described in this Section 1.1. All actual and reasonable, out-of-pocket costs incurred by Tenant as a result of each such relocation shall be paid by Landlord in a sum not to exceed _____.

This Agreement is subject to (1) all ground leases, easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances and other matters of record, (2) all matters discoverable by physical inspection of the Premises or that would be discovered by an accurate survey of the Premises and (3) all matters known to Tenant or of which Tenant has notice, constructive or otherwise.

1.2. Telecommunications Licenses: Tenant may grant telecommunications equipment licenses (which shall include, without limitation, cellular licenses) on the Advertising Structures. Any revenue derived from such licenses shall be included in "Net Revenue" as defined in Section 5.2. Such telecommunications equipment shall not interfere with Tenant's operation of any Advertising Structure, or the operations, views, or lines of sight of any of the Displays (as hereinafter defined) or any of the faces on the Displays, or any business on adjacent land. Tenant must obtain all required approvals, including City permits, before installing any telecommunications equipment on any Advertising Structure.

1.3. Reserved Easements: Landlord reserves to itself, together with the right to grant to others in the future, nonexclusive utility easements (including easements for

have a term of twenty (20) years commencing on the Effective Date, (ii) if the Effective Date occurs on or after the LDDA Execution Date and Tenant or its affiliate that is a party to the LDDA is not in default under the LDDA on the Effective Date, then this Agreement shall have a term of sixty-six (66) years commencing on the Effective Date, and (iii) if the Effective Date occurs on or after the LDDA Execution Date and Tenant or its affiliate that is a party to the LDDA is in default under the LDDA on the Effective Date, then this Agreement shall have a term of twenty (20) years commencing on the Effective Date (the applicable term hereinafter referred to as, the "Initial Term"). Notwithstanding any contrary provision of this Agreement, if, at any time during the Term of this Agreement (i) Landlord, in good faith, determines that all or a portion of the Premises are required by City for a City purpose, or (ii) the average of seventy-five percent(75%) of the Net Revenue during any four (4) consecutive Lease Year (as defined in Section 5.1) period is no more than the average of the Minimum Annual Guarantee (as defined in Section 5.1) for such Lease Year period, then Landlord shall have the right to terminate this Agreement upon not less than one hundred eighty (180) days' prior notice to Tenant.

2.2 Options. If the Effective Date occurs prior to the LDDA Execution Date and provided there was no default by Tenant or its affiliate under the LDDA at the time of the Effective Date, then Tenant shall have two (2) consecutive options (the "Options") to extend the Initial Term for an additional ten (10) years each (the "Option Terms"). Tenant shall exercise each Option, if at all, by giving Landlord written notice thereof ("Option Notice") not less than one hundred eighty (180) days' prior to the expiration of the Initial Term or the first Option Term, as the case may be. Except as otherwise specifically set forth in this Agreement, the words, "Term" or "Term of this Agreement" shall include the Option Terms, if applicable pursuant to this Section and Tenant exercises its Options as provided herein. The Option Terms shall be upon the same terms and conditions as provided for in the Initial Term. In the event Tenant does not deliver an Option Notice within the time specified, Tenant's option to extend shall terminate, and this Agreement shall expire as of the end of the Initial Term or the first Option Term, as the case may be.

2.3 Termination of the LDDA. Notwithstanding any contrary provision of this Agreement, if, prior to the expiration or earlier termination of this Agreement: (i) the LDDA is terminated for any reason other than as a result of a default by any party thereto, then, regardless of the LDDA Execution Date, this Agreement shall have a term of no more than twenty (20) years

commencing on the Effective Date, without any right to the Options; and (ii) the LDDA is terminated solely as a result of a default by Developer or any of its affiliates, then Landlord shall have the right, in its sole discretion and upon written notice to Tenant, to terminate this Agreement or to convert this Agreement into a direct lease and franchise agreement with each of the then-existing subtenants.

3. Use Of Premises:

3.1. Required, Permitted, and Prohibited Uses: Tenant shall use the Premises solely for the purpose of erecting, upgrading, renovating, constructing in accordance with the Advertising Structure Requirements (as such term is defined in Section 4.2), repairing, maintaining, operating, removing and replacing the Advertising Structures located on the Premises, including necessary construction, advertising devices, power poles, communication devices and connections required for the operation of the Advertising Structures, with the right of access to and egress from the Advertising Structures by Tenant's employees, contractors, agents and vehicles across the Access Areas, and the right to display, post, paint, operate and maintain advertisements on the display portions of the Advertising Structures (collectively, the "Displays") and to perform other activities necessary or useful in Tenant's use of the Advertising Structures all in accordance with this Agreement. Tenant shall use its best efforts to access the Advertising Structures on the Premises to avoid disruption to City's business operations.

Tenant shall comply with and conform to all applicable laws and regulations, including but not limited to laws and regulations pertaining to outdoor advertising. Tenant also agrees to comply with City of Oakland ordinances regulating outdoor advertising provided, however, that pursuant to City of Oakland's Ordinance No. 12425 C.M.S., Tenant is not required to obtain local land use approvals. Assuming Tenant has provided a fully completed building permit application with required fees, Landlord agrees in good faith to diligently process the building permit application as quickly as reasonably possible.

Tenant shall use the Advertising Structures continuously throughout the Term of this Agreement to display advertising to the public that Tenant is legally authorized to provide during the Term of this Agreement in a manner which will maximize to the greatest extent reasonably possible Net Revenue as provided in Section 5.2. Tenant shall sell advertising space on the Displays on prevailing market rate terms with no discounts or promotions unless consistent with prevailing market conditions; provided,

however, that in no event shall the rate per advertisement space for the Displays be less than the then current applicable rate set forth on **Exhibit G-1** attached hereto and incorporated herein by this reference ("Rates"). Tenant shall not use the Premises for any other purpose without the written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion.

Tenant shall not use or permit said Premises to used in whole or in part during the Term of this Agreement for any purpose or use in violation of any present or future laws, ordinances and general rules or regulations at any time applicable thereto of any public or governmental authority; and Tenant hereby expressly agrees at all times during the Term of this Agreement, at its own cost, to maintain said Premises in a clean, wholesome and sanitary condition and in compliance with any and all present and future applicable laws, ordinances and general rules or regulations of any public or governmental authority now or at any time during the Term of this Agreement in force relating to sanitation or public health, safety or welfare.

Tenant expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object except as specifically herein authorized. In the event any of the covenants in this Section 3.1 are breached, Landlord reserves the right to seek the remedies referred to in Section 13.

Tenant agrees to indemnify, protect, defend and hold harmless Landlord and its officers, directors, shareholders, employees and agents from and against any and all penalties, liabilities, damages and charges (and including, without limitation, attorneys' fees and legal expenses incurred by Landlord in connection with such penalties, liabilities, damages or charges and proceedings whether or not any such penalties, liabilities, damages or charges are actually imposed) imposed or sought to be imposed on or involving Landlord for any violation of any laws, ordinances and regulations applicable to Tenant's use of the Premises, or caused by the acts or omissions by Tenant or by Tenant's licensees or invitees in relation to Tenant's use of the Premises.

3.2 **Advertising Standards and Requirements.** Tenant agrees to display on the Displays commercial advertisements in compliance with the advertising standards and requirements as described in **Exhibit C** attached hereto and incorporated herein by this reference, which standards and requirements may be revised from time to time by Landlord upon prior notice to Tenant ("Advertising Standards"). Tenant shall submit any advertisement

that it believes may be objectionable to Landlord before posting. Landlord may deny posting of an advertisement if Landlord reasonably determines that such advertisement does not meet the criteria described in the Advertising Standards. Landlord may require Tenant to provide reasonable proof or clarification of statements contained in any advertisement as a condition of use or continued use of advertising space for the advertisement. If Landlord determines that any advertisement fails to comply with any of the Advertising Standards, then Tenant shall remove such advertisement(s) within three (3) business days following receipt by Tenant of a written notice of non-compliance from Landlord. Failure to do so by Tenant will result in a per day penalty in the amount set forth in **Exhibit D** attached hereto and incorporated herein by this reference to Tenant for every advertisement that has not been removed and Landlord may remove the advertisement at Tenant's sole cost and without prior notice. Further, Tenant's failure to remove the non-complying advertisement(s)within such period shall constitute a material breach of this Agreement and Landlord may, at its sole discretion, seek any remedies available to Landlord referred to in Section 13 hereof. Any other use inconsistent with the purposes, terms and conditions of this Agreement, or failure of Tenant to use the Premises for the purposes set forth herein for a period of thirty (30) days, shall entitle Landlord to invoke the remedies referred to in Section 13. Tenant shall not occupy, use or appropriate any space, other than the Premises and, in accordance with the express provisions of this Agreement, except with the prior written consent of Landlord, and if, without such consent, Tenant shall occupy, use or appropriate any such space, premises or land, Landlord may at its option seek to enforce the remedies referred to in Section 13.

Tenant shall, at its sole cost and expense, operate and maintain the Advertising Structures and Displays using then current state-of-the-art technology. All Displays on the Advertising Structures shall be manufactured, installed and removed by Tenant in accordance with industry standards. Tenant shall maintain all such Displays in good condition. Tenant shall immediately remove any damaged advertisements or Displays and in no event later than within three (3) business days upon receipt of written notice of non-compliance from Landlord. If Tenant fails to remove a damaged advertisement or Display within three (3) business days upon receipt of written notice from Landlord, Tenant shall be penalized the per day penalty amount set forth in **Exhibit D** for each and every advertisement or Display that has not been timely removed and Landlord may remove such advertisement or Display at Tenant's sole cost and without prior notice.

Tenant shall permanently affix to each of the Advertising Structures the name of the City of Oakland in conspicuous lettering visible to passing vehicles.

Each of the Advertising Structures shall be illuminated during all hours of operation in a manner which is sufficient to render it visible at night to passing vehicles.

3.3. Tenant's Sales Efforts. Tenant shall make a continuous, full time and good faith best effort to sell the greatest practical amount of advertising space on the Advertising Structures. Tenant, at its cost, shall provide an experienced sales force that is capable of acquiring national, regional and local advertising in the greater San Francisco Bay Area.

Advertising materials that have exceeded the period for which they were to be posted shall be removed and replaced by public service posters or Landlord advertising within ten (10) days of dated copy. Tenant's failure to remove outdated materials within three (3) business days of receipt of written notice of non-compliance from Landlord will result in a per day penalty in the amount set forth in **Exhibit D** to Tenant for each and every advertisement that has not been removed.

Tenant is responsible for fielding and responding to public inquiries or complaints regarding the Advertising Structures, Displays and their advertising content. Tenant shall notify Landlord's Project Manager (as defined in Section 27.1) within twenty-four (24) hours when Tenant has received more than five (5) public inquiries or complaints regarding a specific advertisement on the Advertising Structures.

Tenant shall provide to Landlord's Project Manager quarterly reports describing in reasonable detail sales efforts undertaken by Tenant in the previous quarter and the advertisements being displayed or to be displayed on the Displays, including, without limitation, information regarding the advertiser, the terms of the advertisement arrangement made with such advertiser, list of unsold advertising space, and any other information reasonably requested by Landlord's Project Manager.

3.4 Landlord Use of Advertising Space and Time.

Landlord shall have rights to ten percent (10%) of advertising time annually on any Display to promote its services or products, or those of its partners, or public service messages sponsored by Landlord. Tenant shall schedule Landlord's advertising so as to maintain the ten percent (10%) allocation of

display time during each hour of each day unless otherwise requested or agreed to, in advance in writing by Landlord. Landlord's use of the foregoing advertising time shall not affect Tenant's Rent (as defined in Section 5.2) payment obligations in any way.

In addition, Landlord, CalTrans and/or any other governmental agency shall have the right to use (i) any unsold space or time on the Displays to promote its services or products, or those of its partners, or public service messages sponsored by Landlord, CalTrans or any other governmental agency; and (ii) any space or time on the Displays at any time upon notice to Tenant for emergency public service announcement or alert purposes. The foregoing uses shall not affect Tenant's Rent payment obligations in any way. Upon request, Tenant shall provide Landlord with thirty (30) days advance notice of any potential unsold advertising space on the Advertising Structures. Landlord's use of unsold space is pre-emptible by paid advertising at any time.

4. Permits; Construction of the Advertising Structures

4.1 **Notice to Proceed**. Tenant shall commence work to obtain the permits upon receipt of Landlord's "Notice to Proceed" and after Landlord's Project Manager has approved the preliminary plans as provided in Section 4.3. The Notice to Proceed shall be in the form of a letter that is dated and signed by Landlord's Project Manager. No work by Tenant shall commence under this Agreement until the Notice to Proceed is issued.

4.2 **Permits**. Tenant agrees, at its sole cost and expense, to diligently use its best efforts to obtain all necessary governmental and quasi-governmental permits, approvals, and authorizations (collectively the "Permits") including, without limitation, Permits from CalTrans, to install on the Premises at locations specified, and the number, type and design of Advertising Structures meeting the specifications set forth, in **Exhibit E** attached hereto and incorporated herein by this reference (the "Advertising Structure Requirements").

Notwithstanding any contrary provision of this Agreement, Landlord shall have the option to terminate this Agreement if, despite Tenant's diligent and best efforts and subject to Force Majeure (as defined in Section 39): (1) within a reasonable time from the Effective Date, but in any event not more than one hundred eighty (180) days from the Effective Date, Tenant is unable to obtain the Permits for installation of at least three (3) of the Advertising Structures on the Premises that meet the Advertising Structure Requirements; or (2) for whatever reason,

Tenant fails to install and operate at least three (3) of the Advertising Structures on the Premises that meet the Advertising Structure Requirements within a reasonable time, but in any event no later than one (1) year after the Effective Date.

Landlord shall reasonably cooperate with Tenant to obtain Permits from CalTrans and any other applicable governmental agency for installation of the Advertising Structures on the Premises; provided, however, that, except for reasonable staff time, Landlord shall not be obligated to expend any out-of-pocket costs in connection therewith.

Tenant agrees that once the Permits are obtained to construct the Advertising Structures in accordance with this Section 4.2, Tenant shall maintain and/or takes steps to renew those Permits during the Term of this Agreement and for such time after termination or expiration of this Agreement so as to fully transfer or assign the Permits to Landlord.

Tenant further agrees that all Permits obtained to construct the Advertising Structures shall be owned by and shall remain the property of Landlord, both during the Term of this Agreement and after expiration or termination of this Agreement. The provisions of this paragraph shall survive the expiration or any earlier termination of this Agreement.

4.3 **Preliminary Plans**. Prior to obtaining the Permits for the Advertising Structures, Tenant shall submit preliminary plans for constructing each Advertising Structure in accordance with the Advertising Structure Requirements (the "Preliminary Plans") for Landlord's review and approval to Landlord's Project Manager. Landlord's approval will not be unreasonably withheld, delayed or conditioned. Landlord shall provide written notice of approval of the Preliminary Plans within thirty (30) days after receipt, and Tenant shall not make application for or obtain the Permits until after it has received Landlord's written notice of approval or disapproval of the Preliminary Plans. If Landlord's Project Manager rejects or disapproves of the Preliminary Plans, Landlord shall provide notice of disapproval in writing in the form of a letter to Tenant with the reasons upon which the disapproval is based, and Tenant shall resubmit revised Preliminary Plans to Landlord for review and approval. Within thirty (30) days following Tenant's receipt of Landlord's notice of disapproval, Tenant shall have the right to notify Landlord of any disagreement, error or discrepancy with respect to Landlord's notice of disapproval, whereupon the parties shall promptly meet and confer in order to resolve such claim.

4.4 **Final Plans and Specifications**. The final design and height, final plans and specifications (including, without limitation, specifications on allowable illumination), and location on the Premises for the Advertising Structures shall be subject to Landlord's and Tenant's mutual, reasonable approval. After Tenant has obtained the necessary Permits pursuant to Section 4.2, Tenant shall submit for Landlord's review and approval to Landlord's Project Manager, not later than thirty (30) days prior to the anticipated date of commencing construction of the Advertising Structures, all detailed plans and specifications for constructing the Advertising Structures in compliance with the Permits and the terms of this Agreement (the "Final Plans and Specifications"). The Final Plans and Specifications shall be consistent with the Preliminary Plans approved by Landlord under Section 4.3. Landlord's approval will not be unreasonably withheld, delayed or conditioned. Landlord shall provide notice of approval of the Final Plans and Specifications in writing within thirty (30) days after receipt, and Tenant shall not commence construction on the Premises until after it has received Landlord's written notice of approval of the Final Plans and Specifications. If Landlord's Project Manager disapproves of the Final Plans and Specification, Landlord shall provide notice of disapproval of the Final Plans and Specifications in writing in the form of a letter to Tenant with the reasons upon which the rejection is based, and Landlord shall resubmit revised Final Plans and Specifications to Landlord for approval. Landlord's review of the Final Plans and Specifications shall be for its sole purpose and Landlord shall not be responsible for quality, design, Code compliance, or other matters, and Landlord shall have no liability whatsoever in connection therewith or for any omissions or errors in the Plans and Specifications. Upon Landlord's approval, the approved Final Plans and Specifications shall be the "Approved Plans and Specifications".

Tenant expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object except as specifically authorized by the Approved Plans and Specifications. In the event the aforesaid covenant is breached, Landlord reserves the right to enter upon the Premises and to remove the offending structure or object, all of which shall be at the expense of Tenant, and may at its option seek to enforce the remedies referred to in Section 13.

If the parties cannot mutually agree upon the Plans and Specifications, this Agreement shall terminate and the Premises shall revert back to Landlord with the understanding that the ownership of all Permits shall remain with Landlord.

4.5 **Construction**.

Upon receipt of the necessary Permits pursuant to Section 4.2 and Landlord's approval of the Final Plans and Specifications pursuant to Section 4.4, Tenant shall commence promptly and proceed diligently to completion of the construction of the Advertising Structures in accordance with the Approved Plans and Specifications, the terms of this Agreement, and all Permits. All such construction or installation of the Advertising Structures shall be undertaken by Tenant at no cost to Landlord.

Before the commencement of any construction work hereunder, Tenant, or its contractors, at no cost or expense to Landlord, shall furnish to Landlord security (in form of bond in cash or securities or irrevocable letters of credit in amounts and on terms and conditions satisfactory to Landlord in its sole discretion) concerning improvements and covering any obligation of Tenant under the prevailing wage requirements of this Agreement.

In the event of any termination of this Agreement, Tenant shall not seek reimbursement from Landlord for Tenant's expenses incurred in pursuing the necessary Permits, for construction costs, for Tenant's lost profits, or for damages or reimbursement of any kind, and all rights, Permits, and improvements associated with the Advertising Structures or the Premises shall belong exclusively to Landlord. Upon any termination, neither Tenant nor Landlord shall have any further right, remedy or obligation under this Agreement, except those obligations that are expressly stated herein to survive any termination of this Agreement.

Upon Tenant's completion of installation of the Advertising Structures or any other permitted improvements on the Premises, Tenant shall submit to Landlord a copy of any certificate or Permit which may be required by any federal, state, city or other governmental agency in connection with the completion or occupancy or use of said improvements by Tenant. Tenant shall furnish to Landlord a set of reproducible, final "AS BUILT" drawings of any and all such improvements not later than ninety (90) days following the completion, occupancy or initial use of such improvements by Tenant, whichever comes first.

Notwithstanding any early termination of this Agreement, Tenant shall not seek reimbursement from Landlord for Tenant's expenses incurred in pursuing the Permits, for construction costs, for Tenant's lost profits, or for damages or reimbursement of any kind.

5. **Rent**:

5.1. Minimum Annual Guarantee Payment: For each Lease Year during the Term of this Agreement, Tenant shall pay Landlord a minimum annual guarantee payment of seventy-five percent (75%) of the product of the number of double-sided Advertising Structures constructed at the Premises multiplied by Fifty Thousand Dollars ($50,000) (the "Minimum Annual Guarantee Payment"); provided, however, that the Minimum Annual Guarantee Payment payable to Landlord shall in no event be less than One Hundred Eighty Seven Thousand Five Hundred Dollars ($187,500). The Minimum Annual Guarantee Payment for each Lease Year shall be payable quarterly in equal installments. Tenant shall pay the first quarterly installment of the Minimum Annual Guarantee Payment on the earlier of the date which is the first anniversary of the Effective Date or the date on which the first Advertising Structure is installed on the Premises in accordance with the terms of this Agreement (such earlier date, the "Commencement Date"), with subsequent quarterly payments due on the fifteenth (15th) day of the first month following each quarter thereafter for the Term of this Agreement. For purposes of this Agreement, the term "Lease Year" shall mean a period of twelve (12) consecutive months commencing on the Commencement Date and each twelve (12) consecutive calendar months thereafter. [Notwithstanding any contrary provision of this Agreement, upon a default by Tenant or by its affiliate under the LDDA and until such default is cured, the Minimum Annual Guarantee Payment payable to Landlord shall be Two Hundred Fifty Thousand Dollars ($250,000), prorated, as applicable.]

5.2. Percentage Rent: During the Term of this Agreement, in addition to the quarterly installment of the Minimum Annual Guarantee Payment, Tenant shall pay quarterly (at the same time as payment of the quarterly installment of the Minimum Annual Guarantee Payment) to Landlord seventy-five percent (75%) of the Net Revenue for the previous quarter, less (ii) the quarterly installment of the Minimum Annual Guarantee Payment paid for such previous quarter (the "Percentage Rent" and together with the Minimum Annual Guarantee Payment and any other amounts payable by Tenant to Landlord at any time hereunder, the "Rent"). Concurrently with such payment of Percentage Rent, Tenant shall submit a written statement ("Percentage Rent Statement") including a calculation of such Percentage Rent stating the gross contracted sales for each Display on the Advertising Structures, advertising agency commission for each such facing, Net Revenue for such previous quarter and the calculation of the Percentage Rent payable. Tenant shall deliver such Percentage Rent and Percentage Rent Statement to Landlord no later than fifteen (15) days after

the last day of each quarter during the Term of this Agreement. Upon the expiration or termination of this Agreement, Tenant shall pay any unpaid Rent within 30 days after said expiration or termination. The foregoing obligation of Tenant shall survive the expiration or any earlier termination of this Agreement.

For purposes of this Agreement, "Net Revenue" is defined as any and all revenue derived in whole or in part from the Displays, telecommunications revenue, the Advertising Structures or the Premises by Tenant or payable or paid to Tenant from any assignee, subtenant (including, but not limited to, Foster Interstate Media, Inc. ("Foster")), licensee, or concessionaire of Tenant (collectively, "Gross Revenue") less reasonable and customary advertising agency commission up to a maximum of 16.67% per advertisement paid by Tenant for placement of advertising on the Displays. Net Revenue shall be determined on an accrual basis whether or not actually received. Net Revenue shall include all cash and the fair market value of any other consideration from such business. For purposes of calculating Net Revenue, the amount payable or paid by each subtenant of Tenant with respect to any portion of the Premises shall be no less than the Minimum Sublease Rent (as defined in Section 19). Except as expressly provided herein, no cost or expense shall be deducted from Gross Revenue in computing Net Revenue.

No deduction shall be made from Gross Revenue by reason of a delinquent or missed payment by a debtor, or any credit loss sustained or discount or deduction that may be applicable by reason of the acceptance or use of credit cards, other credit arrangements or the like. If a debtor fails to make a payment due under a valid contract, the missed or delinquent payment (less any applicable advertising commission as described above) shall be included in the Net Revenue calculation. If a charge for any non-advertising sale is not made or collected, the fair market value thereof nevertheless shall be included in the term Net Revenue.

Tenant shall not discount any Rate or bonus the Displays or the Advertising Structures in exchange for any other business with Tenant's clients unless said discount rate is approved by Landlord in advance in writing. Any trade value received by Tenant in exchange for advertising on the Displays shall be valued as cash at the greater of the value of trade received or the Rate applicable to the advertising space for such advertising when calculating Net Revenue. If no pre-established Rate exists, then the rate for such advertising space shall be calculated as the average of the three (3) highest months'

billings for the Advertising Structures in the past twenty-four (24) months.

Rent shall be prorated on the basis of a three hundred sixty-five (365) day year to account for any fractional portion of a year included in the Term of this Agreement at its commencement or expiration (or earlier termination).

All payments made by Tenant to Landlord under this Agreement shall be made out to _____. Separate checks shall be issued to Landlord by Tenant no later than the fifteenth day following each quarter for the Minimum Annual Guarantee Payment and for the Percentage Rent Payment. The checks and the revenue statements required by Section 5.3 below shall be delivered or mailed to:

_____
_____
_____
_____

5.3 Reconciliation. At the close of each Lease Year and within thirty (30) days thereafter, Tenant shall submit a written statement (each, a "Reconciliation Statement") of Gross Revenues and Net Revenues for such Lease Year, and the calculation of Percentage Rent, if any. Tenant's statement shall include (a) monthly Gross Revenues (by category) and Net Revenue, (b) line items providing detailed explanations of the difference between monthly Gross Revenues and Net Revenue, and (c) Tenant's schedule of each advertising campaign. Tenant shall provide the Reconciliation Statement for each Lease Year to Landlord within thirty (30) days of the end of such Lease Year to accompany the last quarterly Percentage Rent payment for that Lease Year. The Reconciliation Statement shall identify - by month and by each applicable face/display - the advertiser, gross sales, Net Revenue, trade/barter, unsold and/or bonus space and explanation therefor, and an accounting of Landlord's use of display time as provided in Section 3.4. Tenant shall comply with any written request by Landlord for copies of advertiser contracts and commission agreements within five (5) business days after receipt of Landlord's request. An annual adjustment shall be made with respect to Percentage Rent paid for such Lease Year as follows: If Tenant shall have paid to Landlord an amount greater than Tenant is required to pay as Percentage Rent for such year, Tenant shall be entitled to a credit against Tenant's next payments of Rent for the amount of such overpayment; provided that, should this Agreement expire or terminate, then Landlord shall reimburse

Tenant for such amount within thirty (30) days of receipt of Tenant's written request, or if Tenant shall have paid an amount less than the Percentage Rent required to be paid, then Tenant shall immediately pay such difference to Landlord. In no event shall Percentage Rent be less than zero. Notwithstanding the provision for the payment of Percentage Rent, Landlord shall not, in any event, be deemed to be a partner or associate of Tenant in the conduct of its business. The relationship of the parties hereto shall, at all times, be solely that of landlord and tenant.

5.4 Records; Audit. Tenant shall maintain or cause to be maintained adequate accounting systems and controls to insure that all Gross Revenue is recorded on an accrual basis. Within 15 days after the close of each month during each Lease Year, Tenant shall render to Landlord, in a form reasonably satisfactory to Landlord, an accounting for the preceding month of all Displays, telecommunications business transactions or any other revenue generating transactions with respect to any part of the Premises, setting forth in particular for said month all Gross Revenue and Net Revenue, as heretofore defined in this Section. Tenant shall keep or cause to be kept true and accurate books and records showing all of such business transactions, including without limitation, business transactions of subtenants, sublicensees or concessionaires, and Landlord shall have the right, through its representatives and at all reasonable times, upon at least 7 days' prior written notice to Tenant, to inspect such books and records, including City business tax records and State of California sales tax return records, and Tenant hereby agrees to make or cause to be made such books and records available to Landlord or its authorized representatives upon request. Said books and records shall be retained for at least seven (7) years after occurrence of the transactions to which they relate. If such books and records are not kept and maintained within a radius of 50 miles from the main office of Landlord in Oakland, California, upon request of Landlord, Tenant shall make such books and records available to Landlord for inspection and audit at a location within said 50-mile radius or Tenant shall pay to Landlord the reasonable and actual costs incurred by Landlord in inspecting and auditing such books and records, including but not limited to travel, lodging and subsistence costs. If Landlord's audit reveals that for any one Lease Year period Net Revenue reported in the Percentage Rent Statement was 3% (or more) less than the Net Revenues required to be reported pursuant to this Agreement, Tenant shall pay to Landlord all of Landlord's reasonable and actual costs (including without limitation the prorated salary of Landlord's auditors, fringe benefits and overhead allocation, or the costs of Landlord's outside auditors) incurred by Landlord in auditing such books and records. If,

however, the parties cannot agree on the results of Landlord's audit, Landlord may (but is not required to) have an audit performed by independent certified public accountants (CPA). Landlord shall present to Tenant the names of 3 CPA firms, none of whom are rendering service to Landlord at the time of such submission or who have rendered service to Landlord within the preceding Lease Year. Within 15 days thereafter Tenant shall, by written notice to Landlord, select one of said firms who shall be the firm to perform the audit. If Tenant fails to select a firm within said period, Landlord shall select the firm. Tenant and Landlord agree that the CPA's decision shall be final and conclusive. Tenant shall pay to Landlord Landlord's costs of retaining the CPA firm, as well as Landlord's said reasonable and actual costs incurred by Landlord in inspecting such books and records, if the CPA determines that the Net Revenue reported in any quarter by Tenant in any one Lease Year is 3% (or more) less than the Net Revenue which Tenant was required to report.

5.5 Late Charges. Tenant hereby acknowledges that late payment by Tenant of Rents or Tenant's failure to provide Percentage Rent Statement when due will cause Landlord to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any Rents shall not be received by Landlord within ten (10) days after such amount shall be due (regardless of Tenant's timely submission of any applicable Percentage Rent Statement), then, without any requirement for notice to Tenant, Tenant shall immediately pay to Landlord a one-time late charge equal to four percent (4%) of each such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default, breach, or event of default with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies under this Agreement. In addition, any monetary payment to Landlord other than late charges, not received when due by Landlord, shall bear interest from the date when due at the rate of ten percent (10%) per annum. Interest is payable in addition to any late charge imposed. Furthermore, Tenant shall be subject to a per occurrence late fee in the amount set forth in **Exhibit D**, if Tenant fails to deliver a Percentage Rent Statement to Landlord when due.

6. Taxes and Assessments: This Agreement may create a possessory interest subject to property taxation, and Tenant

hereunder in whom such possessory interest is vested may be subject to payment of property taxes levied on such interest.

Tenant agrees to pay all lawful taxes, assessments or charges which during the term hereof may become a lien or be levied by the state, county, city or any other tax or assessment levying body upon any interest in this Agreement or any possessory right which Tenant may have in or to said land and/or the improvements thereon by reason of its use or occupation thereof, or otherwise, as well as all taxes, assessments and charges on any activity conducted by Tenant on the Premises, and on goods, merchandise, fixtures, appliances, equipment and property owned by it in and about said Premises.

Tenant may at no cost to Landlord reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Agreement, and institute such proceedings as Tenant considers necessary; provided, however, that Tenant agrees that Tenant at all times shall protect Landlord and the Premises from foreclosure of any lien, and that Landlord shall not be required to join in any proceeding or contest brought by Tenant, unless Landlord's participation is ordered as a necessary party to the proceeding.

7. **Condition of Premises**: Tenant represents and warrants that it has made a sufficient investigation of the conditions of the Premises existing as of the Effective Date and Tenant accepts all risks associated therewith. The taking of possession of the Premises by Tenant shall, in itself, constitute acknowledgment by Tenant that the Premises are in good condition and satisfactory for Tenant's use, and that Landlord has not agreed to undertake any modifications, alterations or improvements to the Premises. Landlord reserves the right, but shall not be obligated to Tenant, further to develop or improve areas adjacent to the Premises as it sees fit, regardless of the desires or views of Tenant and without interference or hindrance from Tenant.

Tenant specifically acknowledges that except as otherwise may be expressly provided herein, Landlord has made no representations concerning the condition of the Premises or any improvements and/or the fitness of the Premises for Tenant's intended use, and/or the compliance of the Premises and/or any improvements with any federal, state, or local building code or ordinance, and Tenant expressly waives any duty which Landlord might have to make any such disclosures. Tenant further agrees that, in the event Tenant sublicenses all or any portion of the Premises or assigns its interest in this Agreement, Tenant will indemnify, protect, defend and hold harmless Landlord for, from

and against any matters which arise as a result of Tenant's failure to disclose any relevant information about the Premises to any subtenant or assignee.

Tenant acknowledges that to the best of Tenant's knowledge, the Premises will safely support the type of improvements to be constructed and maintained thereon by Tenant under the terms and conditions of this Agreement, and that Tenant accepts the Premises in an "as is" condition.

Tenant further agrees that upon completion of construction of the Advertising Structures, Tenant shall promptly return as near as possible the surface of the ground to the condition in which it was prior to the commencement of said work and Tenant shall not commit or suffer to be committed any waste upon the Premises or any nuisance thereon.

Tenant acknowledges and agrees that Tenant does not have any right with respect to outdoor advertising on any other property of Landlord. Landlord shall have the right to permit others to engage in outdoor advertising at any location other than the Premises, provided that Landlord shall not have the right to erect structures that interfere with the operation of, or obstruct the visibility of the Displays.

8. **Repairs, Alterations and Additions**: Tenant shall at its sole cost, keep and maintain said Premises the Advertising Structures, all advertising thereon and appurtenances and every part thereof in good and sanitary order, condition and repair and in accordance with the highest industry standards for similar display structures in the San Francisco Bay Area.

Landlord shall not be required to repair or maintain any portion of the Premises or the Advertising Structures. If Landlord in its sole discretion undertakes repairs that are Tenant's responsibility under this Agreement, Landlord shall give Tenant at least thirty (30) days prior written notice of its intention to undertake such repairs and maintenance. If Tenant does not make such repairs within that time period, or satisfies Landlord that such repairs are not necessary, Tenant shall promptly reimburse Landlord for the reasonable cost of such repairs or maintenance performed by or on behalf of Landlord. Landlord shall not be liable for any damage or loss to any property on the Premises, or any loss of business by Tenant, which arises out of any need for repair or maintenance of the Premises. The making of such repairs by Landlord shall in no event be construed as a waiver of the duty of Tenant to make repairs as herein provided.

Following installation of the Advertising Structures in accordance with this Agreement, Tenant may make structural alterations, additions and betterments to the Premises only with the prior written approval of Landlord and upon first securing at its own cost all necessary approvals and permits, including, without limitation, necessary building, electrical or plumbing permits from City of Oakland, or the State of California. Routine maintenance, cleaning and installation and changing of advertising on Landlord Displays (as requested by Landlord) or the Displays shall not require Landlord approval. Tenant waives the right to make repairs at the expense of Landlord and waives the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California relating thereto; and further agrees that if and when any repairs, alterations, additions, or betterments shall be made by it as in this Section, it promptly shall pay for all labor done or materials furnished on its behalf and shall keep said Premises and Tenant's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever.

Tenant warrants that the proposed improvements if constructed or installed consistently with Landlord-approved plans and specifications will comply with all laws and regulations and ordinances. In addition, construction or installation of improvements shall not commence unless and until Tenant, or its licensed contractor, shall have secured, at no cost to Landlord, all other necessary permits, including, but not limited to, building permits and any necessary approvals and permits from the State of California. Tenant agrees to comply with all terms and conditions of permits whether secured by Tenant or Landlord.

9. Title to Improvements: During the Term, Tenant shall have title to the improvements constructed on the Premises by Tenant, including, the Advertising Structures. Landlord is and shall at all times be the owner of and hold title to any and all local governmental approvals and/or permits obtained by Tenant under the terms of this Agreement, and upon the expiration or earlier termination of this Agreement, Landlord shall be the owner of and hold title to all of the Advertising Structures; provided, however, that Landlord shall have the right to require Tenant to remove all improvements, including the above-ground portions of the Advertising Structures and support structures, and all equipment from the Premises upon the expiration or earlier termination of this Agreement at Tenant's sole cost and expense.

10. Liability for Damages: This Agreement is made upon the express condition that Landlord, members of the Oakland City Council, officers, directors, agents, employees, and volunteers shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury or injuries to any person or persons or death or deaths of any person or persons or damages to property of any kind whatsoever, whether the person or property of Tenant, its agents or employees, its, subtenants, sublicensees, sublessees or concessionaires or third persons, from any cause or causes whatsoever while said person or property is in or upon said Premises or any part thereof during the Term of this Agreement or occasioned by any occupancy or use of said Premises, or any activity carried on by Tenant, its agents or employees in connection therewith, or from the alleged violation of any law or regulation, and Tenant hereby covenants and agrees to indemnify, protect, defend and to save harmless Landlord, members of the Oakland City Council, officers, directors, officers, agents, employees, and volunteers, from all liabilities, charges, expenses (including counsel fees) and costs on account of or by reason of any such injury or injuries, death or deaths, liabilities, claims, suits or losses, however occurring or damages growing out of same, except to the extent that the same is caused solely by the negligence, or other wrongful conduct of Landlord, members of the Oakland City Council, directors, officers, agents, employees or volunteers. The foregoing provisions of this Section are not intended to and shall not be construed to limit the protections otherwise provided to Landlord as an additional insured under any liability insurance required to be maintained by Tenant under this Agreement. Defense counsel retained by Tenant under this Agreement shall be subject to the reasonable approval of the Oakland City Attorney. The foregoing obligations of Tenant shall survive the expiration or any earlier termination of this Agreement.

11. Liability Insurance: **[DRAFTING NOTE: SUBJECT TO REVIEW AND APPROVAL BY CITY'S RISK MANAGER.]** Tenant shall procure and, at all times during the Term of this Agreement, maintain the insurance described in **Exhibit F**.

All such policies shall be endorsed with a severability of interests or cross liability endorsement, reading generally as follows:

> **Cross Liability** - In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to

each assured. Nothing contained herein shall operate to increase Underwriters' limit of liability.

Tenant's insurance coverage shall be primary insurance as respects Landlord, members of the City Council, directors, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by Landlord, members of the City Council, directors, officers, agents, employees, or volunteers shall be excess of Tenant's insurance and shall not contribute with it.

An originally executed certificate(s) or endorsement(s) evidencing such insurance coverage shall be filed with Landlord prior to the commencement of the Term of this Agreement and said certificate shall provide that such insurance coverage will not be canceled or materially changed without at least thirty (30) days' prior written notice to Landlord. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with Landlord. If such coverage is canceled or reduced, Tenant shall, within fifteen (15) days after receipt of written notice from Landlord of such cancellation or reduction of coverage, but in no event later than the date of such cancellation or reduction, file with Landlord a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Landlord may without further notice and at its option: (1) seek the remedies referred to in Section 13 and exercise such other rights as it may have in the event of Tenant's default, and/or (2) procure such insurance coverage at Tenant's expense and Tenant shall promptly reimburse Landlord for such expense.

12. Hazardous Substances: No goods, merchandise or material shall be kept, stored or sold in said Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises other than as is provided for in Section 4 of this Agreement which will increase the rate of or suspend the insurance upon the structure owned by Tenant or upon other structures of Landlord, and no machinery or apparatus shall be used or operated on said Premises which will in any way injure said Premises or adjacent structures; provided, however, that nothing in this Section 12 shall preclude Tenant from bringing, keeping or using on or about said Premises such materials, supplies, equipment and machinery as are necessary or customary in carrying out the uses mentioned in Section 3, so long as such materials, supplies, equipment and machinery are stored,

used and disposed of in accordance with all applicable requirements of law. In the event such uses include the keeping or storage of inflammable or explosive substances, such substances shall be stored in closed containers, and shall be stored, used or dispensed in the manner prescribed by the regulations of City, the Fire Prevention Bureau of City of Oakland, or other public body having authority in the matter, and in any event, in the safest possible manner.

13. Default: It is mutually covenanted, and this Agreement is made upon the condition, that:

(i) if the Rent or other sums which Tenant herein agrees to pay, or any part thereof, shall be unpaid on the date on which the same shall become due;

(ii) if default be made in all or any of the other terms, agreements, conditions or covenants herein contained on the part of Tenant, or should Tenant abandon and cease to use the Premises for a period of thirty (30) days at any one time, except when prevented by fire, earthquake, war, strikes, or other calamity beyond its control;

(iii) in the event of the filing of a petition proposing the adjudication of Tenant or guarantor of Tenant's obligation hereunder as a bankrupt or insolvent or the reorganization of Tenant or any such guarantor or an arrangement by Tenant or any such guarantor with its creditors, whether pursuant to the Act or any similar federal or state proceeding and such action is not dismissed within sixty (60) days after the date of its filing;

(iv) in the event of the sale of Tenant's interest in the Premises under attachment, execution or similar legal process; or

(v) in the event of an assignment, subletting, or transfer of any interest under this Agreement, except as authorized by or permitted under this Agreement,

then and in any such event, at its option Landlord may declare this Agreement terminated, and Landlord may exercise all rights of entry or reentry upon said Premises. No termination shall be declared by Landlord unless and until not less than fifteen (15) days' written notice of failure of Tenant to perform any such term, agreement, condition or covenant shall have been given by Landlord to Tenant, and no forfeiture of said Agreement for any such default by Tenant shall be declared by Landlord if such default shall have been cured or obviated prior to the expiration of such notice, even though performance of such term, agreement,

condition or covenant shall not have been effected or completed strictly within the period during which same should have been effected or completed, so long as Tenant has begun to cure such default and prosecuted the cure diligently and continuously thereafter but in any event no later than thirty (30) days after commencement of the cure; provided, that: (1) only three (3) days' written notice need be given of forfeitures declared for breaches of Section 3 or 5.

Without limiting any rights which Landlord may exercise for Tenant's default under this Section 13, it shall be a material breach of this Agreement for which Landlord may exercise its rights under this Section 13 if Tenant is in default under the Ground Lease (as defined below).

14. Right of Entry: If Landlord obtains a final judgment declaring the termination of this Agreement, or in case of abandonment or vacating of the Premises by Tenant, whether or not Landlord elects to invoke a forfeiture of this Agreement, Tenant hereby authorizes Landlord to enter upon said Premises in such event, and remove any and all persons and/or property whatsoever situated upon said Premises, and place all or any portion of said property, except such property as may belong or be forfeited to Landlord, in storage for account of and at expense of Tenant; and, in such case Landlord may relet the Premises upon such terms as to it may seem fit, and if a sufficient sum shall not thus be realized after paying expenses of such reletting and collecting to satisfy the rent and other sums herein reserved to be paid, Tenant agrees to satisfy and pay any deficiency, and to pay expenses of such reletting and collecting. Tenant hereby exempts and agrees to save harmless Landlord from any cost, loss or damage arising out of or caused by any such entry or reentry upon said Premises and/or the removal of persons and/or property, and storage of such property by Landlord or its agents.

15. Surrender and Holding Over: Tenant covenants that at the expiration or any earlier termination of the Term of this Agreement for any reason, or any holding over that Landlord has not otherwise objected to, Tenant will quit and surrender said Premises in good state and condition, reasonable wear and tear and damage by the elements excepted. Unless otherwise instructed by Landlord in writing, all improvements of every kind and nature constructed, erected, or placed by Tenant on the Premises shall be the property of Landlord, and all local governmental approvals and/or permits obtained by Tenant under this Agreement shall be and remain owned by Landlord. Tenant further covenants and agrees that, at such termination or expiration, Tenant at its sole cost and expense shall remove from said Premises any improvements

required to be removed by Landlord in writing to Tenant not later than 90 days prior to the expiration or termination date, as applicable. If Tenant does not remove such improvements at such termination or expiration, then Landlord shall remove such structures in which event, Tenant shall immediately reimburse Landlord for the cost of such removal.

There shall be no relocation benefits granted to Tenant on account of any termination, Tenant hereby waiving any right to relocation benefits under any law or regulation, unless such termination results from the exercise of eminent domain and Tenant agrees at its expense and at Landlord's request promptly to sign, acknowledge and record a written document memorializing the termination of this Agreement, and a quitclaim deed or other necessary document to evidence the revocation and termination of any utility license or easement granted under Section 1.2.

Upon the expiration or earlier termination of this Agreement, all rights associated with the Premises shall revert back to Landlord and neither Tenant nor Landlord shall have any further right, remedy or obligation under this Agreement with respect to such location. Further, Landlord shall have the sole and exclusive right to enter into a new agreement with Tenant or with another company that is in the business of outdoor advertising with respect to the Premises, Advertising Structures, Displays or any portion thereof, and Tenant agrees that it shall have no claim, right or option for any of the Premises.

If Landlord has not otherwise objected to Tenant's holding over the use of said Premises after the Term of this Agreement has terminated in any manner, such holding over shall be deemed merely a holding from month-to-month on the same terms and conditions as herein provided except as follows:

a. Holdover Monthly Rental. During any holdover period, Tenant shall pay to Landlord monthly rental equal to [two hundred percent (200%) of the Rent for the month immediately preceding the holdover period.

b. Holdover Terms Other Than Monthly Rental

In addition to subsection a. above, Landlord, upon 30 days' written notice to Tenant, may change any of the other terms and conditions of the holding over.

16. Damage or Destruction:

If any Advertising Structure, or other improvement to or on the Premises is damaged or destroyed by casualty or otherwise, whether partially or completely, Tenant shall repair, reconstruct, and restore the same, except in all circumstances where Landlord or one of its other sub-contractors is directly responsible, and this Agreement shall remain in full force and effect. Tenant will with reasonable diligence restore the Premises as nearly as practicable to its former condition, and Tenant's obligation to pay Rent shall be abated during the time and in proportion to the extent that such Premises are not available for Tenant's use. In the event that permits cannot be secured where permits are required to perform such repairs, reconstruction or restoration, Rent shall be abated during the time until the Premises can be lawfully replaced and in proportion to the extent that such Premises are not available for Tenant's use.

If more than fifty percent (50%) of the Displays or Advertising Structures on the Premises shall be destroyed by fire or other casualty, this Agreement shall terminate at the option of Landlord, upon giving at least sixty (60) days' written notice to Tenant after such fire or casualty.

The provisions of this Section 16 constitute an express agreement between Landlord and Tenant with respect to all damage and destruction, and each waives the provisions of any statute or regulation now or hereafter in effect concerning damage or destruction in the absence of an express agreement between the parties, including, without limitation Sections 1932(2) and 1933(4) of the California Civil Code, and agree they shall have no application under this Agreement.

17. Duty to Guard Goods: Tenant shall assume the responsibility for the guarding and safekeeping of, and the risk of loss to, all property and equipment stored or located upon or used in connection with the Premises, including, but not limited to the Advertising Structures.

18. Waivers: No waiver by either party at any time of any of the terms, conditions, covenants or Agreements of this Agreement or of any default or forfeiture shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or Agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of Landlord to reenter the Premises or to exercise any right, power, privilege or option arising from any default, nor subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege or option, or be construed to be a waiver of any such default or relinquishment thereof, or

acquiescence therein, and no notice by Landlord shall be required to restore or revive time as of the essence hereof after waiver by Landlord of default in one or more instances. No option, right, power, remedy or privilege of Landlord shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to Landlord by this Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that exercise of one right, power, option or remedy by Landlord shall not impair its rights to any other right, power, option or remedy.

19. Assignment and Sublease: Tenant shall not at any time, in any manner, either directly or indirectly, assign, hypothecate, encumber or transfer this Agreement or any interest, right or privilege appurtenant thereto, or sublet, or license or suffer any other person to occupy, use or manage (except management by Tenant's employees or servants), the whole or any part of said Premises or the Advertising Structures without Landlord's express written consent, which consent Landlord shall be entitled to withhold or condition in Landlord's sole and absolute discretion.

Tenant further covenants and agrees that neither this Agreement nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment or execution against Tenant, or in voluntary or involuntary proceedings taken under the authority of any bankruptcy act or provision thereof, or in any proceedings in insolvency or receivership taken by or against Tenant or by any process of law, and that possession of the whole or any part of the Premises shall not be divested from Tenant in such proceedings or by any process of law, without the prior written consent of Landlord; and any such divesting of possession by Tenant or any assignment, sale or transfer of this Agreement, or any interest therein, either voluntarily or by judgment, execution, bankruptcy, arrangement, receivership, insolvency proceedings, or by process or operation of law, shall at the option of Landlord be null and void and of no force or effect and shall cause this Agreement to terminate immediately at the option of Landlord.

An assignment within the meaning of this Section 19 shall include, but is not limited to, the following: the incorporation of an individual tenant and the transfer of Tenant's rights hereunder to the corporation which is not wholly owned by Tenant; in the event that Tenant is a partnership, the incorporation of Tenant and transfer of Tenant's rights hereunder or the withdrawal or addition of any partner to Tenant's

partnership; in the event that Tenant consists of co-Tenants, the incorporation of Tenant and transfer of its rights hereunder to the corporation or the voluntary or involuntary transfer by any one or more co-Tenants of his or their rights hereunder to his, or their co-Tenant or to a third person; and, in the event that Tenant is an unincorporated association, the incorporation of Tenant and the transfer of its rights hereunder to the corporation, or the change in fifty percent (50%) or more of the membership of the association.

The sale, assignment or other transfer of a majority interest in Tenant or its parent company or of at least a majority of Tenant's or its parent's assets to an entity with assets (independent of such sale, assignment or other transfer) which equal or exceed the assets of Tenant or its parent company (as the case may be) shall not require Landlord's consent, but shall nevertheless be considered an assignment, sublease or transfer within this Section or Agreement. Tenant agrees to notify Landlord of an assignment pursuant to the preceding sentence.

Landlord's consent to any assignment, transfer, subletting or occupation or use shall not be construed or deemed to be a waiver of the restrictions hereinabove contained or to be a consent to any subsequent assignment, transfer, subletting, or occupation or use by another person. Tenant agrees promptly to provide to Landlord all documentation and information that Landlord reasonably may request in order for Landlord to verify Tenant's compliance with this Section 19, provided that Tenant shall not be required to provide confidential proprietary information unless it would otherwise be impractical for Landlord to ascertain Tenant's compliance with this Section 19.

Tenant agrees that its personal business skills and philosophy were an important inducement to Landlord for entering into this Agreement and that Landlord may reasonably object to the transfer of the Premises to another whose proposed use, while permitted by the use clause of this Agreement, would involve a different quality, manner or type of business skills than that of Tenant, or which would result in the imposition upon Landlord of any new or additional requirements under the provisions of any law or regulation.

It is understood and agreed that placement of advertisement on the Advertising Structures shall be considered an assignment, sublease or transfer within this Section and Agreement.

No assignment or sublease shall release Tenant of any liability or obligation under this Agreement. No permitted assignment or sublease shall be valid or effective until the new tenant and Tenant execute and deliver to Landlord an agreement, in form and substance reasonably satisfactory to Landlord, pursuant to which, such assignee or subtenant agrees to and assumes all (or in the case of a sublease, to the extent it applies to the subleased portion of the Premises) of the obligations of Tenant under this Lease.

Notwithstanding any contrary provision of this Agreement, Tenant may with prior written notice to Landlord, but without Landlord' prior consent, sublet all or a portion of the Premises to Foster on terms and conditions set forth in **Exhibit G-2** attached hereto and incorporated herein by this reference. Tenant shall use commercially reasonable efforts to enter into a sublease/franchise agreement with Foster or any proposed subtenant approved by Landlord in accordance with this Section on terms and conditions consistent with the terms and conditions set froth in **Exhibit G-2** by not later than ninety (90) days after the Effective Date.

With respect to any sublease entered into by Tenant, Tenant acknowledges and agrees that: (a) Tenant shall in no event agree to any financial term that is less favorable to Tenant than those terms set forth in **Exhibit G-2**; (b) without limiting the generality of the foregoing, Tenant shall in no event agree to receive from any subtenant, including, but not limited to, Foster, revenue sharing rent amount that is less than 40% of all revenue derived in whole or in part from the subleased Displays, Advertising Structures or the Premises less reasonable and customary advertising agency commission up to a maximum of 16.67% per Display paid by such subtenant for placement of advertising on the subleased Displays ("Minimum Sublease Rent"); and (c) for purposes of calculating the Net Revenue under this Agreement, to the extent the amount of revenue sharing rent received or payable to Tenant by any subtenant of Tenant is less than the Minimum Sublease Rent, then Tenant shall be responsible for the difference between the Minimum Sublease Rent and the actual amount of rent received by or payable to Tenant by such subtenant.

20. **Right to Inspect Premises**: Landlord reserves the right to enter upon the Premises at any reasonable time to inspect the Premises to ascertain Tenant's compliance with the provisions of this Agreement.

21. Equal Opportunity; Nondiscrimination: [**DRAFTING NOTE: THIS PROVISION IS NOT SUBJECT TO MODIFICATIONS.**]In furtherance of Landlord's long-standing policy to ensure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Landlord-related activities, Tenant for itself, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree with respect to Tenant's activities upon the Premises and as a covenant running with the land:

a. That Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status. Tenant shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Landlord's Equal Opportunity Employment Officer setting forth the provisions of this Section;

b. That Tenant shall, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status;

c. That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person, on the grounds of race, color, national origin, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

d. That Tenant's noncompliance with the provision of this clause shall constitute a material breach of this Agreement. In the event of a breach of any of the above-stated nondiscrimination and affirmative action covenants, Landlord shall have the right to consider but not be limited to the following:

(i) Landlord may terminate this Agreement pursuant to Section 13, and re-enter and possess said land and the facilities thereon, and hold the same as if this Agreement had never been made, without liability therefor; or

(ii) Landlord may seek judicial enforcement or said covenants.

22. Other Programs: [DRAFTING NOTE: THIS PROVISION MAY BE SUBJECT TO MODIFICATIONS BASED ON THE LDDA.] It is further expressly understood and agreed with respect to Tenant's activities upon the Premises that the following provisions apply:

(a) City Local Employment Requirements. City has established a goal that 50% of the work hours at the construction site be furnished by Oakland residents on a craft-by-craft basis, and that 50% of all new construction hires be Oakland residents. Tenant shall abide by the provisions of City's Local Employment Program, and shall achieve the goals therein for the construction of Advertising Structures or document a good faith effort to meet such goals. Tenant shall take reasonable measures to assure that its contractors and subcontractors abide by said program.

(b) City Small Local Business Construction Requirements. City has established a goal that 50% of construction contract amounts shall go to local business enterprises, that 35% of construction contract amounts shall go to small local business enterprises, and that 50% of total trucking dollars on a project be performed by local truckers. Tenant shall abide by the provisions of City's Local/Small Local Business Enterprise Construction Program. Tenant shall take reasonable measures to assure that its contractors and subcontractors abide by said program.

(c) Reporting. Tenant shall submit information on forms supplied by City concerning the workforce and ownership composition of Tenant, its contractors, subcontractors, suppliers, and professional service providers, as reasonably requested by City.

(d) Prevailing wages; Living Wages. All workers performing construction work in connection with the Premises employed by Tenant and by any of its contractors and subcontractors shall be compensated in an amount no 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. Tenant shall comply with, and shall ensure that its contractors and subcontractors comply with,

all reporting and recordkeeping requirements of the applicable prevailing wage statutes and regulations. Tenant is aware of and shall comply with all provisions of City's prevailing wage requirements contained in Resolution No. 87-4 C.M.S., passed on January 20, 1987.

Tenant shall comply with City's Living Wage requirements, if applicable, for its covered employees, and shall include language in any construction contract or subcontract for work requiring that the contractor or subcontractor comply with City's Living Wage requirements, if applicable, for its covered employees.

(e) Equal Benefits. Tenant is aware of and shall comply with, and shall include language in any construction contract for work requiring that the contractor comply with, all provisions of City's Equal Benefits requirements contained in City Ordinance No. 12394.

(f) OAWDPS. Tenant is aware of and shall comply with all provisions of City's Oakland Apprenticeship Workforce Development Partnership System.

(g) Environmentally Sustainable Project. The parties acknowledge that the plans and specifications for the Advertising Structures will incorporate design elements intended for environmental sustainability taking into account reasonable economic feasibility.

(h) Compliance with City's Campaign Reform Act. This Agreement is subject to City of Oakland's Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code, and its implementing regulations. City of Oakland Campaign Reform Act prohibits contractors that are doing business with or seeking to do business with City of Oakland from making campaign contributions to Oakland candidates between the commencement of negotiations and either 180 days after completions of, or termination of, contract negotiations. Tenant must sign and date an Acknowledgment of Campaign Contribution Limits Form as required by the Oakland Municipal Code.

23. Utilities: Tenant shall be responsible for providing and paying for all utilities to the Premises required for Tenant's use. In the event that Landlord provides utilities or other services to Tenant, Tenant shall pay for all water, gas, heat, electricity, fuel, power, telephone service, and other utilities, which may be furnished to or used by Tenant in or about the Premises during the Term of this Agreement.

In cases where arrangements have been made between Tenant and Landlord for Landlord to furnish and deliver gas, electricity or water, Landlord will exercise reasonable diligence and care to furnish and deliver the same; provided, however, that Landlord does not guarantee the continuity or sufficiency of such supply. Landlord will not be liable for interruptions or shortages or insufficiency of supply or any loss or damage of any kind or character occasioned thereby if the same is caused by accident, act of God, fire, strikes, riots, war, terrorism, inability to secure a sufficient supply from the utility company furnishing Landlord, or any other cause except such as arises from Landlord's failure to exercise reasonable diligence. It is understood that Tenant shall take such steps as Tenant may consider necessary to protect Tenant's equipment from any damage that may be caused to such equipment in the event of failure or interruption of any such utility services. Whenever Landlord shall find it necessary for the purpose of making repairs or improvements to any utility supply system it shall maintain, it shall have the right to suspend temporarily the delivery of gas, electricity or water, or any thereof, but in all such cases reasonable notice of such suspension will be given to Tenant, and the making of such repairs or improvements will be prosecuted as rapidly as practicable and, if possible, so as to cause the least amount of inconvenience to Tenant.

24. No Relocation Assistance or Benefits: It is understood and agreed that nothing contained in this Agreement shall give Tenant any right to occupy the Premises at any time after expiration of the Term of this Agreement or its earlier termination, and that this Agreement shall not create any right in Tenant for relocation assistance or payment from Landlord upon the expiration or termination of this Agreement or upon the termination of any holdover tenancy pursuant to Section 15. Tenant acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) or pursuant to any other local, state or federal laws or regulations with respect to any relocation of its business or activities upon the expiration of the Term of this Agreement or upon its earlier termination or upon the termination of any holdover tenancy pursuant to Section 15, and Tenant hereby waives and releases to Landlord all rights, if any, to which Tenant may be entitled under said provisions or other similar laws or regulations.

25. Attorneys' Fees and Costs: If Tenant or Landlord commences any action or proceeding against any other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, including all other reasonable costs and expenses associated with the prevailing party's enforcement of the provisions of this Agreement.

26. Successors: Each of the provisions, agreements, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept shall be binding upon the successors and assigns of the respective parties hereto, and the rights hereunder, and all rights, privileges and benefits arising under this Agreement and in favor of either party, shall be available in favor of the successors and assigns thereof, respectively; provided no assignment by or through Tenant in violation of the provisions of this Agreement shall vest any rights in any such assignee or successor.

27. Project Managers.

27.1 Landlord's Project Manager: Landlord designates [_____]as its Project Manager, who shall be responsible for administering and interpreting the terms and conditions of this Agreement, for matters relating to Tenant's performance under this Agreement, and for liaison and coordination between Landlord and Tenant. Tenant may be requested to assist in such coordinating activities as necessary as part of the services. In the event Landlord wishes to make a change in Landlord's representative, Landlord will notify Tenant of the change in writing.

27.2 Tenant's Project Manager: Tenant agrees that it shall designate a Project Manager for this Agreement with office headquarters located not further than fifty (50) miles from Landlord's office location in downtown Oakland, California. Tenant designates _____ as its Project Manager, who shall have immediate responsibility for the performance of the work and for all matters relating to performance under this Agreement. Any change in Tenant's designated personnel or subconsultant shall be subject to approval by Landlord's Project Manager.

28. Time of Essence: Time is expressly declared to be of the essence of this Agreement.

29. Notices: All notices required or permitted to be given under this Agreement shall be sufficiently given if personally delivered, or mailed by registered or certified United

States mail, postage prepaid, addressed to the party as specified on **Exhibit H**.

If mailed, the written notice shall be deemed received and shall be effective on the earlier of the date of actual receipt by the addressee or three (3) business days after deposit in the United States mail in the State of California. If either party gives notice in writing to the other party of any change in said address, then and in that event such notice shall be given at the changed address specified in such notice.

30. **Agreement Declared Invalid**. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.

31. **Agreement in Multiple Copies**: This Agreement may be executed in multiple copies, and each executed copy shall be deemed an original.

32. **Toxic Materials[DRAFTING NOTE: THIS PROVISION IS SUBJECT TO MODIFICATION TO CONFORM TO LDDA.]**

(a) General

Tenant shall not cause or permit any Toxic Materials (as hereinafter defined) to be brought upon, remain, kept or used in or about the Premises or other Landlord owned property, by Tenant, its agents, employees, contractors or invitees. The above prohibition does not apply to ordinary office and janitorial supplies, to substances in cooling systems (e.g., refrigerators and air conditioning units), or to automobiles and the standard contents therein, used in the ordinary course of Tenant's permitted uses so long as such supplies, substances and automobiles and standard contents therein are stored, used and disposed of in accordance with all other legal requirements ("Exempted Toxic Materials"); provided, however, that with respect to cooling systems and to automobiles and the standard contents therein, this sentence shall not apply to the storage or use of any Toxic Materials outside of a cooling system or an automobile. Tenant's obligations under the provisions in this Section 32 shall apply notwithstanding the party, known or unknown, responsible for the Toxic Materials, except solely in the case where the Toxic Materials are brought upon the Premises by

Landlord or its agents. Tenant shall be solely responsible to assure that no person brings Toxic Materials onto the Premises or any other property owned by Landlord.

(1) Notwithstanding any other provision of this Section 32, Tenant shall not be responsible for any Toxic Material that was on the Premises prior to Tenant taking possession of the Premises under this Agreement) except as follows: (A) Tenant shall be responsible for any such Toxic Material to the extent that the scope of contamination, or the cost of investigation, cleanup, remediation or restoration, is increased as a result of Tenant's failure, after Tenant knows, or has a reasonable basis to believe, that Toxic Materials are on the Premises promptly and reasonably to (i) notify Landlord in writing of such Toxic Materials, or (ii) take precautionary measures to alter its operations and the activities of other parties on the Premises in order to assure that such operations or activities do not increase the scope of contamination or the cost of investigation, cleanup, remediation or restoration, or (iii) provide Landlord prompt and adequate access to the Premises in order to undertake all investigation, cleanup, remediation or restoration activities; (B) Tenant shall be responsible for any such Toxic Materials on the Premises prior to Tenant's taking possession if such Toxic Materials were present on the Premises due to the negligent or intentional acts or omissions of Tenant; and (C) Tenant shall be responsible in accordance with subsection (2) below.

(2) Tenant shall be responsible for any Toxic Material that is discovered as the result of any excavation or other subsurface activity made or undertaken by Tenant, or Tenant's agents, employees, contractors, licensees or invitees, unless Landlord has given to Tenant in writing prior approval for such excavation or subsurface activity.

(b) Compliance With Laws

Tenant shall comply, at its sole cost, with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of any flammable, combustible, explosive, infectious, corrosive, caustic, irritant, strong sensitizing, carcinogenic or radioactive materials, hazardous wastes or toxic substances, including without limitation, all refined or unrefined, new or used, petroleum (including, without limitation, oil, gasoline, diesel, bunker oil, oil and grease and aviation gas) crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas,

or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas), substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "chemicals known to the state (of California) to cause cancer or reproductive toxicity" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq.; the Safe Drinking Water Act, 42 U.S.C. §300(f), et seq.; the Superfund Amendment and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., as amended; those substances defined as "hazardous waste," "extremely hazardous waste," "restricted hazardous waste" or "hazardous substance" in the Hazardous Waste Control Act, §25100 et seq. of the California Health and Safety Code; and those materials and substances similarly described in the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq., as amended; the Atomic Energy Act of 1954, 42 U.S.C. §2011 et seq., as amended; the Porter Cologne Water Quality Control Act, §13000 et seq. of the California Water Code; the California Safe Drinking Water and Toxic Enforcement Act (Proposition 65); and in the regulations adopted and publications promulgated pursuant to said laws (hereinafter collectively referred to as the "Laws"). Such materials and substances are sometimes collectively referred to in this Agreement, as "Toxic Materials." Tenant shall become aware of the content of such Laws and all other laws regulating Toxic Materials as enforced by, but not limited to, the Environmental Protection Agency, the California Environmental Protection Agency, the Bay Area Air Quality Management District, Alameda County Health Care Services Agency, Department of Environmental Health, California Regional Water Quality Control Board (San Francisco Region), California Department of Health Services and all state and federal offices enforcing regulations concerning occupational safety and health. It shall be the sole obligation of Tenant to obtain any permits and approvals required pursuant to the Laws.

(c) Disclosure

If Tenant is required under the Laws or any other federal, state or local laws concerning Toxic Materials, to make disclosures, or provide reports to federal, state or local agencies concerning Tenant's storage, use, generation or disposal of Toxic Materials, Tenant shall concurrently also provide a copy of such disclosures or reports to Landlord.

(d) Business Plan

If Tenant's business conducted within the Premises requires the establishment and implementation of a business plan pursuant to California Health and Safety Code §25500 et seq. concerning the handling of hazardous materials, Tenant shall, prior to occupying the Premises, give written notification to Landlord that Tenant's business is subject to the business plan requirement of the Code and that the business is in compliance with the Code. A copy of the plan shall be delivered to Landlord with such notification. Tenant shall deliver to Landlord any revised and/or updated business plan.

(e) Indemnity

Tenant shall be solely responsible for and shall indemnify, protect, defend and hold harmless Landlord and its agents, employees, representatives, shareholders, directors and officers (collectively hereinafter referred to as the "Indemnitees") from and against any and all claims, costs, penalties, fines, losses (including without limitation, (i) diminution in value of the Premises or any other Landlord owned property; (ii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or any other Landlord owned property; (iii) damages arising from any adverse impact on marketing of space in the Premises or other Landlord owned property; and (iv) sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees), liabilities, attorneys' fees, damages, injuries, causes of action, judgments, taxes and expenses which arise during or after the Term of this Agreement as a result of the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Toxic Materials in, upon or about the Premises or other Landlord owned property, by Tenant, or by Tenant's agents, employees, contractors, licensees or invitees or by any other persons (except Indemnitees) as a result of said parties' presence on the Premises. This indemnification of the Indemnitees by Tenant includes, without limitation, any and all costs incurred in connection with any investigation of site conditions and any cleanup, remediation, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Toxic Materials present in the soil, subsoils, groundwater or elsewhere in, on, under or about the Premises or other Landlord owned property, on account of such activities by Tenant or its agents, employees, contractors, licensees or invitees or such other parties. This indemnification by Tenant under this Section shall survive the expiration or any earlier termination of this Agreement. Landlord shall give to Tenant reasonable notice of

Landlord's knowledge of Toxic Materials affecting the Premises and Landlord's knowledge of any third party's claim in relation thereto, for which Tenant may be responsible hereunder. In addition, Landlord shall allow Tenant a reasonable opportunity promptly and diligently to provide all defense, cleanup, remediation, removal and restoration for which Tenant is responsible hereunder; provided, however, that all response actions, including investigation of site conditions, cleanup, remediation, removal and/or restoration work taken by Tenant or its agents, employees, representatives, directors and officers shall be with the prior, reasonable approval in writing by Landlord.

(f) Cleanup

If Tenant, or Tenant's agents, employees, contractors, licensees or invitees, or any other persons (except the Indemnitees) as a result of said parties' presence in the Premises during Tenant's occupancy of the Premises cause contamination or deterioration of water or soil or other portions of the Premises on account of Toxic Materials, then Tenant shall promptly take any and all action necessary to clean up such contamination or remediate such deterioration in any manner as required by law. Tenant shall provide Landlord with written notification of all actions taken by Tenant, its agents, employees, representatives, directors and officers to cleanup such contamination. If Tenant fails to take such action after prior written notice from Landlord, Landlord may, but shall not be obligated to, take such action. In such event, all costs incurred by Landlord with respect to such cleanup activities shall be for the account of Tenant. "Clean-up" as used herein, shall include investigation, feasibility studies, remediation and monitoring.

(g) Notices and Consent

In addition to Tenant's obligations to report spillage, discharge, release and disposal of Toxic Materials to local, state and federal agencies, Tenant shall immediately provide Landlord with telephonic notice, which shall later be confirmed by written notice, of any and all spillage, discharge, release and disposal of Toxic Materials onto or within the Premises or other Landlord owned property and any injuries or damages resulting directly or indirectly therefrom. Further, Tenant shall deliver to Landlord each and every notice or order received from governmental agencies concerning Toxic Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order.

(h) Storage and Use of Toxic Materials

Subject to the Permitted Uses as defined elsewhere in this Agreement, Tenant shall store in a manner approved or prescribed by law and in accordance with any applicable conditions under this Agreement, any and all Toxic Materials permitted within the Premises pursuant to this Agreement, which if discharged or emitted into the atmosphere, upon the ground or into or on any body of water does or may (1) pollute or contaminate the same, or (2) adversely affect the (a) health, safety or welfare of persons, whether on the Premises or elsewhere, or (b) the condition, use or enjoyment of the Premises, or any real or personal property whether on the Premises or anywhere else. Tenant shall not allow ponding or surface storage whatsoever of Toxic Materials within the Premises or within any other Landlord owned property.

(i) Disposal of Toxic Materials

Notwithstanding anything to the contrary contained in this Section 32 or elsewhere in this Agreement, Tenant shall not dispose of any Toxic Material, regardless of the quantity or concentration, within the storm and/or sanitary sewer drains and plumbing facilities within the Premises or other property of Landlord. The disposal of Toxic Material shall be in approved containers and removed from the Premises only by duly licensed carriers. If Tenant knows or has reasonable cause to believe that any release of a Toxic Material has come to be located on or beneath the Premises, Tenant within a reasonable period of time, either prior to the release or following the discovery of the presence or believed presence of the Toxic Material, shall give written notice of that condition to Landlord.

(j) Safety

Tenant shall maintain Material Safety Data Sheets for each and every Toxic Material, product or material used by Tenant, its agents, employees, contractors, licensees, or invitees used on the Premises, as required under the Hazard Communication Standard in 29 CFR §1910.1200, and any comparable state or local statute or regulation. Such information shall be kept current at all times and shall be kept in a place accessible to Landlord at any time for inspection and in the event of emergency.

(k) Fees, Taxes and Fines

Tenant shall pay, prior to delinquency, any and all fees, taxes (including excise taxes) and fines which are charged upon or incident to any activities on or related to Toxic

Materials for which Tenant is required to indemnify Landlord or Agency under item (e) above, and shall not allow such obligations to become a lien or charge against the Premises or upon Landlord.

(l) Delivery of Documentation

Tenant shall maintain for periodic inspection by Landlord and deliver to Landlord true and correct copies of the following documents (hereinafter referred to as the "Documents"), except for documents protected by the attorney-client privilege, related to the handling, storage, disposal and emission of Toxic Materials, concurrently with the receipt from or submission to a governmental agency:

> Permits; approvals; reports and correspondence; storage and management plans; spill prevention control and countermeasure plans; other spill contingency and emergency response plans; documents relating to taxes for toxic materials; notice of violations of any Laws; plans relating to the installation of any storage tanks to be installed in, under or around the Premises (provided, said installation of tanks shall only be permitted after Landlord has given Tenant its written consent to do so, which consent may be withheld in Landlord's sole discretion); and all closure plans or any other documents required by any and all federal, state and local governmental agencies and authorities for any storage tanks or other facilities installed in, on or under the Premises.

Tenant is not required, however, to provide Landlord with any portion(s) of the Documents containing information of a proprietary nature which, in and of itself, does not contain a reference to any Toxic Materials or hazardous activities which are not otherwise identified to Landlord in such Document, unless any such Document names Landlord as an "Owner" or "Operator" of the facility in which Tenant is conducting its business. It is not the intent of this Section, unless necessary for Landlord to comply with the law or to enforce provisions of this Agreement or otherwise secure Landlord's rights, to provide Landlord with information which could be detrimental to Tenant's business should such information become possessed by Tenant's competitors.

(m) Expiration of Term of Agreement

Tenant regularly shall monitor and inspect the Premises and all activities thereon with the objectives of discovering any Toxic Materials that Tenant is required under the terms of this Agreement to remove upon expiration or termination of this Agreement and of making reasonable and adequate provisions for assuring that removal is accomplished before such expiration or termination. In all cases where reasonably possible, before expiration or termination of this Agreement, and in all other cases promptly after the scheduled date of expiration or termination of this Agreement, Tenant shall take any and all action required to be taken under the Laws in order to (i) surrender the Premises to Landlord in a condition which would be completely free of any and all Toxic Materials, for which Tenant has clean-up responsibility under item (f) above, and (ii) close or remove, in accordance with law, any storage tanks in, on or under the Premises installed by Tenant or its agents, employees, contractors, licensees or invitees. Tenant shall submit to Landlord any and all closure plans relating to the closure or removal of any storage tanks as required by law. At least 90 days, but not more than 120 days, before expiration of the Term of this Agreement, or, in the event of earlier termination prior to the date of termination, Tenant shall give Landlord written notice expressly referring to the provisions herein and stating Tenant's intention either to close or to remove any storage tank. Landlord may elect by written notice to Tenant, given at any time not later than 30 days after receipt of notice of Tenant's intention, to require Tenant either (a) to remove said tank or (b) to leave the tank in place in operating condition; provided, however, that if Landlord requires Tenant to leave the tank in place in operating condition, Landlord shall indemnify, protect, defend and hold harmless Tenant and its agents, employees, contractors or invitees from and against any and all claims, liabilities, costs, penalties, fines and losses concerning the tanks. If Landlord gives no notice of election to Tenant during said 30-day period, Tenant shall handle the tank in accordance with Tenant's intention as stated in its notice to Landlord.

If Tenant does not surrender the Premises in the condition required and complete any required closure or removal of storage tanks before the scheduled date of expiration or termination of this Agreement, then Landlord shall have the option either (a) to extend this Agreement for the period of time necessary for Tenant to bring the Premises to such condition and/or close or remove storage tank(s), subject, however, to Landlord's reserved right at Landlord's election to terminate the Agreement, as so extended, at any time upon at least 30-days prior written notice to Tenant, and Tenant diligently shall pursue

to completion during such extension all work necessary to free the Premises of all Toxic Materials for which Tenant is responsible and/or to close or remove storage tank(s), or (b) not to extend the Agreement, but in the event Landlord either exercises its right to terminate any extended term or does not extend the Agreement, Tenant shall remain obligated diligently to undertake and complete all work necessary to free the Premises of all Toxic Materials for which Tenant is responsible and/or to close or remove storage tank(s). Tenant shall notify Landlord in writing promptly after Tenant becomes aware that Tenant likely will not complete required work before the scheduled date of expiration or termination. Absent contrary written notice from Landlord to Tenant (whether or not Tenant has given Landlord Tenant's said notice that Tenant likely will not timely complete said work), Landlord shall be presumed to have elected to extend this Agreement if Tenant has not completed said work.

In the event this Agreement is extended pursuant to the foregoing provisions, then during the period of extension all of the terms of this Agreement shall continue to apply except that the amount of any Rent under this Agreement may be increased by up to 50% by Landlord effective 30 days after written notice by Landlord to Tenant of the increase. Landlord may increase the amount of any Rent under this Agreement by up to 50% for each 6-month period, or portion of a 6-month period, that the term extends beyond the scheduled expiration or termination date. If this Agreement is not extended, or if extended it subsequently is terminated by Landlord, Tenant shall remain obligated diligently to pursue to completion all work necessary to free the Premises of all Toxic Materials for which Tenant is responsible and/or to close or remove storage tank(s), and until the completion of all of said work all of the indemnity, liability insurance and security/performance deposit provisions of this Agreement shall continue to apply and shall be binding upon Tenant notwithstanding the expiration or termination of the Agreement.

(n) Prohibited Substances

The following substances are prohibited from being brought into the Premises except to the extent they are included as Exempt Toxic Materials under item (a) hereof because they are janitorial or office supplies, substances used in cooling systems (e.g., refrigerators and air conditioning units) or automobiles and the standard contents therein:

Arsines	Etching solutions
Asbestos	Fluorocarbons
Freon	Chlorinated Hydrocarbons

Dioxins, including dioxin precursors and intermediates. Anything contained in the California List of Extremely Hazardous Chemicals.

33. Modifications: The provisions of this Agreement, including the attached exhibits, constitute the entire Agreement between Tenant and Landlord regarding the Premises and the parties' rights and obligations with respect thereto. No representation, covenant or other matter, oral or written, that is not expressly set forth in this Agreement, shall be a part of, modify or affect this Agreement; provided, however, that this Agreement may be modified if the modification is in writing authorized by resolution or ordinance of Landlord.

34. Covenant Against Contingent Fees: Tenant warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee or commission. For breach or violation of this warranty, Landlord, at its option, may recover from Tenant the full amount of the contingent fee which Landlord is obligated to pay to any third party.

"Contingent Fee," as used in this Section 34, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Landlord contract.

35. Memorandum of Agreement: At Landlord's request and at Tenant's cost and expense, Tenant shall execute and acknowledge, and record a memorandum of this Agreement.

36. Eminent Domain: Except for waiver of any relocation rights or benefits as provided in Section 24, if all or any part of the property subject of this Agreement or any interest therein is taken by or under the power of eminent domain (including but not limited to a conveyance under threat of and in lieu of exercise of such power), this Agreement shall, as to the part so taken, terminate as of the date title shall vest in the condemnor. If all of the Premises shall be taken or if such part be taken so that there does not remain a portion susceptible for reasonable occupation and use as herein authorized, as determined by Landlord, then this Agreement shall terminate.

Tenant acknowledges Landlord's power upon payment of just compensation to exercise its power of eminent domain as to the

franchise and leasehold estate created hereunder; provided, however, that the foregoing acknowledgment shall not be deemed or construed to prejudice or waive any rights of Tenant to challenge or object to any attempt by Landlord so to exercise such power or to recover any damages as may be permitted by law resulting from the exercise of such power.

37. Ground Lease. As of the Effective Date, Landlord and Tenant (or an affiliate of Tenant) are considering entering into one or more Ground Leases that cover all or a portion of the Premises (each, a "Ground Lease"). The parties acknowledge and agree that if and when Landlord and Tenant (or an affiliate of Tenant) enter into a Ground Lease and while a Ground Lease remains in effect, this Agreement shall be subject and subordinate to the terms and conditions of the Ground Lease. Such subordination shall be self-operative. However, in confirmation thereof, Tenant shall, upon the request of Landlord, execute a subordination agreement in form and substance reasonably satisfactory to Landlord.

38. Confidentiality.

(a) Tenant agrees to maintain in confidence and not disclose to any person or entity, without Landlord's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of Landlord. Tenant further agrees to maintain in confidence and not to disclose to any person or entity, any data, information, technology, or material developed or obtained by Tenant during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.

(b) Tenant's response to Landlord's request for proposals and this Agreement (including the exhibits), are subject to the mandatory public disclosure requirements of the California Public Records Act (PRA) and the City's Sunshine Ordinance ("CSO"). All other materials and information submitted by Tenant to Landlord under this Agreement are also subject to the PRA and CSO. However, any other such materials and information which Tenant designates as propriety, and there is a PRA or CSO request filed with Landlord seeking disclosure of that information, Tenant agrees to hold Landlord harmless and, at Landlord's option, to provide legal defense for Landlord and all claims and demands including attorneys' fees assessed against Landlord that result from Landlord refusing to make public documents that Tenant has designated as propriety. Tenant agrees that, if any action is filed in court seeking disclosure of the information declared

proprietary by Tenant, Landlord may deposit the documents with the court and Tenant will defend in court its designation of the information as propriety.

The provisions of this Section shall survive the expiration or any earlier termination of this Agreement.

39. **Force Majeure**. For purposes of this Agreement, "Force Majeure" means events which result in delays in a party's performance of its obligations hereunder due to causes beyond such party's control, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, fires, floods, earthquakes, tidal waves, terrorist acts, strikes, freight embargoes, delays of subcontractors and unusually severe weather and, in the case of Tenant, any delay resulting from a defect in Landlord's title to the Premises, provided written notice thereof is delivered by such party to the other party. Force Majeure does not include failure to obtain financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, to restore if appropriate, and to complete performance of the hindered act.

[DRAFTING NOTE: AGREEMENT TO BE UPDATED TO INCLUDE LDDA'S DISPUTE RESOLUTION PROCEDURES.]

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURES ARE ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties, duly authorized, have executed this Agreement the day and year first above written.

CITY OF OAKLAND, a municipal corporation, Landlord

Dated: _____ By _____
City Manager

_____, a
_____, Tenant

Dated: _____ By _____
Name _____
Its _____

Dated: _____ By _____
Name _____
Its _____

THIS AGREEMENT SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL IT IS SIGNED BY THE DEPUTY CITY ATTORNEY.

Approved as to form and legality this _____ day of _____ 2012.

_____
Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION AND DEPICTION OF PREMISES

EXHIBIT A-1

LEGAL DESCRIPTION AND DEPICTION OF SITE __

EXHIBIT B

LEGAL DESCRIPTION AND DEPICTION OF ACCESS AREAS

EXHIBIT C

ADVERTISING STANDARDS

The following advertising standards and requirements shall be followed at all times by Tenant.

A. No advertising promoting the sale or use of alcohol, guns/firearms or tobacco shall be allowed.

B. No advertisement or public service announcement shall be accepted by Tenant for display, which is to the knowledge of Tenant:

1. False, misleading or deceptive; or

2. Clearly defamatory; or

3. Obscene or pornographic according to local community standards; or

4. In advocacy of unlawful violent action; or

5. All or any combination of the foregoing.

C. Advertisements of a political or editorial or election nature, either for a specific candidate(s) or an issue(s), are to contain the statement. "Paid for By (sponsor's name)" including (when an election campaign is involved) the State of California committee number in bold type with letters at least three inches (3") high and shall comply with any then-existing laws regarding political advertising.

D. Advertising that is perceived reasonably and in good faith by a neighboring business to be competitive shall be removed within 24 hours upon receiving written or verbal notification from Landlord. The term "neighboring business" for purposes of this paragraph shall mean any business operating on _____. The term "competitive" for purposes of this paragraph D shall mean a product or service that is identical or substantially similar as recognized by the applicable industry or trade. This concept is illustrated, by way of example only, as follows:

Example 1: The developer of the neighboring property owned by City establishes an exclusive retail outlet for a one-brand computer store. Tenant may not advertise competing computer products that are substantially similar to those sold at the store. However, if the computers sold at the retail store, for instance, are home-based computers, Tenant

could advertise business-serving computers of another brand.

Example 2, if the neighboring business is an automobile dealership that sells a range of class of automobiles, Tenant may not advertise the same vehicles or a dealership which sells the same vehicles, but Tenant may advertise an automobile that competes with one or more of the class of automobiles offered by the neighboring business.

E. Reasonable proof or clarification of statements contained in any advertisement may be required by Landlord as a condition of use or continued use of advertising space.

F. Tenant should provide an experienced sales force that is capable of acquiring national, regional and local advertising.

G. Advertisement of civic, public service or other announcements or messages on the Advertising Structures is not intended to nor do they create a public forum. The Advertising Structures are non-public forums.

EXHBIT D

PENALTY AMOUNTS/LATE FEES

[Exhibit to include periodic escalation and review and resetting provisions.]

EXHIBIT E

ADVERTISING STRUCTURES REQUIREMENTS

EXHIBIT F

INSURANCE REQUIREMENTS

[DRAFTING NOTE: SUBJECT TO REVIEW AND APPROVAL BY CITY'S RISK MANAGER.]

a. **Tenant Insurance Requirements**

Tenant shall procure, prior to commencement of construction, and keep in force for the term of this agreement, at Tenant's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to City. If requested, Tenant shall provide City with copies of all insurance policies. The insurance shall at a minimum include:

i. **All-Risk Property Insurance** with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 ("Causes of Loss - Special Form" (or its replacement), in an amount not less than 100% of the then-current full replacement cost of all of the Advertising Structures with any deductible not to exceed One Hundred Thousand and No/100 Dollars ($100,000).

ii. **Commercial General Liability** insurance specific to this agreement, including but not limited to, Bodily Injury, Broad Form Third-Party Property Damage, Personal Injury Liability arising from premises operations, Personal and Advertising Injury; Medical Payments; Pollution Liability; Contractual Liability; Products and Completed Operations; XCU; and Owners and Contractor Protective Liability. This coverage shall be evidenced by Tenant and Contractor. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).

A. Coverage afforded on behalf of Landlord, members of the City Council, directors, officers, agents, employees and volunteers shall be primary insurance and any other insurance available to Landlord, members of the City Council, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement).

B. Limits of liability: Tenant shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than $2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

C. If the policy is a "claim made" type policy, the following should be included as endorsements:

1) The retroactive date shall be the effective date of this Agreement or a prior date.
2) The extended reporting or discovery period shall not be less than thirty-six (36) months.

iii. **Automobile Liability** insurance, including all owned, non-owned and hired automobiles used by Tenant or its agents in the performance of this Agreement shall have the following minimum limits for Bodily Injury and Property Damage - $1,000,000 each accident. Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.

iv. **Worker's Compensation** insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than $1,000,000 each accident, $1,000,000 policy limit bodily injury by disease, $1,000,000 each employee bodily injury by disease. Tenant certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. Tenant shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

iv. **Professional Liability Insurance**: Tenant shall ensure that design professionals it retains obtains, at Tenant's or the contractor's expense, and keep in effect during the term of the construction, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Coverage shall be with limits not less than $2,000,000 each claim and $2,000,000 aggregate. If the

professional liability/errors and omissions insurance is written on a claims made form:

a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the contractor must purchase extended period coverage for a minimum of three (3) years after completion of work.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

i. Additional Insured: Tenant shall name City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Tenant submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 11 85 form (or more recent) and/or CA 20 48 - Designated Insured Form (for business auto insurance). A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT;

ii. Loss Payee: Tenant shall name City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as Loss Payee in the Builders' Risk Insurance and Property Insurance. Tenant shall provide appropriate Loss Payee endorsement as proof of meeting this requirement;

iii. Cancellation Notice: 30-day prior written notice of cancellation, termination or material change in coverage, and 10-day prior written notice of cancellation for non-payment;

iv. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and

v. Insurer shall carry a Best Rating of A VII or greater.

EXEMPTION NOTE: ***Until further notice, City will accept the State Compensation Insurance Fund (SCIF) as an acceptable insurer for the purposes of Workers' Compensation coverage.***

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, City may, at City's option, take out and maintain at the expense of Tenant, such insurance in the name of Tenant as is required pursuant to this Agreement, and may include the cost of taking out and maintaining such insurance from any sums which may be found or become due by Tenant under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office (ISO) as of the date of this Agreement.

e. Proof of Insurance

Tenant will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Tenant's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Tenant shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein. City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

If requested by Landlord, Tenant shall provide evidence of financial ability reasonably satisfactory to City showing that Tenant will be able to pay any losses and related

investigations, claim administration and defense expenses under its deductibles and self-insurance retentions.

h. **Misc.**

City's Risk Manager may from time to time throughout the term of this Agreement require Tenant to increase insurance coverages or to add other insurance coverages as City's Risk Manager reasonably determines is necessary to protect City's interests under this Agreement.

i. **Higher Limits of Insurance**

If Tenant maintains higher limits than the minimums shown above, City shall be entitled to coverage for the higher limits maintained by Tenant.

EXHIBIT G-1

RATES

[Exhibit to include periodic rate escalation and review and resetting provisions.]

EXHIBIT G-2

SUBLEASING TERMS AND CONDITIONS

Term:	Initial 20-year term [with two 10-year options].
Revenue Share:	40% of the annual net advertising revenue. Annual net advertising revenue is defined as all revenue received for the sale of advertising less agency commission, if applicable (not to exceed 16 2/3%).
Guarantee:	Guaranteed minimum annual cash payment of $50,000 per double-sided structure.
Investment:	Estimated capital expenditure to design and build the proposed state-of-the-art general advertising sign structures is $6 million.
Liabilities:	Subtenant will carry appropriate commercial and other relevant coverage, including property damage, workers compensation and employer's liability.

EXHIBIT H

NOTICE ADDRESSES

Notices Address:

TENANT:

_____
_____
Attention: _____
Telephone: _____
Facsimile: _____
E-mail: _____

With a copy to:

_____
Attention: _____
Telephone: _____
Facsimile: _____
E-mail: _____

LANDLORD:

City of Oakland
One Frank H. Ogawa Plaza, Third Floor
Oakland, CA 94612
Attention: City Administrator

With a copy to:

Oakland City Attorney's Office
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attention: Supervising Attorney - Real Estate

Term Sheet
Property Management Agreement

The following are the material terms and conditions related to CCIG, Inc.'s roles with respect to the performance of certain services for the City under the Property Management Agreement:

1. Property Management. During the period prior to the construction of the Public Improvements for the various portions of the Lease Property, CCIG, Inc. will use commercially reasonable efforts to perform the following property management services for the Lease Property, with a goal of minimizing costs and maximizing revenue:

a. Operating Budget/Account. Within 90 days after the effective date, prepare an operating budget for the Lease Property for the City's review and approval and update the same on a semi-annual basis. CCIG, Inc. will maintain a separate, property specific property account to implement the Operating Budget. Subject to the availability of funds, the following activities shall be consistent with the approved Operating Budget.

b. Lease Management. Enforce the express terms of any existing and new leases for the Property, collect rents as and when due, and maintain good tenant relations. CCIG, Inc. shall have the right to retain third party legal expenses as a City cost to assist in the enforcement of the leases, including, without limitation, eviction of tenants in material default.

c. Property Maintenance. Subject to the availability of funds from operation, CCIG, Inc. shall ensure that the Lease Property is maintained in good condition (considering existing condition and ordinary wear and tear), pay all utilities for which the City is responsible and perform all obligations for which the City is responsible under the leases.

In return for the foregoing property management services, CCIG, Inc. shall pay itself a fee equal to the greater of (i) an amount equal to 5% of gross revenue (rent and utility charges) from the operation of the Lease Property or (ii) $8,500 per month. CCIG, Inc. shall be entitled to market rate file set up fees and a 5% mark-up on reimbursable costs. The City shall indemnify, defend and hold CCIG, Inc. harmless from and against any claims arising out of CCIG's performance of the property management services, however the City shall not be obligated to indemnify CCIG, Inc. for its negligence of willful misconduct.

2. Materials Handling Operation. As soon as is practicable after the effective date of the agreement, CCIG, Inc. shall implement a soils import and stockpiling operation at the Lease Property. The operation shall be conducted pursuant to a work plan approved by the City, which plan shall require all imported materials to meet written criteria previously published by the City. All materials stockpiled at the Lease Property pursuant to the work plan shall be and remain the sole property of the City. With respect to such materials handling operation, CCIG shall

maintain the insurance policies and indemnify the City Parties consistent with the terms of the Right of Entry. Costs associated with the operation shall be paid from project revenue. The City shall pay CCIG, Inc. a mobilization fee of $100,000 within ten calendar days after the initiation of the materials handling operation and CCIG, Inc. shall earn a tipping fee of 4% of gross proceeds from the operation. CCIG shall consult with and secure the approval of the City regarding the cost and or revenues associated with the soils import program, it being to mutually beneficial goal of acquiring the soils materials at the lowest possible cost and perhaps at a net positive cost.

3. Design Build Bridging Documents. CCIG, Inc. shall serve as the City's representative with respect to the preparation of the design build bridging documents for the Public Improvements. To implement this role, the Professional Services Agreement between the City and CCIG shall be assigned to CCIG, Inc. by CCIG ("PSA"), the scope and budget in the PSA shall be amended as necessary for CCIG, Inc. to deliver the 35% bridging documents and conduct site investigations with respect to the location of the Public Improvements for a price not to exceed $14.1mm (inclusive of the approximately $5.35 expended to date), the PSA shall be amended to include a mutual waiver of consequential damages and to provide for the payment of the following fees to CCIG, Inc.: a fee equal to 4% if third party costs and a mark-up of 5% on reimbursable costs. The 35% bridging documents shall be substantially similar to the approved Master Plan. CCIG, Inc. shall have line item flexibility to meet the budget.

4. Design Build Contract. CCIG, Inc. shall retain one or more contractors from the Developer's design build project team set forth in the Second Amendment to the ENA to serve as the design build contractor for the design and delivery of the Public Improvements (including the performance of any Remediation of any RAP/RMP items, other than listed sites) (the "Contractor"). The Contractor shall provide a guaranteed maximum price (excluding hazardous materials costs) based on the design build bridging documents and the Contractor shall be "at risk" with respect to the delivery of the job on budget. The design and delivery of the Public Improvements pursuant to the design build contract shall include the applicable Community benefits policies set forth in Attachment 15. CCIG, Inc. shall maintain the insurance and hold the City Parties harmless from and against CCIG, Inc.'s negligence or willful misconduct. In return for such services, the City shall pay the following fees to CCIG, Inc.: a fee equal to 4% of third party costs and a mark-up of 5% on reimbursable costs.

5. Miscellaneous items:

a. The approved Master Plan will not be required to be plan checked by the City Public Works personnel.

b. The City shall consult with CCIG, Inc. regarding the City's retention of a third party, full time, field inspections team that will work in collaboration with and as a part of the CCIG and the program management team. The field inspection team shall be offered office space at CCIG, Inc.'s on-site project office.

c. The City shall evidence funds available prior to CCIG, Inc. entering into a rolling GMP contract under a full GMP procurement.

d. The Contractor may self-perform as much as 35% of the design or construction work under the design build contract.

e. Pat Cashman to remain available part time for 1 year in to assist in project transition and training of new city project manager.

f The City shall identify its long term project management staff by July 15, 2012 and in place no later than September 1, 2012.

g. In the event that funding issues arises with respect to TCIF of other funding issues, the parties agree to meet and confer to resolve.

h. Document retention, production and audit provisions shall set reasonable liniits and require CCIG, Inc. to be compensated for its time in responding to duphcative requests.

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
	TV Inspection of Sanitary Sewer, Oakland Army Base, Oakland, California	Lee, Stranglo & Associates, Inc.	1/1/1985
	Underground Fuel Storage Tanks Master Plan for Oakland Army Base, Oakland, California	Jacobs Engineering	12/1/1986
55	Update of the Initial Installation Assessment of Oakland Army Base, CA	Environmental Science and Engineering, Inc.	4/1/1988
77	Update of the Initial Installation Assessment	U.S. Army Toxic and Hazardous Materials Agency	4/29/1988
	Results of Preliminary Soil Sampling Associated with USTs	SCS Engineers	6/1/1989
	Soil Gas/Shallow Ground Water Survey, Burma Road	Geomatrix Consultants, Inc.	11/9/1989
	Oakland Army Base Asbestos Data Back-up (Volumes I and II)	U.S. Corps of Engineers	1/1/1990
	Prioritization Asbestos Assessment Study, Original Field Work and Laboratory Results (Report #S70114, 2/1/90, Vol. 2)	Hall-Kimbrell Environmental Services, Inc.	2/1/1990
	Prioritization Assessment Study, (Report #S70114, 2/1/90, Vol. 1 of 2)	Hall-Kimbrell Environmental Services, Inc.	2/1/1990
	Underground Storage Tank Replacement, 1990	Petroleum Engineering Company	3/5/1990
70	Port of Oakland Berth 8 & 9 48-inch Sewer Line Sediment and Waste Removal TC 4601-16	Tetra Tech, Inc.	12/28/1990
	Health and Safety Plan -UST Site Investigation, Draft	SCS Engineers	3/5/1991
	Health and Safety Plan - UST Site Investigation - Revised	SCS Engineers	5/6/1991
92	Phase Ii Soil andf Preliminary Groundwater Investigation - Southern Pacific Transportation Company	SP Environmental Systems, Inc.	7/22/1991
	Subsurface Investigation, Oakland Army Base, Oakland, California (Volumes I & II)	SCS Engineers	11/1/1991
	Chemical Analysis of Soil Cuttings and Purged Water	SCS Engineers	11/12/1991
	Building Information Schedule, Oakland Army Base	U.S. Army Corps of Engineers	3/1/1992
	Ground Water Monitoring Report, Sampling Event #2	SCS Engineers	6/1/1992
	90% Sub. 6/92 - Ground Water Sampling Report for UST Investigation From SOS	SCS Engineers	6/1/1992
91	Phase II Investigation - Volume 2, Southern Pacific Transportation Company, Oakland Army Base	Industrial Compliance	6/15/1992
	Ground Water Monitoring Report, Sampling Event #3	SCS Engineers	8/19/1992
	Work Plan & Related Documents - Site Characteristics and Soil Remediation	The Mark Group Engineers & Geologists, Inc.	10/22/1992
	PWC Closure Summary - Grand Avenue Overpass - OARB - PWC Stains	Brown and Caldwell Consultants	10/27/1992
	Closure of Area B-1 At Grand Avenue - PWC Stains	Brown and Caldwell Consultants	10/27/1992
	Investigate Work Plan for Continued Backfill at Specific Tank Sites (Draft)	SCS Engineers	3/30/1993
	Groundwater Monitoring Report - Sampling Event #4 - 9/93	SCS Engineers	6/16/1993
102	Supplemental Soil & Groundwater Investigation Report	Industrial Compliance	6/16/1993
	Work Plan - on TK18 - Final (12/93)	SCS Engineers	7/2/1993
	Chemical Data Acquisition Plan for UST TK18 Site Acquisition Plan	SCS Engineers	7/2/1993
	Building 807 - Site Investigation - 9/93		9/1/1993

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
	Groundwater Monitoring Report: Sampling Event #5	SCS Engineers	9/1/1993
53	Letter from EPA to Executive Officers re: The Department of Toxic Substances Control Lead Designation for California Military Base Cleanup.	Various	9/20/1993
	SCS Health and Safety Plan - UST Investigation (Revised)	SCS Engineers	12/28/1993
	Work Plan for Installation of Additional monitoring Wells 2/94	SCS Engineers	2/8/1994
	Draft: Soil Remediation and Groundwater Study Work Plan	Industrial Compliance	2/15/1994
	Site Specifications Health & safety Plan and Health & Safety Program for Remediation	Kleinfelder, Inc.	3/23/1994
94	First Quarter 1994 Ground Water Monitoring Report	Industrial Compliance	4/15/1994
	Closure Summary Report IV - B-1 at Grand - PWC Statins (Duplicate of BS 44)	Navy Public Works Center	7/1/1994
85	Closure Summary Report for Cleanup and Closure of Area B-1 at the Grand Avenue Overpass, Oakland Army Base	U.S. Army Corps of Engineers Sacramento District	7/1/1994
26	Federal Facility Site Remediation Agreement	Department of Toxic Substances Control	7/18/1994
93	RFB Building Demolition, Soil Excavation and Associated Activities - SPTC	Industrial Compliance	8/24/1994
90	Revised Soil Remediation and Ground Water Study Workplan	Industrial Compliance	9/13/1994
	Site Investigation - Berths 8 and 9, October 1994	ERM West	10/4/1994
	Subsurface Investigative Report - UST Site TK18-7/94	SCS Engineers	10/27/1994
	Utility Technical Study of All Utilities 1/95 - Volume I	Bechtel National, Inc.	1/1/1995
53	Regulatory Agency Incoming Correspondence Addressed to Oakland Army Base	Various	1/3/1995
53	Letter from DTSC to OBRA re: Department of Toxic Substances Control Lead Agency Designation.	Various	1/3/1995
	Demolish Liquified Petroleum Tanks - Facility 829 (Design)	U.S. Army Corps of Engineers	2/15/1995
98	Third Quarter 1994 Ground Water Monitoring Report	U.S. Army Corps of Engineers	3/1/1995
	Site Characterization Report, Site 807	Kleinfelder, Inc.	3/21/1995
95	Fourth Quarter 1994 Ground Water Monitoring Report	U.S. Army Corps of Engineers	3/31/1995
	Closure Report UST Removal/Replacement	Remedial Constructors, Inc.	4/10/1995
	Quarterly Letter Report - UST Site TK18 - 3/95	SCS Engineers	5/3/1995
54	Backfill Investigation Report - OARB 6/9/95	SCS Engineers	6/9/1995
96	First Quarter 1995 Ground Water Monitoring Report	U.S. Army Corps of Engineers	6/16/1995
	Groundwater Monitorijng Report - Sampling Event #6 - 8/94	SCS Engineers	6/21/1995
99	Second Quarter 1994 Ground Water Monitoring Report	U.S. Army Corps of Engineers	7/15/1995
	Quarterly Letter Report - UST TK6 - 8/95	SCS Engineers	8/1/1995
53	Letter from DTSC to OBRA re: Basewide Preliminary Assessment/ Site Investigation at the Oakland Army Base, Oakland ,California	Various	8/3/1995
	Quarterly Letter Report - UST Site TK18 - 6/95	SCS Engineers	8/17/1995
97	Second Quarter 1995 Ground Water Monitoring Report	U.S. Army Corps of Engineers	8/17/1995
	Final Air Emission Inventory Report	Earth Tech	8/25/1995

City Qf Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
	Base Reafignment and Cfosure Manuaf For Compfiance With The Nationaf Environmental Policy Act	U.S. Army	9/1/1998
53	Letter from DTSC to OBRA re: Department of Toxic Substances Control's Comment to Scope of Work, Environmental Baseline Survey and Preliminary Assessment/ Site Investigation for the Oakland Army Base.	Various	10/19/1995
	Quarterly Letter Report - UST TK18 - 9/95	SCS Engineers	10/23/1995
	Indefinite Contamination for Remediation and Disposal of UST and PCB Transformers Section C - Chemical Acqulsaltion Plan (10/26/95 Draft)	Remedial Constructors, Inc.	10/26/1995
	Monitoring Well completion Report for Select UST Sites at OARB - 6/94 (Final)	SCS Engineers	10/31/1995
	Site characterization Work Plan Underground - UST TK6 (Final)	SCS Engineers	11/10/1995
53	Letter from DTSC to OBRA re: Draft Basewide Preliminary Assessment/Site Investigation Workplan Scope of Work, Oakland Army Base	Various	11/29/1995
	Lead Management Plan	Navy Public Works Center	12/1/1995
	Installation Natural Resources Management Plan, Oakland Army base, Oakland, California	SCS Engineers	7/1/1996
	Asbestos Operations and Management Plan - 1996	Foster Wheeler Environmental Corporation	1/1/1996
	USAACE - Site Specifications Health and Safety Plan - Preliminary Site Characteristics	Kleinfelder, Inc.	1/10/1996
	Final Pollution Prevention Plan for Oakland Army Base	Radian Corporation	1/30/1996
101	Fourth Quarter 1995 Ground Water Monitoring Report	U.S. Army Corps of Engineers	2/21/1996
	Asbestos Survey - 1996	U.S. Army Corps of Engineers	5/1/1996
	Base Realignment and Closure (BRAC) Cleanup Plan, Oakland Army Base, Oakland California (Version 1)	Foster Wheeler Environmental Corporation	7/1/1996
53	Letter from EPA to OBRA re: Oakland Army Base BRAC Cleanup Plan	Various	7/8/1996
	Groundwater Monitoring Report - Sampling Event #7 - 12/94 to 3/95	SCS Engineers	7/14/1996
53	Letter from DTSC to OBRA re: Oakland Army Base BRAC Cleanup Plan	Various	7/22/1996
53	Letter from DTSC to OBRA re: Basewide Environmental Baseline Survey	Various	8/8/1996
53	Letter from EPA to OBRA re: Building 807 Work Plan for Remedial Investigation	Various	8/9/1996
53	Letter from DTSC to OBRA re: Draft Work plan for Remedial Investigation, Building 807	Various	8/19/1996
53	Letter from EPA to OBRA re: Oakland Army Base BRAC Cleanup Plan	Various	8/29/1996
	Draft Site Characterization Report, Underground Storage Tank Sites TK 6 and TK18, Oakland Army Base, Oakland, California	SCS Engineers	9/18/1996
	Final Work Plan for Additional Field Investigation (Bldg. 807) 9/96	Kleinfelder, Inc.	9/23/1996
76	Basewide Environmental Baseline Survey for Oakland Army Base, Oakland, California (Final)	Foster Wheeler Environmental Corporation	9/24/1996
	Army and Air Force Exchange Services Work Plan - 10/96	CDM Federal Programs Corporation	10/1/1996

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
	Project Work Plan - UST Removal (Final)	Remedial Constructors, Inc.	10/17/1996
	Appendix B&C - Field Investigations - Volume II - Basewide	Kleinfelder, Inc.	10/30/1996
	Sampling and Analysis Plan - Investigation of UST Sites With	SCS Engineers	11/20/1996
	Restoration Advisory Board Information 1996	BRAC Environmental Coordinator	12/1/1996
24	Draft Phase II Site Assessment Report, Oakland Army Base, Oakland California 12/1996	CDM Federal Programs Corporation	12/1/1996
53	Letter from DTSC to OBRA re: Draft Workplan for Basewide Preliminary Assessment/Site Investigation	Vahous	12/20/1996
	Site Characterization Report - UST Sites TK6 & TK18	SCS Engineers	12/31/1996
	Final Basewide Ouality Assurance Project Plan & Waste Management Plan	Kleinfelder, Inc.	1/1/1996
	Sanitary Sewer Survey CCTV	Subtronic Corporation	1/1/1997
	Oakland Army Base, T.V. and Clean manhole Inspections	Radian International	1/1/1997
	Final Basewide Site Safety and Health Plan for Field Investigation	Kleinfelder, Inc.	1/14/1997
	Lab Results (DACW05-94-D-0020) 1/97 (Pit Samples Tank)	EMAX Laboratories, Inc.	1/16/1997
	Final Work Plan for Hydrogeologic Study - 4/97	Kleinfelder, Inc.	4/4/1997
	Underground Storage Tank Closure Reports for Tank sites TK1, TK2, TK3, TK14, TK16, TK17, TK18 & TKN; Oakland Army Base, Oakland, California	SCS Engineers	4/11/1997
	Final Basewide Preliminary Assessment/Site Inspection	Kleinfelder, Inc.	4/30/1997
	Final Work Plan for Basewide Preliminary Assessment/Site Inspection	Kleinfelder, Inc.	4/30/1997
	Draft Inventory, Natural Gas Disthbution System, Electric Distribution System, Potable Water System, Wastewater System, Storm Water System, Oakland Army Base, California	C.H. Guernsey & Company	5/1/1997
53	Letter from DTSC to OBRA re: DTSC Review of the Revised Draft Workplan Addenda-Group A Basewide PA/SI, Oakland Army Base.	Various	5/8/1997
	Technical Report - Investigation of Underground Storage Tank Sites with Unknown Status, Oakland Army Base, Oakland, California	SCS Engineers	5/9/1997
53	Letter from DTSC to OBRA re: DTSC Review of the Revised Draft Workplan Addenda-Groups A, B and C Basewide PA/SI, Oakland Army Base.	Various	5/30/1997
	Draft Final Storm Sewer Survey Report	Radian International	6/3/1997
53	Letter from EPA to OBRA re: US EPA Review of Draft Report Additional Field Investigation Building 807	Various	6/13/1997
53	Letter from DTSC to OBRA re: DTSC Review of the Additional Field Investigation, Building 807	Various	6/25/1997
	Final Storm Sewer Survey Report, Oakland Army Base	Radian International	6/30/1997
	Sanitary Sewer Survey Manhole Inspection, Oakland Army Base, California	Subtronic Corporation	7/1/1997
	Final Closure Report USTs Removal, Tanks 8A, 14A, 19, and 21	U.S. Army Corps of Engineers	7/1/1997
	Closure Report (Final) UST Removal, OARB - 7/3/97	Remedial Constructors, Inc.	7/3/1997

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
53	Letter from DTSC to OBRA re: Final Closure Report, Underground Storage Tank Removal (waste oil)	Various	8/7/1997
53	Letter from DTSC to OBRA re: DTSC Review of the Draft Outline for the Basewide PA/SI Report	Various	8/22/1997
	Final Report (Volume I) Additional Field Investigation - Building 807	Kleinfelder, Inc.	8/25/1997
	Final Report (Volume II) Additional Field Investigation - Building 807	Kleinfelder, Inc.	8/25/1997
	Sanitary Sewer Survey Report, Final	U.S. Army Corps of Engineers	9/1/1997
53	Letter from Department of Transportation to US Army Corps of Engineers re: The existing eastern span (of the San Francisco-Oakland Bay Bridge) will be retrofitted on an interim basis until the "New Bridge" will ultimately replace the eastern span.	Various	9/17/1997
53	Letter from DTSC to OBRA re: Review and Comment on the Annotated Outlines for Operable Unit 2 RI/FS Workplan, Operble Unit 7 Additional Site Investigation Workplan, and Risk Assessment Tech Memo	Various	9/19/1997
	Environmental Master Plan for Oakland Army Base, Oakland, California	ICF Kaiser Engineers, Inc.	9/23/1997
9	Environmental Assessment for Interim Leasing and Finding of No Significant Impact.	U.S. Army Corps of Engineers Sacramento District	10/1/1997
23	Lead-Based Paint and Asbestos - 10/1997 (Survey)	U.S. Army Corps of Engineers Sacramento District	10/1/1997
53	Letter from EPA to OBRA re: Work Plan for OU2 Investigation	Various	10/29/1997
	OU4 Hot Spot Screening Level Investigation Report - Sampling and Analysis Plan	ICF Kaiser Engineers, Inc.	10/30/1997
	Basewide Safety & Health Plan	ICF Kaiser Engineers, Inc.	11/3/1997
53	Letter from EPA to OBRA re: Oakland Army Base Basewide OAPP (Ouality Assurance Project Plan)	Various	11/14/1997
53	Letter from EPA to OBRA re: Response to Comments for OU2 Work Plan	Various	11/24/1997
	Restoration :Advisory Board Information 1997	Various	12/1/1997
	OU-4 Hot Spot Screening Level Investigation Report	ICF Kaiser Engineers, Inc.	12/3/1997
	OU2 Remedial Investigation Work Plan and Sampling and Analysis Plan	ICF Kaiser Engineers, Inc.	12/10/1997
53	Letter from EPA to OBRA re: EPA Review of Draft PA/SI	Various	12/22/1997
53	Letter from DTSC to OBRA re: Draft Basewide Preliminary Assessment Site Inspection (PA/SI)	Various	12/24/1997
	Lead-Based Paint, Asbestos Survey, Oakland Army Base, Oakland, California - (1997, 1998 Surveys)	U.S. Army Corps of Engineers	1/1/1998
	Chemical Reference Handbook for Oakland Army Base, California	Radian International, LLC	1/1/1998
	Finding of Suitability to Lease (FOSL), BRAC Parcels 11, 12, and 25 and Buildings 726 and 729 for Oakland Army Base, Oakland, California (Draft)	Foster Wheeler Environmental Corporation	2/1/1998
	Oakland Harbor Navigation Improvement (-50 Foot) Project Draft Environmental Impact Statement/Environmental Impact Report, Executive Summary	U.S. Army Corps of Engineers/Port of Oakland	2/1/1998

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
	Oakland Harbor Navigation improvement Project Draft Feasibility Study Volume I	U.S. Army Corps of Engineers/Port of Oakland	2/1/1998
	Oakland Harbor Navigation Improvement Project Draft Feasibility Study Volume II, Draft Environmental Impact Statement	U.S. Army Corps of Engineers/Port of Oakland	2/1/1998
	Oakland Harbor Navigation Improvement Project Draft Feasibility Study Vofume fff, Draft Feasibility Study	U.S. Army Corps of Engineers/Port of Oakland	2/1/1998
	Oakland Harbor Navigation Improvement Project Draft Feasibility Study Volume IV, Environmental Impact report Appendices	U.S. Army Corps of Engineers/Port of Oakland	2/1/1998
	Oakland Harbor Navigation Improvement Project Draft Feasibility Study Volume V, Environmental Impact Appendices N through V and Appendix X: Response to Comments	U.S. Army Corps of Engineers/Port of Oakland	2/1/1998
	Oakland Harbor Navigation Improvement Project Draft Feasibility Study Volume VI, Appendix W1 Comments From Agencies and Org.	U.S. Army Corps of Engineers/Port of Oakland	2/1/1998
	Oakland Harbor Navigation improvement Project Draft Feasibility Study Volume VII, Appendix W2 Comments From Businesses and Individuals on Draft EIS/R/FS	U.S. Army Corps of Engineers/Port of Oakland	2/1/1998
	Oakland Harbor Navigation Improvement Project Draft Feasibility Study Volume VIII, Executive Summary	U.S. Army Corps of Engineers/Port of Oakland	2/1/1998
53	Letter from Sierra Club to OBRA re: Comments on Oakland Army Base Draft P/VSI	Various	2/1/1998
	Restoration Board Summary -Basewide Preliminary Assessment/Site Investigation (PA/SI), Oakland Army Base, Oakland, California	Kleinfelder, Inc.	2/1/1998
53	Memorandum from Phillip Ramsey to Mark Filippini, Hydrogeologist re: Review of Draft Basewide Hydrogeplogic Study	Various	2/3/1998
53	Letter from EPA to OBRA re: US EPA Review of Oakland Army Base Parcel-Specific FOSL	Various	2/5/1998
53	Letter from DTSC to OBRA re: Oakland Army Base, Oakland California: Risk Assessment Technical Memoranda	Various	2/5/1998
53	Letter from DTSC to OBRA re: Oakland Army Base, Oakland California: Draft Fast-Track Finding of Suitability to Lease (FOSL) For BRAC Parcels 11 and 12, and Buildings 726 and 796.	Various	2/11/1998
53	Letter from US EPA to OBRA re: Oakland Army Base Basewide Sampling and Analysis Plan	Various	2/12/1998
53	Letter from EPA to OBRA re: Draft Basewide Hydrogeologic Study, Oakland Army Base (OARB), January 21, 1998.	Various	2/18/1998
16.1	Final Report Basewide Preliminary Assessment/Site Inspection (PA/SI) Volume I: Preliminary Assessment	Kleinfelder, Inc.	2/24/1998
16.2	Final Report Basewide Preliminary Assessment/Site Inspection (PA/SI) Volume II: Site Inspection	Kleinfelder, Inc.	2/24/1998

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
16.3	Final Report Basewide Preliminary Assessment/Site Inspection (PA/SI) Volume III: Si Appendices A through E	Kleinfelder, Inc.	2/24/1998
	Final Report Basewide Preliminary Assessment/Site Inspection (PA/SI) Volume IV: Appendix F	Kleinfelder, Inc.	2/24/1998
	Final Report Basewide Preliminary Assessment/Site Inspection (PA/SI) Volume V: Appendix F (cont.)	Kleinfelder, Inc.	2/24/1998
	Final Report Basewide Preliminary Assessment/Site Inspection (PA/SI) Volume VI: Appendix F (cont.) and G	Kleinfelder, Inc.	2/24/1998
53	Letter from EPA to OBRA re: Draft Basewide Hydrogeologic Study, Oakland Army Base	Various	2/24/1998
53	Letter from OBRA to BRAC Environmental Coordinator re: OBRA/City Comments on Draft Finding of Suitability to Lease	Various	3/13/1998
53	Letter from DTSC to OBRA re: Basewide Sampling and Analysis Plan	Various	3/27/1998
53	Memorandum from DTSC to Office of Military Facilities re: Oakland Army Base, Oakland California: Risk Assessment Technical Memoranda 4b - Supplemental Review	Various	4/8/1998
53	Letter from RWQCB to QBRA re: Draft Underground Storage Tank (UST) Closure Investigation and Feasibility Study Work Plan, and Technical Memorandum, March 12, 1998; and Draft Technical Memorandum, Data Quality Objectives (DQQ) Process USTs, Februdary 23, 1998, Oakland Army Base	Various	4/13/1998
129	Report of Oil-Water Separator and Septic Tank Removal, Operable Unit 2	ICF Kaiser Engineers, Inc.	5/1/1998
	Work Plan for Underground Storage Tank (UST) Closure Investigation and Feasibility Study, Oakland Army Base, Oakland, California	ICF Kaiser Engineers, Inc.	5/7/1998
53	Letter from RWQCB to OBRA re: Final Underground Storage Tank Closure Investigation and Feasibility Study Work Plan, Oakland Army Base, May 6, 1998	Various	6/2/1998
	Work Plan, Sampling and Analysis Plan, Contractor Quality Control Plan, QU-2 Remedial Investigation	ICF Kaiser Engineers, Inc.	6/19/1998
	Report of Oil/Water Separator 6, 7, 8, and 9 Removal, Operable Unit 1, Oakland Army Base, Oakland, California	ICF Kaiser Engineers, Inc.	6/26/1998
	Basewide Sampling and Analysis Plan	ICF Kaiser Engineers, Inc.	6/26/1998
53	Letter from DTSC to OBRA re: Final Basewide Preliminary Assessment/Site Inspection (PA/SI) Report	Various	6/30/1998
53	Letter from DTSC to QBRA re: Draft Minutes from the May 27, 1998 Meeting of the Oakland Army Base Restoration Advisory Board (RAB)	Various	7/7/1998
	Oakland Army Base Fast-Track FOSL	KEA Environmental	7/22/1998
89	Appendix A USts 6, O, and P Case Closure Letter	Oakland Base Reuse Authority	9/1/1998

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
	Environmental Impact Statement for the Disposal and Reuse of the Oakland Army Base, Oakland, California	Foster Wheeler Environmental Corporation	10/1/1998
	Remedial Investigation, Work Plan, Sampling and Analysis Plan, Contractor Quality Control Plan, Health and Safety Plan Addendum, Operable Unit 1	ICF Kaiser Engineers, Inc.	10/9/1998
	Risk Assessment Work Plan, Revision 0	ICF Kaiser Engineers, Inc.	11/9/1998
	Finding of Suitability to Lease (FOSL) (Version 1.0), Oakland Army Base, BRAC Parcels 1 to 10, 12 to 24, and 26	KEA Environmental	12/1/1998
	Restoration Advisory Board Information, 1998	Various	12/1/1998
	Basewide Quarterly Groundwater Monitoring Reports, July-Sep. 1998, Oct.-Dec. 1998	ICF Kaiser Engineers, Inc.	12/11/1998
43.1	Final Report Basewide Hydrogeologic Study Volume I	Kleinfelder, Inc.	12/18/1998
43.2	Final Report Basewide Hydrogeologic Study Volume II: Appendices A through J	Kleinfelder, Inc.	12/18/1998
43.3	Final Report Basewide Hydrogeologic Study Volume II: Appendix K	Kleinfelder, inc.	12/18/1998
53	Letter from EPA to OBRA regarding Draft Report, Groundwater Beneficial Use Determination (Appendix K), Basewkide Hydrogeologic Study, October 27, 1998	Various	12/9/1998
8	Base Realignment and Closure (BRAC) Cleanup Plan, Oakland Army Base, Oakland California (Version 2)	Foster Wheeler Environmental Corporation	1/1/1999
53	Letter from State Water Resources Control Board to Walt Pettit re: Soil and Groundwater Testing for MTBE	Various	1/15/1999
	Biological Assessment for Aquatic Species for the Disposal and Reuse of Oakland Army Base, Oakland, California	Foster Wheeler Environmental Corporation	2/1/1999
130	Tier 2 Risk-Based Corrective Action Site-Specific Target Levels for TPH as Gasoline, Diesel, and Motor Oil at Petroleum Fuel Tank Sites	ICF Kaiser Engineers, Inc.	2/1/1999
106	Port of Oakland, Geotechnical & Hydrogeologic Investigations, Figures & Boring Logs.	Subsurface Consultants, Inc.	2/12/1999
	RAB Information (RAB Formation)	Various	2/21/1999
47	Closure Investigation Report for Underground Storage Tanks 10, B and C, D, F, K,L, M, Q and Above-Ground Storage Tanks in Brae Parcels 4 and 5 Revision C	ICF Kaiser Engineers, Inc.	3/15/1999
53	Letter from EPA to OBRA re: U.S. EPA Review of OARB QU2 draft RI Report.	Various	4/1/1999
31	Risk Assessment Work Plan, Revision 1	ICF Kaiser Engineers, Inc.	4/13/1999
	Radiological Survey Report, Oakland Army Base, Buildings 161 & 806	SSPORTS Environmental Detachment	4/30/1999
	Environmental Impact Statement for the Disposal and Reuse of the Oakland Army Base, Oakland, California	Foster Wheeler Environmental Corporation	6/1/1999
27	Remedial Action Plan Offshore Sediments Operable Unit, Fleet and Industrial Supply Center	Port of Oakland	6/2/1999
	Biological Assessment for National Fisheries Service	Foster Wheeler Environmental Corporation	9/1/1999
	Biological Assessment for Fish and Wildlife Service	Foster Wheeler Environmental Corporation	9/1/1999

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
	Basewide Groundwater Monitoring Report Jan-Dec 1999	ICF Kaiser Engineers, Inc.	9/17/1999
35	Pipeline Investigation Report, for the Storm Drain and Sanitary Sewer Pipeline Systems, Oakland Army Base	ICF Kaiser Engineers, Inc.	9/29/1999
10	Sacramento TERC 1I, Transmittal of Final Remedial Investigation Report for Operable Unit 2.	IT Corporation	10/15/1999
	Final Remedial Investigation Report for OU2 Remedial Investigation, Oakland Army Base, Oakland, California; Volume 1, October 1999	IT Corporation	10/15/1999
	Final Remedial Investigation Report for OU2 Remedial Investigation, Oakland Army Base, Oakland, California, Appendix A, USTs 6, O, and P Case Closure Letter, Volume II, October 1999	IT Corporation	10/15/1999
	Final Remedial Investigation Report for OU2 Remedial Investigation, Oakland Army Base, Oakland, California, Appendix H, Human health risk Assessment Report (HHRA), Volume III, October 1999	IT Corporation	10/15/1999
53	Letter from EPA to OBRA re: U.S. EPA Review of Oakland Army Base Draft Data Ouality Objective Summary Tables and Maps, Operable Unit 4 Remedial Investigation	Various	10/26/1999
53	Letter from EPA to OBRA re: U.S. EPA Review of Oakland Army Base Draft Feasibility Study Technical Approach Memorandum, dated September 30, 1999.	Various	11/2/1999
	1999 Restoration Advisory Board (RAB) Information	Various	12/1/1999
25	Annual Asbestos Survey	U.S. Army Corps of Engineers Sacramento District	12/10/1999
	Sampling and Analysis Plan for OU1 Remedial Investigation, Rev. 1, 12/99	IT Corporation	12/15/1999
	Sampling and Analysis Plan for OU1 Remedial Investigation (Rev. 1)	IT Corporation	12/15/1999
	Draft Final Pipeline Investigation Report: Storm Drain and Sanitary Sewer Pipeline Systems for the Oakland Arrfiy Base, Rev. C, 12/99	IT Corporation	12/27/1999
	Oakland Army Base wharf 6, 6 1/2, and 7 Condition Study	Moffett & Nichoi Engineers	1/1/2000
	Oakland Army Base Community Relations Plan, 1/00	Foster Wheeler Environmental Corporation	1/1/2000
	Sampling and Analysis Plan for UST Closure Investigation	IT Corporation	1/27/2000
	Draft Final, Remedial Investigation Work Plan, Sampling and Analysis Plan, Contractor Ouality control Plan, Safety and Health Plan Addendum, OU4	U.S. Army Corps of Engineers	2/1/2000
39	Corrective Action Plan for Petroleum Tank Sites	U.S. Army Corps of Engineers Sacramento District	2/25/2000
	Remedial Investigation Report For OU I, Volume I of III	U.S. Army Corps of Engineers Sacramento District	3/1/2000
3	Remedial Investigation Report For OU1, Volume II of III, Appendices A-G	U.S. Army Corps of Engineers Sacramento District	3/1/2000

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
	Remedial Investigation Report For OU1, Volume III of 1II	U.S. Army Corps of Engineers Sacramento District	3/1/2000
53	Letter from DTSC to OBRA re: Draft Final Remedial 1nvestigation Report for Operable Unit 1, Revision D, Oakland Army Base	Various	3/6/2000
53	Letter from DTSC tb Office of Military Facilities re: Oakland Army Base, Operable Unit 1- Draft Final Remedial Investigation Report for OU1 Remedial 1nvdestigation, Revision D, Dated December 23, 1999.	Various	3/6/2000
29	Corrective Action Plan for Petroleum Tank Sites, Revision C	U.S. Army Corps of Engineers Sacramento District	3/14/2000
30	Draft Final Technical Memorandum for Evaluation of Beneficial Uses of Groundwater, Revision C	U.S. Army Corps of Engineers Sacramento District	3/20/2000
53	Letter from EPA to OBRA re: Review of Oakland Army Base Draft Final Remedial Action Workplan for OU2 Soil, February 2000	Various	3/29/2000
107	Remedial Investigation Report for OU1 Remedial Investigation, Oakland Army Base, Vol I	IT Corporation	3/31/2000
107	Remedial Investigation Report for OU1 Remedial Investigation, Oakland Army Base, Vol II	IT Corporation	3/31/2000
107	Remedial Investigation Report for OU1 Remedial Investigation, Oakland Army Base, Vol III	IT Corporation	3/31/2000
53	Letter from EPA to OBRA re: EPA Review of Oakland Army Base Revision O, Historical Document Review, March 20, 2000.	Various	4/19/2000
53	Letter from EPA to OBRA re: EPA Review of Oakland Army Base Revision C, Addendum 1 Remedial Investigation for OU1 and OU3, March 15,2000.	Various	4/19/2000
53	Letter from EPA to OBRA re: EPA Review of Oakland Army Base Technical Memorandum for Evaluation of Beneficial Uses of Groundwater, March 2000	Various	4/19/2000
53	Letter from EPA to OBRA re: EPA Review of Oakland Army Base Revision C, Workplan for Remedial 1nvestigation OU4, February 29, 2000	Various	4/19/2000
	Corrective Action Implementatin Report for Tank D1: Addendum 2 to the Removal Report for Petroleum Tanks	IT Corporation	4/20/2000
53	Letter from DTSC to Office of Military Facilities re: Oakland Army Base, Operable Unit 4 Remedial Investigation Work Plan Site	Various	4/27/2000
	Removal Action Work Plan, OU2 Soil, Revision 0	1T Corporation	5/1/2000
59	Corrective Action Rlan, SAP, COC, Petroleum Tank Sites	SCS Engineers	5/11/2000
53	Letter from DTSC to OBRA re: Remedial Investigation Work Plan, Operable Unit 4, Revision C, Oakland Army Base	Various	5/2/2000
53	Letter from DTSC to OBRA regarding Technical Memorandum for Evaluation of Beneficial Uses of Groundwater, Revision C	Various	5/10/2000

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
53	Letter from DTSC to OBRA re: Addendum 1 Remedial Investigation Reports for Operable Units 1 and 3, Revision C, Oakland Army Base	Various	5/24/2000
	Corrective Action Plan for Petroleum Tank Sites: final (Rev 0)	IT Corporation	5/25/2000
	Final Memorandum For Evaluation of Beneficial Uses of Shallow Groundwater	U.S. Army Corps of Engineers	6/1/2000
	Remedial Investigation Work Plan, Sampling and Analysis Plan, Contractor Quality Control Plan, Safety and Health Plan Addendum, OU4, June 2000	IT Corporation	6/9/2000
53	Letter from EPA re: Review of Oakland Army Base Revision C Remedial Action Workplan for OU2 Soil, dated May 19, 2000	Various	6/13/2000
	Technical Memorandum on Beneficial Uses of Groundwater, 3/3/2000	IT Corporation	6/22/2000
	Remedial Investigation Report for OU I and OU3, 6/2000	IT Corporation	6/23/2000
38	Final Addendum I Remedial Investigation Report for OU I and OU3	IT Corporation	6/23/2000
68	Trench Logs OU-4	Harding Lawson Associates	6/29/2000
	Draft Final Remedial Investigation Report For GU I, Volume 1 of II	IT Corporation	7/1/2000
	Draft Final Remedial Investigation Report For OU1, Volume II of II	IT Corporation	7/1/2000
	Draft Final Remedial Investigation Report For OU4, Volume I of III	U.S. Army Corps of Engineers Sacramento District	7/1/2001
4	Draft Final Remedial Investigation Report For OU4, Volume III of til	U.S. Army Corps of Engineers Sacramento District	7/1/2000
5	Addendum 2,Remedial Investigation Report For OU1, Volume II of II	U.S. Army Corps of Engineers Sacramento District	7/1/2000
65	Draft Final Addendum 2 Remedial Investigation Report for OUI, Volume I of II	U.S. Army Corps of Engineers Sacramento District	7/7/2000
79	Corrective Action Plan for Petroleum Tank Sites Addendum 1	U.S. Army Corps of Engineers Sacramento District	7/7/2000
53	Letter from EPA to OBRA regarding EPA Review of Oakland Army Base Revision O, Technical Memorandum for Evaluation of Beneficial Uses of Groundwater, June 22, 2000	Various	7/13/2000
53	Letter from EPA to OBRA re: EPA Review of Oakland Army Base Revision O, Addendum 1 Remedial Investigation for OU I and OU3, June 23, 2000.	Various	7/13/2000
53	Letter from EPA to OBRA re: EPA Review of Oakland Army Base Revision O, Workplan for Remedial Investigation OU4, June 9, 2000.	Various	7/13/2000
	Ouallty Control Summary Report for the Additional Remedial Investigation of OU I, OU3, AST and UST sites,	IT Corporation	8/2/2000
53	Letter from Dept. of the Army to OBRA regarding Biological Assessment for USFWS, Disposal and Reuse of Oakland Army Base, Alameda, California	Various	8/3/2000
17	Draft Final Feasibility Study for OU2, OU3 and OU7, Revision C	U.S. Army Corps of Engineers Sacramento District	8/17/2000

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
53	Letter from EPA to OBRA regarding EPA Review of Oakland Army Base Revision C, Feasibility Studay, Operable Units 2,3 and 7, August 16, 2000.	Various	9/18/2000
53	Letter from EPA to OBRA regarding EPA Review of Oakland Army Base Revision C, Human Health Risk Assessment Report for OU1, July 7, 2000.	Various	9/18/2000
	Remedial Action Plan, Onshore Operable unit Fleet and Industrial Supply Center	DTSC	10/1/2000
53	Letter from Dept. of the Interior Fish and Wildlife Service to OBRA regarding Concurrence of Not Likely to Adversely Affect Disposal and Reuse of Oakland Army Base, Alameda, California	Various	10/11/2000
53	Letter from EPA to OBRA regarding Review of Oakland Army Base Revision 1 Remedial Action Workplan for OU2 Soil, September 2000	Various	10/24/2000
45.1	Closure Investigation Report Underground Storage Tanks 10, B and C, D, F, K, L, M, Q, and Above-Ground Storage Tanks in BRAC Parcels 4 and 5 Vol. t of II	IT Corporation	11/17/2000
45.2	Closure Investigation Report Underground Storage Tanks 10, B and C, D, F, K, L, M, Q, and Above-Ground Storage Tanks in BRAC Parcels 4 and 5 Vol. II of II	IT Corporation	11/17/2000
	Addendum 2, Remedial Investigation Report for Operable Unit 1 11/2000 Volume I	IT Corporation	11/20/2000
	Addendum 2, Remedial Investigation Report for Operable Unit 1 11/2000 Volume II	IT Corporation	11/20/2000
11	Final Report, Oakland Army Base Utility Study Environmental Review	Earth Tech	12/1/2000
12	Final Report Oakland Army Base Utility Study Utilities Systems Review	Earth Tech	12/1/2000
	Oakland Army Base Remedial Program managers (RPM) Meeting Minutes	Various	1/1/2001
53	Letter form DTSC to OBRA regarding Development of Soil Cleanup Levels for both Human Health and Ecological Protection, OU2 Wetland	Various	1/10/2001
36	Draft Feasibility Study for Operable Unit 1, Oakland Army Base, Oakland, California (Revision B)	IT Corporation	1/26/2001
32	Final Removal Report for Petroleum Tanks, Volume I, January 2001	IT Corporation	1/30/2001
	Final Removal Report for Petroleum Tanks, Volume II, January 2001	IT Corporation	1/30/2001
	Building 1 Sludge Sampling Site Safety and Health Plan	Harding Lawson Associates	2/1/2001
	Removal Action Work Plan, OU2 Soil, Revision 2	IT Corporation	2/1/2001
63	Final Remedial Investigation Report Howard Terminal, Volume 1 of 4	Baseline Environmental Consulting	3/1/2001
	Monitoring Well Closure Plan (Rev. 1)	IT Corporation	3/13/2001
22	Draft Final Addendum 2 Remedial Investigation Report	U.S. Army Corps of Engineers Sacramento District	3/13/2001
53	Letter from EPA to OBRA regarding Review of Oakland Army Base Revision 2 Remedial Action Workplan for OU 2 Soil, February 22, 2001.	Various	3/19/2001
33	Corrective Action Implementation Report for Petroleum Tank Sites, Addendum 1 to the Removal Report for Petroleum Tanks	IT Corporation	3/23/2001
19	Final Remedial Investigation Report, Operable Unit No. 1	U.S. Army Corps of Engineers Sacramento District	3/31/2001

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Dale
13	Final Report, Oakland Army Base Utility Study Geotechnical Review	Earth Tech ,	4/1/2001
6	Annual Basewide Groundwater Monitoring Report - Year 2000	U.S. Army Corps of Engineers Sacramento District	4/1/2001
	Closure Investigation Report for Tanks 4 v& 5, Addendum 1 of Closure Investigation Report for UST and AST at Oakland Army Base	IT Corporation	4/4/2001
14	Amended Draft Final Reuse Plan for the Oakland Army Base (OARB)	Oakland Base Reuse Authority	4/9/2001
	Principles of Environmental Restoration and Their Application To Streamlining Initiatives, Oakland Army Base Scoping Workshop	U.S. Army Environmental Center	4/23/2001
21	Final Removal Action Work Plan for QU2 Soil	IT Corporation	4/23/2001
61	Draft Corrective Action Implementation Report for Tank DI, Addendum 2 to the Removal Repori for Petroleum Tanks	U.S. Army Corps of Engineers Sacramento District	4/26/2001
53	Letter from RWQCB to OBRA regarding Comments on Final Corrective Action Implementation Report for Petroleum Tank Sites, Addendum I to the Removal Report for Petroleum Tanks, Oakland Army Base, issued by IT Corporation on March 23, 2001.	Various	5/14/2001
53	Letter from RWQCB to QBRA regarding Concurrence on "Monitoring Well Closure Work Plan, Oakland Army Base, Oakland" Revision I, issued by IT Corporation on March 13, 2001.	Various	5/16/2001
	Environmental Impact Statement for the Disposal and Reuse of the Oakland Army Base, Oakland, California	Foster Wheeler Environmental Corporation	6/1/2001
	Draft Environmental Baseline Survey For Transfer For Oakland Army Base, Oakland, California	IT Corporation	6/14/2001
53	Letter from IT Corporation to Army Corps of Engineers regarding Sacramento TERC II-Responses to RWQCB Comments on Flanal Corrective Action Implementation Report for Petroleum Tank Sites; Addendum 1 to the Removal Report for Petroleum Tanks at Oakland Army Base.	Various	6/14/2001
15	Information from Roger Caswell regarding Background on Building 1 Oily Residue and Army Investigation Plans	Roger Caswell, P.E. OARB BEC	6/25/2001
53	Letter from DTSC to OBRA regarding Technical Memorandum, Building 840 Investigation, Oakland Army Base	Various	6/25/2001
	Draft Annual Basewide Groundwater Monitoring Report - Year 2000	IT Corporation	6/29/2001
	Annual Basewide Groundwater Monitoring Report - Year 2000	IT Corporation	6/29/2001
	Final Corrective Action implementation Report for Tank D1, Addendum 2 To The Report For Petroleum Tanks	U.S. Army Corps of Engineers	7/1/2001
2	Remedial Investigation Report For OU4, Volume I of III	U.S. Army Corps of Engineers Sacramento District	7/1/2001

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
88	Coordinated Environmental Cost Study for Fitzsimons Redeveopment Authority, City of Aurora	Matrix Design Group	7/5/2001
	Operable Unit 2 Soil Removal Work Plan, Sampling and Analysis Plan, Contractor Quality Control Plan	IT Corporation	7/11/2001
	Corrective Action Implementation Report for Tank D1	IT Corporation	7/16/2001
69	Draft Negative Declaration	Department of Toxic Substances Control	7/17/2001
18	Environmental Baseline Survey for Transfer	U.S. Army Corps of Engineers Sacramento District	8/3/2001
	Removal Action Work Plan, OU2 Soil, Revision 1	IT Corporation	9/1/2001
53	Letter from DTSC to OBRA regarding Reuse of Building 1, Oakland Army Base	Various	9/14/2001
	PCB Equipment List and Laboratory Analyses Results	Earth Tech	10/1/2001
	Engineering Investigation Of Building One, Oakland Army Base, Oakland, California - Seismic Vulnerability and Retrofit	Earth Tech, Inc.	10/1/2001
28	Economic Development Conveyance Application, Oakland Army Base (OARB)(no oversize figure)	Oakland Base Reuse Authority	10/1/2001
52	Economic Development Conveyance of the Oakland Army Base, Economic Development Conveyance Application(Includes oversize figure)	Oakland Base Reuse Authority	10/1/2001
46.1	Soil Residual Contamination Review UST/AST Sites OU-1	Innovative Technical Solutions, Inc.	10/11/2001
46.2	Soil Residual Contamination Review UST/AST Sites OU-2 OU-3 OU-4 OU-5	Innovative Technical Solutions, Inc.	10/11/2001
	Draft Corrective Action Implementation Report for Building 99 Pipeline, Addendum 3 to the Removal Report for Petroleum Tanks	U.S. Army Corps of Engineers	11/1/2001
48	Validation of Cost Estimating Approach Oakland Army Base	Erier & Kalinowskl, Inc.	11/30/2001
66	Draft Cost to Complete Remediation Estimate for Issues and Sites on the Oakland Army Base	Erier & Kalinowskl, Inc.	11/30/2001
	Environmental Impact Statement for the Disposal and Reuse of the Oakland Army Base, Oakland, California	Foster Wheeler Environmental Corporation	12/21/2001
123	Draft Removal Action Workplan for the Charies P. Howard Terminal, Oakland, California	Baseline Environmental Consulting	12/21/2001
75	Final Catch Basin Cleaning Report	U.S. Army Corps of Engineers Sacramento District	1/14/2002
73	Sacramento TERC II, Transmittal of Sierra Testing Laboratories Report, dated 10 Nov 1998	IT Corporation	2/7/2002
50	Corrective Action Implementation Report for Building 99 Pipeline, Addendum 3 to the Removal Report for Petroleum Tanks	IT Corporation	2/12/2002
41	Sacramento TERC II, Contract Task Order No. 01, Transmittal of Petroleum Engineering Repori Dated 1990	IT Corporation	2/22/2002

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
127	Sacramento TERC II, Draft Closure Report for Operable Unit 2 Wetland Soil Removal.	IT Corporation	2/22/2002
49	Draft Closure Report Operable Unit 2 Wetland Soil Removal	IT Corporation	2/22/2002
67	Tarry Residue Sample Analytical Data, Former ORP/Building 1 Area	Erler & Kalinowski, Inc.	3/1/2002
51	Sacramento TERC II, Draft Building 1 Site Supplemental Investigation Report (Tech Info Only)	IT Corporation	3/14/2002
110	Draft Building 1 Site Supplemental Investigation Report (Tech Info Only)	IT Corporation	3/14/2002
58	Monitoring Well Installation and Groundwater Monitoring Report	U.S. Army Corps of Engineers Sacramento District	3/14/2002
	Draft Environmental Impact Report (Volumes 1, 2, & 3)	G. Borchard & Associates	4/1/2002
	Oakland Army Base Area Redevelopment Plan (Volumes 1, 2, and 3)	G. Borchard & Associates	4/1/2002
64	Missed Information Report, Volume II of II	Baseline Environmental Consulting	4/1/2002
81	Missed Information Report, Oakland Army Base	Baseline Environmental Consulting	4/3/2002
56	Preliminary Draft Remedial Action Plan Oakland Army Base	Erler & Kalinowski, Inc.	4/15/2002
57	Preliminary Draft Risk Management Plan Oakland Army Base	Erler & Kalinowski, Inc.	4/15/2002
	Pile Inspection Report, Pile Inspection of wharfs 7 & 6 1/2 At the Port of Oakland	Underwater Resources, Inc.	5/16/2002
82	Independent Government Cost Estimate (IGCE) (Confidential Information)	SMI, Inc.	5/31/2002
108	Draft OBRA Phase II Investigation Data Report, Oakland Army Base	Erler & Kalinowski, Inc.	6/6/2002
	OBRA Phase II Investigation Data Report, Oakland Army Base, Oakland, California	Erler & Kalinowski, Inc.	6/12/2002
62	Draft Final Building 1 Site Supplemental Investigation Report	U.S. Army Corps of Engineers Sacramento District	6/20/2002
80	Sacramento TERC II, Draft Phase II Supplemental Investigation Report	IT Corporation	6/24/2002
115	Draft Remedial Action Plan Oakland Army Base	Erler & Kalinowski, Inc.	7/19/2002
116	Draft Risk Management Plan Oakland Army Base (Appendix E to Draft RAP)	Erler & Kalinowski, Inc.	7/19/2002
	Gateway to the East Bay: Final Reuse Plan For The Oakland Army Base	Oakland Base Reuse Authority	7/31/2002
	Mitigation Monitoring and Reporting Program for the Oakland Army Base Reuse Plan	G. Borchard & Associates	7/31/2002
84	Transmittal of the closure Letter and Site Summaries for Department of Defense (DoD) Underground Storage Tanks at Oakland Army Base, Oakland, CA	Regional Water Quality Control Board	8/9/2002
	Final Remedial Action Plan Oakland Army Base	Erler & Kalinowski, Inc.	9/27/2002
	Final Risk Management Plan Oakland Army Base (Appendix E to Final RAP)	Erler & Kalinowski, Inc.	9/27/2002
	Final Environmental Baseline Survey for Transfer For Oakland Army Base, Oakland, California	MWH Americas, Inc.	12/31/2002
	Draft Finding of Suitability for Early Transfer for Oakland Army Base	Department of the Army	2/20/2003
	Finding of Suitability for Early Transfer for Oakland Army Base, Oakland, California	Department of the Army	4/1/2003
	Treatability Test Field Activities Report Former ORP/Building 1 Area Oakland Army Base Oakland, California	Erler & Kalinowski, Inc.	7/22/2003

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
	Memorandum of Agreement For Oakland Army Base, Volume I, Exhibits A Through M		8/7/2003
	Memorandum of Agreement For Oakland Army Base, Volume It, Exhibit L		8/7/2003
	Memorandum of Agreement For Oakland Army Base, Volume III, Exhibits N Through V and All Schedules		8/7/2003
	Pre-design Investigation Memorandum Former ORP/Bullding 1 Area Oakland, California	Ninyo & Moore	1/20/2004
	Contract Documents for Former QRP/Bullding 1 Area Remediation Project Former Oakland Army Base / Economic Development Conveyance Area Oakland, CA	Erier & Kaiinowski, Inc.	5/14/2004
	Final Groundwater Monitoring Plan Addendum No. 1, Former Oakland Army Base - EDC Area, Oakland, California	Erier & Kaiinowski, Inc.	8/27/2004
	Field Documents for Oakland Gateway Development Area, Oakland, California	Environmental Sampling Services	11/4/2004
	Closure Summary Report For Eleven Underground Fuel Storage Tank Sites Former Oakland Army Base, Oakland, California	Kleinfelder, Inc.	2/28/2005
	Site Control Plan, Former Oakland Army Base - EDC Area, Oakland, California	Erier & Kalinowski, Inc.	3/1/2005
	Final Site-Wide Quality Assurance Program Plan Former Oakland Army Base - EDC Area Oakland, California	Veridian Environmental, Inc.	4/8/2005
	Revised Tables and Figures For The Oakland Army Base Feasibility Study	Matrix Environmental Services, L.L.C.	5/12/2005
	Soil Treatment Process Plan Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California (Draft)	Northgate Environmental Management, Inc.	7/11/2005
	DRAFT Dust and Odor Control Plan, Building 1	Northgate Environmental Management, Inc.	7/20/2005
	Decontamination Plan Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California (Draft)	Northgate Environmental Management, Inc.	7/21/2005
	Traffic Control and Transportation Plan Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California (Draft)	Northgate Environmental Management, Inc.	7/22/2005
	Environmental Site Health & Safety Plan Former ORP/Building 1 Area Remediation Project Oakland, California	Geomatrix Consultants, Inc.	8/1/2005
	Task-Specific Health and Safety Plan Utility Demolition Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California	Northgate Environmental Management, Inc.	8/1/2005
	Site-Specific Health and Safety Plan, Building 1 Area (draft)	Northgate Environmental Management, Inc.	8/3/2005
	Dust and Odor Control Plan Former QRP/Buiiding 1 Area Former Oakland Army Base - EDC Area Oakland, California (Draft)	Northgate Environmental Management, Inc.	8/5/2005
	DRAFT Traffic Control and Transportation Plan, Former ORP/Bullding 1 Area, Former Oakland Army Base - EDC Area, Oakland, California	Northgate Environmental Management, Inc.	8/5/2005
	Pre-Design Groundwater Monitoring Report Second Quarteriy Event Spring 2005 VOCs in Groundwater Near Building 99 Former Oakland Army Base Oakland California	Fugro West, Inc.	8/8/2005

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
	DRAFT Soil Treatment Process Plan Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California	Northgate Environmental Management, Inc.	8/16/2005
	Task-Specific Health and Safety Plan Utility Demolition Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California	Northgate Environmental Management, Inc.	8/22/2005
	Perimeter Air Monitoring Plan, Building 1 Area (Draft) 8/23/05	Northgate Environmental Management, Inc.	8/23/2005
	Perimeter Air Monitoring Plan, Building 1 Area (Draft) 8/30/05	Northgate Environmental Management, Inc.	8/30/2005
	Site-Specific Health and Safety Plan, Building 1 Area (draft)	Northgate Environmental Management, Inc.	8/31/2005
	Task-Specific Health and Safety Plan Utility Demolition Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California	Northgate Environmental Management, Inc.	9/1/2005
	DRAFT Soil Treatment Process Plan Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California	Northgate Environmental Management, Inc.	9/1/2005
	Dust and Odor Control Plan Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California	Northgate Environmental Management, Inc.	9/8/2005
	Perimeter Air Monitoring Plan, Building 1 Area (Draft) 9/16/05	Northgate Environmental Management, Inc.	9/16/2005
	Traffic Control and Transportation Plan Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California	Northgate Environmental Management, Inc.	9/16/2005
	DRAFT Storm Water Pollution Prevention Plan, Building 1	Northgate Environmental Management, Inc.	9/16/2005
	Pre-Design Investigation Memorandum Building 807 Area and Building 808/823 Area Former Oakland Army Base, Oakland, California	Northgate Environmental Management, Inc.	9/19/2005
	Results of Pre-Design Investigation Building 99 Soil RAP Site Former Oakland Army Base Economic Development Conveyance Area Oakland California	Fugro West, inc.	9/26/2005
	Decontamination Plan Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California	Northgate Environmental Management, Inc.	10/28/2005
	Storm Water Pollution Prevention Plan Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California	Northgate Environmental Management, Inc.	10/31/2005
	Soil Treatment Process Plan Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California	Northgate Environmental Management, Inc.	11/4/2005
	Site-Specific Health and Safety Plan Former ORP/Building 1 Area Former Oakland Army Base - EDC Area Oakland, California	Northgate Environmental Management, Inc.	11/7/2005
	Stockpile Management Plan	Northgate Environmental Management, Inc.	11/28/2005
	Remedial Design and Implementation Plan Former ORP/Building 1 Area Oakland Army Base - EDC Area Oakland, California	Erier & Kalinowskl, Inc.	1/9/2006
	Oakland Base Reuse Authority, Building 1 Area Remediation, PSEC #605119, Hazardous Waste Manifests for Non RCRA Treated Soil Profile EC8767	Pacific States Environmental Contractors, Inc.	12/31/2006
	Oakland Base Reuse Authority, Building 1 Area Remediation, PSEC #605119, Air Monitoring Reports (5/26/06 - 8/25/06)	Pacific States Environmental Contractors, Inc.	12/31/2006

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
	Oakland Base Reuse Authority, Building 1 Area Remediation, PSEC #605119, Documentation of Completion of Work (Book 1 of 4)	Pacific States Environmental Contractors, Inc.	12/31/2006
	Oakland Base Reuse Authority, Building 1 Area Remediation, PSEC #605119, Documentation of Completion of Work (Book 2 of 4)	Pacific States Environmental Contractors, Inc.	12/31/2006
	Oakland Base Reuse Authority, Building 1 Area Remediation, PSEC #605119, Documentation of Completion of Work (Book 3 of 4)	Pacific States Environmental Contractors, Inc.	12/31/2006
	Oakland Base Reuse Authority, Building 1 Area Remediation, PSEC #605119, Documentation of Completion of Work (Book 4 of 4)	Pacific States Environmental Contractors, Inc.	12/31/2006
	Summary Groundwater Monitoring Repori, VOCs in Groundwater Near Building 808/823, Former Oakland Army Base, Economic Development Conveyance Area	Northgate Environmental Management, Inc.	4/2/2007
	Request for Closure - RMP Locations In North Gateway Area, Former Oakland Army Base – EDC Area, Oakland, California	Erier & Kalinowskl, Inc.	4/10/2007
	Limited Soil Investigation Repori, OBRA/EBMUD Pipeline Alignment, Oakland, California	Fugro West, Inc.	5/3/2007
	Draft Completion Repori for VOCs In Groundwater at Buildings 808 and 823, Former Oakland Army Base - EDC Area, Oakland, California	Erier & Kaiinowski, Inc.	8/17/2007
	Remediation Completion Report, Former ORP/Building 1 Remediation, Oakland Army Base - EDC Area, Oakland, California	Geomatrix	8/22/2007
	Opinion of Estimated Cost for Remaining Environmental Remediation at the Former Oakland Army Base - EDC Area, Oakland, California	Erier & Kalinowskl, Inc.	3/27/2008
	Building 99 Debris Area Investigation Report, Former Oakland Army Base, Oakland, California	Northgate Environmental Management, Inc.	7/14/2008
	Revised Operations and Maintenance Plan Former ORP/Building 1 Area Remediation Project, Former Oakland Army Base, Economic Development Conveyance Area	AMEC Geomatrix	9/4/2008
	Request for Completion - RMP Locations 3 through 6 in West Gateway Area, Former Oakland Army Base – EDC Area, Oakland, California	Erier & Kaiinowski, Inc.	9/17/2008
	Well Installation and First Quarterly Groundwater Monitoring Report for the Former ORP/Building 1 Area Remediation Project, Former Oakland Army Base – EDC Area, Oakland, California	AMEC Geomatrix	11/11/2008
	Revised Remediation Completion Repori, Former ORP/Building 1 Area Remediation, Former Oakland Army Base – EDC Area, Oakland, California	AMEC Geomatrix	2/13/2009
	Completion Report for VOCs in Groundwater at Buildings 808 and 823, Former Oakland Army Base – EDC Area, Oakland, California	Erier & Kalinowskl, Inc.	4/24/2009
	Annual Groundwater Monitoring Report, Former QRP/Building 1 Area Remediation Project, Former Oakland Army Base – EDC Area, Oakland, California	AMEC Geomatrix	7/24/2009

City Of Oakland Environmental Assessment Reports

Index No.	Document Title	Author	Date
	Request for Completion - RMP Locations 11, 75, 86, 93, 105, 106, 107, 108, and 109 in Central Gateway Area, Former Oakland Army Base – EDC Area, Oakland, California	Erler & Kalinowski, Inc.	10/15/2009
	Draft First Five-Year Review for the GDA and Subaru Lot, Former Oakland Army Base, Oakland, California	Erler & Kalinowski, Inc.	6/10/2010
	Request for Completion - RMP Locations 23, 24, 25, 87, 88, 113, 114, and 123 in the East Gateway Area, Former Oakland Army Base – EDC Area, Oakland, California	Erler & Kalinowski, Inc.	6/29/2010
	Well Destruction Report, Former ORP/Building 1 Remediation Project, Former Oakland Army Base – EDC Area, Oakland, California	AMEC Geomatrix	6/30/2010
	Request for Completion - RMP Location 96 in the West Gateway Area, Former Oakland Army Base – EDC Area, Oakland, California	Erler & Kalinowski, Inc.	1/14/2011
	Revised Request for Completion - RMP Locations 7, 22, and 29, Former Oakland Army Base – EDC Area, Oakland, California	MACTEC Engineering and Consulting	2/25/2011
	Revised Building 99 Debris Area Investigation Report, Former Oakland Army Base, Oakland, California	Northgate Environmental Management, Inc.	3/15/2011
	Request for Completion - RMP Locations 8, 10, 19/107, and 97 in Central Gateway Area	Montclair Environmental Management Inc.	5/25/2011
	Revised Draft First Five-Year Review for the GDA and Subaru Lot, Former Oakland Army Base, Oakland, California	Erler & Kalinowski, Inc.	9/29/2011
	Request for Completion - RMP Locations 15, 91, and 98, Former Oakland Army Base – EDC Area, Oakland, California	AMEC	12/5/2011
	Updated Master Plan Level Geotechnical Investigation Report, Oakland Army Base, Maritime Street and Highway 880, Oakland, California	Berlogar Stevens & Associated	3/7/2012
	Request for Completion - RMP Locations 1 and 2 in the West Gateway Area, Former Oakland Army Base, Oakland, California	Montclair Environmental Management Inc.	5/1/2012

Updated and Amended 3/29/2012

First American Title

1850 Mt. Diablo Blvd., Suite 300
Walnut Creek, CA 94596

John Monetta
City of Oakland, Community & Economic Development Agency
250 Frank H. Ogawa Plaza, 4th Floor, Rm 4308
Oakland, CA 94607
Phone: (510)238-7125

Escrow Officer:	Liz Treangen
Phone:	(925)927-2100
Borrower:	
Property:	Parcels: (B-2 and B-3-EDC), (C-1 and C-2 Port Sliver), (E-Public Trust), (14 and B-4-Baldwin Yard), (15-A and B-1-Subaru) Former Oakland Army Base and vicinity, Oakland, CA

PRELIMINARY REPORT

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. *The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.* Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of tide insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of March 10, 2012 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

None: Informational

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

AS TO EDC PARCELS B-2 and B-3:

City of Oakland, a municipal corporation

AS TO PORT "SLIVER" PARCELS C-2 AND C-1:

City of Oakland, a municipal corporation

AS TO PUBLIC TRUST PARCEL E:

The Redevelopment Agency of the City of Oakland, a community redevelopment agency organized and existing under the California Community Redevelopment Law, as a trustee pursuant to the public trust for commerce, navigation, and fisheries and the terms and conditions of Chapter 657, Statutes of 1911 and Chapter 664, Statutes of 2005, both as amended, and the State of California, acting by and through the State Lands Commission, as to those interests reserved to it through Chapter 657, Statutes of 1911 and Chapter 664, Statutes of 2005, both as amended.

AS TO BALDWIN YARD ADJUSTED PARCEL 14:

City of Oakland, a municipal corporation

AS TO SUBARU ADJUSTED PARCEL 15-B:

City of Oakland, a municipal corporation

The estate or interest in the land hereinafter described or referred to covered by this Report is:

Fee Simple

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year 2012-2013, a lien not yet due or payable.

   Taxes for the year 2011-2012 were exempt.

2. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

3. Any easements or lesser rights in favor of Oakland Terminal Railway Co., Pacific Gas and Electric Company, or others for railroad tracks, underground utilities and sewers located within a northeastern portion of EDC Parcel B-2, as disclosed by the Indenture recorded February 17, 1942, Instrument No. PP-7972, Book 4186, Page 156 of Official Records.

4. An easement for railroad tracks and incidental purposes, recorded August 4, 1942 as Instrument No. PP-39463, Book 4267, Page 109 of Official Records.

In Favor of:	Santa Fe Land Improvement Company
Affects:	A northern portion of EDC Parcel B-2 and Baldwin Yard Adjusted Parcel 14

   The rights of Santa Fe Land Improvement Company under said easement grant were conveyed to The California, Arizona and Santa Fe Railway Company, a California corporation by Deed recorded December 15, 1957, Instrument No. AB-107222, Book 5347, Page 71 of Official Records.

   The rights of The California, Arizona and Santa Fe Railway Company under said easement grant were conveyed to The Atchison, Topeka and Santa Fe Railway Company by the document recorded August 29, 1963, Instrument No. AU-144208, Reel 978, Image 378 of Official Records.

5. An easement for public street and roadway purposes and incidental purposes, recorded July 23, 1943 as QQ-38166, Book 4404, Page 171 of Official Records.

In Favor of:	City of Oakland, a municipal corporation (not acting by and through its Board of Port Commissioners) by reservation
Affects:	that portion of Parcel B-2 within Maritime Street as it physically existed at said of July 23, 1943 which now includes a roadway which may now be known as Navy Roadway and additional land

   NOTE: By virtue of the City of Oakland having acquired the fee title said Parcel B-2, such easement should be merged out of existence

6. An easement for outfall sewer line and incidental purposes, recorded September 23, 1949 as Instrument No. AD-64847, Book 5894, Page 349 of Official Records.

In favor of:	East Bay Municipal Utility District
Affects:	a northern portion of EDC Parcels B-2 and B-3 and a portion of Public Trust Parcel E

   In connection therewith, unrecorded permit for installation and maintenance of sewer outfall dated July 19, 1949 by and between the State of California, East Bay Municipal Utility District amd Key Route Transit Lines

   Terms and provisions contained in the above documents.

7. An easement for public highway viaducts, surface roadways and roadway ramps and incidental purposes, recorded June 26, 1968 as Instrument No. BA-68979, Reel 2205, Image 787 of Official Records.

In favor of:	State of California
Affects:	northern portions EDC Parcel B-2 and B-3, Public Trust Parcel E and portions of the Baldwin Yard and Subaru Parcels

Terms and provisions contained in the above document.

8. Abutter's rights of ingress and egress to or from the adjoining freeway and freeway frontage roads (West Grand Avenue) have been relinquished pursuant to the terms and provisions in the documents recorded June 26, 1968 as Instrument No. BA-68979, Reel 2205, Image 787 and recorded February 23, 1979 as Instrument No. 79-34788 and recorded February 13, 2002 as Instrument No. 2002-72863

Affects: EDC Parcel B-2, Baldwin Yard Adjusted Parcel 14 and Subaru Adjusted Parcel 15-B and Port "Sliver" Parcels C-1 of Official Records.

9. An easement for aerial easement and right to construct overhead freeway bridge and/or highway together with inspection and access rights and incidental purposes, recorded February 3, 1995 as Instrument No. 95-28117 of Official Records.

In Favor of:	State of California
Affects:	portion of Port "Sliver" Parcels C-1

10. The fact that the land lies within the boundaries of the Oakland Army Base Redevelopment Project Area, as disclosed by the document recorded August 3, 2000 as Instrument No. 2000232151 of Official Records.

Revised Statement of Institution of Redevelopment for the Oakland Army Base Redevelopment Project recorded December 3, 2007 as Instrument No. 2007-409556 of Official Records

11. An easement for construction of the San Francisco-Oakland Bay Bridge Span Seismic Safety Project, including but not limited to governmental, on-commercial harbor and port use and incidental purposes, recorded Feburuary 13, 2002 as Instrument No. 2002-72862 of Official Records.

In favor of:	State of California
Affects:	portion EDC Parcel B-3 and Public Trust Parcel E

12. An easement for road purposes and incidental purposes, recorded February 13, 2002 as Instrument No. 2002-72864 of Official Records.

In favor of:	State of California
Affects:	a 40 foot wide strip located within EDC Parcels B-2 and B-3 and Public Trust Parcel E and and two 41 foot wide strips the locations of which are not defined of record

Terms and provisions contained in the above document.

13. An easement for rights of access to perform acts of environmental investigation and remediation and incidental purposes, recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.

In Favor of: United States of America, acting by and through the Secretary of the Army

Affects: All of said lands, excepting Port "Sliver" Parcels C-1

Terms and provisions contained in the above document.

14. An unrecorded easement (DACA05-2-70-01) for underground communication cable line and incidental purposes, dated January 8, 1970, as disclosed in the Quitclaim Deed recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.

In Favor of: The Pacific Telephone and Telegraph Company

Affects: a portion of the EDC Parcels B-2 and B-3 and Public Trust Parcel E

Terms and provisions contained in the above document.

15. An unrecorded easement (SFRE (S) 499) for underground communication cable line and incidental purposes, dated January 25, 1954, as amended by supplements dated June 29, 1965, May 19, 1966, May 29, 1968 and June 23, 1970, as disclosed by the quitclaim deed recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.

In Favor of: The Pacific Telephone and Telegraph Company

Affects: a portion of the EDC Parcels B-2 and B-3 and Public Trust Parcel E

Terms and provisions contained in the above document.

16. An unrecorded easement (SFRE (S)-630) for underground communication cable line and incidental purposes, dated June 17, 1955, as disclosed by the Quitclaim Deed recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.

In Favor of: The Western Union Telegraph Company

Affects: a portion of the EDC Parcels B-2 and B-3 and Public Trust Parcel E

Terms and provisions contained in the above document.

17. An unrecorded easement (SFRE-(S)-729) for underground communication cable line and incidental purposes,dated February 25, 1957, as disclosed by the Quitclaim Deed recorded August 8, 2003 as Instrument No. 2003466370 of Official Records.

In Favor of: The Pacific Telephone and Telegraph Company

Affects: a portion of the EDC Parcels B-2 and B-3 and Public Trust Parcel E

Terms and provisions contained in the above document.

18. The terms and provisions contained in the document entitled "Covenant to Restrict use of Property Environmental Restriction" recorded August 8, 2003 as Instrument No. 2003466371 of Official Records. Affects: EDC Parcels B-2 and B-3 and Public Trust Parcel E and Baldwin Yard Adjusted Parcel 14

19. The terms and provisions contained in the document entitled "Covenant to Restrict use of Property Environmental Restriction" recorded November 18, 2004 as Instrument No. 2004-513848 of Official Records. Affects: Subaru Adjusted Parcel 15-B

20. The terms and provisions contained in the document entitled "Quitclaim Deed" recorded November 18, 2004 as Instrument No. 2004-513849 of Official Records. Affects: Subaru Adjusted Parcel 15-B

21. An easement for ingress and egress and incidental purposes, recorded November 18, 2004 as Instrument No. 2004-513852 of Official Records.

In Favor of:	United States of America (Department of the Army)
Affects:	southeasteriy portion of Baldwin Yard Adjusted Parcel 14

Quitclaim Deed recorded June 29, 2007 as Instrument No. 2007-243205 of Official Records by which the United States of America (Department of the Army) transfered its above easement interest to East Bay Municipal Utility District

Terms and provisions contained in the above documents.

22. The terms and provisions contained in the document entitled "Oakland Army Base Settlement and Exchange Agreement" recorded August 7, 2006 as Instrument No. 2006-301845 of Official Records.

Among other matters, said document contains provisions that land herein are imposed with and subject to the "public trust" as set forth therein

The imposition of said "public trust" is made effective as to the lands herein on that certain Patent by the State of California to the Redevelopment Agency of the City of Oakland recorded August 7, 2006 as Instrument No. 2006-301850 of Official Records.

Affects: Public Trust Parcel E

23. An easement for ingress and egress and incidental purposes, recorded August 31, 2007 as Instrument No. 2007-319054 of Official Records.

In Favor of:	City of Oakland, acting by and through its Board of Port Commissioners
Affects:	southeasterly portion of Baldwin Yard Adjusted Parcel 14

24. An easement for all reasonable activities associated with the investigation, engineering and construction work for the "Berth 21 Project" and incidental purposes, recorded March 4, 2008 as Instrument No. 2008-80868 of Official Records.

In Favor of:	City of Oakland, acting by and through it Board of Port Commissioners
Affects:	southwesterly portion of EDC Parcel B-2 and a portion of Public Trust Parcel E

25. An easement for bike paths and incidental purposes, recorded July 28, 2010 as Instrument No. 2010-208571 of Official Records.

In Favor of: State of California Department of Transportation
Affects: portion of Parcels B-2, B-3 and E

Terms and provisions contained in the above document.

26. Any challenge to the transfer of title under the Grant Deed recorded January 31, 2012, as Instrument No. 2012-30757 of Official Records which challenge arises out of or is authorized or enabled by reason of the enactment of California Assembly Bill ABx1 26, Statutes of 2011, by the State of California

Affects: EDC Parcels B-2 and B-3, Port "Sliver" Parcels C-2 and C-1, Baldwin Yard Adjusted Parcel 14 and Subaru Adjusted Parcel 15-B

27. The effect upon title to Public Trust Parcel E by reason of the fact that title is vested of record in the Redevelopment Agency of the City of of Oakland, as Trustee etc, the existence of which entity was effectively terminated by reason of the enactment of California Assembly Bill ABIX 26, Statutes of 2011, by the State of California

INFORMATIONAL NOTES

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

LEGAL DESCRIPTION

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

EDC PROPERTY (PARCELS B-2 AND B-3)

PARCEL B-2

PARCELS 1 AND 2, PARCEL MAP NO. 10074, FILED DECEMBER 15, 2011, PARCEL MAP BOOK 318, PAGES 74-76, INCLUSIVE, ALAMEDA COUNTY RECORDS

APN: 018-0507-001-11

PARCEL B-3

A PORTION OF PARCEL 1 AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED FOR NO-COST ECONOMIC DEVELOPMENT CONVEYANCE PARCEL, COUNTY OF ALAMEDA, CALIFORNIA, RECORDED AUGUST 8, 2003 AS DOC. NO. 2003466370 IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT CITY OF OAKLAND MONUMENT NO. 7SE13, SAID MONUMENT BEING A PIN SET IN CONCRETE, IN A MONUMENT WELL MARKING THE INTERSECTION OF THE CENTERLINES OF MARITIME STREET AND 10TH STREET, AS SAID STREETS ARE SHOWN ON THAT UNRECORDED MAP ENTTfLED "OAKLAND ARMY TERMINAL BOUNDARY MAP" PREPARED BY WILSEY & HAM ENGINEERS IN 1958 FOR THE U.S. ARMY CORPS OF ENGINEERS, FILE NO. 45-1-286 (HEREINAFTER REFERRED TO AS THE ARMY MAP), SAID MONUMENT IS FURTHER DESCRIBED AS BEING PORT OF OAKLAND MONUMENT ID H006 AS SHOWN UPON RECORD OF SURVEY 990, FILED FOR RECORD IN BOOK 18 OF RECORDS OF SURVEYS, AT PAGES 50-60, ALAMEDA COUNTY OFFICIAL RECORDS;

THENCE SOUTH 38°00'05" WEST, 989.35 FEET TO THE EASTERN MOST CORNER OF PARCEL SEVEN AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED, RECORDED JUNE 15, 1999 AS DOC. NO. 99-222447 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 99222447), BEING A POINT ON THE LINE OF ORDINARY LOW TIDE IN THE BAY OF SAN FRANCISCO AS IT EXISTED ON THE 4TH DAY OF MAY IN THE YEAR 1852 (HEREINAFTER REFERRED TO AS THE AGREED LOW TIDE LINE OF 1852) AS DESCRIBED AND AGREED UPON IN CITY OF OAKLAND ORDINANCE NO. 3099 A CERTIFIED COPY OF WHICH WAS RECORDED ON OCTOBER 10, 1910 IN BOOK 1837 OF DEEDS, PAGE 84, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS 1837 DEEDS 84), SAID POINT BEING MARKED BY A PIN SET IN CONCRETE IN A MONUMENT WELL, AS SHOWN ON SAID ARMY MAP;

THENCE ALONG SAID AGREED UPON LOCATION OF THE "AGREED LOW TIDE LINE OF 1852" (1837 DEEDS 84) NORTH 41°00'50" EAST, 3829.19 FEET TO THE EASTERN MOST CORNER OF PARCEL 4 AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED FOR BERTH 21 SUBMERGED/UPLAND PROPERTY RECORDED AUGUST 8, 2003 AS DOC. NO. 2003466373 IN THE OFFICE OF THE RECORDER OF SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 2003466373);

THENCE DEPARTING FROM THE SAID AGREED UPON LOCATION OF THE "AGREED LOW TIDE LINE OF 1852" (1837 DEEDS 84), NORTH 80°39'13" WEST, 4577.07 FEET TO A POINT IN THE

EXISTING WESTERLY PERIMETER FENCE LINE OF SAID PIER 7, SAID EXISTING PERIMETER FENCE BEING THE WESTERN BOUNDARY OF SAID PARCEL 1 (DOC. 2003466370) AND THE POINT OF BEGINNING OF PARCEL OF PARCEL B-3 AS HEREIN DESCRIBED;

THENCE NORTHERLY ALONG THE SAID WESTERLY PERIMETER FENCE LINE OF PIER 7, BEING THE SAID WESTERN BOUNDARY OF PARCEL 1 (DOC. 2003466370), THE FOLLOWING TWO COURSES:

1) NORTH 20°41'10" WEST 427.98 FEET TO AN ANGLE POINT IN SAID FENCE LINE;

2) THENCE NORTH 01°48'40" WEST, 114.71 FEET TO A POINT ON THE SOUTHERN BOUNDARY OF PARCEL "S" AS DESCRIBED IN THAT CERTAIN INDENTURE AND CONVEYANCE BY AND BETWEEN THE STATE OF CALIFORNIA ACTING BY AND THROUGH IT'S DEPARTMENT OF PUBLIC WORKS AND THE CALIFORNIA TOLL BRIDGE AUTHORTTY, AND CITY OF OAKLAND, ACTING BY AND THROUGH IT'S BOARD OF PORT COMMISSIONERS, RECORDED ON FEBRUARY 17, 1942 IN BOOK 4186 OF OFFICIAL RECORDS, AT PAGE 156 IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS 4186 O.R. 156) BEING THE GENERALLY NORTHERN BOUNDARY OF SAID PARCEL 1 (DOC. 2003466370); THENCE ALONG THE SAID SOUTHERN BOUNDARY OF SAID PARCEL "S" (4186 O.R. 156), BEING THE SAID GENERALLY NORTHERN BOUNDARY OF PARCEL 1 (DOC. 2003466370), THE FOLLOWING TWO COURSES:

1) NORTH 88°08'30" EAST, 291.86 FEET;
2) THENCE NORTH 81°36'26" EAST 984.09 FEET;

THENCE DEPARTING FROM THE SAID SOUTHERN BOUNDARY OF SAID PARCEL "S" (4186 O.R. 156), BEING THE SAID GENERALLY NORTHERN BOUNDARY OF PARCEL 1 (DOC. 2003466370), SOUTH 08°23'15" EAST 210.89 FEET;

THENCE SOUTH 41°23'42" WEST 1098.60 FEET;

THENCE NORTH 48°40'48" WEST 552.26 FEEF TO THE POINT OF BEGINNING, CONTAINING 758,852 SQUARE FEET (17.421 ACRES), MORE OR LESS, MEASURED IN GROUND DISTANCES.

APN: 000-0507-001-10

PORT "SLIVER" PARCELS (PARCELS C-2 AND C-1)

PARCEL C-2

A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN ACT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA ENTTFLED "AN ACT GRANTING CERTAIN TIDE LANDS AND SUBMERGED LANDS OF THE STATE OF CALIFORNIA TO THE CTTY OF OAKLAND AND REGULATING THE MANAGEMENT, USE AND CONTROL THEREOF," APPROVED MAY 1, 1911 AS CHAPTER 657 OF STATUTES OF 1911, AND AMENDATORY ACTS (HEREINAETER REFERRED TO AS STAT. 1911, CH. 657), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF OAKLAND MONUMENT NO. 7SE13, SAID MONUMENT BEING A PIN SET IN CONCRETE, IN A MONUMENT WELL MARKING THE INTERSECTION OF THE CENTERLINES OF MARITIME STREET AND 10TH STREET, AS SAID STREETS ARE SHOWN ON THAT UNRECORDED MAP ENTITLED "OAKLAND ARMY TERMINAL BOUNDARY MAP" PREPARED

BY WILSEY & HAM ENGINEERS IN 1958 FOR THE U.S. ARMY CORPS OF ENGINEERS, FILE NO. 45-1-286 (HEREINAFTER REFERRED TO AS THE ARMY MAP), SAID MONUMENT IS FURTHER DESCRIBED AS BEING PORT OF OAKLAND MONUMENT ID H006 AS SHOWN UPON RECORD OF SURVEY 990, FILED FOR RECORD IN BOOK 18 OF RECORDS OF SURVEYS, AT PAGES 50-60, OFFICIAL RECORDS OF THE SAID COUNTY OF ALAMEDA;

THENCE SOUTH 38°00'05" WEST, 989.35 FEET TO THE EASTERN MOST CORNER OF PARCEL SEVEN AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED, RECORDED ON JUNE 15, 1999 AS DOC. NO. 99222447 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 99222447), BEING A POINT ON THE LINE OF ORDINARY LOW TIDE IN THE BAY OF SAN FRANCISCO AS IT EXISTED ON THE 4TH DAY OF MAY IN THE YEAR 1852 (HEREINAFTER REFERRED TO AS THE AGREED LOW TIDE LINE OF 1852) AS DESCRIBED AND AGREED UPON IN CITY OF OAKLAND ORDINANCE NO. 3099, A CERTIFIED COPY OF WHICH WAS RECORDED ON OCTOBER 10, 1910 IN BOOK 1837 OF DEEDS, PAGE 84, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS 1837 DEEDS 84), SAID POINT BEING MARKED BY A PIN SET IN CONCRETE IN A MONUMENT WELL, AS SHOWN ON SAID ARMY MAP;

THENCE NORTHEASTERLY ALONG SAID AGREED UPON LOCATION OF THE "AGREED LOW TIDE LINE OF 1852" (1837 DEEDS 84) NORTH 41°00'50" EAST, 3829.19 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE DEPARTING FROM THE SAID AGREED UPON LOCATION OF THE "AGREED LOW TIDE LINE OF 1852" (1837 DEEDS 84), NORTH 48°48'07" WEST, 839.34 FEET TO A POINT ON THE GENERALLY SOUTHERLY LINE OF PARCEL 1, TRACT 14 AS DESCRIBED IN SAID FINAL JUDGMENT AS TO INTERESTS OF DEFENDANT CITY OF OAKLAND, A MUNICIPAL CORPORATION, UNITED STATES OF AMERICA VS. CITY OF OAKLAND, ET AL., CASE NO. 21758-L, CASE NO. 21930-L, CASE NO. 22084-L RECORDED FEBRUARY 24, 1960, REEL 032, IMAGE 660 OF OFFICIAL RECORDS IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS REEL: 32, IMAGE:660), BEING THE POINT OF BEGINNING OF THE SAID PORTION OF LANDS (STAT. 1911, CH. 657) HEREIN DESCRIBED;

THENCE DEPARTING THE GENERALLY SOUTHERLY LINE OF SAID PARCEL 1, TRACT 14 (REEL: 32, IMAGE: 660), NORTH 48°48'07" WEST, 275.79 FEET TO A POINT ON A LINE THAT IS 100.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE LINE OF MEAN HIGH TIDE IN THE OAKLAND OUTER HARBOR, WHICH FOR THE PURPOSES OF THIS LEGAL DESCRIPTION IS BASED UPON A SURVEY, BY THE PORT OF OAKLAND IN SEPTEMBER 2001, OF THE LOCATION OF MEAN HIGH WATER FOR THE SAID OAKLAND OUTER HARBOR AS DEFINED BY THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION/NATIONAL OCEAN SERVICE;

THENCE NORTHERLY ALONG SAID PARALLEL LINE, THE FOLLOWING TWO COURSES:

1) NORTH 11°00'07" EAST 181.49 FEET;

2) NORTH 41°18'35" WEST 11.96 FEET TO A POINT ON THE SAID GENERALLY SOUTHERLY LINE OF PARCEL 1, TRACT 14 (REEL: 32, IMAGE: 660);

THENCE DEPARTING FROM SAID PARALLEL LINE, EASTERLY AND SOUTHERLY ALONG THE SAID GENERALLY SOUTHERLY LINE OF PARCEL 1, TRACT 14 (REEL: 32, IMAGE: 660) THE FOLLOWING TWO COURSES:

1) NORTH 86°48'30" EAST 235.16 FEET;

2) SOUTH 08°03'07" WEST, 385.68 FEET TO THE POINT OF BEGINNING, CONTAINING 65,473

SQUARE FEET (1.503 ACRES), MORE OR LESS, MEASURED IN GROUND DISTANCES.

BEARINGS AND DISTANCES CALLED FOR HEREIN ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE III, NORTH AMERICAN DATUM OF 1983 (1986 VALUES) AS SHOWN UPON THAT CERTAIN MAP ENTITLED RECORD OF SURVEY 990, FILED IN BOOK 18 OF RECORD OF SURVEYS, PAGES 50-60, OFFICIAL RECORDS OF THE SAID COUNTY OF ALAMEDA. TO OBTAIN GROUND LEVEL DISTANCES, MULTIPLY DISTANCES CALLED FOR HEREIN BY 1.0000705.

APN: 000-0507-007

PARCEL C-1:

A PORTION OF THE LANDS DESCRIBED AS PARCEL 2 IN THAT CERTAIN QUITCLAIM DEED BETWEEN THE STATE OF CALIFORNIA AND THE CITY OF OAKLAND, RECORDED FEBRUARY 23, 1979 AS DOC. NO. 79-034788 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 79034788), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF OAKLAND MONUMENT NO. 7SE13, SAID MONUMENT BEING A PIN SET IN CONCRETE, IN A MONUMENT WELL MARKING THE INTERSECTION OF THE CENTERLINES OF MARITIME STREET AND 10TH STREET, AS SAID STREETS ARE SHOWN ON THAT UNRECORDED MAP ENTITTLED "OAKLAND ARMY TERMINAL BOUNDARY MAP" PREPARED BY WILSEY & HAM ENGINEERS IN 1958 FOR THE U.S. ARMY CORPS OF ENGINEERS, FILE NO. 45-1-286 (HEREINAFTER REFERRED TO AS THE ARMY MAP), SAID MONUMENT IS FURTHER DESCRIBED AS BEING PORT OF OAKLAND MONUMENT ID H006 AS SHOWN UPON RECORD OF SURVEY 990, FILED FOR RECORD IN BOOK 18 OF RECORDS OF SURVEYS, AT PAGES 50-60, OFFICIAL RECORDS OF THE SAID COUNTY OF ALAMEDA;

THENCE NORTH 06°22'58" WEST, 3704.99 FEET TO THE WESTERN MOST CORNER OF SAID PARCEL 2 (DOC. 79-034788), SAID CORNER BEING MARKED BY A CONCRETE NAIL AND CALTRANS TAG SET FLUSH, AS SHOWN ON RECORD OF SURVEY NO. 1687, FILED IN BOOK 25 OF RECORDS OF SURVEYS, AT PAGES 58-69, THE SAID COUNTY OF ALAMEDA OFFICIAL RECORDS, AND BEING THE POINT OF BEGINNING OF THE PORTION OF SAID PARCEL 2 (DOC. 79034788) HEREIN DESCRIBED;

THENCE ALONG THE WESTERN AND GENERALLY NORTHERN LINES OF SAID PARCEL 2 (DOC. 79034788) THE FOLLOWING THREE COURSES:

1) NORTH 21°36'13" EAST, 249.00 FEET TO AN ANGLE POINT MARKED BY A 1" IRON PIPE AND CALTRANS CAP UNDER A CYCLONE FENCE, AS SHOWN ON SAID RECORD OF SURVEY NO. 1687;

2) NORTH 75°30'42" EAST, 642.22 FEET TO AN ANGLE POINT MARKED BY A 1" IRON PIPE AND CALTRANS CAP, AS SHOWN ON SAID RECORD OF SURVEY NO. 1587;

3) NORTH 78°23'41" EAST, 230.24 FEET TO THE WESTERN MOST CORNER OF PARCEL 1 DESCRIBED IN THAT CERTAIN GRANT DEED FROM THE CITY OF OAKLAND TO THE STATE OF CALIFORNIA, RECORDED FEBRUARY 3, 1995 AS DOC. NO. 95028117 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 95028117), SAID CORNER BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 295.00 FEET AND A CENTRAL ANGLE OF 58°05'18", FROM WHICH BEGINNING THE RADIUS POINT BEARS NORTH 45°29'15" EAST;

THENCE ALONG THE GENERALLY SOUTHERLY LINE OF SAID PARCEL 1 (DOC. 95028117) THE

FOLLOWING FIVE COURSES:

1) ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 299.08 FEET TO A POINT OF TANGENCY;

2) NORTH 77°23'57" EAST, 93.57 FEET;

3) NORTH 78°35'02" EAST, 301.18 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1457.00 FEET AND A CENTRAL ANGLE OF 12°33'12";

4) ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 319.22 FEET TO AN ANGLE POINT FROM WHICH THE RADIUS POINT BEARS SOUTH 01°08'14" WEST;

5) SOUTH 09°10'00" EAST, 85.90 FEET TO A POINT ON THE NORTHWEST LINE OF THE LANDS DESCRIBED IN THAT CERTAIN FINAL JUDGMENT AS TO TRACT 5, UNITED STATES OF AMERICA VS. CITY OF OAKLAND, STATE OF CALIFORNIA, ET AL., CASE NO. 21930-L, DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED FEBRUARY 16, 1951 IN BOOK 6361 OF OFFICIAL RECORDS, PAGE 334 IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS 6361 O.R. 334);

THENCE ALONG THE GENERALLY NORTHWEST LINE OF SAID TRACT 5 (6361 O.R. 334), SOUTH 64°17'11" WEST, 319.86 FEET TO A POINT ON THE GENERALLY SOUTHERLY LINE OF PARCEL "S" DESCRIBED IN THAT CERTAIN INDENTURE AND CONVEYANCE BY AND BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND THROUGH ITS DEPARTMENT OF PUBLIC WORKS AND THE CALIFORNIA TOLL BRIDGE AUTHORITY, AND THE CITY OF OAKLAND, A MUNICIPAL CORPORATION, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS, RECORDED FEBRUARY 17, 1942 IN BOOK 4186 OF OFFICIAL RECORDS, PAGE 156, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS 4186 O.R. 156);

THENCE ALONG SAID GENERALLY SOUTHERLY LINE OF SAID PARCEL "S" (4186 O.R. 156), SOUTH 81°36'26" WEST, 1660.88 FEET TO THE POINT OF BEGINNING, CONTAINING 416,298 SQUARE FEET (9.557 ACRES), MORE OR LESS, MEASURED IN GROUND DISTANCES.

APN: 000-0507-006

PUBLIC TRUST PARCEL (PARCEL E)

PARCEL E

A PORTION OF PARCEL 1 AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED FOR NO-COST ECONOMIC DEVELOPMENT CONVEYANCE PARCEL, COUNTY OF ALAMEDA, CALIFORNIA, RECORDED AUGUST 8, 2003 AS DOC. NO. 2003466370 IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 2003465370), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF OAKLAND MONUMENT NO. 7SE13, SAID MONUMENT BEING A PIN SET IN CONCRETE, IN A MONUMENT WELL MARKING THE INTERSECTION OF THE CENTERLINES OF MARITIME STREET AND 10TH STREET, AS SAID STREETS ARE SHOWN ON THAT UNRECORDED MAP ENTITLED "OAKLAND ARMY TERMINAL BOUNDARY MAP" PREPARED BY WILSEY & HAM ENGINEERS IN 1958 FOR THE U.S. ARMY CORPS OF ENGINEERS, FILE NO.

45-1-286 (HEREINAFTER REFERRED TO AS THE ARMY MAP), SAID MONUMENT IS FURTHER DESCRIBED AS BEING PORT OF OAKLAND MONUMENT ID H006 AS SHOWN UPON RECORD OF SURVEY 990, FILED FOR RECORD IN BOOK 18 OF RECORDS OF SURVEYS, AT PAGES 50-60, ALAMEDA COUNTY OFFICIAL RECORDS;

THENCE SOUTH 38°00'05" WEST, 989.35 FEET TO THE EASTERN MOST CORNER OF PARCEL SEVEN AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED, RECORDED JUNE 15, 1999 AS DOC. NO. 99222447 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS DOC. 99222447), BEING A POINT ON THE LINE OF ORDINARY LOW TIDE IN THE BAY OF SAN FRANCISCO AS IT EXISTED ON THE 4TH DAY OF MAY IN THE YEAR 1852 (HEREINAFTER REFERRED TO AS THE AGREED LOW TIDE LINE OF 1852) AS DESCRIBED AND AGREED UPON IN CITY OF OAKLAND ORDINANCE NO. 3099 A CERTIFIED COPY OF WHICH WAS RECORDED ON OCTOBER 10, 1910 IN BOOK 1837 OF DEEDS, PAGE 84, IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS 1837 DEEDS 84), SAID POINT BEING MARKED BY A PIN SET IN CONCRETE IN A MONUMENT WELL, AS SHOWN ON SAID ARMY MAP;

THENCE ALONG SAID AGREED UPON LOCATION OF THE "AGREED LOW TIDE LINE OF 1852" (1837 DEEDS 84) NORTH 41°00'50" EAST 3829.19 FEET TO THE EASTERN MOST CORNER OF PARCEL 4 AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED FOR BERTH 21 SUBMERGED/UPLAND PROPERTY RECORDED AUGUST 8, 2003 AS DOC. NO. 2003466373 IN THE OFFICE OF THE RECORDER OF SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 2003466373);

THENCE DEPARTING FROM SAID AGREED UPON LOCATION OF THE "AGREED LOW TIDE LINE OF 1852" (1837 DEEDS 84), NORTHWESTERLY ALONG THE NORTHEASTERN BOUNDARY, AND ITS NORTHWESTERLY EXTENSION OF SAID PARCEL 4 AND THE NORTHEASTERN BOUNDARY OF PARCEL 3 DESCRIBED IN SAID QUITCLAIM DEED (DOC. 2003466373), NORTH 48°48'07" WEST 1962.29 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE CONTINUING ALONG THE SAID NORTHEASTERN BOUNDARY OF PARCEL 3 (DOC. 2003466373), AND THE GENERALLY NORTHERN BOUNDARY OF SAID PARCEL 3 (DOC. 2003456373) THE FOLLOWING TWO COURSES:

1) NORTH 48°48'07" WEST 334.21 FEET;

2) THENCE SOUTH 81°26'43" WEST 354.67 FEET TO THE EASTERN MOST CORNER OF PARCEL 8 AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED FOR WEST MARITIME SUBMERGED PROPERTY RECORDED AUGUST 8, 2003 AS DOC. NO. 2003466374 IN THE OFFICE OF THE RECORDER OF THE SAID COUNTY OF ALAMEDA (HEREINAFTER REFERRED TO AS DOC. 2003466374);

THENCE DEPARTING FROM THE SAID GENERALLY NORTHERN BOUNDARY OF PARCEL 3 (DOC. 2003465373), WESTERLY AND SOUTHERLY ALONG THE NORTHERN AND WESTERN BOUNDARIES OF SAID PARCEL 8 (DOC. 2003465374), THE FOLLOWING THREE COURSES;

1) SOUTH 80°58'50" WEST, 241.56 FEET;

2) THENCE SOUTH 08°24'05" EAST, 40.51 FEET;

3) THENCE SOUTH 07°08'26" EAST, 42.27 FEET TO AN ANGLE POINT IN THE EXISTING FACE OF WHARF LOCATED AT THE PORTION OF THE FORMER OAKLAND ARMY BASE KNOWN AS PIER 8, BEING A POINT ON THE SAID GENERALLY NORTHERN BOUNDARY OF PARCEL 3 (DOC. 2003456373);

THENCE DEPARTING FROM THE SAID WESTERN BOUNDARY OF SAID PARCEL 8 (DOC. 2003466374), CONTINUING IN A GENERALLY WESTERLY DIRECTION ALONG THE EXISTING FACE OF WHARF OF SAID PIER 8 AND PIER 7, BEING THE SAID GENERALLY NORTHERN BOUNDARY OF PARCEL 3 (DOC. 2003466373) THE FOLLOWING SIX COURSES:

1) SOUTH 81°35'04" WEST, 751.30 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF;

2) THENCE SOUTH 74°45'15" WEST, 80.05 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF;

3) THENCE SOUTH 61°28'19" WEST, 85.21 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF;

4) THENCE SOUTH 48°06'56" WEST, 79.89 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF;

5) THENCE SOUTH 41°20'07" WEST, 1332.88 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF;

6) THENCE NORTH 48°42'09" WEST, 259.68 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF, SAID ANGLE POINT BEING AN ANGLE POINT IN THE WESTERLY BOUNDARY OF SAID PARCEL 1 (DOC. 2003466370);

THENCE DEPARTING FROM THE SAID GENERALLY NORTHERN BOUNDARY OF PARCEL 3 (DOC. 2003465370), CONTINUING ALONG THE SAID FACE OF WHARF OF PIER 7, SAID FACE OF WHARF BEING THE SAID WESTERN BOUNDARY OF PARCEL 1 (DOC. 2003466370), THE FOLLOWING TWO COURSES:

1) NORTH 41°16'18" EAST, 124.89 FEET TO AN ANGLE POINT IN SAID FACE OF WHARF;

2) NORTH 48°38'16" WEST, 249.42 FEET TO A POINT IN THE EXISTING WESTERLY PERIMETER FENCE LINE OF SAID PIER 7;

THENCE NORTHERLY ALONG THE SAID WESTERN PERIMETER FENCE LINE OF PIER 7, SAID PERIMETER FENCE BEING THE SAID WESTERN BOUNDARY OF PARCEL 1 (DOC. 2003466373), NORTH 20°41'10" WEST, 212.85 FEET;

THENCE DEPARTING FROM THE SAID WESTERN PERIMETER FENCE LINE OF PIER 7, SAID PERIMETER FENCE BEING THE SAID WESTERN BOUNDARY OF PARCEL 1 (DOC. 2003466373), SOUTH 48°40'48" EAST 552.26 FEET;

THENCE NORTH 41°23'42" EAST 1098.60 FEET;

THENCE NORTH 08°23'15" WEST 210.89 FEET TO A POINT ON THE SOUTHERN BOUNDARY OF PARCEL "S" AS DESCRIBED IN THAT CERTAIN INDENTURE AND CONVEYANCE BY AND BETWEEN THE STATE OF CALIFORNIA ACTING BY AND THROUGH IT'S DEPARTMENT OF PUBLIC WORKS AND THE CALIFORNIA TOLL BRIDGE AUTHORTTY, AND CTTY OF OAKLAND, ACTING BY AND THROUGH IT'S BOARD OF PORT COMMISSIONERS, RECORDED ON FEBRUARY 17, 1942 IN BOOK 4186 OF OFFICIAL RECORDS, AT PAGE 156 IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS 4186 O.R. 156); THENCE ALONG THE SOUTHERN BOUNDARY OF SAID PARCEL "S" (4186 O.R. 156), NORTH 81°36'25" EAST 2132.80 FEET;

THENCE DEPARTING FROM THE SAID SOUTHERN BOUNDARY OF PARCEL "S" (4186 O.R. 156), SOUTH 08°55'17" EAST 191.86 FEET;

THENCE SOUTH 41°08'50" WEST 319.69 FEET TO THE POINT OF BEGINNING, CONTAINING 728,996 SQUARE FEET (16.735 ACRES), MORE OR LESS, MEASURED IN GROUND DISTANCES.

BEARINGS AND DISTANCES CALLED FOR HEREIN ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE III, NORTH AMERICAN DATUM OF 1983 (1986 VALUES) AS SHOWN UPON THAT CERTAIN MAP ENTITLED RECORD OF SURVEY 990, FILED IN BOOK 18 OF RECORD OF SURVEYS, PAGES 50-60, ALAMEDA COUNTY RECORDS. TO OBTAIN GROUND LEVEL DISTANCES, MULTIPLY DISTANCES CALLED FOR HEREIN BY 1.0000705.

APN: 000-0507-001-07

BALDWIN YARD PARCEL (ADJUSTED PARCEL 14 TO INCLUDE PARCEL B-4)

ADJUSTED PARCEL 14

A PORTION OF THE PARCELS OF LAND DESCRIBED IN THAT CERTAIN INDENTURE BETWEEN THE SOUTHERN PACIFIC COMPANY AND THE UNITED STATES OF AMERICA, RECORDED APRIL 23, 1941, IN BOOK 4017 OF OFFICIAL RECORDS, PAGE 485 IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS 4017 O.R. 485); A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN FINAL JUDGMENT AS TO TRACT 1 AND AS TO LACK OF INTERESTS OF CERTAIN PERSONS AS TO PROPERTY SUBJECT TO THE ABOVE ACTION, UNITED STATES OF AMERICA VS. SANTA FE LAND AND IMPROVEMENT CO., SOUTHERN PACIFIC RAILROAD COMPANY ET AL., CASE NO. 23099-S, DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED OCTOBER 22, 1951, IN BOOK 6566 OF OFFICIAL RECORDS, PAGE 301 IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS 6566 O.R. 301); A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN FINAL JUDGMENT AS TO INTERESTS OF DEFENDANT CITY OF OAKLAND, A MUNICIPAL CORPORATION, UNTTED STATES OF AMERICA VS. CITY OF OAKLAND ET AL., CASE NO. 21758-L, CASE NO. 21930-L, CASE NO. 22084-L, DISTRICT COURT OF THE UNTTED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED FEBRUARY 24, 1960, REEL 032, IMAGE 660 OF OFFICIAL RECORDS IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS REEL:032, IMAGE:660); A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN FINAL JUDGMENT AS TO TRACT 5, UNFTED STATES OF AMERICA VS. CFTY OF OAKLAND, STATE OF CALIFORNIA ET AL., CASE NO. 21930-L, DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED FEBRUARY 15, 1951 IN BOOK 6361 OF OFFICIAL RECORDS, PAGE 334 IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY HEREINAFTER REFERRED TO AS 6361 O.R. 334); A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN FINAL JUDGMENT AS TO PARCEL NO. 6, UNITED STATES OF AMERICA VS. CITY OF OAKLAND, STATE OF CALIFORNIA ET AL., CASE NO. 21930-L, DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED MAY 23, 1960, REEL 092, IMAGE 111 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS REEL:092, IMAGE:111), ALL OF WHICH ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF OAKLAND MONUMENT NO. 7SE13, SAID MONUMENT BEING A PIN

SET IN CONCRETE, IN A MONUMENT WELL MARKING THE INTERSECTION OF THE CENTERLINES OF MARITIME STREET AND 10TH STREET, AS SAID STREETS ARE SHOWN ON THAT UNRECORDED MAP ENTITLED "OAKLAND ARMY TERMINAL BOUNDARY MAP" PREPARED BY WILSEY & HAM ENGINEERS IN 1958 FOR THE U.S. ARMY CORPS OF ENGINEERS, FILE NO. 45-1-286 (HEREINAFTER REFERRED TO AS THE ARMY MAP), SAID MONUMENT IS FURTHER DESCRIBED AS BEING PORT OF OAKLAND MONUMENT ID H006 AS SHOWN UPON RECORD OF SURVEY 990, FILED FOR RECORD IN BOOK 18 OF RECORD OF SURVEYS, AT PAGES 50-60, ALAMEDA COUNTY OFFICIAL RECORDS;

THENCE NORTH 48°22'05" EAST, 5692.24 FEET TO THE NORTHERN MOST CORNER OF PARCEL 1, TRACT 1 AS DESCRIBED IN SAID FINAL JUDGMENT AS TO TRACT 1 AND AS TO LACK OF INTERESTS OF CERTAIN PERSONS AS TO PROPERTY SUBJECT TO THE ABOVE ACTION, UNITED STATES OF AMERICA VS. SANTA FE LAND AND IMPROVEMENT CO., SOUTHERN PACIFIC RAILROAD COMPANY ET AL., CASE NO. 23099-S (6566 O.R. 301), SAID CORNER BEING THE NORTHWESTERN TERMINUS OF THE COURSE DESCRIBED AS "NORTH 71°40'17" WEST 585.40 FEET" IN THE DESCRIPTION OF SAID PARCEL 1, TRACT 1 (6566 O.R. 301), AND BEING MARKED BY A 2 ½" BRASS DISK WITH PUNCH MARK STAMPED "CTIY OF OAKLAND SURVEY STATION 8NW9" AS SHOWN ON RECORD OF SURVEY NO. 1705, FILED IN BOOK 26 OF RECORD OF SURVEYS, AT PAGE 1, ALAMEDA COUNTY OFFICIAL RECORDS;

THENCE ALONG THE NORTHWEST LINE OF SAID PARCEL 1, TRACT 1 (6566 O.R. 301) SOUTH 79°57'58" WEST, 9.41 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 599.96 FEET AND A CENTRAL ANGLE OF 20°37'16", FROM WHICH THE RADIUS POINT BEARS SOUTH 36°18'10" WEST, BEING THE POINT OF BEGINNING OF PARCEL 14 AS HEREIN DESCRIBED;

THENCE ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 215.93 FEET TO A POINT ON THE GENERALLY NORTHERN LINE OF PARCEL A AS DESCRIBED IN AN UNRECORDED "TRANSFER AND ACCEPTANCE OF MILITARY REAL PROPERTY" FROM THE MILITARY TRAFFIC MANAGEMENT COMMAND OF THE OAKLAND ARMY BASE TO THE 63RD R.S.C., DATED DECEMBER 17, 1998, SAID PARCEL A BEING COMMONLY REFERRED TO AS THE "SUBARU LOT" (SAID PARCEL A BEING HEREINAFTER REFERRED TO AS THE SUBARU LOT);

THENCE ALONG SAID GENERALLY NORTHERN LINE OF SAID PARCEL A (THE SUBARU LOT) THE FOLLOWING THIRTEEN COURSES:

1) NORTH 70°14'16" WEST, 59.22 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WTTH BOLT STAMPED "L5 5379";

2) NORTH 59°21'45" WEST, 49.64 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WITH BOLT STAMPED "LS 6379";

3) NORTH 63°28'21" WEST, 40.88 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A ¾" BRASS TAG IN CONCRETE STAMPED "LS 5379";

4) NORTH 56°07'36" WEST, 44.94 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WTTH BOLT STAMPED "LS 6379";

5) NORTH 69°32'54" WEST, 44.74 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WITH BOLT STAMPED "LS 6379";

6) NORTH 72°38'25" WEST, 67.85 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WITH BOLT STAMPED "LS 6379";

7) NORTH 70°15'39" WEST, 49.25 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1" IRON PIPE WTTH PLUG STAMPED "LS 5379";

8) SOUTH 80°41'00" WEST, 170.83 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1" IRON PIPE WTTH PLUG STAMPED "LS 6379";

9) NORTH 87°09'05" WEST, 415.50 FEET TO BEGINNING OF A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 299.98 FEET AND A CENTRAL ANGLE OF 25°11'31", SAID BEGINNING OF CURVE BEING MARKED BY A 1" IRON PIPE WTTH PLUG STAMPED "LS 6379";

10) ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 131.90 FEET;

11) SOUTH 67°39'24" WEST, 25.68 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 199.99 FEET AND A CENTRAL ANGLE OF 39°56'30", SAID BEGINNING OF CURVE BEING MARKED BY A 1" IRON PIPE WITH PLUG AND TACK STAMPED "LS 6379";

12) ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 139.42 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 29°55'43", SAID BEGINNING OF CURVE BEING MARKED BY A 1 ½" BRASS DISK AND SPIKE STAMPED "LS 6379";

13) ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 10.45 FEET TO THE INTERSECTION OF SAID CURVE WTTH THE GENERALLY NORTHEASTER LINE OF SAID PARCEL 55444 (DOC. 2002072863), BEING A POINT ON THE COURSE DESCRIBED AS "SOUTH 65°41'47" EAST 135.08 FEET" IN THE DESCRIPTION OF SAID PARCEL 56444 (DOC. 2002072863);

THENCE ALONG SAID GENERALLY NORTHEASTERN LINE OF SAID PARCEL 56444 (DOC. 2002072853) THE FOLLOWING SEVEN COURSES:

1) NORTH 65°41'40" WEST, 109.04 FEET TO AN ANGLE POINT IN SAID LINE;

2) NORTH 49°47'18" WEST, 162.81 FEET TO AN ANGLE POINT IN SAID LINE;

3) NORTH 54°46'46" WEST, 103.19 FEET TO AN ANGLE POINT IN SAID LINE, SAID ANGLE POINT BEING MARKED BY A 1" IRON PIPE AND CALTRANS CAP AS SHOWN ON RECORD OF SURVEY NO. 1687 FILED IN BOOK 25 OF RECORDS OF SURVEYS, AT PAGES 58-69, ALAMEDA COUNTY OFFICIAL RECORDS;

4) NORTH 47°07'33" WEST, 55.66 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1160.00 FEET AND A CENTRAL ANGLE OF 12°07'10", SAID BEGINNING OF CURVE BEING MARKED BY A 1" IRON PIPE AND CALTRANS CAP AS SHOWN ON SAID RECORD OF SURVEY NO. 1687;

5) ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 245.37 FEET TO AN ANGLE POINT IN SAID LINE FROM WHICH THE RADIUS POINT BEARS SOUTH 30°45'17" WEST, SAID ANGLE POINT BEING MARKED BY A 1" IRON PIPE AND CALTRANS CAP AS SHOWN ON SAID RECORD OF SURVEY NO. 1687;

6) NORTH 59°14'43" WEST, 262.30 FEET TO AN ANGLE POINT IN SAID LINE, SAID ANGLE POINT BEING MARKED BY A 1" IRON PIPE AND CALTRANS CAP AS SHOWN ON SAID RECORD OF SURVEY NO. 1687;

7) NORTH 57°29'34" WEST, 66.49 FEET TO A POINT ON THE GENERALLY NORTHERN LINE OF

"PARCEL 3, BALDWIN YARD" AS SHOWN ON RECORD OF SURVEY NO. 1704, FILED IN BOOK 26 OF RECORD OF SURVEYS, AT PAGE 65, ALAMEDA COUNTY OFFICIAL RECORDS (HEREINAFTER REFERRED TO AS THE BALDWIN YARD), BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 1252.80 FEET AND A CENTRAL ANGLE OF 8°05'48", FROM WHICH BEGINNING THE RADIUS POINT BEARS SOUTH 08°32'47" EAST;

THENCE DEPARTING FROM SAID GENERALLY NORTHEASTERN LINE OF SAID PARCEL 56444 (DOC. 2002072863), ALONG THE SAID GENERALLY NORTHERN LINE OF SAID BALDWIN YARD, THE FOLLOWING THREE COURSES:

1) ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 177.04 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 3336.10 FEET AND A CENTRAL ANGLE OF 19°16'27", FROM WHICH THE RADIUS POINT BEARS SOUTH 00°34'42" EAST;

2) ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 1122.25 FEET TO AN ANGLE POINT IN SAID LINE FROM WHICH THE RADIUS POINT BEARS SOUTH 18°41'45" WEST;

3) SOUTH 71°17'43" EAST, 326.69 FEET TO AN ANGLE POINT IN SAID LINE;

THENCE DEPARTING FROM SAID GENERALLY NORTHERN LINE, SOUTH 70°28'52" EAST, 223.98 FEET TO A POINT ON THE NORTHWEST LINE OF PARCEL 2, TRACT 14 AS DESCRIBED IN SAID FINAL JUDGMENT AS TO INTERESTS OF DEFENDANT CITY OF OAKLAND, A MUNICIPAL CORPORATION, UNITED STATES OF AMERICA VS. CFTY OF OAKLAND ET AL., CASE NO. 21758-L, CASE NO. 21930-L, CASE NO. 22084-L (REEL: 32, IMAGE:660) ALSO BEING THE NORTHWEST LINE OF FORMER 34TH STREET (NOW WAKE AVENUE);

THENCE ALONG SAID NORTHWEST LINE OF SAID PARCEL 2, TRACT 14 (REEL: 32, IMAGE:660), NORTH 79°57'58" EAST, 36.10 FEET TO THE EASTERN MOST CORNER OF SAID LANDS DESCRIBED IN SAID FINAL JUDGMENT AS TO PARCEL NO. 6, UNITED STATES OF AMERICA VS. CFFY OF OAKLAND, STATE OF CALIFORNIA, ET AL., CASE NO. 21930-L (REEL: 92, IMAGE: 111);

THENCE DEPARTING FROM SAID NORTHWEST LINE OF SAID PARCEL 2, TRACT 14 (REEL: 32, IMAGE:660), SOUTH 13°11'35" EAST, 60.09 FEET TO A POINT ON THE SOUTHEAST LINE OF SAID PARCEL 2, TRACT 14, ALSO BEING THE SOUTHWEST LINE OF FORMER 34TH STREET (NOW WAKE AVENUE);

THENCE ALONG SAID SOUTHEAST LINE OF SAID PARCEL 2, TRACT 14 (REEL: 32, IMAGE:560), NORTH 79°57'58" EAST, 2.13 FEET TO THE POINT OF BEGINNING.

BEARINGS AND DISTANCES CALLED FOR HEREIN ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE III, NORTH AMERICAN DATUM OF 1983 (1986 VALUES) AS SHOWN UPON THAT CERTAIN MAP ENTITLED RECORD OF SURVEY 990, FILED IN BOOK 18 OF RECORD OF SURVEYS, PAGES 50-60, ALAMEDA COUNTY RECORDS. TO OBTAIN GROUND LEVEL DISTANCES, MULTIPLY DISTANCES CALLED FOR HEREIN BY 1.0000705.

APN: 000-0507-004-04 AND 000-0507-004-01

SUBARU PARCEL (ADJUSTED PARCEL 15-B TO INCLUDE PARCEL B-1)

ADJUSTED PARCEL 15-B

A PORTION OF THE PARCELS OF LAND DESCRIBED IN THAT CERTAIN INDENTURE BETWEEN THE SOUTHERN PACIFIC COMPANY AND THE UNITED STATES OF AMERICA, RECORDED APRIL 23, 1941, IN BOOK 4017 OF OFFICIAL RECORDS, PAGE 485 IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS 4017 O.R. 485); A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN FINAL JUDGMENT AS TO INTERESTS OF DEFENDANT CITY OF OAKLAND, A MUNICIPAL CORPORATION, UNITED STATES OF AMERICA VS. CITY OF OAKLAND, ET AL., CASE NO. 21758-L, CASE NO. 21930-L, CASE NO. 22084-L, DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED FEBRUARY 24, 1960, REEL 032, IMAGE 660 OF OFFICIAL RECORDS IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS REEL: 32, IMAGE:660); A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN FINAL JUDGMENT AS TO PARCEL NO. 6, UNITED STATES OF AMERICA VS. CITY OF OAKLAND, STATE OF CALIFORNIA, ET AL., CASE NO. 21930-L, DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED MAY 23, 1960, REEL 092, IMAGE 111 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS REEL:092, IMAGE:111), ALL OF WHICH ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF OAKLAND MONUMENT NO. 7SE13, SAID MONUMENT BEING A PIN SET IN CONCRETE IN A MONUMENT WELL MARKING THE INTERSECTION OF THE CENTERLINES OF MARITIME STREET AND 10TH STREET, AS SAID STREETS ARE SHOWN ON THAT UNRECORDED MAP ENTTTLED "OAKLAND ARMY TERMINAL BOUNDARY MAP" PREPARED BY WILSEY & HAM ENGINEERS IN 1958 FOR THE U.S. ARMY CORPS OF ENGINEERS, FILE NO. 45-1-286 (HEREINAFTER REFERRED TO AS THE ARMY MAP), SAID MONUMENT ALSO BEING PORT OF OAKLAND MONUMENT ID H006 AS SHOWN UPON RECORD OF SURVEY 990, FILED FOR RECORD IN BOOK 18 OF RECORDS OF SURVEYS, AT PAGES 50-60, ALAMEDA COUNTY OFFICIAL RECORDS;

THENCE NORTH 48°22'05" EAST, 5692.24 FEET TO THE NORTHERN MOST CORNER OF PARCEL 1, TRACT 1 AS DESCRIBED IN SAID FINAL JUDGMENT AS TO TRACT 1 AND AS TO LACK OF INTERESTS OF CERTAIN PERSONS AS TO PROPERTY SUBJECT TO THE ABOVE ACTION, UNITED STATES OF AMERICA VS. SANTA FE LAND AND IMPROVEMENT CO., SOUTHERN PACIFIC RAILROAD COMPANY, ET AL., CASE NO. 23099-S, DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, RECORDED OCTOBER 22, 1951 IN BOOK 6566 OF OFFICIAL RECORDS, PAGE 301 IN THE OFFICE OF THE RECORDER OF SAID ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS 6566 O.R. 301), SAID CORNER BEING THE NORTHWEST TERMINUS OF THE COURSE DESCRIBED AS "NORTH 71°40'17" WEST 585.40 FEET" IN THE DESCRIPTION OF SAID PARCEL 1, TRACT 1 (6566 O.R. 301), SAID CORNER BEING MARKED BY A 2 ½" BRASS DISK WITH PUNCH MARK STAMPED "CITY OF OAKLAND SURVEY STATION 8NW9" AS SHOWN ON RECORD OF SURVEY NO. 1705, FILED IN BOOK 26 OF RECORDS OF SURVEYS, AT PAGE 1, ALAMEDA COUNTY OFFICIAL RECORDS;

THENCE SOUTH 57°59'13" EAST, 432.18 FEET TO A POINT ON THE GENERALLY NORTHEASTERN LINE OF PARCEL A AS DESCRIBED IN AN UNRECORDED "TRANSFER AND ACCEPTANCE OF MILITARY REAL PROPERTY" FROM THE MILITARY TRAFFIC MANAGEMENT COMMAND OF THE OAKLAND ARMY BASE TO THE 63RD R.S.C., DATED DECEMBER 17, 1998, SAID PARCEL A BEING COMMONLY REFERRED TO AS THE "SUBARU LOT" (SAID PARCEL A WILL HEREINAFTER BE REFERRED TO AS THE SUBARU LOT), BEING A POINT ON THE COURSE DESCRIBED AS "SOUTH 71°25'25" EAST, 87.02 FEET" IN THE DESCRIPTION OF SAID PARCEL A (THE SUBARU LOT), SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 444.22 FEET AND A CENTRAL ANGLE OF 25°38'05", FROM WHICH THE RADIUS POINT BEARS SOUTH 57°14'39" WEST, AND BEING THE POINT OF

BEGINNING OF PARCEL 15B AS HEREIN DESCRIBED;

THENCE DEPARTING FROM SAID NORTHEASTERN LINE OF SAID PARCEL A (THE SUBARU LOT) ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 198.75 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 426.09 FEET AND A CENTRAL ANGLE OF 41°30'48";

THENCE ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 308.72 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 906.45 FEET AND A CENTRAL ANGLE OF 4°28'14";

THENCE ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 70.73 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 302.83 FEET AND A CENTRAL ANGLE OF 16°33'59";

THENCE ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 87.56 FEET TO AN ANGLE POINT FROM WHICH THE RADIUS POINT BEARS NORTH 34°34'15" WEST, BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1542.01 FEET AND A CENTRAL ANGLE OF 6°28'40", FROM WHICH BEGINNING THE RADIUS POINT BEARS NORTH 37°30'42" WEST;

THENCE ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 174.33 FEET TO A POINT ON THE GENERALLY NORTHEASTERN LINE OF PARCEL 56444 AS DESCRIBED IN THAT CERTAIN QUITCLAIM DEED, RECORDED ON FEBRUARY 13, 2002 AS DOCUMENT NO. 2002-072863 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY (HEREINAFTER REFERRED TO AS DOC. 2002-072863), SAID POINT BEING AN ANGLE POINT FROM WHICH THE RADIUS POINT BEARS NORTH 31°02'02" WEST, AND ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1647.00 FEET AND A CENTRAL ANGLE OF 2°40'12", FROM WHICH BEGINNING THE RADIUS POINT BEARS SOUTH 40°40'27" WEST;

THENCE ALONG THE GENERALLY NORTHEASTERN LINE OF SAID PARCEL 56444 (DOC. 2002-072863) THE FOLLOWING EIGHT COURSES:

1) ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 75.75 FEET TO AN ANGLE POINT FROM WHICH THE RADIUS POINT BEARS SOUTH 38°00'16" WEST, BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1647.00 FEET AND A CENTRAL ANGLE OF 7°24'24", FROM WHICH BEGINNING THE RADIUS POINT BEARS SOUTH 39°39'54" WEST;

2) ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 212.91 FEET TO A POINT OF TANGENCY;

3) NORTH 57°44'30" WEST, 113.40 FEET TO AN ANGLE POINT;

4) NORTH 49°58'48" WEST, 124.70 FEET TO AN ANGLE POINT;

5) NORTH 59°26'20" WEST, 696.99 FEET TO AN ANGLE POINT;

6) NORTH 38°53'13" WEST, 28.48 FEET TO AN ANGLE POINT;

7) NORTH 59°26'21" WEST, 95.01 FEET TO AN ANGLE POINT;

8) NORTH 65°41'40" WEST, 26.04 FEET TO A POINT ON THE GENERALLY NORTHWESTERN

LINE OF SAID PARCEL A (THE SUBARU LOT), SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 29°55'43", FROM WHICH BEGINNING THE RADIUS POINT BEARS NORTH 87°47'11" EAST;

THENCE ALONG THE NORTHWESTERN, NORTHERN AND NORTHEASTERN LINES OF SAID PARCEL A (THE SUBARU LOT) THE FOLLOWING SIXTEEN COURSES:

1) ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 10.45 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 199.99 FEET AND A CENTRAL ANGLE OF 39°56'30", SAID POINT OF COMPOUND CURVATURE BEING MARKED BY A 1 ½" BRASS DISK AND SPIKE STAMPED "LS 6379";

2) ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 139.42 FEET TO A POINT OF TANGENCY MARKED BY A 1" IRON PIPE WITH PLUG AND TACK STAMPED "LS 6379";

3) NORTH 67°39'24" EAST, 25.68 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 299.98 FEET AND A CENTRAL ANGLE OF 25°11'31";

4) ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 131.90 FEET TO A POINT OF TANGENCY MARKED BY A 1" IRON PIPE WITH PLUG STAMPED "LS 6379";

5) SOUTH 87°09'05" EAST, 415.50 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1" IRON PIPE WITH PLUG STAMPED "LS 6379";

6) NORTH 80°41'00" EAST, 170.83 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1" IRON PIPE WITH PLUG STAMPED "LS 6379";

7) SOUTH 70°15'39" EAST, 49.25 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WITH BOLT STAMPED "LS 6379";

8) SOUTH 72°38'25" EAST, 57.85 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WITH BOLT STAMPED "LS 5379";

9) SOUTH 69°32'54" EAST, 44.74 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WITH BOLT STAMPED "LS 6379";

10) SOUTH 66°07'36" EAST, 44.94 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A ¾" BRASS TAG IN CONCRETE STAMPED "LS 6379";

11) SOUTH 63°28'21" EAST, 40.88 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WITH BOLT STAMPED "LS 5379";

12) SOUTH 69°21'45" EAST, 49.64 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WITH BOLT STAMPED "LS 5379";

13) SOUTH 70°14'15" EAST, 101.26 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WITH BOLT STAMPED "LS 6379";

14) SOUTH 71°46'24" EAST, 32.44 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WITH BOLT STAMPED "LS 6379";

15) SOUTH 74°35'55" EAST, 103.17 FEET TO AN ANGLE POINT IN SAID LINE, SAID POINT BEING MARKED BY A 1 ½" BRASS DISK WITH BOLT STAMPED "LS 6379";

16) SOUTH 71°25'40" EAST, 51.59 FEET TO THE POINT OF BEGINNING.

BEARINGS AND DISTANCES CALLED FOR HEREIN ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE III, NORTH AMERICAN DATUM OF 1983 (1986 VALUES) AS SHOWN UPON THAT CERTAIN MAP ENTTTLED RECORD OF SURVEY 990, FILED IN BOOK 18 OF RECORD OF SURVEYS, PAGES 50-60, ALAMEDA COUNTY RECORDS UNLESS OTHERWISE INDICATED. TO OBTAIN GROUND LEVEL DISTANCES, MULTIPLY DISTANCES CALLED FOR HEREIN BY 1.0000705.

APN: 000-0507-008 AND 000-0507-005

NOTICE I

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

If you have any questions about the effect of this new law, please contact your local First American Office for more details.

NOTICE II

As of January 1, 1991, if the transaction which is the subject of this report will be a sale, you as a party to the transaction, may have certain tax reporting and withholding obligations pursuant to the state law referred to below:

In accordance with Sections 18662 and 18668 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to three and one-third percent of the sales price in the case of the disposition of California real property interest by either:

1. A seller who is an individual with a last known street address outside of California or when the disbursement instructions authorize the proceeds be sent to a financial intermediary of the seller, OR
2. A corporate seller which has no permanent place of business in California.

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars ($500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000), OR
2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a resident of California, or if a corporation, has a permanent place of business in California, OR
3. The seller, who is an individual, executes a written certificate, under the penalty of perjury, that the California real property being conveyed is the seller's principal residence (as defined in Section 1034 of the Internal Revenue Code).

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.

The California statutes referenced above include provisions which authorize the Franchise Tax Board to grant reduced withholding and waivers from withholding on a case-by-case basis.

The parties to this transaction should seek an attorney's, accountant's, or other tax specialist's opinion concerning the effect of this law on this transaction and should not act on any statements made or omitted by the escrow or closing officer.

The Seller May Request a Waiver by Contacting:
Franchise Tax Board
Withhold at Source Unit
P.O. Box 651
Sacramento, CA 95812-0651
(916) 845-4900

Privacy Policy

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use pf personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

EXHIBIT A
LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)

1. CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990
SCHEDULE B

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy; or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by their policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

2. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970
SCHEDULE OF EXCLUSIONS FROM COVERAGE

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions of area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or

created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

3. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970 WITH REGIONAL EXCEPTIONS

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 2 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:
Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

4. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970 WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE SCHEDULE OF EXCLUSIONS FROM COVERAGE

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant, (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder, (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

5. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970 WITH REGIONAL EXCEPTIONS

When the American Land Tide Association Lenders Policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy, the exclusions set forth in paragraph 4 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:
Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or reguladons) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or.enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
   (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
   (iii) the transaction creadng the interest of the insured mortgagee being deemed a preferential bransfer except where the preferential transfer results from the failure:
   (a) to timely record the instrument of transfer; or
   (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992
WITH REGIONAL EXCEPTIONS

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy; or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (I) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
   (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
   (a) to timely record the instrument of transfer; or
   (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992
WITH REGIONAL EXCEPTIONS

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:
Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

10. AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL
TITLE INSURANCE POLICY - 1987
EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resuldng from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   * land use
   * land division
   * improvements on the land
   * environmental protection

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.
   This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:

* a notice of exercising the right appears in the public records on the Policy Date
* the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.

3. Title Risks:
* that are created, allowed, or agreed to by you
* that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
* that result in no loss to you
* that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:
* to any land outside the area specifically described and referred to in Item 3 of Schedule A, or
* in streets, alleys, or waterways that touch your land
This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

11. EAGLE PROTECTION OWNER'S POLICY

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998

Covered Risks 14 (Subdivision Law Violation). 15 (Building Permit). 16 (Zoning) and 18 (Encruachment of boundary walls or fences) are subject to Deductible Amounts and Maximum Dollar Limits of Liabillty

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:

a. building	b. zoning
c. land use	d. improvements on the land
e. land division	f. environmental protection

This exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.
This exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.

3. The right to take the Land by condemning it, unless:
a. a notice of exercising the right appears in the Public Records at the Policy Date; or
b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.

4. Risks:
a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
c. that result in no loss to You; or
d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.

5. Failure to pay value for Your Title.

6. Lack of a right:
a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
b. in streets, alleys, or waterways that touch the Land.
This exclusion does not limit the coverage described in Covered Risk 11 or 18.

12. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992 WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE WITH EAGLE PROTECTION ADDED

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulatirig, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the Land; (iii) s separation in ownership or a change in the dimensions or area of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under insuring provisions 14, 15, 16 and 24 of this policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a

defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under insuring provisions 14, 15, 16 and 24 of this policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
(a) created, suffered, assumed or agreed to by the Insured Claimant;
(b) not known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
(c) resulting in no loss or damage to the Insured Claimant;
(d) attaching or created subsequent to Date of Policy (this paragraph (d) does not limit the coverage provided under insuring provisions 7, 8, 16, 17, 19, 20, 21, 23, 24 and 25); or
(e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon:
(a) usury, except as provided under insuring provision 10 of this policy; or
(b) any consumer credit protection or truth in lending law.
6. Taxes or assessments of any taxing or assessment authority which become a lien on the Land subsequent to Date of Policy.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
(a) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
(b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
(c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
(i) to timely record the instrument of transfer; or
(ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.
8. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or Interest covered by this policy. This exclusion does not limit the coverage provided under insuring provision 7.
9. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting title, the existence of which are Known to the Insured at:
(a) The time of the advance; or
(b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification.
This exclusion does not limit the coverage provided under insuring provision 7.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Environmental protection liens provided for by the following existing statutes, which liens will have priority over the lien of the Insured Mortgage when they arise: NONE.

11. EAGLE PROTECTION OWNER'S POLICY

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 2008
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 2008

Covered Risks 16 (Subdivision Law Violation), 18 (Building Permit), 19 (Zoning) and 21 (Encroachment of boundary walls or fences) are subject to Deductible Amounts and Maximum Dollar Limits of Liability

EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
a. building — b. zoning
c. land use — d. improvements on the land
e. land division — f. environmental protection
This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;

b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the policy Date;

c. that result in no loss to You; or

d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 26, 26, 27 or 28.

5. Failure to pay value for Your Title.
6. Lack of a right:

a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and

b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows: Covered Risk 16, 18, 19 and 21, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A. The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1% of Policy Amount or $5,000.00 (whichever is less)	$10,000.00
Covered Risk 18:	1% of Policy Amount or $5,000.00 (whichever is less)	$25,000.00
Covered Risk 19:	1% of Policy Amount or $5,000.00 (whichever is less)	$25,000.00
Covered Risk 21:	1% of Policy Amount or $2,500.00 (whichever is less)	$5,000.00

12. THIRD GENERATION EAGLE LOAN POLICY AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (1/01/08)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions, or location of any improvement erected on the Land; (iii) the subdivision of land; or(iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
   (b)Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
   (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

13. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
(i) the occupancy, use, or enjoyment of the Land;
(ii) the character, dimensions, or location of any improvement erected on the Land;
(iii) the subdivision of land; or
(iv) environmental protection;
or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
(a) created, suffered, assumed, or agreed to by the Insured Claimant;
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
(c) resulting in no loss or damage to the Insured Claimant;
(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because.of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors? rights laws, that the transaction creating the lien of the Insured Mortgage, is
(a) a fraudulent conveyance or fraudulent transfer, or
(b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

14. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006 WITH REGIONAL EXCEPTIONS

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 13 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:
1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

15. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006 EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
(i) the occupancy, use, or enjoyment of the Land;
(ii) the character, dimensions, or location of any improvement erected on the Land;
(iii) the subdivision of land; or
(iv) environmental protection;or the effect of any violation of these laws, ordinances,
or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
(a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
(c) resulting in no loss or damage to the Insured Claimant;
(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors? rights laws, that the transaction vesting the Title as shown in Schedule A, is
(a) a fraudulent conveyance or fraudulent transfer; or
(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

16. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006 WITH REGIONAL EXCEPTIONS

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 15 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

COMMUNITY BENEFIS MATRIX OF TERMS
[UNDER NEGOTIATION]

	Community Benefit Category	Summary	Obligation
1.	West Oakland Community Fund (WOCF)	Developer to pay fair share contribution to WOCF ($16,000 per net developable acre). Payments in phases due as a condition precedent to entering into each phase of ground lease.	Developer/ Private Improvements
2.	Jobs	The City shall use commercially reasonable efforts to negotiate a Cooperation Agreement regarding jobs on the OAB with community groups, including Revive Oakland and Oakland Works.	City
3.	Jobs	The City shall make commercially reasonable efforts to assist in establishment of a West Oakland Jobs Center (Jobs Center) in West Oakland, including providing assistance in identifying suitable locations and funding sources. In the event that the Jobs Center is not established prior to the approval of any Project on the OARB, then the functions of the Jobs Center may be transferred to the existing City Comprehensive One-Stop Career Center.	City
4.	Jobs	The City and the design build contractor shall include the Horizontal Construction Jobs Policy, attached as Exhibit A, in all contracts for Public Improvement Construction Work and Developer shall include the Vertical Construction Jobs Policy, attached as Exhibit B, in all contracts for Private Improvement Construction Work. Construction Work shall mean all construction related to public infrastructure improvements, initial private improvements, which include initial buildout and initial tenant improvements, and subsequent public infrastructure or private improvements over $300,000; construction does not include repair and maintenance The City, its design-build contractor, or Developer, as relevant, shall ensure that all contracts for Construction Work include the applicable Construction Jobs Policy, and: (i) impose the Construction Jobs Policy's responsibilities on all contractors performing Construction Work; (ii) require such contractors to impose such responsibilities on subcontractors or other parties involved in the Project through the contract in question; (iii) allow enforcement of such	City with respect to the Public Improvements and Developer with respect to the Private Improvements

		responsibilities directly against contractors, subcontractors, or other parties with such responsibilities by the City as an intended third-party beneficiary of the contract in question; and (iv) require all such contractors, subcontractors or other parties with such responsibilities to report to the City on compliance. Inclusion of said Policy in all relevant contracts and compliance with said Policy by Developer will fully meet the Developer obligation to the extent Developer is acting in a project management capacity; employers, including Developer when acting in a Construction Work employment capacity or a prime contracting capacity must meet the terms of the Construction Jobs Policy.. The Construction Jobs Policies strengthens existing City employment policies and expressly supersedes the employment portions of City Ordinance No. 12389, as amended by Council Ordinance 13101 (12/20/11), and the program Guidelines in the Local and Small Local Business Enterprise Program guidance dated February 1, 2012 with regard to Local Employment Program, Local Construction Employment Referral Program, and Apprenticeship Program.	
5.	Jobs	Developer shall ensure that any contract under which On-site Jobs, as defined in the attached Policies, may be performed include the apphcable Operations Jobs Pohcy. The Parties acknowledge that the uses anticipated to be managed by the Developer's affiliates on the different phase areas will differ; therefore, there is one Operations Jobs Policy that shall apply to the operations managed by Prologis, attached as Exhibit C, and one that applies to the operations managed by CCIG, attached as, attached as Exhibit D. The City and Developer agree that if Developer determines that one or more aspects of the Operations Jobs Policy are having a significant adverse effect on Developer's ability to obtain subtenants at fair market rates, then City will meet and confer to consider amendment of the Operations Jobs Pohcy and related terms in this Agreement. Developer shall ensure that any subleases, assignments, or other contracts under which On-site Jobs shall be performed include the applicable Operations Jobs Policy and: (i) impose responsibilities of the Operations Jobs Policy on relevant entifies; (ii) require such entities to impose such responsibilities on subtenants, subcontractors or other parties involved in the Project through the contract in question; (iii) allow enforcement of such responsibilifies directly against such subcontractors or other parties by the City as an intended third-party	Developer/ Private Improvements

		beneficiary of the contract in question; and (iv) require all such subcontractors or other parties with such responsibilities to report to the City. Inclusion of said Policy in all relevant leases and contracts and compliance with such Policy by Developer will fully meet the Developer obligation. The Operations Jobs Policy strengthens existing City employment policies and expressly supersedes the employment portions of City Ordinance No. 12389 (12/18/01) and the program Guidelines in the Local and Small Local Business Enterprise Program guidance dated February 1, 2012 with regard to the Local Employment Program.	
6.	Jobs	Developer shall require compliance with the City Living Wage Policy for Operations Jobs by Project employers. (Council Ordinance No. 12050, 4/7/98).	Developer/ Private Improvements
7.	Jobs	Developer shall comply with the City Equal Benetits Policy for Construction Work and Operations Jobs (Council Ordinance No. 12394, 12/18/01), except where such application would be inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or the State of Califomia.	Developer/ Private Improvements
8.	Jobs	Developer shall comply with the Prompt Payment Ordinance (Council Ordinance No. 12857 (01/15/08).	Developer/ Private Improvements
9.	Jobs	Developer to pay Jobs/Housing Impact Fee (approximately $4.50/sf) into fund to support West Oakland Jobs Center [DISCUSS HOW TO REDIRECT].	Developer/ Private Improvements
10.	Jobs	Developer to establish a Community Area Maintenance fee and pay annual fee into fund to support the Jobs Center. The annual fee shall increase consistent with the Ground Lease CPI structure.	Developer/ Private Improvements
11.	Contracting	The City and Developer shall comply with the contracting requirements in the City Local and Small Local Business Enterprise Program, Council Ordinance 12389 (12/18/01), as amended by Council Ordinance 13101 (12/20/11), (L/SLBE participation requirements) for Public	City/ Public Improvements

		Improvements, except where such application would be inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or the State of Califoruia in accordance with [DISCUSS PROCESS]. The City through its Oftice of Contracting Compliance shall oversee compliance with the contracting elements of the Community Benefits Program.	
12.	Contracting	If the Public Improvements receive federal funds that trigger the requirements of the Disadvantaged Business Enterprise Program, the City shall comply with the that program, which requires 11.7% overall annual anticipated disadvantaged level, 3.95% race-neutral goal and 7.22% race-conscious goal.	City/ Public Improvements
13.	Contracting	The City shall make commercially reasonable efforts to enter into a PLA with the Unions for the Public Infrastructure that facilitates compliance with the Horizontal Construction Jobs Policy; this satisfies City Prevailing Wage Policy, Agency Resolution No. 87-4 (1/20/87) and State Prevailing Wage requirement, CA Labor Code 1720 et seq.	City/ Public Improvements
14.	Contracting	In order to protect the City's proprietary interest in prompt completion of construction, Developer shall, prior to commencement of construction, enter into a project labor agreement, project stabilization agreement, or similar agreement with labor organizations representing workers in a ruajority of construction trades necessary to project construction. Such agreement shall require such labor organizations to refrain from work stoppages on project construction, and shall be consistent with and facilitate compliance with the Vertical Construction Jobs Policy.	Developer/ Private Iruprovements
15.	Environmental	Developer, in conjunction with both the Public Infrastructure and the Private Improvements, shall comply with CEQA Mitigation Measures and Standard Conditions of Approval, attached as Exhibit E. Such measures include those set forth in the City Council Areas of Agreeruent, including measures to address noise limits, dust control, hazardous materials removal, storru water plan, use of permeable pavers where feasible, use deconstruction rather than demolition where possible, and preparation and implementation of a demolition debris recycling plan, prepare a GHG Reduction Plan and maximize the use of green energy (solar, wind, other) where possible, further water conservation through use of rain barrels and gray water technology where possible, ensure that truck related construction routes are directed away from residents, provide public or private transit connection for construction workers	City with respect to Public Improvements and Developer with respect to Private Improvements

		(connecting to BART and at least two West Oakland locations), and provide public notification of project status (updated at least monthly and posted online and at the West Oakland Public Library). Responsibility for implementation of these measures will be allocated as between the City and the Developer through the DA/PUD process that will follow the LDDA. More feasible and/or cost effective measures may be considered by the Parties so long as those measures overall meet substantially the same performance standards and are functionally equivalent or better and do not themselves cause any potentially significant effect on the environment, as determined by the City through the DA/PUD process.	
16.	Environmental	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 as presented to the City Council March 1, 2011.	Developer/ Private Improvements
17.	Environmental	The City and Developer shall cooperate in an air quality monitoring program to install and maintain air monitoring equipment in locations determined in consultation with the Port, Bay Area Air Quality Management District (BAAQMD), Alameda County Public Health Department (ACPHD), and the West Oakland Environmental Indicator Project (WOEIP), and shall provide monitoring reports from that equipment to the BAAQMD, the City, the Port and the WOEIP on a quarterly basis. The "fence-line" monitoring program shall be funded by the City throughout the construction of the Public Infrastmcture, the Developer shall fund the ongoing "fence-line" monitoring and reporting during the construction of the Private Improvements and throughout the term of the Ground Lease.	City with respect to Public Improvements and Developer with respect to Private Improvements

STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

This Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCA/MMRP) is based on the hnitial Study/Addendum (IS/A) prepared for the 2012 OARB Project. This SCA/MMRP is in compliance with Section 15097 of the CEQA Guidelines, which requires that the Lead Agency "adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects." The SCA/MMRP lists mitigation measures recommended in the IS/A and identifies mitigation monitoring requirements, as well as the City's Standard Conditions of Approval identified in the IS/A as measures that would minimize potential adverse effects that could result from implementation of the project, to ensure the conditions are implemented and monitored. In addition, "recommended measures", not required by CEQA are also included in this SCA/MMRP.[1]

All mitigation measures, Standard Conditions of Approval, and recommended measures identified in the 2012 OARB IS/A are included herein. To the extent that there is any inconsistency between the SCA and Mitigation Measures, the more restrictive conditions shall govern; to the extent any mitigation measures, recommended measures and/or Standard Conditions of Approval identified in the 2012 OARB IS/A were inadvertently omitted, they are automatically incorporated herein by reference.

Mitigation measures from the 2002 EIR that are applicable to the 2012 OARB Project retain the same numbering; each new mitigation measures is numbered according to the section of the IS/A from which it is derived. For example, Mitigation Measure 3.16-1 is the first new mitigation measure identified in the Section 3.16 Traffic and Transportation of the IS/A. The Standard Conditions are identified with the prefix SCA- followed by an abbreviation of the environmental topic to which is applies (e.g., SCA AES-1 is the first SCA relating to aesthetic impacts).

- The first column indicates the environmental impact as identified in the 2002 EIR and the 2012 IS/A;
- The second column identifies the Standard Condition of Approval (SCA), mitigation measure (MM) or recommended measure applicable to that impact in the 2002 EIR and the 2012 IS/A;
- The third column identifies the monitoring schedule or timing applicable to the 2012 Project; and
- The fourth column names the party responsible for monitoring the required action for the 2012 Project.[2]

[1] There may be differences between Appendix J: 2012 Mitigation and Monitoring Program Roadmap ("Roadmap") of the IS/A, whose purpose is to show the differences between mitigation measures, Standard Conditions of Approval, and recommended measures from the 2002 EIR and those from the 2012 OARB Project IS/A, and this SCA/MMRP. Any differences between the Roadmap and this SCA/MMRP represent inadvertent omissions; the Roadmap was provided for informational purposes only.

[2] At various places throughout the IS/A, Mitigation Measures and Standard Conditions of Approval indicate that the project sponsor, project applicant, developer, City and/or Port are responsible for implementation. Regardless of such, the City within its jurisdiction and the Port within its jurisdiction are responsible for implementing the Mitigation Measures and/or Standard Conditions of Approval. Where both the City and Port jurisdictions are involved, both entities are responsible. The Port will impose the City of Oakland SCA where the 2012 Project requires building and electrical permits, which apply to most projects at the Port. The Port Engineering Department shall review as appropriate any mitigations and SCAs for components of the Project that occur within the Port's jurisdiction.

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
Aesthetics, Wind and Shadows			
1. Would the project create a new source of substantial light or glare which would adversely affect daytime or nighttime views in the area?	SCA-AES-1: Lighting Plan: The proposed lighting fixtures shall be adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. Plans shall be submitted to the Planning and Zoning Division and the Electrical Services Division of the Public Works Agency for review and approval. All lighting shall be architecturally integrated into the site.	Prior to the issuance of an electrical or building permit.	City/Port
	Mitigation 4.11-1: New lighting shall be designed to minimize off-site light spillage; "stadium" style lighting shall be prohibited. Modern security lighting is available that directs light toward a specific site, and substantially reduces spillage of light onto adjacent properties. The City shall require the use of such directional lighting as a condition of approval for redevelopment projects throughout the project area. In no case shall the City allow the use of stadium-style lighting, which directs light outward across a broad area.	Prior to the issuance of an electrical or building permit.	City/Port
2. Would the project introduce structures or landscape that would now or in the future cast substantial shadow on existing solar collectors (in conflict with California Public Resources Code §§ 25980-25986), photovoltaic cells, or impair the function of a building using passive solar heat collection?	Mitigation 4.11-3: New active or passive solar systems within or adjacent to the project area shall be set back from the property line a minimum of 25 feet. Through design review, the City shall ensure that proposed solar systems are not located in a manner that would unduly restrict design of future development. Such conflicts are to be resolved in design review. If the proposed solar system cannot be designed to accommodate adjacent actions, it shall be disallowed.	Prior to the issuance of an electrical or building permit.	City/Port
	Mitigation 4.11-4: New construction within the Gateway development area adjacent to a parcel containing permitted or existing active or passive solar systems shall demonstrate through design review that the proposed structures shall not substantially impair operation of existing solar systems. Through design review, the City shall ensure that the effectiveness an operation of existing or permitted active or passive solar systems shall not be substantially impaired. The design of the subsequent proposed structures shall be modified so as not to have such an adverse effect.	Prior to the issuance of an electrical or building permit.	City
	Mitigation 4.11-5: The City and Port shall coordinate with respect to the design of new, permanent buildings constructed along the Port/Gateway boundary to minimize conflicts over solar access. The City and Port shall coordinate with one another regarding design of subsequent redevelopment activities within their respective jurisdictions that may affect operation of solar installations in the other's jurisdiction.	Prior to the issuance of an electrical or building permit.	City/Port
3. Would the project cast shadow that substantially impairs the beneficial use of any public or quasi-public park, lawn, garden, or open space?	Mitigation 4.11-6: New construction adjacent to a public park or open space shall demonstrate through design review that development shall not substantially impair enjoyment of the public utilizing the space. Through design review, the City shall ensure that new building or landscaping shall not shade existing or proposed parks or open spaces in a manner that would make these public spaces	Prior to the issuance of a building permit	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring:	
		Schedule	Responsibility
	substantially less useful or enjoyable to the public. The City may require specific building placement, tiered roofs, or other means of reducing shadow effects on public opens spaces. It is not the intent of this measure to completely eliminate shade in these areas, but to reduce shade to the maximum extent feasible.		
Air Quality			
1. Would the project conflict with or obstruct implementation of the applicable air quality plan?	SCA AIR-2: Construction-Related Air Pollution Controls (Dust and Equipment Emissions): During construction, the project applicant shall require the construction contractor to implement all of the following applicable measures recommended by the Bay Area Air Quality Management District (BAAQMD): a) Water all exposed surfaces of active construction areas at least twice daily (using reclaimed water if possible). Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible. b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer). c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. d) Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used. e) Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.). f) Limit vehicle speeds on unpaved roads to 15 miles per hour. g) Idling times on all diesel-fueled commercial vehicles over 10,000 lbs. shall be minimized either by shutting equipment off when not is use or reducing the maximum idling time to five minutes (as required by Title 13, Section 2485, of the California Code of Regulations. Clear signage to this effect shall be provided for construction workers at all access points. h) Idling times on all diesel-fueled off-road vehicles over 25 horsepower shall be shall be minimized either by shutting equipment off when not is use or reducing the maximum idling time to five minutes and fleet operators must develop a written idling policy (as required by Title 13, Section 2449 of the California Code of Regulations.) i) All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. j) Post a publicly visible sign that includes the contractor's name and telephone number to contact regarding dust complaints. When contacted, the contractor shall respond and take corrective action within 48 hours. The telephone numbers of contacts at the City and the BAAQMD shall also be visible. This information may be posted on other required on-site signage.	Ongoing throughout demoiition, grading, and/or construction	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	k) All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. l) All excavation, grading, and demolition activities shall be suspended when average wind speeds exceed 20 mph. m) Install sandbags or other erosion control measures to prevent silt runoff to public roadways. n) Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more). o) Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress. p) Install appropriate wind breaks (e.g., trees, fences) on the windward side(s) of actively disturbed areas of the construction site to minimize wind blown dust. Wind breaks must have a maximum 50 percent air porosity. q) Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established. r) The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time. s) All trucks and equipment, including tires, shall be washed off prior to leaving the site. t) Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel. u) All equipment to be used on the construction site and subject to the requirements of Title 13, Section 2449 of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations") must meet Emissions and Performance Requirements one year in advance of any fleet deadlines. The project applicant shall provide written documentation that the fleet requirements have been met. v) Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings).		
	Mitigation 4.4-3: The Port shall develop and implement a criteria pollutant reduction program aimed at reducing or off-setting Port-related emissions in West Oakland from its maritime and rail operations to less than significant levels, consistent with applicable federal, state and local air quality standards. The program shall be sufficiently funded to strive to reduce emissions from redevelopment related contributors to local West Oakland air quality, and shall continually reexamine potential reductions toward achieving less than significant impacts as new technologies emerge. The adopted program shall define measurable reductions within specific time periods. This program shall be periodically reviewed and updated every one to three years, corresponding to regular updates of the CAP. The review and update shall include, and not be limited to, an assessment of any potential new strategies, a reassessment of funding requirements, technical	Prior to starting operations	Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	feasibility, and cost benefit assumptions. Periodic updates shall be submitted to the City/Port Liaison Committee or its equivalent. The pollutant reduction program shall give priority to emission reduction strategies that address PM_{10} emissions, but shall also provide for reductions in NO_x and ROG emissions. The emission reduction program shall include a list of potential emission reduction strategies. Strategies that shall be included in the program and implemented over the buildout period include: • The Port shall expand its existing cargo handling equipment re-powering and retrofitting program (part of the Berths 55-58 Project air quality mitigation program) to include marine and rail terminal yard equipment added or relocated as part of redevelopment build-out. • The Port shall extend its grant program (part of the Berths 55-58 Project air quality mitigation program) to provide financial incentives to tugboat operators at New Berth 21 and other Port facilities to implement emission reduction control measures or to replace tugboat engines to low NOx technology. • The Port shall require rail terminal operators to use switch engines at the New Intermodal Facility that comply with federal air emission regulations for diesel operated locomotives as set forth in federal air regulations. In addition, the rail terminal operator and the Port are to exchange information with the goal of investigating options to accelerate compliance with Tier 0, 1 and 2 requirements of the federal regulations. • The Port shall not preclude in its design of the New Intermodal Facility the installation of an alternative fueling station and shall to the extent feasible accommodate such a fueling station. • The Port shall encourage ships to implement source control technologies when in the port area (such as reduced hoteiing). Other strategies to be included in the Port criteria pollutant reduction program when technically and economically feasible, include: • Inclusion of an alternative fueling facility at the New Intermodal Facility.		
	Mitigation 4.4-4: The City and the Port shall jointly create, maintain and fund on a fair share basis, a truck diesel emission reduction program. The program shall be sufficiently funded to strive to reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels, consistent with applicable federal, state and local air quality standards. The adopted program shall define measurable reduction within specific time periods. This program shall be periodically reviewed and updated every one to three years, corresponding to regular updates of the CAP. The review and update shall include, and not be limited to, an assessment of any potential new strategies, a reassessment of funding requirements, technical feasibility, and cost benefit assumptions. Periodic updates shall be submitted to the City/Port Liaison Committee or its equivalent.	Prior to operations	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	The diesel emissions reduction program shall include a list of potential emission reduction strategies that shall include on-site Port improvements and/or practices; loan, grant or incentive-based programs; and on-going studies. Strategies that shall be included in the diesel emissions reduction program and implemented over the build-out period include the following: 1. On-site Port improvements. • Configure truck parking in the Port to minimize traffic interference and reduce idling times. • Allow easy access to a truck parking facility at the Port 24-hours a day. • Synchronize traffic lights in the Port area to reduce congestion (requires coordination with the City). 2. City/Port loan or grant/incentive programs for local businesses or entities. • Provide incentives for re-powering, retrofitting, electrifying, or switching to alternative fuels to local businesses, franchises or truck fleets operating in West Oakland. Such businesses may include, for example, locally owned and operated trucking operations, refuse and recycling collection vehicles, school buses, Port and/or City fleet vehicles, and US Mail trucks. Other strategies to be included in the diesel emissions reduction program to be examined and incorporate when technically and economically feasible, include the following: 1. On-site Port improvements. • Allow trucks using alternative fuels to the head of queues or have separate gate entrances. 2. On-going studies. • Explore methods to minimize truck idling times at the Port. • Explore and encourage the use of alternative fuels for Port marine, rail and truck operations. • Propose and fund a random roadside heavy duty diesel vehicle (HDDV) emissions testing program and an HDDV repair subsidy program. 3. City/Port loan or grant/incentive programs for local businesses or entities. • Provide subsidies, training programs and/or voucher programs for local West Oakland businesses to conduct timing retard, compressions changes and other adjustments to diesel engines to reduce emissions. • Install oxidative catalyst and particulate traps on diesel engines with low NOx, alternaiivcly fueled or electrified engines.		
	<u>SCA TRANS-1: Parking and Transportation Demand Management</u>, see Traffic and Transportation section below.		

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring: Schedule	Responsibility
2. Would the project violate any air quality standard or contribute substantially to an existing or projected air quality violation?	See above for SCA AIR-2 and 2002 EIR Mitigation Measures 4.4-3, 4.4-4, 4.4-5		
	SCA AIR-1: Construction Management Plan: The project applicant shall submit to the Planning and Zoning Division and the Building Services Division for review and approval a construction management plan that identifies the conditions of approval and mitigation measures to construction impacts of the project and explains how the project applicant will comply with these construction-related conditions of approval and mitigation measures.	Prior to issuance of a demolition, grading, or building permit	City/Port
	Mitigation 4.4-6: Title 24 of the Uniform Building Code (UBC) requires that new construction include energy-conserving fixtures and designs. Additionally, the City and Port shall implement sustainable development policies and strategies related to new development design and construction. Implementation of UBC requirements would reduce the need for space and water heating that would emit pollutants. City and Port policies and strategies shall be conditioned for all new development within the redevelopment project area. Specific examples may include, and are not limited to the following: • Wood fire heating shall be prohibited in new live/work development. • Where siting allows and where feasible, buildings shall be oriented to take advantage of passive and active climate control designs. • To the maximum extent feasible, central water heating systems shall be installed.	Prior to issuance of a demolition, grading, or building permit	City/Port
3. Would the project result in a cumulatively considerable net increase of any criteria air pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	See above for SCA AIR-2 and 2002 EIR Mitigation Measures 4.4-3, 4.4-4, 4.4-5 and 4.4-6		
	Mitigation Measure 5.4-1: The City and the Port shall encourage, lobby, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality. Such encouragement, lobbying, and participation may include the following: • Retrofitting locomotive engines to meet current federal standards. • Using reduced sulfur fuels in ships while the ships are in the San Francisco Bay. • Treating NO_x with selective catalytic reductions. • Implementing random roadside emissions tests and develop a system of fines for trucks not in compliance with emission regulations. • Establishing emissions-based berthing fees. • Buying relatively old, highly polluting cars to take them off the road. Although these programs may assist in advancing emission reduction technologies or implementing emission reduction methods, the incremental contribution of the redevelopment program would remain cumulatively considerable, and the cumulative impact on air quality remains significant and unavoidable	Pre-operations; Operations	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
4. Would the project result in a cumulatively considerable net increase of any criteria air pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitadve thresholds for ozone precursors)?	See above SCA AIR-1, SCA AIR-2 and **2002** EIR Mitigation Measures **4.4-3, 4.4-4, 4.4-5** and **4.4-6**		
	<u>SCA AIR-3: Exposure to Air Pollution (Toxic Air Contaminants: Particulate Matter):</u> A. Indoor Air Quality: In accordance with the recommendations of the California Air Resources Board (ARB) and the Bay Area Air Quality Management District, appropriate measures shall be incorporated into the project design in order to reduce the potential health risk due to exposure to diesel particulate matter to achieve an acceptable interior air quality level for sensitive receptors. The appropriate measures shall include <u>one</u> of the following methods: 1) The project applicant shall retain a qualified air quality consultant to prepare a health risk assessment (HRA) in accordance with the ARB and the Office of Environmental Health and Hazard Assessment requirements to determine the exposure of project residents/occupants/users to air polluters prior to issuance of a demolition, grading, or building permit. The HRA shall be submitted to the Planning and Zoning Division for review and approval. The apphcant shall implement the approved HRA recom-mendations, if any. If the HRA concludes that the air quality risks from nearby sources arc at or below acceptable levels, then additional measures are not required. 2) The applicant shall implement all of the following features that have been found to reduce the air quality risk to sensitive receptors and shall be included in the project construction plans. These features shall be submitted to the Planning and Zoning Division and the Building Services Division for review and approval prior to the issuance of a demolition, grading, or building permit and shall be maintained on an ongoing basis during operation of the project. a) Redesign the site layout to locate sensitive receptors as far as possible from any freeways, major roadways, or other sources of air pollution (e.g., loading docks, parking lots). b) Do not locate sensitive receptors near distribution center's entry and exit points. c) Incorporate tiered plantings of trees (redwood, deodar cedar, live oak, and/or oleander) to the maximum extent feasible between the sources of pollution and the sensitive receptors. d) Install, operate and maintain in good working order a central heating and ventilation (HV) system or other air take system in the building, or in each individual residential unit, that meets or exceeds an efficiency standard of MERV 13. The HV system shall include the following features: Installation of a high efficiency filter and/or carbon filter to filter particulates and other chemical matter from entering the building. Either HEPA filters or ASHRAE 85% supply filters shall be used. e) Retain a qualified HV consultant or HERS rater during the design phase of the project to locate the HV system based on exposure modeling from the pollutant sources. f) Install indoor air quality monitoring units in buildings.	Prior to issuance of a demolition, grading, or building permit	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	g) Project applicant shall maintain, repair and/or replace HV system on an ongoing and as needed basis or shall prepare an operation and maintenance manual for the HV system and the filter. The manual shall include the operating instructions and the maintenance and replacement schedule. This manual shall be included in the CC&Rs for residential projects and distributed to the building maintenance staff. In addition, the applicant shall prepare a separate homeowners manual. The manual shall contain the operating instructions and the maintenance and replacement schedule for the HV system and the filters. B. Outdoor Air Quality: To the maximum extent practicable, individual and common exterior open space, including playgrounds, patios, and decks, shall either be shielded from the source of air pollution by buildings or otherwise buffered to further reduce air pollution for project occupants.		
Biological Resources			
1. Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	SCA BIO-1: Tree Removal During Breeding Season: To the extent feasible, removal of any tree and/or other vegetation suitable for nesting of raptors shall not occur during the breeding season of March 15 through August 15. If tree removal must occur during the breeding season, all sites shall be surveyed by a qualified biologist to verify the presence or absence of nesting raptors or other birds. Pre-removal surveys shall be conducted within 15 days prior to start of work from March 15 through May 31, and within 30 days prior to the start of work from June 1 through August 15. The pre-removal surveys shall be submitted to the Planning and Zoning Division and the Tree Services Division of the Public Works Agency. If the survey indicates the potential presences of nesting raptors or other birds, the biologist shall determine an appropriately sized buffer around the nest in which no work will be allowed until the young have successfully fledged. The size of the nest buffer will be determined by the biologist in consultation with the CDFG, and will be based to a large extent on the nesting species and its sensitivity to disturbance. In general, buffer sizes of 200 feet for raptors and 50 feet for other birds should suffice to prevent disturbance to birds nesting in the urban environment, but these buffers may be increased or decreased, as appropriate, depending on the bird species and the level of disturbance anticipated near the nest.	Prior to issuance of a tree removal permit	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	SCA BIO-5 Regulatory Permits and Authorizations: Prior to construction in or near the water, the project applicant shall obtain all necessary regulatory permits and authorizations, including without limitation, from the U.S. Army Corps of Engineers (Corps), Regional Water Quality Control Board (RWQCB), San Francisco Bay Conservation and Development Commission (BCDC) and the City of Oakland, and shall comply with all conditions issued by applicable agencies. Required permit approvals and certifications may include, but not be limited to the following: a) U.S. Army Corps of Engineers (Corps): Section 404. Permit approval from the Corps shall be obtained for the placement of dredge or fill material in Waters of the U.S., if any, within the interior of the project site, pursuant to Section 404 of the federal Clean Water Act. b) Regional Walter Quality Control Board (RWQCB): Section 401 Water Quality Certification. Certification that the project will not violate state water quality standards is required before the Corps can issue a 404 permit, above. c) San Francisco Bay Conservation and Development Commission (BCDC) approvals.	Prior to issuance of a demolition, grading, or building permit within vicinity of the shoreline	City/Port
	Mitigation Measure 4.12-5: A qualified observer shall be present on site during all in-water construction activities near potential herring spawning areas between December 1 and March 1. This measure shall be enforced via contract specifications. The observer shall have the authority to redirect, but not to stop work.	During construction	City/Port
	Mitigation Measure 4.12-6: If spawning is observed, in-water construction activities shall be redirected for 200 meters around the spawning area for two weeks. Work may resume in the spawning area after two weeks, providing additional spawning does not occur. This measure shall be enforced via contract specifications.	During construction	City/Port
	Mitigation Measure 4.12-10: The Port shall confinue to enforce its tariff requirements regarding ballast water and if the State law sunsets, shall implement the remainder of its ballast water ordinance, as it may be amended from time to time. Item No. 02215 of the Port's tariff (its operating rules and regulations) defines the Port's Ballast Water Management Program. Among other things, the Port's program compiles information regarding the ballasting behavior of carriers calling at the Port of Oakland. This information is expected to be valuable in crafting durable solutions to the problems ballast water-borne invasive species pose to the ecology of the Bay, and to invasive species issues elsewhere. This mitigation measure would confinue the Port's program through the build-out year of this project, or 2020, or until required by regulatory permit conditions, whichever is later. Should portions of the Port's program be redundant to federal, state, or regional programs, or be pre-empted by such programs, the Port will continue to operate those non-pre-empted portions of its program that provide information not obtained through other programs.	During constmction	Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	Modified Mitigation Measure 4.12-11: The Port, and developer and sub-tenants at Berths 7 and 8 (Wharves 6½ and 7), shall continue to develop and implement a carrier ballast water education program. Either by itself or by participating in programs by others, *e.g.*, Sea Grant, the Port shall create a program to educate ocean carriers regarding the potential harm of ballasting activities. The program shall at a minimum, include the following elements: • Educate carriers to all applicable regulations and guidelines. • Inform carriers of the benefits of ships constructed with internal ballast water transfer systems. These systems allow ballast water to be shifted internally from tank to tank, minimizing or eliminating the need for discharge of ballast water when ships are at berth • Encourage carriers to purchase internally-ballasting vessels when they place orders for new ships. • Educate carriers regarding potential benefits of reducing ballast water discharges, even if ballast water has already been exchanged in the open ocean.	Operations	City/Port
	Modified Mitigation Measure 4.12-12: The Port, and developer and sub-tenants at Berths 7 and 8 (Wharves 6½ and 7), shall support international and United States efforts to adopt uniform international or national standards to avoid introduction of exotic species through shipping activities.	Operations	City/Port
	Mitigation Measure 3.4-1a: The developer shall submit a Landscape Plan for City review and approval. The plan shall not include tall ornamental trees that could provide perches for raptors in the northern project site, in the vicinity of Gateway Park. **Mitigation Measure 3.4-1b:** The developer shall submit a Lighting Plan for City review and approval. The plan shall note that raptor deterrents shall be placed on light standards in the northern project site, in the vicinity of Gateway Park, or lighting fixtures or posts in the area shall have limited horizontal elements which could be used as perches.	Prior to issuance of a building permit, associated with the Planned Unit Development (PUD) process	City/Port
2. Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	See above for **Modified 2002 EIR Mitigation Measures 4.12-11 and 4.12-12**		

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
3. Would the project have a substantial adverse effect on federally protected wetlands (as defined by Section 404 of the Clean Water Act) or state protected wetlands, through direct removal, filling, hydrological interruption, or other means?	See above for SCA BIO-5		
4. Would the project substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	See above for Mitigation Measures 4.12-5, 4.12-6, 4.12-11 and 4.12-12		
5. Would the project fundamentally conflict with the City of Oakland Tree Protection Ordinance (Oakland Municipal Code (OMC) Chapter 12.36) by removal of protected trees under certain circumstances?	SCA BIO-2: Tree Removal Permit: Prior to removal of any protected trees, per the Protected Tree Ordinance, located on the project site or in the public right-of-way adjacent to the project, the project applicant must secure a tree removal permit from the Tree Division of the Public Works Agency, and abide by the conditions of that permit.	Prior to issuance of a demolition, grading, or building permit.	City/Port
	SCA BIO-3: Tree Replacement Plantings: Replacement plantings shall be required for erosion control, groundwater replenishment, visual screening and wildlife habitat, and in order to prevent excessive loss of shade, in accordance with the following criteria: a) No tree replacement shall be required for the removal of nonnative species, for the removal of trees which is required for the benefit of remaining trees, or where insufficient planting area exists for a mature tree of the species being considered. b) Replacement tree species shall consist of Sequoia sempervirens (Coast Redwood), Quercus agrifolia (Coast Live Oak), Arbutus menziesii (Madrone), Aesculus californica (California Buckeye) or Umbellularia californica (California Bay Laurel) or other tree species acceptable to the Tree Services Division. c) Replacement trees shall be at least of twenty-four (24) inch box size, unless a smaller size is recommended by the arborist, except that three fifteen (15) gallon size trees may be substituted for each twenty-four (24) inch box size tree where appropriate. d) Minimum planting areas must be available on site as follows: i. For Sequoia sempervirens, three hundred fifteen square feet per tree; ii. For all other species listed in #2 above, seven hundred (700) square feet per tree. e) In the event that replacement trees are required but cannot be planted due to site constraints, an	Prior to issuance of a final inspection of the building permit.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	in lieu fee as determined by the master fee schedule of the city may be substituted for required replacement plantings, with all such revenues applied toward tree planting in city parks, streets and medians. Plantings shall be installed prior to the issuance of a final inspection of the building permit, subject to seasonal constraints, and shall be maintained by the project applicant until established. The Tree Reviewer of the Tree Division of the Public Works Agency may require a landscape plan showing the replacement planting and the method of irrigation. Any replacement planting which fails to become established within one year of planting shall be replanted at the project applicant's expense.		
	<u>SCA BIO-4: Tree Protection During Construction:</u> Adequate protection shall be provided during the construction period for any trees which are to remain standing, including the following, plus any recommendations of an arborist: a) Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Tree Reviewer. Such fences shall remain in place for durafion of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree. b) Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the City Tree Reviewer from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree. c) No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construcfion materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree. d) Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration. e) If any damage to a protected tree should occur during or as a result of work on the site, the project applicant shall immediately notify the Public Works Agency of such damage. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the	Prior to issuance of a demolition, grading, or building permit.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed. f) All debris created as a result of any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations.		
Cultural Resources			
1. Would the project cause a substantial adverse change in the significance of a historical resource as defined in *CEQA Guidelines* Section 15064.5? Specifically, a substantial adverse change includes physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of the historical resource would be "materially impaired?"	Mitigation Measure 4.6-2: The City, Port and OARB sub-district developers shall fund on a fair-share basis development of a commemoration site, including preparation of a Master Plan for such a site, at a public place located within the Gateway development area. The City shall ensure that the scale and scope of the commemoration site reflects the actual loss of historic resources. Land shall be set aside for development of a commemoration site at a publicly accessible place located within the Gateway development area (potentially the Gateway Park at the Bay Bridge touchdown peninsula). The commemoration site should include relocated physical elements of the OARB Historic District, along with appropriate monument(s) to memorialize the contributions of civilians and the military in the Bay Area to all wars. • An appropriate location shall be set aside for development of a commemorafion site. The commemoration site shall be at a publicly accessible place. It may be located within or adjacent to any historic district contributor buildings that are preserved on a permanent basis (see Mitigation Measure 4.6-16). If that is not feasible, another potential location is within or near to the Gateway Park. • A design plan for the commemoration site shall be prepared, and shall include the design of monuments and the selection of appropriate relocated physical elements from the OARB, potentially including relocated structures or portions of structures to be included in the site. The City and the Port shall identify structures and/or portions of structures to be preserved or moved to the commemoration site prior to demolition. • The master planning process should involve the City and the Port, the public and interested historical and veterans groups, historic experts, and other public agencies. • Implementation of the commemoration site master plan may be phased along with the timing of new development. • The master plan shall include an endowment to be funded by the City and the Port, or their designee, for on-going maintenance and replacement and may also include curator costs associated with commemoration site and with trail signage, exhibits, and design elements as described below. • The City and the Port shall develop an ongoing outreach program informing the public of the importance of the OARB to the community and the region, and of the existence of the commemorative site.	Prior to approval of PUD	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	Mitigation Measure 4.6-3: The City shall ensure the commemoration site is linked to the Gateway Park and the Bay Trail via a public access trail. Within the Gateway development area, this trail may be located along the shoreline. Beyond the Gateway, the trail would follow the new alignment of Maritime Street, connecting to 7th Street, which connects to the Port's Middle Harbor Shoreline Park and other existing and planned trail segments. • The design and development of this on-site trail shall include a series of interpretive panels, exhibits and design elements that communicate the scope and historical significance of Base activities and their impact on the community throughout the life of the Base. • A brochure shall be developed and made available describing the history of the Army Base that could be used as a self-guided tour, related to the interpretive panels and exhibits described above.	Prior to approval of PUD.	City/Port
	Mitigation Measure 4.6-5: The City, Port, and OARB sub-district developers shall fund on a fair share basis collaboration with "military.com" or a similar military history web site. • The parties shall fund development of an interactive web page to be provided to military.com or other web-based organization where former military personnel can be connected to the OARB documentation. • A list of list of draftees/enlistees processed through the OARB during WWII and the Korean and Vietnam Wars may be an element of such a site.	Prior to issuance of a building permit	City/Port
	Mitigation Measure 4.6-7: If determined of significant historical educational value by the Oakland Landmarks Preservation Advisory Board and the Oakland Heritage Alliance, the City, Port, and OARB sub-district developers shall fund on a fair share basis distribution of copies of "A Job Well Done" documentary video published by the Army. The Army has produced a television broadcast–quality video documentary that describes the mission and historical significance of the OARB. This documentary is not widely distributed, and has not been viewed by the Oakland Landmarks Preservation Advisory Board or the Oakland Heritage Alliance. This documentary is currently available to the public, but is not widely distributed. This mitigation measure will ensure that the documentary is widely distributed and made available to a larger audience interested in the history of the Base. It will also offset the modification and/or destruction of many of the historic buildings on the base, preserve their images, and provide a description of their function and role to the interested public. Copies of the video shall be distributed to: the Oakland History Room, Oakland Public Library, Bancroft Library, University of California; the Port of Oakland Archives; local public schools and libraries; and local public broadcasting stations. Funding shall also be used to copy this video onto more permanent archive-stable medium such as a CD.	Prior to issuance of a building permit	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	Mitigation Measure 4.6-9: The City, Port, and OARB sub-district developers shall fund on a fair share basis a prograru to salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed. These materials shall be used on site if deconstrucfion is the only opfion. Reuse of a warehouse building or part of a warehouse building at its current location, or relocated to another Gateway location is preferable. To the extent feasible, these materials shall be used in whole, on site, in the construction of new buildings within the Gateway development area. Special consideration shall be given to the use of these materials at the commemoration site through the site's Master Planning eITort If on-site reuse is found infeasible, opportunities shall be sought for reuse of these materials in other East Bay Area construction, or be sold into the recycled construction ruaterials market. Landfill disposal of salvageable construction material from contributing historic structures shall be prohibited by contract specification. Salvage and reuse requirements shall be enforced via contract specification. Salvage operations shall employ members of local job-training bridge programs (Youth Employment Program, Joint Apprenticeship Training Committee, Homeless Collaborative) or other similar organizafions, if feasible, to provide construction-training opportunities to Oakland residents. Salvage and reuse of the timber from these structures will help to reduce the impacts on the environment and save this ecologically and historically valuable material for reuse in the local community.	Prior to issuance of a building pennit	City/Port
	Mitigation Measure 4.6-10: The City, Port, and OARB sub-district developers shall fiind on a fair share basis production of a brochure describing history and architectural history of the OARB. • The brochure shall be distributed to local libraries and schools, and be made available to the public at select pick-up and drop-off locations along the Bay Trail to be used for self-guided tours. • This brochure shall build upon the previously completed historical documentation produced by the Port of Oakland, the Navy, and the Army for previous projects and on the original research completed for preparation of the Historical Resource Documentation Program and book. • This brochure shall will document the history of the redevelopment area and provide references to where more detailed information about the Base may be found.	Prior to issuance of a building permit	City/Port
	Modified Mitigation Measure 4.6-14: No demolition or deconstmction of contributing structures lo the OARB Historic District shall occur until a ruaster plan and/or Lease Disposition and Development Agreement has been approved by the City, and demolition or deconstrucfion of a building is required to realize the master infrastructure development plan necessary for approved	Approval of master plan and/or Lease Disposition and Development	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	redevelopment activities, in conformity with applicable General Plan Historic Preservation Element and City of Oakland Planning requirements.[3]	Agreement	
2. Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to *CEQA Guidelines* Section 15064.5?	SCA CULT-1: Archaeological Resources: Pursuant to CEQA Guidelines section 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist or paleontologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Oakland. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards. a) In considering any suggested measure proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, the project applicant shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while measure for historical resources or unique archaeological resources is carried out. Should an archaeological artifact or feature be discovered on-site during project construction, all activities within a 50-foot radius of the find would be halted until the findings can be fully investigated by a qualified archaeologist to evaluate the find and assess the significance of the find according to the CEQA definition of a historical or unique archaeological resource. If the deposit is determined to be significant, the project applicant and the qualified archaeologist shall meet to determine the appropriate avoidance measures or other appropriate measure, subject to approval by the City of Oakland, which shall assure implementation of appropriate measure measures recommended by the archaeologist. Should archaeologically-significant materials be recovered, the qualified archaeologist shall recommend appropriate analysis and treatment, and shall prepare a report on the findings for submittal to the Northwest Information Center.	Ongoing throughout demolition, grading, and/or construction.	City/Port

[3] The 2002 EIR mitigation measure 4.6-14 states that the Port shall not demolish or deconstruct structures until it has approved a final development plan for the relevant new facility or facilities. This requirement shall continue to apply to the Port in the absence of a Lease Disposition and Development Agreement.

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
3. Would the project directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	SCA CULT-3: Paleontological Resources: In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find under the criteria set forth in Section 15064.5 of the CEQA Guidelines. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.	Ongoing throughout demolition, grading, and/or construction.	City/Port
4. Would the project disturb any human remains, including those interred outside of formal cemeteries?	SCA CULT-2: Human Remains: In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.	Ongoing throughout demolition, grading, and/or construction	City/Port
Geology and Soils			
1. Would the project expose people or stmctures to substantial risk of loss, injury, or death involving: i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map or Seismic Hazards Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to California Geological Survey 42 and 117 and Public Resources Code section 2690 el. seq.; ii) Strong seismic ground shaking; iii) Seismic-related ground	SCA GEO-2: Soils Report: A preliminary soils report for each construction site within the project area shall be required as part of this project and submitted for review and approval by the Building Services Division. The soils reports shall be based, at least in part, on information obtained from on-site testing. Specifically the minimum contents of the report should include: A. Logs of borings and/or profiles of test pits and trenches: a) The minimum number of borings acceptable, when not used in combination with test pits or trenches, shall be two (2), when in the opinion of the Soils Engineer such borings shall be sufficient to establish a soils profile suitable for the design of all the footings, foundations, and retaining structures. b) The depth of each boring shall be sufficient to provide adequate design criteria for all proposed structures. c) All boring logs shall be included in the soils report.	Prior to issuance of demolition, grading or building permit	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
failure, including liquefaction, lateral spreading, subsidence, collapse; iv) Landslides?	B. Test pits and trenches a) Test pits and trenches shall be of sufficient length and depth to establish a suitable soils profile for the design of all proposed structures. b) Soils profiles of all test pits and trenches shall be included in the soils report. C. A plat shall be included which shows the relationship of all the borings, test pits, and trenches to the exterior boundary of the site. The plat shall also show the location of all proposed site improvements. All proposed improvements shall be labeled. D. Copies of all data generated by the field and/or laboratory testing to determine allowable soil bearing pressures, sheer strength, active and passive pressures, maximum allowable slopes where applicable and any other information which may be required for the proper design of foundations, retaining walls, and other stmctures to be erected subsequent to or concurrent with work done under the grading permit. E. Soils Report. A written report shall be submitted which shall include, but is not limited to, the following: a) Site description; b) Local and site geology; c) Review of previous field and laboratory investigations for the site; d) Review of information on or in the vicinity of the site on file at the Information Counter, City of Oakland, Office of Planning and Building; e) Site stability shall be addressed with particular attention to existing conditions and proposed corrective attention to existing conditions and proposed corrective actions at locations where land stability problems exist; f) Conclusions and recommendations for foundations and retaining structures, resistance to lateral loading, slopes, and specifications, for fills, and pavement design as required; g) Conclusions and recommendations for temporary and permanent erosion control and drainage. If not provided in a separate report they shall be appended to the required soils report; h) All other items which a Soils Engineer deems necessary; i) The signature and registration number of the Civil Engineer preparing the report. F. The Director of Planning and Building may reject a report that she/he believes is not sufficient. The Director of Planning and Building may refuse to accept a soils report if the certification date of the responsible soils engineer on said document is more than three years old. in this instance, the Director may be require that the old soils report be recertified, that an addendum to the soils report be submitted, or that a new soils report be provided.		

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring:	
		Schedule	Responsibility
	SCA-GEO-3: Geotechnical Report: a) A site-specific, design level, landslide or liquefaction geotechnical investigation for each construction site within the project area shall be required as part of this project and submitted for review and approval by the Building Services Division. Specifically: i. Each investigation shall include an analysis of expected ground motions at the site from identified faults. The analyses shall be accordance with applicable City ordinances and polices, and consistent with the most recent version of the California Building Code, which requires structural design that can accommodate ground accelerations expected from identified faults. ii. The investigations shall determine final design parameters for the walls, foundations, foundation slabs, surrounding related improvements, and infrastructure (utilities, roadways, parking lots, and sidewalks). iii. The investigations shall be reviewed and approved by a registered geotechnical engineer. All recommendations by the project engineer, geotechnical engineer, shall be included in the final design, as approved by the City of Oakland. iv. The geotechnical report shall include a map prepared by a land surveyor or civil engineer that shows all field work and location of the "No Build" zone. The map shall include a statement that the locations and limitations of the geologic features are accurate representations of said features as they exist on the ground, were placed on this map by the surveyor, the civil engineer or under their supervision, and are accurate to the best of their knowledge. v. Recommendations that are applicable to foundation design, earthwork, and site preparation that were prepared prior to or during the projects design phase, shall be incorporated in the project. vi. Final seismic considerations for the site shall be submitted to and approved by the City of Oakland Building Services Division prior to commencement of the project. vii. A peer review is required for the Geotechnical Report. Personnel reviewing the geologic report shall approve the report, reject it, or withhold approval pending the submission by the applicant or subdivider of further geologic and engineering studies to more adequately define active fault traces. b) Tentative Tract or Parcel Map approvals shall require, but not be limited to, approval of the Geotechnical Report.	Prior to issuance of demolition, grading or building permit	City/Port
	Mitigation **4.13-1**: Redevelopment elements shall be designed in accordance with criteria established by the UBC, soil investigation and construction requirements established in the Oakland General Plan, the Bay Conservation and Development Commission Safety of Fill Policy, and wharf design criteria established by the Port or City of Oakland (depending on the location of the wharf).	Prior to issuance of demolition, grading or building permit	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	The UBC requires structures in the San Francisco Bay Area to be designed to withstand a ground acceleration of 0.4 g. A licensed engineer should monitor construction activities to ensure that the design and construction criteria are followed. The Health and Safety element of the Oakland General Plan requires a soils and geologic report be submitted to the Department of Public Works (DPW) prior to the issuance of any building permit. The Oakland General Plan also requires all structures of three or more stories to be supported on pile foundations that penetrate Bay Mud deposits, and to be anchored in firm, non-compressible materials unless geotechnical findings indicate a more appropriate design. The General Plan also provides for the identification and evaluation of existing structural hazards and abalement of those hazards to acceptable levels of risk. To comply with the BCDC safety of fill policy, the plans and specifications for the placement of Bay fill will be submitted to the BCDC Engineering Criteria Review Board for review and approval. The Port of Oakland has developed wharf design criteria to be used in the design, construction, reconstruction, and repairs of existing and future wharf structures, except in the event that current engineering practice requires adjustments or modification of the wharf design criteria. All construction associated with New Berth 21 must adhere to the wharf design criteria established by the Port of Oakland. A licensed engineer should monitor construction activities to ensure that the design and construction criteria are followed. The City shall adopt wharf design criteria and apply them to any wharf in the City's jurisdiction.		
	Mitigation 4.13-2: Redevelopment elements shall be designed and constmcted in accordance with requirements of a site-specific geotechnical evaluation. Site-specific geotechnical, soils, and foundation investigation reports shall be prepared by a licensed geotechnical or soil engineer experienced in construction methods on fill materials in an active seismic area. The reports shall provide site-specific construction methods and recommendations regarding grading activities, fill placement, compaction, foundation construction, drainage control (both surface and subsurface), and seismic safety. Designers and contractors shall comply with recommendations in the reports. A licensed geotechnical or soil engineer shall monitor earthwork and construction activities lo ensure that recommended site-specific construction methods are followed. The Oakland General plan requires all structures of three or more stories lo be supported on pile foundations that penetrate Bay Mud deposits and to be anchored in firm, non-compressible materials unless geotechnical findings indicate a more appropriate design. The General Plan also provides for the identification and evaluation of existing structural hazards and abatement of those hazards lo acceptable levels of risk.	Prior to issuance of demolition, grading or building permit	City/Port
2. Would the projecl result in substantial soil erosion or loss of topsoil, creating substantial risks to life, property, or	See Hydrology and Water Quality section below for SCA HYD-1 through SCA HYD-4		
	SCA GEO-1: Erosion and Sedimentation Control Plan:	Prior to issuance of	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
creeks/waterways?	*Prior to issuance of a demolition, grading, or building permit.* A. The project applicant shall obtain a grading permit if required by the Oakland Grading Regulations pursuant to Section 15.04.660 of the Oakland Municipal Code. The grading permit application shall include an erosion and sedimentation control plan for review and approval by the Building Services Division. The erosion and sedimentation control plan shall include all necessary measures to be taken to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading operations. The plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and stormwater retention basins. Off-site work by the project applicant may be necessary. The project applicant shall obtain permission or easements necessary for off-site work. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated stormwater runoff and sediment volumes shall be included, if required by the Director of Development or designee. The plan shall specify that, after construction is complete, the project applicant shall ensure that the storm drain system shall be inspected and that the project applicant shall clear the system of any debris or sediment. *Ongoing throughout and construction activities* B. The project applicant shall implement the approved erosion and sedimentation plan. No grading shall occur during the wet weather season (October 15 through April 15) unless specifically authorized in writing by the Building Services Division.	a demolition, grading, or building permit; and ongoing throughout and construction activities (refer to SCA language to the left)	
3. Would the project be located on expansive soil, as defined in section 1802.3.2 of the California Building Code (2007, as it may be revised), creating substantial risks to life or property?	See above for SCA GEO-2 and SCA GEO-3		
4. Would the project be located above a well, pit, swamp, mound, tank vault, or unmarked sewer line, creating substantial risks to life or property?	See above for SCA GEO-2 and SCA GEO-3 and Mitigation Measure 4.13-2		
	Mitigation 4.13-4: The project applicant shall thoroughly review available building and environmental records. The City and Port shall keep a record of, and the designer shall review, available plans, and facility, building, and environmental records in order to identify underground utilities and facilities, so that these may be either avoided or incorporated into design as relevant.	Prior to issuance of demolition, grading or building permit; and on-going	City/Port
	Mitigation 4.13-5: The developer shall perform due diligence, including without limitation,	Prior to issuance of	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	retaining the services of subsurface utility locators and other technical experts prior to any ground-disturbing activities. The contractor shall utilize Underground Service Alert or other subsurface utility locators to identify and avoid underground utilities and facilities during construction of redevelopment elements. The contractor shall keep a record of its contacts regarding underground features, and shall make these records available to the City or Port upon request. This condition shall be enforced through contract specification.	demolition, grading or building permit; and on-going	
5. Would the project be located above landfills for which there is no approved closure or post-closure plan, or unknown fill soils, creating substantial risks to life or property?	See above for SCA-GEQ-2 and Mitigation Measures **4.13-2, 4.13-4,** and **4.13-5**		
Greenhouse Gas Emissions			
1. Would the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	SCA GCC-1: Greenhouse Gas (GHG) Reduction Plan: The project applicant shall retain a qualified air quality consultant to develop a Greenhouse Gas (GHG) Reduction Plan for City review and approval. The applicant shall implement the approved GHG Reduction Plan. The goal of the GHG Reduction Plan shall be to increase energy efficiency and reduce GHG emissions by at least 20 percent, with a goal of 36 percent below the project's "adjusted" baseline GHG emissions (as explained below) to help achieve the City's goal of reducing GHG emissions. The GHG Reduction Plan shall include, at a minimum, (a) a detailed GHG emissions inventory for the project under a "business-as-usual" scenario with no consideration of project design features, or other energy efficiencies, (b) an "adjusted" baseline GHG emissions inventory for the project, taking into consideration energy efficiencies included as part of the project (including the City's Standard Conditions of Approval, proposed mitigation measures, project design features, and other City requirements), (c) a comprehensive set of quantified additional GHG reduction measures available to further reduce GHG emissions beyond the adjusted GHG emissions, and (d) requirements for ongoing monitoring and reporting to demonstrate that the additional GHG reduction measures are being implemented. If the project is to be constructed in phases, the GHG Reduction Plan shall provide GHG emission scenarios by phase. Specifically, the applicant/sponsor shall adhere to the following: a) ***GHG Reduction Measures Program.*** Prepare and submit to the City Planning Director or his/her designee for review and approval a GHG Reduction Plan that specifies and quantifies GHG reduction measures that the project will implement by phase. Potential GHG reduction measures to be considered include, but are not be limited to, measures recommended in BAAQMD's latest CEQA Air Quality Guidelines, the California Air	Prior to approval of PUD.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	Resources Board Scoping Plan (December 2008, as may be revised), the California Air Pollution Control Officers Association (CAPCOA) Quantifying Greenhouse Gas Mitigation Measures Document (August 2010, as may be revised), the California Attorney General's website, and Reference Guides on Leadership in Energy and Environmental Design (LEED) published by the U.S. Green Building Council. The proposed GHG reduction measures must be reviewed and approved by the City Planning Director or his/her designee. The types of allowable GHG reduction measures include the following (listed in order of City preference): (1) physical design features; (2) operational features; and (3) the payment of fees to fund GHG-reducing programs (i.e., the purchase of "offset carbon credits," pursuant to item "b" below). The allowable locations of the GHG reduction measures include the following (listed in order of City preference): (1) the project site; (2) off-site within the City of Oakland; (3) off-site within the San Francisco Bay Area Air Basin; (4) off-site within the State of California; then (5) elsewhere in the United States. b) ***Offset Carbon Credits Guidelines.*** For GHG reduction measures involving the purchase of offset carbon credits, evidence of the payment/purchase shall be submitted to the City Planning Director or his/her designee for review and approval prior to completion of the project (or prior to completion of the project phase, if the project includes more one phase). As with preferred locations for the implementation of all GHG reductions measures, the preference for offset carbon credit purchases include those that can be achieved as follows (listed in order of City preference): (1) within the City of Oakland; (2) within the San Francisco Bay Area Air Basin; (3) within the State of California; then (4) elsewhere in the United States. The cost of offset carbon credit purchases shall be based on current market value at the time purchased and shall be based on the Project's operational emissions estimated in the GHG Reduction Plan or subsequent approved emissions inventory, which may result in emissions that are higher or lower than those estimated in the GHG Reduction Plan. c) ***Plan Implementation and Documentation.*** For physical GHG reduction measures to be incorporated into the design of the project, the measures shall be included on the drawings submitted for construction-related permits. For operational GHG reduction measures to be incorporated into the project, the measures shall be implemented on an indefinite and ongoing basis beginning at the time of project completion (or at the completion of the project phase for phased projects). For physical GHG reduction measures to be incorporated into off-site projects, the measures shall be included on drawings and submitted to the City Planning Director or his/her designee for review and approval and then installed prior to completion of the subject project (or prior to completion of the project phase for phased projects). For operational GHG reduction measures to be incorporated into off-site projects, the measures shall be implemented on an indefinite and		

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	ongoing basis beginning at the time of completion of the subject project (or at the completion of the project phase for phased projects). d) ***Compliance, Monitoring and Reporting.*** Upon City review and approval of the GHG Reduction Plan program by phase, the applicant/sponsor shall satisfy the following requirements for ongoing monitoring and reporting to demonstrate that the additional GHG reduction measures are being implemented. The GHG Reduction Plan requires regular periodic evaluation over the life of the Project (generally estimated to be al least 40 years) lo determine how the Plan is achieving required GHG emissions reductions over time, as well as the efficacy of the specific additional GHG reduction measures identified in the Plan. Implementation of the GHG reduction measures and related requirements shall be ensured through the project applicant/sponsor's compliance with Conditions of Approval adopted for the project. Generally, starting two years after the City issues the first Certificate of Occupancy for the project, the project applicant/sponsor shall prepare each year of the useful life of the project an Annual GHG Emissions Reduction Report (Annual Report), subject to the City Planning Director or his/her designee for review and approval. The Annual Report shall be submitted to an independent reviewer of the City Planning Director's or his/her designee's choosing, to be paid for by the project applicant/sponsor (see ***Funding***, below), within two months of the anniversary of the Certificate of Occupancy. The Annual Report shall summarize the project's implementation of GHG reduction measures over the preceding year, intended upcoming changes, compliance with the conditions of the Plan, and include a brief summary of the previous year's Annual Report results (starting the second year). The Annual Report shall include a comparison of annual project emissions lo the baseline emissions reported in the GHG Plan. The GHG Reduction Plan shall be considered fully attained when project emissions are 36 percent below the project's "adjusted" baseline GHG emissions, as confirmed by the City Planning Director or his/her designee through an established monitoring program unless the applicant demonstrates il is infeasible to achieve the 36 percent goal. Monitoring and reporting activities will continue at the City's discretion, as discussed below. e) ***Funding.*** Within two months after the Certificate of Occupancy, the project applicant/sponsor shall fund an escrow-type account or endowment fund to be used exclusively for preparation of Annual Reports and review and evaluation by the City Planning Director or his/her designee, or its selected peer reviewers. The escrow-type account shall be initially funded by the project applicant/sponsor in an amount determined by the City Planning Director or his/her designee and shall be replenished by the project applicant/sponsor so that the amount does not fall below an amount determined by the City Planning Director or his/her designee. The mechanism of this account shall be mutually agreed upon by the project applicant/sponsor and the City Planning Director or his/her designee, including the ability of the City to access the funds if the project applicant/sponsor is not complying with the GHG Reduction Plan requirements, and/or		

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring:	
		Schedule	Responsibility
	to reimburse the City for its monitoring and enforcement costs. f) *Corrective Procedure.* If the third Annual Report, or any report thereafter, indicates that, in spite of the implementation of the GHG Reduction Plan, the project is not achieving the GHG reduction goal, the project applicant/sponsor shall prepare a report for City review and approval, which proposes additional or revised GHG measures to better achieve the GHG emissions reduction goals, including without limitation, a discussion on the feasibility and effectiveness of the menu of other additional measures (Corrective GHG Action Plan). The project applicant/sponsor shall then implement the approved Corrective GHG Action Plan. If, one year after the Corrective GHG Action Plan is implemented, the required GHG emissions reduction target is still not being achieved, or if the project applicant/owner fails to submit a report at the times described above, or if the reports do not meet City requirements outlined above, the City Planning Director or his/her designee may, in addition to its other remedies, (a) assess the project applicant/sponsor a financial penalty based upon actual percentage reduction in GHG emissions as compared to the percent reduction in GHG emissions established in the GHG Reduction Plan; or (b) refer the matter to the City Planning Commission for scheduling of a compliance hearing to determine whether the project's approvals should be revoked, altered or additional conditions of approval imposed. The penalty as described in (a) above shall be determined by the City Planning Director or his/her designee and be commensurate with the percentage GHG emissions reduction not achieved (compared to the applicable numeric significance thresholds) or required percentage reduction from the "adjusted" baseline. In determining whether a financial penalty or other remedy is appropriate, the City shall not impose a penalty if the project applicant/sponsor has made a good faith effort to comply with the GHG Reduction Plan. The City would only have the ability to impose a monetary penalty after a reasonable cure period and in accordance with the enforcement process outlined in Planning Code Chapter 17.152. If a financial penalty is imposed, such penalty sums shall be used by the City solely toward the implementation of the GHG Reduction Plan. g) *Timeline Discretion and Summary.* The City Planning Director or his/her designee shall have the discretion to reasonably modify the timing of reporting, with reasonable notice and opportunity to comment by the applicant, to coincide with other related monitoring and reporting required for the project. • *Fund Escrow-type Account for City Review*: Certificate of Occupancy plus 2 months • *Submit Baseline Inventory of "Actual Adjusted Emissions"*: Certificate of Occupancy plus 1 year		

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	• *Submit Annual Report #1*: Certificate of Occupancy plus 2 years • *Submit Corrective GHG Action Plan* (if needed): Certificate of Occupancy plus 4 years (based on findings of Annual Report #3) • *Post Attainment Annual Reports*: Minimum every 3 years and at the City Planning Director's or his/her designee's reasonable discretion		
Hazards and Hazardous Materials			
1. Would the project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	SCA HAZ-1: Best Management Practices for Soil and Groundwater Hazards The project applicant shall implement all of the following Best Management Practices (BMPs) regarding potential soil and groundwater hazards. a) Soil generated by construction activities shall be stockpiled onsite in a secure and safe manner or if designated for off-site disposal at a permitted facility, the soil shall be loaded, transported and disposed of in a safe and secure manner. All contaminated soils determined to be hazardous or non-hazardous waste must be adequately profiled (sampled) prior to acceptable reuse or disposal at an appropriate off-site facility. Specific sampling and handling and transport procedures for reuse or disposal shall be in accordance with applicable local, state and federal agencies laws, in particular, the Regional Water Quality Control Board (RWQCB) and/or the Alameda County Department of Environmental Health (ACDEH) and policies of the City of Oakland. The excavation, on-site management, and off-site disposal of soil from Project areas within the OARB shall follow the DTSC-approved RAP/RMP. b) Groundwater pumped from the subsurface shall be contained onsite in a secure and safe manner, prior to treatment and disposal, to ensure environmental and health issues are resolved pursuant to applicable laws and policies of the City of Oakland, the RWQCB and/or the ACDEH. The on-site management and off-site disposal of groundwater extracted from Project areas within the OARB shall follow the DTSC-approved RAP/RMP for Project areas within the OARB. Engineering controls shall be utilized, which include impermeable barriers to prohibit groundwater and vapor intrusion into the building (pursuant to the Standard Condition of Approval regarding Radon or Vapor Intrusion from Soil and Groundwater Sources. c) Prior to issuance of any demolition, grading, or building permit, the applicant shall submit for review and approval by the City of Oakland, written verification that the appropriate federal, state or county oversight authorities, including but not limited to the RWQCB and/or the ACDEH, have granted all required clearances and confirmed that the all applicable standards, regulations and conditions for all previous contamination at the site. The applicant also shall provide evidence from the City's Fire Department, Office of Emergency Services, indicating compliance with the Standard Condition of Approval requiring a Site Review by the Fire Services Division pursuant to City Ordinance No. 12323, and compliance with the Standard Condition of Approval requiring a Phase I and/or Phase II Reports.	Ongoing throughout demolition, grading, and construction activities.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	SCA HAZ-2: Hazards Best Management Practices: The project applicant and construction contractor shall ensure Best Management Practices (BMPs) are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following: a) Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction; b) Avoid overtopping construction equipment fuel gas tanks; c) During routine maintenance of construction equipment, properly contain and remove grease and oils; d) Properly dispose of discarded containers of fuels and other chemicals. e) Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all USTs, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building. f) If soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notification of regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval (and DTSC-approved RAP/RMP for Project area within the OARB), as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.	Prior to commencement of demolition, grading, or construction.	City/Port
	SCA HAZ-3: Hazardous Materials Business Plan: The project applicant shall submit a Hazardous Materials Business Plan for review and approval by Fire Prevention Bureau, Hazardous Materials Unit. Once approved this plan shall be kept on file with the City and will be updated as applicable. The purpose of the Hazardous Materials Business Plan is to ensure that employees are adequately trained to handle the materials and provides information to the Fire Services Division should emergency response be required. The Hazardous Materials Business Plan shall include the following: a) The types of hazardous materials or chemicals stored and/or used on site, such as petroleum fuel products, lubricants, solvents, and cleaning fluids.	Prior to issuance of a business license.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	b) The location of such hazardous materials. c) An emergency response plan including employee training information. d) A plan that describes the manner in which these materials are handled, transported and disposed.		
2. Would the project create a significant hazard to the public through the storage or use of acutely hazardous materials near sensitive receptors?	See above for SCA HAZ-1 and SCA HAZ-2		
3. Would the project be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 (i.e.,the "Cortese List") and, as a result, would create a significant hazard to the public or the environment.	SCA HAZ-4: Asbestos Removal in Structures: If asbestos-containing materials (ACM) are found to be present in building materials to be removed, demolished and disposed of, the project applicant shall submit specifications signed by a certified asbestos consultant for the removal, encapsulation, or enclosure of the identified ACM in accordance with all applicable laws and regulations, including but not necessarily limited to: California Code of Regulations, Title 8; Business and Professions Code; Division 3; California Health & Safety Code 25915-25919.7; and Bay Area Air Quality Management District, Regulation 11, Rule 2, as may be amended.	Prior to issuance of a demolition permit.	City/Port
	SCA HAZ-5: Lead-Based Paint/Coatings, Asbestos, or PCB Occurrence Assessment: The project applicant shall submit a comprehensive assessment report to the Fire Prevention Bureau, Hazardous Materials Unit, signed by a qualified environmental professional, documenting the presence or lack thereof of asbestos-containing materials (ACM), lead-based paint, and any other building materials or stored materials classified as hazardous waste by State or federal law.	Prior to issuance of any demolition, grading or building permit	City/Port
	SCA HAZ-6: Lead-based Paint Remediation: If lead-based paint is present, the project applicant shall submit specifications to the Fire Prevention Bureau, Hazardous Materials Unit signed by a certified Lead Supervisor, Project Monitor, or Project Designer for the stabilization and/or removal of the identified lead paint in accordance with all applicable laws and regulations, including but not necessarily limited to: Cal/OSHA's Construction Lead Standard, 8 CCR1532.1 and DHS regulation 17 CCR Sections 35001 through 36100, as may be amended.	Prior to issuance of any demolition, grading or building permit.	City/Port
	SCA HAZ-7: Other Materials Classified as Hazardous Waste: If other materials classified as hazardous waste by State or federal law are present, the project applicant shall submit written confirmation to Fire Prevention Bureau, Hazardous Materials Unit that all State and federal laws and regulations shall be followed when profiling, handling, treating, transporting and/or disposing of such materials.	Prior to issuance of any demolition, grading or building permit.	City/Port
	SCA HAZ-8: Health and Safety Plan per Assessment: If the required lead-based paint/coatings, asbestos, or PCB assessment finds presence of such materials, the project applicant shall create and implement a health and safety plan to protect workers from risks associated with hazardous materials during demolition, renovation of affected structures, and transport and disposal.	Prior to issuance of any demolition, grading or building permit.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	Mitigation **4.7-3:** Implement RAP/RMP as approved by DTSC, and if future use proposals include uses not identified in the Reuse Plan and incorporated into the RAP/RMP or if future amendments to the remediation requirements are proposed, obtain DTSC and, as required, City approval.	Prior to issuance of any demolition, grading or building permit; and on-going	City/Port
	Mitigation **4.7-4:** For the project areas not covered by the DTSC-approved RAP/RMP, investigate potentially contaminated sites; if contamination is found, assess potential risks to human health and the environment, prepare and implement a clean up plan for DTSC or RWQCB approval, prepare and implement a Risk Management Plan and prepare and implement a Site Health and Safety Plan prior to commencing work. Since implementation of the RAP/RMP approved by DTSC is proposed as part of the project for the OARB, and the RAP/RMP requires remediation to be fully protective of human health and the environment for the proposed future uses of the OARB, no further mitigation is required for the OARB unless either (1) future use proposals include those that were not identified in the Reuse Plan and incorporated into the RAP/RMP or (2) future amendments are proposed to the remediation requirements included in the approved RAP/RMP. In either of these two circumstances, required remediation includes obtaining the DTSC and, as required, City approval, for proposed changes in full conformance with applicable legal requirements including but not limited to the HSAA and CEQA. Specific contaminants and concentrations may vary across the redevelopment project area. Nevertheless, the types of impacts expected, and therefore, the general response actions and approaches to mitigation would be consistent throughout the redevelopment project area. With respect to the OARB and as described in greater detail above, the process across the redevelopment project area would mirror the RAP/RMP process that is already underway at the OARB. With respect to the OARB sub-district, pursuant to HSAA Chapter 6.8, the OBRA has proposed a RAP/RMP. The OBRA's remedial goal is to remediate soil and groundwater contamination consistent with the City of Oakland ULR Program 10^{-5} remedy with appropriate land use restrictions. This RAP/RMP must be approved by DTSC, which has the legal discretion to impose remedies falling within the 10^{-4} and 10^{-6} risk range. For the other sub-districts and areas not included in the DTSC-approved RAP/RMP, prior to beginning redevelopment-related activities, potentially affected areas shall be investigated, potentially including additional studies or site characterization activities, as required by the regulatory agencies (DTSC or RWQCB). Once contaminated areas are identified, potential human health risks from contaminants of concern based upon realistic future land use shall be assessed, health risk-based and environmental risk-based cleanup goals shall be established, and a determination regarding the need for additional site assessment work shall be made. The potential risks associated with affected areas shall be assessed in accordance with regulatory agency guidance and approvals and may result in remediation requirements. Such cleanup plans	Prior to issuance of any demolition, grading or building permit; and on-going	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	shall address each area where soil or groundwater is contaminated above ULR goals could be encountered during redevelopment. The clean up plan, the names of which vary based on the type and source of contamination and the legal framework for the particular oversight agency, shall specify measures to be taken to protect workers and the public from exposure to potential contamination and certify that the proposed remediation measures, including removal, disposal, stabilization and/or institutional controls are protective of human health and the environment and implemented in accordance with federal, state and local requirements. Additionally, a Risk Management Plan may be required by the oversight agency to address site redevelopment activities and operations and provide an enforcement structure to be in place during and post-construction. Finally, a Site Health and Safety Plan shall be prepared in accordance with the OSHA and Cal/OSHA regulations. Off-hauling of contamination shall comply with applicable laws, and construction hours shall be limited as provided for in Mitigation Measure 4.5-1 in order to prevent night-time glare. Additionally, potential odor impact measures, and dust or other nuisance conditions from remediation-related truck traffic is provided for in Mitigation Measure 4.3-13, and safety concerns are addressed in Mitigation Measure 4.9-3.		
	Mitigation **4.7-5:** For the project areas not covered by the DTSC-approved RAP/RMP, remediate soil and groundwater contamination consistent with the City of Oakland ULR Program and other applicable laws and regulations.	Prior to issuance of any demolition, grading or building permit; and on-going	City/Port
	Mitigation **4.7-6:** Buildings and structures constructed prior to 1978 slated for demolition or renovation that have not previously been evaluated for the presence of LBP shall be sampled to determine whether LBP is present in painted surfaces, and the safety precautions and work practices as specified in government regulations shall be followed during demolition.	Prior to issuance of any demolition, grading or building permit; and on-going	City/Port
	Mitigation **4.7-7:** Buildings, structures and utilities that have not been surveyed for ACM, shall be surveyed to determine whether ACM is present prior to demolition or renovation, and the safety precautions and work practices as specified in government regulations shall be followed during demolition.	Prior to issuance of any demolition, grading or building permit; and on-going	City/Port
	Mitigation **4.7-8:** Buildings and structures proposed for demolition or renovation shall be surveyed for PCB-impacted building materials, and the safety precautions and work practices as specified in government regulations shall be followed during demolition.	Prior to issuance of any demolition, grading or building permit; and on-going	City/Port
	Mitigation **4.7-9:** For above-ground and underground storage tanks (ASTs/USTs) on the OARB, implement the RAP/RMP.	Prior to issuance of any demolition, grading or building permit; and on-going	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	Mitigation 4.7-11: For LBP-impacted ground on the OARB, implementation of RAP/RMP to be approved by DTSC as part of the project will result in avoidance of this potentially significant impact. For the remainder of the development project area, sampling shall be performed on soil or paved areas around buildings that are known or suspected to have LBP, and the safety precautions and work practices specified in government regulations shall be followed.	Prior to issuance of any demolition, grading or building permit; and on-going	City/Port
	Mitigation 4.7-12: The condition of identified ACM shall be assessed annually, and prior to reuse of a building known to contain ACM.	Prior to issuance of any demolition, grading or building permit; and on-going	City/Port
	Mitigation 4.7-13: No future tenancies shall be authorized at the OARB for use categories that are inconsistent with the Reuse Plan without an updated environmental analysis and DTSC approval as provided for in the RAP/RMP.	Pre-operations	City/Port
	Mitigation 4.7-16: Oil-filled electrical equipment in the redevelopment project area that has not been surveyed shall be investigated prior to the equipment being taken out of service to determine whether PCBs are present. Equipment found to contain PCBs should be part of an ongoing monitoring program. Surface and subsurface contamination from any PCB equipment shall be investigated and remediated in compliance with applicable laws and regulations.	Prior to issuance of any demolition, grading or building permit; and on-going during operations	City/Port
	Mitigation 4.7-17: PCB-containing or PCB-contaminated equipment taken out of service shall be handled and disposed in compliance with applicable laws and regulations. Equipment filled with dialectic fluid (oil) including transformers, ballast, etc. containing more than 5 ppm PCBs is considered a hazardous waste in California	Prior to issuance of any demolition, grading or building permit; and on-going during operations	City/Port
4. Would the project fundamentally impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	See below in Traffic and Transportation for Mitigation Measures 4.3-8, and Mitigation Measure 3.16-15a and 3.16-15b		
Hydrology and Water Quality			
1. Would the project violate any water	See above in Hazards and Hazardous Materials section for SCA HAZ-1		

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
quality standards or waste discharge requirements during in-water construction or encountering shallow groundwater during constmction?	SCA HYD-1: Stormwater Pollution Prevention Plan (SWPPP): The project applicant must obtain coverage under the General Construction Activity Storm Water Permit (General Construction Permit) issued by the State Water Resources Control Board (SWRCB). The project applicant must file a notice of intent (NOI) with the SWRCB. The project applicant will be required to prepare a stormwater pollution prevention plan (SWPPP) and submit the plan for review and approval by the Building Services Division. At a minimum, the SWPPP shall include a description of constmction materials, practices, and equipment storage and maintenance; a list of pollutants likely to contact stormwater; site-specific erosion and sedimentation control practices; a list of provisions to eliminate or reduce discharge of materials to stormwater; Best Management Practices (BMPs), and an inspection and monitoring program. Prior to the issuance of any construction-related permits, the project applicant shall submit to the Building Services Division a copy of the SWPPP and evidence of submittal of the NOI to the SWRCB. Implementation of the SWPPP shall start with the commencement of construction and continue though the completion of the project. After construction is completed, the project applicant shall submit a notice of termination to the SWRCB.	Prior to and ongoing throughout demolition, grading, and/or construction activities.	City/Port
	Mitigation 4.15-1: Prior to in-water construction, the contractor shall prepare a water quality protection plan acceptable to the RWQCB, including site-specific best management practices for protection of Bay waters, and shall implement this plan during construction. BMPs to effectively control turbidity and/or contaminant suspension and migration would be site-specific. They may include, and are not limited to, the following: • Use environmental or clamshell dredges or hydraulic cutterhead dredges designed to reduce release of solids. • Reduce or eliminate overflow of decant water from barges used to transport material. Use silt curtains or other specialized equipment to reduce dispersion of material during dredging and filling operations.	Prior to issuance of any demolition, grading or building permit; and on-going during operations	City/Port
	Mitigation 4.15-2: Contractors and developers shall comply with all permit conditions from the Corps, RWQCB and BCDC. This measure shall be enforced on Contractors by contract specifications.	Prior to issuance of any demolition, grading or building permit; and on-going during operations	City/Port
2. Would the project result in substantial erosion or siltation on- or off-site that would affect the quality of receiving waters?	See above for SCA HYD-1, SCA GEO-1 (Geology and Soils section) and SCA HAZ-1 (Hazards and Hazardous Materials)		
3. Would the project result in substantial flooding on- or off-site?	Mitigation 3.9-1: Coordinate and consult with EBMUD and if necessary design and build storm drain improvements resulting from increased elevation in the North Gateway area.	Prior to issuance of building permit (or other constmction-related permit).	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
4. Would the project create or contribute substantial runoff which would exceed the capacity of existing or planned stormwater drainage systems?	SCA HYD-2: Post-Construction Stormwater Management Plan: The applicant shall comply with the requirements of Provision C.3 of the National Pollutant Discharge Elimination System (NPDES) permit issued to the Alameda Countywide Clean Water Program. The applicant shall submit with the application for a building permit (or other construction-related permit) a completed Constmction-Permit-Phase Stormwater Supplemental Form lo the Building Services Division. The project drawings submitted for the building permit (or other construction-related permit) shall contain a stormwater management plan, for review and approval by the City, to manage stormwater run-off and to limit the discharge of pollutants in stormwater after construction of the project lo the maximum extent practicable. a) The post-construction stormwater management plan shall include and identify the following: i. All proposed impervious surface on the site; ii. Anticipated directional flows of on-site stonnwater runoff; and iii. Site design measures to reduce the amount of impervious surface area and directly connected impervious surfaces; and iv. Source control measures to limit the potential for slormwater pollution; v. Stormwater treatment measures to remove pollutants from stormwater runoff; and vi. Hydromodification management measures so that post-project stormwater runoff does not exceed the flow and duration of pre-project runoff, if required under the NPDES permit. b) The following additional information shall be submitted with the post-construction stormwater management plan: i. Detailed hydraulic sizing calculations for each stormwater treatment measure proposed; and ii. Pollutant removal information demonstrating that any proposed manufactured/mechanical (i.e., non-landscape-based) stormwater treatment measure, when nol used in combination with a landscape-based treatment measure, is capable or removing the range of pollutants typically removed by landscape-based treatment measures and/or the range of pollutants expected to be generated by the project. All proposed stormwater treatment measures shall incorporate appropriate planting materials for stormwater treatment (for landscape-based treatment measures) and shall be designed with considerations for vector/mosquito control. Proposed planting materials for all proposed landscape-based stormwater treatment measures shall be included on the landscape and irrigation plan for the project. The applicant is not required to include on-site stormwater treatment measures in the post-construction stonnwater management plan if he or she secures approval from Planning and Zoning of a proposal that demonstrates compliance with the requirements of the City's Altemative Compliance Program.	Prior to issuance of building pennit (or other construction-related permit). Prior to final permit inspection, the applicant shall also implement the approved stormwater management plan.	City/Port
	SCA HYD-3: Maintenance Agreement for Stormwater Treatment Measures: For projects incorporating stormwater treatment measures, the applicant shall enter into the "Standard City of	Prior to final zoning	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	Oakland Stormwater Treatment Measures Maintenance Agreement," in accordance with Provision C.3.e of the NPDES permit, which provides, in part, for the following: i. The applicant accepting responsibility for the adequate installation/construction, operation, maintenance, inspection, and reporting of any on-site stormwater treatment measures being incorporated into the project until the responsibility is legally transferred to another entity; and Legal access to the on-site stormwater treatment measures for representatives of the City, the local vector control district, and staff of the Regional Water Quality Control Board, San Francisco Region, for the purpose of verifying the implementation, operation, and maintenance of the on-site stormwater treatment measures and to take corrective action if necessary. The agreement shall be recorded at the County Recorder's Office at the applicant's expense.	inspection.	
	SCA HYD-4: Stormwater and Sewer: Confirmation of the capacity of the City's surrounding stormwater and sanitary sewer system and state of repair shall be completed by a qualified civil engineer with funding from the project applicant. The project applicant shall be responsible for the necessary stormwater and sanitary sewer infrastructure improvements to accommodate the proposed project. In addition, the applicant shall be required to pay additional fees to improve sanitary sewer infrastructure if required by the Sewer and Stormwater Division. Improvements to the existing sanitary sewer collection system shall specifically include, but are not limited to, mechanisms to control or minimize increases in infiltration/inflow to offset sanitary sewer increases associated with the proposed project. To the maximum extent practicable, the applicant will be required to implement Best Management Practices to reduce the peak stormwater runoff from the project site. Additionally, the project applicant shall be responsible for payment pf the required installation or hook-up fees to the affected service providers.	Prior to completing the final design for the project's sewer service.	City/Port
5. Would the project create or contribute substantial mnoff which would be an additional source of polluted mnoff?	See above for SCA HYD-1 through SCA HYD-3 and SCA GEO-1 (Geology and Soils section)		
	Mitigation 4.15-5: Post-construction controls of stormwater shall be incorporated into the design of new redevelopment elements to reduce pollutant loads. NPDES permitting requires that BMPs to control post-construction stormwater be implemented to the maximum extent practicable. Analysis of anticipated runoff volumes and potential effects to receiving water quality from stormwater shall be made for specific redevelopment elements, and site-specific BMPs shall be incorporated into design. BMPs shall be incorporated such that runoff volume from 85 percent of average annual rainfall at a development site is pre-treated prior to its discharge from that site, or a pre-treated volume in compliance with RWQCB policy in effect at the time of design. Non-structural BMPs may include and are not limited to good housekeeping and other source control measures, such as the following: • Stencil catch basins and inlets to inform the public they are connected to the Bay;	Prior to issuance of building permit (or other construction-related permit).	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation/Implementation/ Monitoring: Schedule	Responsibility
	• Sweep streets on a regular schedule; • Use and dispose of paints, solvents, pesticides, and other chemicals properly; • Keep debris bins covered; and • Clean storm drain catch basins and properly dispose of sediment. Structural BMPs may include and are not limited to the following: • Minimize impervious areas directly connected to storm sewers; • Include drainage system elements in design as appropriate such as: o infiltration basins o detention/retention basins o vegetated swales (biofilters) o curb/drop inlet protection.		
6. Would the project otherwise substantially degrade water quality? Would the project cause saltwater to intrude into shallow groundwater, cause contaminants to migrate to uncontaminated groundwater, or lead to degradation of surface water quality?	Mitigation **4.14-1**: Installation of groundwater extraction wells into the shallow water-bearing zone or Merritt Sand aquifer for any purpose other than construction de-watering and remediation, including monitoring, shall be prohibited. Implementation of this measure would prevent saltwater from being drawn into the aquifer and potentially causing fresh water to become brackish or saline. Limiting extraction of shallow groundwater and groundwater from the Merritt Sand unit will prevent potential impacts to existing study area groundwater resources.	Prior to issuance of building permit (or other construction-related permit); and during operations.	City/Port
	Mitigation **4.14-2**: Extraction of groundwater for construction de-watering or remediation, including monitoring, shall be minimized where practicable; if extraction will penetrate into the deeper aquifers, than a study shall be conducted to determine whether contaminants of concern could migrate into the aquifer; if so, extraction shall be prohibited in that location. Implementation of this measure would prevent unnecessary extraction of groundwater and prohibit its extraction where contaminants of concern could migrate into deeper aquifers; therefore it will help avoid or reduce the potential migration of contaminants. The City and Port shall ensure that groundwater extraction, other than for remediation or construction dewatering, is minimized where practicable in the redevelopment project area.	Prior to issuance of building permit (or other construction-related permit); and during operations.	City/Port
	Mitigation **4.15-6:** Site-specific design and best management practices shall be implemented to prevent runoff of recycled water to receiving waters. Design of subsequent redevelopment activities shall ensure recycled water does not leave the site and enter receiving waters. Best management practices shall be implemented to prevent runoff of recycled water. These BMPs may be either structural or non-structural in nature and may include	Prior to issuance of building permit (or other construction-related permit).	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	but are not limited to the following: • Preventing recycled water from escaping designated use areas through the use of: o berms o detention/retention basins o vegetated swales (biofllters) • Not allowing recycled water to be applied to irrigation areas when soils are saturated. Plumbing portions of irrigation systems adjacent to receiving waters with potable water.		
7. Would the project place housing, structures within a 100-year flood hazard area, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map, that would impede or redirect flood flows; or would the project expose people or structures to a substantial risk of loss, injury or death involving flobding?	Recommended Measure (not required by CEQA): The Project Sponsor should prepare a Sea Level Rise Adaptation Plan for City of Oakland for review and approval.	Prior to approval of PUD.	City/Port
8. Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course, or increasing the rate or amount of flow, of a creek, river or stream in a manner that would result in substantial erosion, siltation, or flooding, both on- or off-site?	See above for Mitigation Measure 4.15-5, SCA HYD-1 through SCA HYD-3 and SCA GEO-1 (Geology and Soils section)		
Noise			
1. Would the project generate noise in violation of the City of Oakland Noise Ordinance (Oakland Planning Code section 17.120.050) regarding construction noise, except if an acoustical analysis is performed that identifles recommend measures to reduce potential impacts?	SCA NOI-1: Davs/Hours of Construction Operation: The project applicant shall require construction contractors to limit standard constmction activities as follows: a) Construction activities are limited lo between 7:00 a.m. and 7:00 p.m. Monday through Saturday, except that barging and unloading of soil shall be allowed 24 hours per day, 7 days per week for about 15 months. b) Any construction activity proposed to occur outside of the standard hours of 7:00 a.m. lo 7:00 p.m. Monday through Saturday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences	Ongoing throughout demolition, grading, and/or constmction.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division. The project applicant shall also submit an air quality report prepared by a qualified professional evaluating the air quality impacts of the special activities, if the duration of each activity exceeds 6 months. c) No construction activity shall take place on Sundays or Federal holidays, except as noted above. d) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area. e) Applicant shall use temporary power poles instead of generators where feasible.		
	SCA NOI-2: Noise Control: To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Planning and Zoning Division and the Building Services Division review and approval, which includes the following measures: a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible). b) Except as provided herein, Impact tools (e g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures. c) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction. The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.	Ongoing throughout demolition, grading, and/or construction.	City/Port
	SCA NOI-3: Noise Complaint Procedures: Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the Building Services Division a list of measures to respond to and track complaints pertaining to construction	Ongoing throughout demolition, grading, and/or construction.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	noise. These measures shall include: a) A procedure and phone numbers for notifying the Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours); b) A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours); c) The designation of an on-site construction complaint and enforcement manager for the project; d) Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity; and e) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including constmction hours, neighborhood notification, posted signs, etc) are completed.		
	SCA NOI-6: Pile Driving and Other Extreme Noise Generators: To further reduce potential pier drilling, pile driving and/or other extreme noise generating construction impacts greater than 90dBA, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the Planning and Zoning Division and the Building Services Division to ensure that maximum feasible noise attenuation will be achieved. This plan shall be based on the final design of the project. A third-party peer review, paid for by the projecl applicant, may be required to assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submilled by the projecl applicant. The criterion for approving ihe plan shall be a detemination that maximum feasible noise attenuation will be achieved. A special inspection deposit is required to ensure compliance with the noise reduction plan. The amount of the deposit shall be determined by the Building Official, and the deposit shall be submitted by the project applicant concurrent with submittal of the noise reduction plan. The noise reduction plan shall include, but not be limited to, an evaluation of implementing the following measures. These attenuation measures shall include as many of the following control strategies as applicable to the site and construcfion activity: a) Erect temporary plywood noise barriers around the constmction site, particularly along on sites adjacent to residential buildings; b) Implement "quiet" pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions; c) Utihze noise control blankets on the building structure as the building is erected to reduce	Ongoing throughout demolition, grading, and/or construction.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	noise emission from the site; d) Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example and implement such measure if such measures are feasible and would noticeably reduce noise impacts; and e) Monitor the effectiveness of noise attenuafion measures by taking noise measurements.		
2. Would the project generate noise in violation of the City of Oakland nuisance standards (Oakland Municipal Code section 8.18.020) regarding persistent constmction-related noise?	See above for SCA NOI-1, SCA NOI-2, SCA NOI-3, and SCA NOI-6		
3. Would the projecl generate noise in violation of the City of Oakland Noise Ordinance (Oakland Planning Code section 17.120.050) regarding operational noise?	SCA NOI-4: Interior Noise: If necessary to comply with the interior noise requirements of the City of Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls), and/or other appropriate features/measures, shall be incorporated into project building design, based upon recommendations of a qualified acoustical engineer and submitted to the Building Services Division for review and approval prior to issuance of building permit. Final recommendations for sound-rated assemblies, and/or other appropriate features/measures, will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phases. Written confirmation by the acoustical consultant, HVAC or HERS specialist, shall be submitted for City review and approval, prior to Certificate of Occupancy (or equivalent) that: a) Quality control was exercised during constmction lo ensure ail air-gaps and penetrations of the building shell are controlled and sealed; and b) Demonstrates compliance with interior noise standards based upon performance testing of a sample unit. c) Inclusion of a Statement of Disclosure Notice in the CC&R's on the lease or title to all new tenants or owners of the units acknowledging the noise generating activity and the single event noise occurrences. Potential features/measures to reduce interior noise could include, but are not limited to, the following: i) Installation of an altemative form of ventilation in all units identified in the acoustical analysis as not being able to meet the interior noise requirements due to adjacency to a noise generating activity, filtration of ambient make-up air in each unit and analysis of ventilation noise if ventilation is included in the recommendations by the acoustical analysis. ii) Prohibition of Z-duct construction.	Prior to issuance of a building permit and Certificate of Occupancy.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring:	
		Schedule	Responsibility
	SCA NOI-5: Operational Noise-General: Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services.	Ongoing	City/Port
4. Would the project generate noise resulting in a 5 dBA permanent increase in ambient noise levels in the project vicinity above levels existing without the project; or, if under a cumulative scenario where the cumulative increase results in a 5 dBA permanent increase in ambient noise levels in the project vicinity without the project (i.e., the cumulative condition including the project compared to the existing conditions) and a 3 dBA permanent increase is attributable to the project (i.e., the cumulative condition including the project compared to the cumulative baseline condition without the project)?	See above for SCA NOI-4 and NOI-5		
5. Would the project be exposed to a community noise in conflict with the land use compatibility guidelines of the Oakland General Plan after incorporation of all applicable Standard Conditions of Approval?	See above for SCA NOI-4 and NOI-5		
6. Would the project expose persons to or generate noise levels in excess of applicable standards established by a regulatory agency (e.g., occupational noise standards of OSHA)?	See above for SCA NOI-5		
7. Would the project, during either project construction or project	See above for SCA NOI-1, SCA NOI-2, SCA NOI-3, and SCA NOI-6		

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
operation, expose persons to or generate groundborne vibration that exceeds the criteria established by the Federal Transit Administration (FTA)?			
Public Services			
1. Would the project result in increased demand for fire protection services and first responder medical emergency services?	SCA PSU-1: Underground Utilities: The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate that show all fire alarm conduits and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all fire water service and fire alarm facilities installed in accordance with standard specifications of the serving utilities.	Prior to issuance of a building permit.	City/Port
	SCA PSU-2: Fire Safety Phasing Plan: The project applicant shall submit a separate fire safety phasing plan to the Planning and Zoning Division and Fire Services Division for their review and approval. The fire safety plan shall include all of the fire safety features incorporated into the project and the schedule for implementation of the features. Fire Services Division may require changes to the plan or may reject the plan if it does not adequately address fire hazards associated with the project as a whole or the individual phase.	Prior to issuance of a demolition, grading, and/or construction and concurrent with any p-job submittal permit.	City/Port
	Mitigation 4.9-1. The City and Port shall cooperatively investigate the need for, and if required shall fund on a fair-share basis, development and operation of increased firefighting and medical emergency response services via fireboat to serve the OARB sub-district. The City and Port of Oakland will each contribute a fair share toward cooperatively investigating the need for increased firefighting and emergency response services to serve the redevelopment area west of I-880. This investigation shall include consultation with the OES and OFD. Should this investigation conclude, based on detailed redevelopment design, that increased fireboat services are required, the Port and the City shall each fund its fair share to equip and staff fireboat-based services in the OARB sub-district. In addition, as subsequent redevelopment activities occur, the City and Port shall be allowed to develop fee formulae (to recoup initial investment from future development or tenants), as well as a long-term cost-sharing formula (to equitably distribute the cost of continuing operations). The fire facility will be constructed after basic underground infrastructure is constructed, and before any people-attracting subsequent redevelopment activities begin operations.	Pre-operations; at time Port and Gateway development area employees exceed 2,044 (1995 baseline)	City/Port
	Mitigation 4.9-2: The Port and City shall work with OES to ensure changes in local area circulation	Pre-construction	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	are reflected in the revised Response Concept. The Port and City would provide information to the OES to facilitate that agency's accurate revision of its Response Concept and Annex H. In particular, the City and Port would provide OES information regarding new and proposed project area development, intensification and changes in land uses, realignment of area roadways, and construction of new local circulation facilities.		
	Mitigation 4.9-3: The Port and City shall require developers within their respective jurisdictions to notify OES of their plans in advance of construction or remediation activities. Each developer proposing construction in the redevelopment project area would be required to notify OES prior to initiation of construction, so that OES may plan emergency access and egress taking into consideration possible conflicts or interference during the construction phase. The developer would also be required to notify OES once construction is complete.	Pre-construction	City/Port
Traffic and Transportation			
Project Impacts 1. At a study, signalized intersection which is located outside the Downtown area, would the Project cause the level of service (LOS) to degrade to worse than LOS D (i.e., LOS E)?	**Mitigation Measure 3.16-1:** ***7th Street & I-880 Northbound Off-Ramp (#12)***[4]. The project sponsor shall fund, prepare, and install the approved plans and improvements: • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach) for the PM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit the following to City of Oakland's Transportation Engineering Division and Caltrans for review and approval: • Plans, Specifications, and Estimates (PS&E) to modify the intersection. All elements shall be designed to City standards in effect at the time of construction and all new or upgraded signals should include these enhancements. All other facilities supporting vehicle travel and alternative modes through the intersection should be brought up to both City standards and ADA standards (according to Federal and State Access Board guidelines) at the time of construction. Current City Standards call for the elements listed below: • 2070L Type Controller • GPS communication (clock) • Accessible pedestrian crosswalks according to Federal and State Access Board guidelines • City Standard ADA wheelchair ramps	At issuance of first Certificate of Occupancy (CO)	City/Port

[4] The numbers appearing after the location of the intersection listed refer to Figure 3.16-1 in the IS/Addendum that illustrates the study intersections.

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	• Full actuation (video detection, pedestrian push buttons, bicycle detection) • Accessible Pedestrian Signals, audible and tactile according to Federal Access Board guidelines • Countdown Pedestrian Signals • Signal interconnect and communicafion to City Traffic Management Center for corridors identified in the City's ITS Master Plan for a maximum of 600 feet • Signal timing plans for the signals in the coordination group.		
	Mitigation Measure 3.16-2: ***San Pablo Ave & Ashby Avenue (#42).*** To implement this measure, the Project Sponsor shall coordinate with City of Berkeley and Caltrans, and shall fund, prepare, and install the improvements consistent with City of Berkeley and/or Caltrans standards. • Optimize signal timing (i.e., adjust the allocation of green fime for each intersection approach) for the PM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group.	At issuance of first Certificate of Occupancy (CO)	City/Port
2. At two intersections, the project would cause (a) the total intersection average vehicle delay to increase by two (2) or more seconds, or (b) an increase in average delay for any of the critical movements of four (4) seconds or more; or (c) the volume-to-capacity ("V/C") ratio exceeds 0.03 or more (but only if the delay values are greater than 120 seconds of average intersection delay as delay values over 120 seconds tend to increase exponentially and are then generally considered unreliable).	Mitigation Measure 3.16-3: ***7th Street & Harrison Street (#18).*** To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach) for the PM peak hour. • Coordinate the signal fiming changes at this intersection with the adjacent intersections that are in the same signal coordination group. The project sponsor shall fund, prepare, and install the approved plans and improvements.	At issuance of first Certificate of Occupancy (CO)	City/Port
	Mitigation Measure 3.16-4: ***12th Street & Castro Street (#29).*** To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach) for the PM peak hour • Coordinate the signal timing changes at this intersection with the adjacent intersecfions that are in the same signal coordination group. The project sponsor shall fund, prepare, and install the approved plans and improvements.	At issuance of first Certificate of Occupancy (CO)	City/Port
3. Redevelopment would cause some roadway segments on the Congestion Management Program (CMP) to a) degrade to LOS F; or b) increase the	SCA TRANS-1: Parking and Transportation Demand Management: The project sponsor shall pay for and submit for review and approval by the City a Transportation Demand Management (TDM) plan containing strategies to:	For construcfion: Prior to issuance of first permit related to construction (e.g.,	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
V/C ratio by more than three percent for a roadway segment that would operate at LOS F without the project.	1. Reduce the amount of traffic generated by new development and the expansion of existing development, pursuant to the City's police power and necessary in order to protect the public health, safety and welfare. 2. Ensure that expected increases in traffic resulting from growth in employment and housing opportunities in the City of Oakland will be adequately mitigated. 3. Reduce drive-alone commute trips during peak traffic periods by using a combination of services, incentives, and facilities. 4. Promote more efficient use of existing transportation facilities and ensure that new developments are designed in ways to maximize the potential for alternative transportation usage. Establish an ongoing monitoring and enforcement program to ensure that the desired alternative mode use percentages are achieved. The project sponsor shall implement the approved TDM plan. The TDM plan shall include strategies to increase pedestrian, bicycle, transit, and carpool/vanpool use. All four modes of travel shall be considered, and parking management and parking reduction strategies should be included. Actions to consider include the following: a) Inclusion of additional long term and short term bicycle parking that meets the design standards set forth in chapter five of the Bicycle Master Plan, and Bicycle Parking Ordinance, and shower and locker facilities in commercial developments that exceed the requirement. b Construction of and/or access to bikeways per the Bicycle Master Plan; construction of priority bikeways, onsite signage and bike lane striping. c) Installation of safely elements per the Pedestrian Master Plan (such as cross walk striping, curb ramps, count down signals, bulb outs, etc.) to encourage convenient and safe crossing at arterials. d) Installation of amenities such as lighting, street trees, trash receptacles per the Pedestrian Master Plan and any applicable streetscape plan. e) Construction and development of transit stops/shelters, pedestrian access, way finding signage, and lighting around transit stops per transit agency plans or negotiated improvements. f) Direct onsite sales of transit passes purchased and sold at a bulk group rate (through programs such as AC Transit Easy Pass or a similar program through another transit agency). g) Employees or residents can be provided with a subsidy, determined by the project sponsor and subject to review by the City, if the employees or residents use transit or commute by other alternative modes. h) Provision of ongoing contribution to AC Transit service to the area between the development and nearest mass transit station. If that is not available, an ongoing contribution to an existing area shuttle service between the development and nearest mass transit station. The last option is	demolition, grading, etc.) For operation: Prior to issuance of a final building permit	

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	establishment of a new shuttle service between the development and nearest mass transit station may be developed. The contribution required for the service (any option) will be based on the cost of the last option. i) Guaranteed ride home program for employees, either through 511.org or through separate program. j) Pre-tax commuter benefits (commuter checks) for employees. k) Free designated parking spaces for on-site car-sharing program (such as City Car Share, Zip Car, etc.) and/or car-share membership for employees or tenants. l) On-site carpooling and/or vanpool program that includes preferential (discounted or free) parking for carpools and vanpoots. m) Distribution of information concerning altemative transportation options. n) Parking spaces sold/leased separately for residential units. Charge employees for parking, or provide a cash incentive or transit pass altemative to a free parking space in commercial properties. o) Parking management strategies; including attendant/valet parking and shared parking spaces. p) Requiring tenants to provide opportunities and the ability to work off-site. q) Allow employees or residents to adjust their work schedule in order to complete the basic work requirement of five eight-hour workdays by adjusting their schedule to reduce vehicle trips to the worksite. r) Provide or require tenants to provide employees with staggered work hours involving a shift in the set work hours of all employees al the workplace or flexible work hours involving individually determined work hours. The project sponsor shall submit an annual compliance report for review and approval by the City. This report will be reviewed either by City staff (or a peer review consultant, chosen by the City and paid for by the project sponsor). If timely reports are not submitted, the reports indicate a failure to achieve the stated policy goals, or the required alternative mode split is still not achieved, staff will work with the project sponsor to find ways to meet their commitments and achieve trip reduction goals. If the issues cannot be resolved, the matter may be referred to the Planning Commission for resolution. Project sponsors shall be required, as a condition of approval, to reimburse the City for costs incurred in maintaining and enforcing the trip reduction program for the approved project.		
	Mitigation 4.3-4: The City and Port, in consultation with transit agencies, shall jointly create and maintain a transit access plan(s) for the redevelopment project area designed to reduce demand for single-occupant, peak hour trips, and to increase access to transit opportunities. Major project area developers shall fund on a fair share basis the plan(s). The Transit Access Plan shall be funded on a fair-share basis by major project area developers, defined as developers of more than 20,000 square feet of employment-generating space, or developers who would generate more than 100 job opportunities.	Pre-operations	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	The City shall establish a Transportation Enhancement Association or other similar funding mechanism whereby developers will contribute their fair share to the Transit Access Plan. The plan shall include transportation demand management strategies designed to reduce peak hour trip generation, including but not limited to the following: • Fund a transit coordinator to assist employers and employees in the project area; • Transit user subsidies including the bulk purchase of transit passes; • Implementation of a parking cash-out program. A parking cash-out program is an employer-funded program in which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space. The ACCMA estimates that such programs reduce employee commute traffic by five percent from previous non-monetary incentive-based programs and reduced parking utilization by an estimated three percent; • Flex-time schedules; • Telecommuting; • Utilization of site design standards that would benefit transit, pedestrians, and bicyclists; • Preferential parking for carpools and vanpools; • Rideshare matching programs; • Guaranteed Ride Home program (provides carpool and vanpool participants with a vehicle in an emergency or if they cannot leave at their usual times; and • Funding for City and/or Port monitoring of the programs. The plan shall include strategies designed to promote transit use and increase availability of transit opportunities within the project area, including, but not limited lo the following: • Coordinafion with AC Transit to provide expanded bus service with no greater than 30 minute peak commute hour headways to major employment centers. • Coordination with BART to provide shuttle service with no greater than 15 minute peak commute hour headways between the West Oakland BART station and major employment centers • Provision of employer incentives to use altemative transit modes, such as "Flash" passes or transit reimbursements These measures shall be coordinated with BAAQMD and CAP Transportation Control Measures (TCMs) implemented under Mitigation Measure 4.4-5. The Transit Access Plan shall be funded at a level that would enable the goal of a 15 percent reduction in single-occupancy, peak hour ridership.		

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring:	
		Schedule	Responsibility
4. The project would directly or indirectly cause or expose roadway users to a permanent and substantial transportation hazard due to a new or existing physical design feature or incompatible uses?	**Mitigation 4.3-5:** Redevelopment elements shall be designed in accordance with standard design practice and shall be subject to review and approval of the City or Port design engineer. Through design review, the City and/or Port, as applicable, shall ensure the design of roadways, bicycle and pedestrian facilities, parking lots, and other transportation features comply with design standards and disallow design proposals that likely to result in traffic hazards. Any mitigation or redevelopment features that may directly affect Caltrans facilities shall be submitted for review by that agency.	Prior to approval of PUD.	City/Port
	Mitigation 4.3-7: The City and the Port shall continue and shall work together to create a truck management plan designed to reduce the effects of transport trucks on local streets. The City and Port shall fund on a fair share basis, implementation of this plan. The truck management plan may include, and is not limited to, the following elements: • Analyze truck traffic in West Oakland; • Traffic calming strategies on streets not designated as truck routes designed to discourage truck through travel; • Truck driver education programs; • Expanded signage, including truck prohibitions on streets not designated as truck routes; • Traffic signal timing improvements; • Explore the feasibility of truck access to Frontage Road; • Roadway and terminal gate design elements to prevent truck queues from impeding the flow of traffic on public streets; and • Continue Port funding of two police officers to enforce truck traffic prohibitions on local streets.	Prior to issuance of a final building permit	City/Port
	Mitigation 4.3-8: Provide an emergency service program and emergency evacuation plan using waterborne vessels. The City shall provide emergency access to the OARB sub-district by vessel. The area is currently served by fire boat out of the Jack London Square Fire Station. The City may elect lo equip that fire boat with first response medical emergency personnel as well as limited hazardous materials response personnel and equipment (see also Mitigation Measure 4.9-1). Major developers shall fund these improvements on a fair share basis.	Pre-operations; at time Port and Gateway development area employees exceed 2,044 (1995 baseline)	City/Port
	<u>With regard to Maritime Street between 7th Street and West Grand Avenue:</u> **Mitigation Measure 3.16-5**: The City shall provide a shoulder with a minimum width of 8 feet on the west side of Maritime Street to accommodate queuing trucks and minimize intrusion onto the southbound travel lane. **Mitigation Measure 3.16-6**: The City shall provide a 9-foot wide area along the entire west side of	Prior to approval of the PUD	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring:	
		Schedule	Responsibility
	Maritime Street in this area to accommodate a sidewalk and utilities; exact dimensions of these elements will be determined by the City's Transportation and Infrastructure Divisions during the PUD process. Mitigation Measure 3.16-7: The City shall provide an 18-foot wide area along the entire east side of Maritime Street in tbis area to accommodate a Class 1 bicycle path and utilities; exact dimensions of these elements will be determined by the City's Transportation and Infrastructure Divisions during the PUD process.		
	With regard toNorth Maritime (formerly Wake Avenue): Mitigation Measure 3.16-8: The City shall provide 2 travel lanes in each direction in this area with shoulders on each side for bicycle lanes. The exact dimensions of these elements will be determined by the City's Transportation and Infrastructure Divisions during the PUD process.	Prior to approval of the PUD	City/Port
	With regard to Burma Road between Maritime Street and West Oakland (Burma East): Mitigation Measure 3.16-9: The City shall provide a 9-foot wide area along the entire north side of Burma Street in this area to accommodate utilities and a sidewalk; bicycles will be accommodated on the shoulder; exact dimensions of these elements will be determined by the City's Transportation and Infrastructure Divisions during the PUD process.	Prior to approval of the PUD	City/Port
	Mitigation Measure 3.16-10: The City shall provide a 7-foot wide area along the entire south side of Burma Street in this area to accommodate utilities; bicycles will be accommodated on the shoulder; exact dimensions of these elements will be determined by the City's Transportation and Infrastructure Divisions during the PUD process.	Prior to approval of the PUD	City/Port
	With regard to Burma Road between Maritime Street and Railroad Tracks (Burma West): Mitigation Measure 3.16-11: The City shall provide a 9-fodt wide area along the entire south side of Burma Street in this area to accommodate utilities and a sidewalk; bicycles will be accommodated on the shoulder; exact dimensions of these elements will be determined by the City's Transportation and Infrastructure Divisions during the PUD process. Mitigation Measure 3.16-12: The City shall provide a 20-foot wide area along the entire north side of Burma Street in this area to accommodate utilities and a Class 1 bicycle path; exact dimensions of these elements will be determined by the City's Transportation and Infrastructure Divisions during the PUD process.	Prior to approval of the PUD	City/Port
	With regard to Burma Road between Railroad Tracks and Gateway Park (Burma Far West):	Prior to approval of the PUD	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	Mitigation Measure 3.16-13: The City shall provide an 8-foot wide area along the entire south side of Burma Street in this area to accommodate utilities and a sidewalk; bicycles will be accommodated on the shoulder with a Class 2 bicycle lane; exact dimensions of these elements will be determined by the City's Transportation and Infrastructure Divisions during the PUD process.		
	Mitigation Measure 3.16-14: The City shall provide a shoulder along the entire north side of Burma Street in this area to accommodate bicycles with a Class 2 bicycle lane; exact dimensions of these elements will be determined by the City's Transportation and Infrastructure Divisions during the PUD process.	Prior to approval of the PUD	City/Port
	With regard to Emergency Access: **Mitigation Measure 3.16-15a:** The Project Sponsor shall develop, in consultation and coordination with adjacent property owners, including EBMUD, an emergency response plan for the 2012 Army Base Project, which addresses emergency ingress/egress. **Mitigation Measure 3.16-15b:** The Project Sponsor shall include in the design of West Burma Road turn-outs and turn-arounds at the appropriate locations and dimensions as required by the Fire Department, in order to allow for appropriate ingress and egress of emergency vehicles.	For MM 3.15-15a: at the time of issuance of the first Certificate of Occupancy (CO); For MM 3.15-15b: prior to approval of the PUD	City/Port
5. Project would directly or indirectly result in a permanent substantial decrease in pedestrian safety.	See above for Mitigation Measures 4.3-5		
6. Project would directly or indirectly result in a permanent substantial decrease in bicyclist safety.	See above for Mitigation Measures 4.3-5 and new Mitigation Measures 3.16-5 through 3.16-15a and 3.16-15b		
7. Project would generate substantial multi-modal traffic traveling across at-grade railroad crossings that cause or expose roadway users to a permanent and substantial transportation hazard?	See above for Mitigation Measures 4.3-5 and 4.3-7.		
	SCA TRANS-3: Railroad Crossings: Any proposed new or relocated railroad crossing improvements must be coordinated with California Public Utility Commission (CPUC) and affected railroads and all necessary permits/approvals obtained, including a GO 88-B Request (Authorization to Alter Highway Rail Crossings), if applicable. Appropriate safety-related design features and measures should be incorporated, including without limitation: a) Installation of grade separations at crossings, i.e., physically separating roads and railroad tracks by constructing overpasses or underpasses.	Action required prior to railroad crossing construction	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	b) Improvements to warning devices at existing highway rail crossings that are impacted by project traffic. c) Installation of additional warning signage. d) *Improvements to traffic signaling at intersections adjacent to crossings, e.g.*, signal preemption. e) Installation of median separation to prevent vehicles from driving around railroad crossing gates. f) Where soundwalls, landscaping, buildings, etc. would be installed near crossings, maintaining the visibility of warning devices and approaching trains. g) Prohibition of parking within 100 feet of the crossings to improve the visibility of warning devices and approaching trains. h) Construction of pull-out lanes for buses and vehicles transporting hazardous materials. i) Installation of vandal-resistant fencing or walls to limit the access of pedestrians onto the railroad right-of-way. j) Elimination of driveways near crossings. k) Increased enforcement of traffic laws at crossings. l) Rail safety awareness programs to educate the public about the hazards of highway-rail grade crossings.		
	Mitigation Measure **3.16-16:** a. Redesign the Engineers Road to intersect the EBMUD driveway at least 100 feet north of the at-grade rail crossing or configure an internal circulation plan that prohibits turns from Engineers Road onto Wake Avenue. b. Provide a high visibility crosswalk with pedestrian crossing signs at the pedestrian crossing just west of the rail crossing on West Burma Road. c. Paint "KEEP CLEAR" on West Burma Road for westbound vehicles at the Truck Services driveway. d. Unless approved otherwise by the California Public Utility Commission (CPUC), construct all rail crossings at a minimum street-crossing angle of 45 degrees consistent with Institute of Transportation Engineers recommendations, 90 degrees is preferred for cross-traffic safety.	At the time of issuance of the first Certificate of Occupancy (CO)	City/Port
	Recommended Measures (not required by CEQA): • The Project Sponsor shall negotiate with EBMUD in good faith to reach an agreement which reasonably limits train movements from unreasonably parking, stopping and/or blocking access to EBMUD's main gate to the MWWTP. Specifically, the Master Developer shall coordinate the timing of its use of the tracks to a schedule that reduces, to the maximum extent	At the time of issuance of the first Certificate of Occupancy (CO)	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	feasible, any potentially adverse impacts to EBMUD's main gate to the MWWTP. • The Project Sponsor shall make reasonable good faith efforts to explore the feasibility of, and if determined feasible, obtain/secure alternate emergency vehicle access to the MWWTP that would not be impacted by the 2012 Army Base rail traffic. The City shall coordinate its efforts with EBMUD.		
8. Project could fundamentally conflict with adopted City policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities adopted for the purpose of avoiding or mitigating an environmental effect.	See above for Mitigation Measures **3.16-5** through **3.16-15a** and **3.16-15b**		
	Mitigation **4.3-9:** Redevelopment plans shall conform to City of Oakland or Port development standards with facilities that support transportation alternatives to the single-occupant automobile. Facilities that support transportation alternatives to the single-occupant automobile may include, and are not limited to, bus turnouts, bicycle racks, on-site showers, on-sile lockers, and pedestrian and bicycle ways.	Prior to issuance of first permit related to construction (e.g., demolition, grading, etc.)	City/Port
9. Would the project result in a substantial, though temporary, adverse effect on the circulation system during construction of the project.	SCA TRANS-2: Construction Traffic and Parking: The project sponsor and construction contractor shall meet with appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project (see also SCA TRANS-1, especially "h") and other nearby projects that could be simultaneously under construction. The project sponsor shall develop a construction management plan. The plan shall be submitted to EBMUD, the Port, and Caltrans for their review and comment ten (10) business days before submittal to the City. The project sponsor shall consider in good faith such comments and revise the plan as appropriate. The revised plan shall be submitted for review and approval by the City's Planning and Zoning Division, the Building Services Division, and the Transportation Services Division. The plan shall include at least the following items and requirements: a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. b) Notification procedures for adjacent project sponsors and public safety personnel regarding when major deliveries, detours, and lane closures will occur. c) Location of constmction staging areas for materials, equipment, and vehicles at an approved location. d) A process for responding to, and tracking, complaints pertaining to construction activity, including idenfification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services. e) Provision for accommodation of pedestrian flow. f) Provision for parking management and spaces for all construcfion workers lo ensure that	Prior to the issuance of a demolition, grading or building permit	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	construction workers do not park in on-streel spaces (see also SCA TRANS-1, especially "h"). g) Any damage to the street caused by heavy equipment, or as a result of this constmction, shall be repaired, at the applicant's expense, within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to issuance of a final inspection of the building permit. All damage that is a threat to public health or safety shall be repaired immediately. The street shall be restored to its condition prior to the new construction as established by the City Building Inspector and/or photo documentation, at the applicant's expense, before the issuance of a Certificate of Occupancy. h) Any heavy equipment brought to the construction site shall be transported by truck, where feasibie. i) No materials or equipment shall be stored on the traveled roadway at any time. j) Prior to constmction, a portable toilet facility and a debris box shall be installed on the site, and properly maintained through project completion. k) All equipment shall be equipped with mufflers. l) Prior to the end of each work day during construction, the contractor or contractors shall pick up and property dispose of all litter resulting from or related to the project, whether located on the property, within the public rights-of-way, or properties of adjacent or nearby neighbors. Specifically, to further implement SCA TRANS-2, a traffic construction management analysis was performed which recommended certain improvements to the Adeline/5th and Adelme/3rd Street and Adeline Street intersection, which is discussed under construction impacts of the Traff.c and Transportation section of the 2012 OARB Initial Study/Addendum.		
	Mitigation 4.3-13: Prior to commencing hazardous materials or hazardous waste remediation, demolition, or constmction activities, a Traffic Control Plan (TCP) shall be implemented to control peak hours trips to the extent feasible, assure the safety on the street system and assure that transportation activities are protective of human health, safety, and the environment. Construction and remediation TCPs shall be designed and implemented to reduce to the maximum feasible extent traffic and safety impacts to regional and local roadways. The TCP shall address items including but not limited to: truck routes, street closures, parking for workers and staff, access to the project area and land closures or parking restrictions that may require coordination with and/or approval by the City, the Port and/or Caltrans. The TCP shall be submitted to the City Traffic Engineering and Planning divisions or the Port, as appropriate, for review and approval prior to the issuance of any building, demolition or grading permits. The City and the Port shall coordinate their respective approvals to maximize the effectiveness of the TCP measures. DTSC would have ongoing authority under ils Remedial Action Plan/Remedial Monitoring Plan oversight and the Hazardous Substances Account Act to regulate remediation transportation activities, which must be protective of human health, safety and the environment. Remediation and demolition/construction traffic shall be restricted to designated tmck routes within	Prior to issuance of first permit related to construction (e.g., demolition, grading, etc.)	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	the City, and the TCP shall include a signage program for all truck routes serving the site during remediation or demolition/constmction. A signage program details the location and type of truck route signs that would be installed during remediation and demolition/constmction to direct tmcks to and from the project area. Truck access points for entry and exit should be included in the TCP. In addition, as determined by City of Port staff, the developer shall be responsible for repairing any damage to the pavement that is caused by remediation or demolition/construction vehicles for restoring pavement to pre-constmction conditions. Remediation and demoiition/construction-related trips will be restricted to daytime hours, unless expressly permitted by the City or the Port, and to the extent feasibie, trips will be minimized during the a.m. and p.m. peak hours. The TCP shall identify locations for construction/remediation staging. Remediation staging areas are anticipated to be located near construction areas, since remediation will be largely coordinated with redevelopment. In addition, the TCP shall identify and provide off-street parking for remediation and demolition/construction staff to the extent possible throughout all phases of redevelopment. If there is insufficient parking available within walking distance of the site for workers, the developer shall provide a shuttle bus or other appropriate system to transfer workers between the satellite parking areas and remediation or demolition/construction site. The TCP shall also include measures to control dust, requirements to cover all loads to control odors, and provisions for emergency response procedures, health and safety driver education, and accident notification.		
Cumulative Impacts Year 2020 for 2012 OARB Project (Compared to Year 2025 for 2002 EIR Project) 1. Increased congestion at signalized intersections outside the Downtown area exceeding the cumulatively significant threshold. (Year 2020)	Mitigation Measure 3.16-17: ***West Grand Avenue & I-880 Frontage Road (#2).*** • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach) for the AM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	At the time of issuance of the first Certificate of Occupancy (CO)	City/Port
	7th Street & I-880 Northbound Off-Ramp (#12). See above for Mitigation 3.16-1		
2. One intersection located outside the downtown area, where the level of service is LOS E, the project would cause the total intersection average vehicle delay to increase by four (4) or	Mitigation Measure 3.16-18: ***San Pablo Ave & Ashby Ave (#42).*** • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach) for the PM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in	At the time of issuance of the first Certificate of Occupancy (CO)	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
more seconds, or degrade to worse than LOS E. (Year 2020)	the same signal coordination group. To implement this measure, the project sponsor shall coordinate with the City of Berkeley and Caltrans, and shall fund, prepare, and install the approved plans and improvements.		
3. One intersection with LOS F, where the project would cause (a) the total intersection average vehicle delay to increase by two (2) or more seconds, or (b) an increase in average delay for any of the critical movements of four (4) seconds or more; or (c) the volume-to-capacity ("V/C") ratio exceeds three (3) percent. (Year 2020)	*12th Street and Castro Street (#29)* - See above for Mitigation Measure 3.16-4.		
4. Four roadway segments of the Congestion Management Program (CMP) would a) degrade to LOS F; or b) increase the V/C ratio by more than three percent for a roadway segment that would operate at LOS F without the project (Year 2020).	See above for Mitigation Measure 4.3-4 and SCA TRANS-1.		
<u>Cumulative Impacts for Year 2035 for 2012 OARB Project (Compared to Year 2025 for 2002 EIR Project)</u> 1. Three intersections located outside the Downtown area, which the project would cause the level of service (LOS) to degrade to worse than LOS D. (Year 2035)	Mitigation Measure 3.16-19: *West Grand Avenue & Maritime Street (#1).* • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach) for the PM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	Mitigation at this intersection may be required by Year 2028. Investigation of the need for this mitigation shall be studied in 2028 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	City/Port
	Mitigation Measure: *7th Street & I-880 Northbound Off-Ramp (#12).* See above for Mitigation Measure 3.16-1.		
	Mitigation Measure 3.16-20: *7th Street & Union Street (#15).* • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach) for the AM peak hour.	Mitigation at this intersection may be required by Year 2032. Investigation	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	• Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	of the need for this mitigation shall be studied in 2032 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	
2. At one intersection located within the Downtown area, the project would cause the LOS to degrade to worse than LOS E. (Year 2035)	Mitigation Measure 3.16-21: ***West Grand Avenue & Northgate Avenue*** (#8). • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach) for the AM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	Mitigation at this intersection may be required by Year 2030. Investigation of the need for this mitigation shall be studied in 2030 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first	City/Port
3. At two intersections located outside the Downtown area where the level of service is LOS E, would the project cause the total intersection average vehicle delay to increase by four (4) or more seconds, or degrade to worse than LOS E (Year 2035)	Mitigation Measure 3.16-22: ***5th Street & Union Street / I-880 North Ramps (#21).*** • Optimize signal timing (i.e., increase the traffic signal cycle length to 100 seconds and adjust the allocation of green time for each intersection approach) for the PM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	Mitigation at this intersection may be required by Year 2022. Investigation of the need for this mitigation shall be studied in 2022 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	City/Port
	Mitigation Measure 3.16-23: ***MacArthur Boulevard & Market Street (#33).*** • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach)	Mitigation at this intersection may be required by Year	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	for the AM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	2032. Investigation of the need for this mitigation shall be studied in 2032 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	
4. Eleven intersections where the level of service is LOS F, the project would cause (a) the total intersection average vehicle delay to increase by two (2) or more seconds, or (b) an increase in average delay for any of the critical movements of four (4) seconds or more; or (c) the volume-to-capacity ("V/C") ratio increases 0.03 or more (but only if the delay values are greater than 120 seconds of average intersection delay as delay values over 120 seconds tend to increase exponentially and are then generally considered unreliable). (Year 2035)	Mitigation Measure 3.16-24: ***West Grand Avenue & I-880 Frontage Road (#2).*** • Optimize signal timing (i.e., increase the traffic signal cycle length and adjust the allocation of green time for each intersection approach) for the AM and PM peak hours. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	Mitigation at this intersection may be required by Year 2021. Investigation of the need for this mitigation shall be studied in 2021 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	City/Port
	Mitigation Measure 3.16-25: ***West Grand Avenue & Adeline Street (#4).*** • Optimize signal timing (i.e., increase the traffic signal cycle length to 90 seconds and adjust the allocation of green time for each intersection approach) for the PM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	Mitigation at this intersection may be required by Year 2032. Investigation of the need for this mitigation shall be studied in 2032 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	City/Port
	Mitigation Measure 3.16-26: ***West Grand Avenue & Market Street (#5)*** • Provide split phasing for northbound and southbound movements.	Mitigation at this intersection may be required by Year	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	• Optimize signal timing (i.e., increase the traffic signal cycle length to 120 seconds and adjust the allocation of green time for each intersection approach) for both the AM and PM peak hours. • Coordinate the signal timing changes at this intersection with the adjacent intersections thai are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 thai are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	2022. Investigation of the need for this mitigation shall be *studied in 2022 and* every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	
	Mitigation Measure 3.16-27: ***West Grand Avenue & San Pablo Avenue (#6)*** • Remove parking on the south side of West Grand Avenue; add an eastbound through lane between San Pablo Avenue and Martin Luther King Jr. Way; and convert the eastbound right turn lane lo a through-right combination lane. • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach) for the PM peak hour. • Coordinate the signal liming changes at this intersection with the adjacent intersections thai are in the same signal coordination group. To implement this measure, the projecl sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	Mitigation at this intersection may be required by Year 2026. Investigation of the need for this mitigation shall be studied in 2026 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	City/Port
	Mitigation Measure 3.16-28: ***West Grand Avenue & Harrison Street (#9)*** • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach) for the PM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	Mitigation at this intersection may be required by Year 2025. Investigation of the need for this mitigation shall be studied in 2025 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	City/Port
	Mitigation Measure 3.16-29: ***7th Street & Harrison Street (#18)*** • Provide split phasing for northbound and southbound movements.	Mitigation at this intersection may be required at the time	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	• Optimize signal timing (i.e., increase the traffic signal cycle length to 80 seconds and adjust the allocation of green time for each intersection approach) for the PM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	of Project construction. Investigation of the need for this mitigation shall be studied at the time of construction and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	
	Mitigation Measure 3.16-30: *6th Street & Jackson Street (#20)* • Provide split phasing for northbound and southbound movements. • Optimize signal timing (i.e., increase the traffic signal cycle length lo 80 seconds and adjust the allocation of green time for each intersection approach) for the AM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to Cily of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	Mitigation al this intersection may be required by Year 2025. Investigation of the need for this mitigation shall be studied in 2025 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	City/Port
	Mitigation Measure 3.16-31: *12th Street & Brush Street (#28)* • Optimize signal timing (i.e., increase the traffic signal cycle length to 120 seconds and adjust the allocation of green time for each intersection approach) for the AM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	Mitigation at this intersection may be required by Year 2023. Investigation of the need for this mitigation shall be studied in 2023 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	12th Street & Castro Street (#29). See Mitigation Measure 3.16-4 above.		
	Mitigation Measure 3.16- 32: ***Powell Street & Hollis Street (#37)*** • Provide protected plus permitted traffic signal phasing for the northbound and southbound Hollis Street movements. • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach) for both the AM and PM peak hours. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Emeryville's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	Mitigation at this intersection may be required by Year 2028. Investigation of the need for this mitigation shall be studied in 2028 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	City/Port
	Mitigation Measure 3.16- 33: ***Powell Street/Stanford Avenue & San Pablo Avenue (#38)*** • Optimize signal timing (i.e., adjust the allocation of green time for each intersection approach) for the AM peak hour. • Coordinate the signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group. To implement this measure, the project sponsor shall submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval. The project sponsor shall fund, prepare, and install the approved plans and improvements.	Mitigation at this intersection may be required by Year 2021. Investigation of the need for this mitigation shall be studied in 2021 and every three years thereafter until 2035 or until the mitigation measure is implemented, whichever occurs first.	City/Port
4. Four roadway segments of the Congestion Management Program (CMP) would a) degrade to LOS F; or b) increase the V/C ratio by more than three percent for a roadway segment that would operate at LOS F without the project (Year 2035).	See above for Mitigation Measure 4.3-4		
Planning Related Non-CEQA Issues Queuing	Recommended Measures (not required by CEQA) The following improvements are recommended to accommodate the anticipated queues:	At issuance of first Certificate of Occupancy (CO)	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
Existing Plus Project: The project would result in exceedance of available storage capacity at only the following locations: • Northbound left-turn at W. Grand Avenue & Maritime Street (#1) - PM peak hour • Westbound left-turn at 7th Street & Maritime Street (#10) – AM & PM peak hours • Eastbound left-turn at 7th Street & I-880 northbound off-ramp (#12) – PM peak hour	▪ W. Grand Avenue & Maritime Street (#1). Extend the northbound left-turn storage length to 475 feet; while providing a minimum of 100 feet storage length for the southbound left-turn movement at the Burma Road and Maritime Street intersection (#46). ▪ 7th Street & Maritime Street (#10). Extend the westbound left-turn storage length to 320 feet by removing a portion of the existing center median. ▪ 7th Street & I-880 northbound off-ramp (#12). Convert one of the existing eastbound through lane to an exclusive left-turn lane to provide two left-turn lanes, and one through lane.		
Year 2020 cumulative conditions: Similar to Existing plus Project conditions, the Project would result in exceedance of available storage at the same three intersections: • Northbound left-turn at W. Grand Avenue & Maritime Street (#1) - PM peak hour • Westbound left-turn at 7th Street & Maritime Street (#10) – AM & PM peak hours • Eastbound and southbound left-turn at 7th Street & I-880 northbound off-ramp (#12) – PM peak hour	Recommended Measures (not required by CEQA) The following improvements are recommended to accommodate the anticipated queues: ▪ W. Grand Avenue & Maritime Street (#1). Widen Maritime Street to provide two northbound left-turn lanes at the intersection. ▪ 7th Street & Maritime Street (#10). Extend the westbound left-turn storage length to 320 feet by removing a portion of the existing center median. ▪ 7th Street & I-880 northbound off-ramp (#12). Convert one of the existing eastbound through lane to an exclusive left-turn lane to provide two left-turn lanes, and one through lane; and extend the southbound left-turn storage pocket to 250 feet by removing a portion of the existing center median.	At issuance of first Certificate of Occupancy (CO) or 2020, whichever is later	City/Port
Utilities			
1. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	See above for SCA **HYD-4** (**H**ydrology and **W**ater Quality section)		
2. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	SCA UTL-3: Underground Utilities: The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all electric, telephone, water	Prior to issuance of a building permit.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	service, fire water service, cable, and fire alarm facilities installed in accordance with standard specifications of the serving utilities.		
	SCA UTL-5: Improvements in the Public Right-of Way (Specific): Final building and public improvement plans submitted to the Building Services Division shall include the following components: Examples include: a) Install additional standard City of Oakland streetlights. b) Remove and replace any existing driveway that will not be used for access to the property with new concrete sidewalk, curb and gutter. c) Reconstmct drainage facility to current City standard. d) Provide separafion between sanitary sewer and water lines to comply with current City of Oakland and Alameda Health Department standards. e) Constmct wheelchair ramps that comply with Americans with Disability Act requirements and current City Standards. f) Remove and replace deficient concrete sidewalk, curb and gutter within property frontage. Provide adequate fire department access and water supply, including, but not limited to currently adopted fire codes and standards.	Approved prior to the issuance of a grading or building permit.	City/Port
	SCA UTL-6: Payment for Public Improvements: The project applicant shall pay for and install public improvements made necessary by the project including damage caused by construction activity.	Prior to issuance of a final inspection of the building permit.	City/Port
3. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	Mitigation 4.9-4: Individual actions with landscaping requirements of one or more acres shall plumb landscape areas for irrigation with recycled water. As subsequent redevelopment activities are designed, the City and Port would require that activities of a certain magnitude shall include a reclaimed landscaping irrigation system. The City and Port would make this a condition of approval for private actions that require such approval, and would include reclaimed landscape water systems in the design of their own public projects.	Prior to issuance of a building permit or other construction-related permit.	City/Port
	Mitigation 4.9-5: Individual buildings with gross floor area exceeding 10,000 square feet shall install dual plumbing for both potable and recycled water, unless determined to be infeasible by the approving agency (City or Port). Any major subsequent redevelopment activity that includes total usable fioor area within or more building of 10,000 square feet or more would be required to provide a dual plumbing system—one for potable water, and one for reclaimed water. Reclaimed water may be used for certain industrial uses, and for landscape irrigation, toilet flushing, and other appropriate purposes.	Prior to issuance of a building permit or other construction-related permit.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	Mitigation 4.9-6: Site design shall facilitate use of recycled water, and shall comply with requirements of CCR Title 22 regarding prohibitions of site run-offito surface waters. When subsequent redevelopment activities are required to include reclaimed water in their design, the City and Port would ensure that requirements of Title 22 intended to protect the environment are reflected in that design, including prohibitions against run-off to surface waters. The City, Port, and proponents of subsequent redevelopment activities should coordinate these efforts with the reclaimed water supplier, EBMUD.	Prior to issuance of a building permit or other construction-related permit.	City/Port
	<u>SCA UTL-1a: Compliance with the Green Building Ordinance, OMC Chapter 18.02:</u> ***Prior to issuance of a demolition, grading, or building permit*** The applicant shall comply with the requirements of the California Green Building Standards (CALGreen) mandatory measures and the applicable requirements of the Green Building Ordinance, OMC Chapter 18.02. a) The following information shall be submitted to the Building Services Division for review and approval with the application for a building permit: i. Documentation showing compliance with Title 24 of the 2008 California Building Energy Efficiency Standards. ii. Completed copy of the final green building checklist approved during the review of the Planning and Zoning permit. iii. Copy of the Unreasonable Hardship Exemption, if granted, during the review of the Planning and Zoning permit. iv. Permit plans that show, in general notes, detailed design drawings, and specifications as necessary, compliance with the items listed in subsection (b) below. v. Copy of the signed statement by the Green Building Certifier approved during the review of the Planning and Zoning permit that the project complied with the requirements of the Green Building Ordinance. vi. Signed statement by the Green Building Certifier that the project still complies with the requirements of the Green Building Ordinance, unless an Unreasonable Hardship Exemption was granted during the review of the Planning and Zoning permit. vii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance. b) The set of plans in subsection (a) shall demonstrate compliance with the following: i. CALGreen mandatory measures. ii. All pre-requisites per the LEED / GreenPoint Rated checklist approved during the review of the Planning and Zoning permit, or, if applicable, all the green building measures approved as part of the Unreasonable Hardship Exemption granted during the review of	Prior to issuance of a demolition, grading, or building permit; or during construction or after construction as specified in SCA UTL-1a or UTL-1b.	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	the Planning and Zoning permit. iii. Insert green building point level/certification requirement: (See Green Building Summary Table) per the appropriate checklist approved during the Planning entitlement process. iv. All green building points identified on the checklist approved during review of the Planning and Zoning permit, unless a Request for Revision Plan-check application is submitted and approved by the Planning and Zoning Division that shows the previously approved points that will be eliminated or substituted. *v.* The required green building point minimums in the appropriate credit categories. ***During construction*** The applicant shall comply with the applicable requirements CALGreen and the Green Building Ordinance, Chapter 18.02. a) The following information shall be submitted to the Building Inspections Division of the Building Services Division for review and approval: i. Completed copies of the green building checklists approved during the review of the Planning and Zoning permit and during the review of the building permit. ii. Signed statement(s) by the Green Building Certifier during all relevant phases of construction that the project complies with the requirements of the Green Building Ordinance. *iii.* Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance. ***After construction, as specified below*** Within sixty (60) days of the final inspection of the building permit for the project, the Green Building Certifier shall submit the appropriate documentation to Build It Green/Green Building Certification Institute and attain the minimum certification/point level identified in subsection (a) above. Within one year of the final inspection of the building permit for the project, the applicant shall submit to the Planning and Zoning Division the Certificate from the organization listed above demonstrating certification and compliance with the minimum point/certification level noted above. SCA UTL-1b: Compliance with the Green Building Ordinance, OMC Chapter 18.02, for Building and Landscape Projects Using the StopWaste.Org Small Commercial or Bay Friendly Basic Landscape Checklist ***Prior to issuance of a building permit*** The applicant shall comply with the requirements of the California Green Building Standards (CALGreen) mandatory measures and the applicable requirements of the Green Building Ordinance, (OMC Chapter 18.02.) for projects using the StopWaste.Org Small Commercial or Bay Friendly Basic Landscape Checklist.		

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	a) The following information shall be submitted to the Building Services Division for review and approval with application for a Building permit: i. Documentation showing compliance with the 2008 Title 24, California Building Energy Efficiency Standards. ii. Completed copy of the green building checklist approved during the review of a Planning and Zoning permit. iii. Permit plans that show in general notes, detailed design drawings and specifications as necessary compliance with the items listed in subsection (b) below. iv. Other documentation to prove comphance. b) The set of plans in subsection (a) shall demonstrate compliance with the following: i. CALGreen mandatory measures. *ii.* All applicable green building measures identified on the StopWaste.Org checklist approved during the review of a Planning and Zoning permit, or submittal of a Request for Revision Plan-check application that shows the previously approved points that will be eliminated or substituted. ***During construction*** The applicant shall comply with the applicable requirements of CALGreen and Green Building Ordinance, Chapter 18.02 for projects using the StopWaste.Org Small Commercial or Bay Friendly Basic Landscape Checklist. a) The following information shall be submitted to the Building Inspections Division for review and approval: i. Completed copy of the green building checklists approved during review of the Planning and Zoning permit and during the review of the Building permit. ii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.		
4. Result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	See above for SCA **HYD-4** (**H**ydrology and **W**ater **Q**uality section)		
5. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	SCA UTL-2: Waste Reduction and Recycling: The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.	Prior to issuance of demolition, grading, or building permit; or ongoing as	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Mitigation Implementation/ Monitoring: Responsibility
	Prior to issuance of demolition, grading, or building permit Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/modifications with construction values of $50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at www.oaklandpw.com/Page39.aspx or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan. ***Ongoing*** The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, (Chapter 17.118 of the Oakland Municipal Code), including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be in implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be re-submitted to the Environmental Services Division of the Public Works Agency for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.	specified in SCA ULT-2.	
	Mifigation: **4.9-7:** To the maximum extent feasible, the City and Port shall jointly participate in a deconstruction program to capture materials and recycle them into the construction market. Substantial quantities of construction debris would be generated by the removal of structures at the OARB, in both the Gateway and Port development areas. Some of the buildings span both development areas, and coordination between the Port and City is critical in reducing the amount of solid waste disposal that occurs in this sub-district. The City and Port would jointly plan, implement, and operate a program whereby buildings would be deconstmcted, rather than demolished, and the resulting material would be recycled to the construction market as practicable. Material for recycling may include, and is not limited to, timbers and siding, ceramic fixtures, metal, and copper wiring. The City and Port may elect to partner with local job-training bridge programs to provide construction training opportunifies to Oakland residents through their deconstmction program.	Prior to issuance of a demolition permit	City/Port
	Mitigation **4.9-8:** Concrete and asphalt removed during demolition/construction shall be crushed on site or at a near site location, and reused in redevelopment or recycled to the construction market. Foundation and paving removal would generate substantial debris, and the City and Port would ensure these materials are crushed and recycled. As a first preference, these materials should be re-used on-site; as a second preference, they would be sold to the construction market. The City and Port would make every effort practicable to avoid disposal to landfill of this material. This mitigation measure may itself result in impacts to the environment relative to noise and air	On-going, during construction	City/Port

Environmental Impact	Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/ Monitoring: Schedule	Responsibility
	quality. These impacts are discussed in Sections 4.4: Air Quality, and 4.15: Noise.		
	Mitigation 4.9-9: The City and Port shall require developers to submit a plan that demonstrates a good faith effort to divert at least 50 percent of the operations phase solid waste from landfill disposal. Each project sponsor of a redevelopment activity or subsequent redevelopment activity would be required to submit to the City or Port (depending on the location of the activity) a source reduction/waste diversion plan specifying how the activity will reduce solid waste disposal by 50 percent. The sponsor would be responsible for development and implementation of its plan, and for reporting its progress and success rate to the Port or City. Should the source reduction/diversion plan program not meet its stated goal, the sponsor would modify the plan until the desired level of reduction/diversion is achieved. While each plan would be specific, the following general topics should be addressed: • Goals. • Key personnel. • Quantification of waste. • Identification of waste materials. • Program elements. • Monitoring requirements and performance standards. • Reporting.	On-going during operations	City/Port
6. Comply with federal, State, and local statutes and regulations related to solid waste?	See above for **SCA UTL-2**		
7. Would the project violate applicable federal, state and local statutes and regulations relating to energy standards?	See above for **SCA UTL-1**		
8. Would the project result in a determination by the energy provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the providers' existing commitments and require or result in construction of new energy facilities or expansion of existing facilities, construction of which could cause significant environmental effects?	See above for **SCA UTL-1**		

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 MAY 31 PM 4:44

Approved as to form and legality

Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A COOPERATION AGREEMENT AMONG THE CITY OF OAKLAND, ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL, ALAMEDA COUNTY CENTRAL LABOR COUNCIL, AND SPECIFIED OAKLAND COMMUNITY-BASED ORGANIZATIONS RELATING TO THE APPLICATION OF SPECIFIED COMMUNITY BENEFITS REGARDING THE DEVELOPMENT OF THE FORMER OAKLAND ARMY BASE, IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED DOCUMENTS, WITHOUT RETURNING TO CITY COUNCIL

WHEREAS, the City of Oakland ("City") and the Port of Oakland ("Port") own respective parcels of the former Oakland Army Base ("OARB"); and

WHEREAS, between 2000 and 2002, the Oakland Base Reuse Authority, the Redevelopment Agency of the City of Oakland, and the City adopted a Redevelopment Plan and a Base Reuse Plan for the Oakland Army Base Redevelopment Area; and

WHEREAS, to further implement the Redevelopment Plan and the Base Reuse Plan, the City entered into an Exclusive Negotiating Agreement ("ENA") with Prologis Property, L.P. (as successor by merger to AMB Property, L.P.)/California Capital & Investments Group ("Master Developer") to develop a portion of the former Army Base and to develop a Master Plan for certain City-owned and Port-owned properties, including portions of the former Army Base that is further described in the California Enviromnental Quality Act (CEQA) Addendum as the 2012 OARB Project ("2012 OARB Project"); and

WHEREAS, the ENA contains a Commmity Benefits requirement, which outlines topics for further discussion and consideration for inclusion as terms in a Lease Disposition and Development Agreement ("LDDA") with the Master Developer; and

WHEREAS, the City convened a series of meetings and workshops with community stakeholders who focused specifically on the topic of local hiring; and

WHEREAS, the community stakeholders included Oakland WORKS, Revive Oakland!, the Alameda Labor Council, the Building and Construction Trades Council of Alameda County, the Construction Employers Association, and many other individuals and groups that became the

body called the Army Base Jobs Working Group ("Working Group"); and

WHEREAS, the Working Group, through a consensus building process, developed a set of recommendations which provided the framework for the negotiation of a Community Jobs Policy ("CJP"), which sets forth a Construction Jobs Policy and an Operations Jobs Policy; and

WHEREAS, the Construction Jobs Policy will apply to any prime contract, design/build contract, or construction management contract for work to be performed on the OARB, while the Operations Jobs Policy will apply to any lease or service contract with any entity that (a) may employ workers in Operations Jobs or (b) may enter into a subsequent contract under which Operations Jobs may be performed by another party; and

WHEREAS, the City and the community-based organizations, represented by a coalition of community groups ("Coalition"), which included members of the Working Group, wishing to maximize the opportunities that the development of the 2012 OARB Project can provide for quality employment and training for community residents, negotiated a Cooperation Agreement; and

WHEREAS, the Cooperation Agreement supports the successful development of the 2012 OARB Project by establishing the commitments of the parties entering into the Agreement to each other with respect to the Project and specifying a process for resolving certain controversies and avoiding litigation with regard to the Project; and

WHEREAS, the Cooperation Agreement requires, among other things, that the City (1) incorporate the Construction Jobs Policy and the Operations Jobs Policy as material terms in the LDDA with the Master Developer and in the City's development agreements with other development partners for the OARB; (2) monitor the OARB developers to ensure that they comply with the Jobs Policies; and (3) ensure adequate staffing to perform the monitoring and enforcement; and

WHEREAS, in return, the Coalition agrees to release legal and administrative claims with regard to the project, and to support the Project; and

WHEREAS, costs for implementing the Cooperation Agreement are being calculated, but will include the following cost categories:

- Facilitating the creation and operation of the West Oakland Jobs Center
- Ongoing compliance monitoring for community benefits commitments
- Possible staffing of an Oversight Committee or Commission;

WHEREAS, potential sources of revenue to fund the implementation of the Cooperation Agreement include:

- Oakland WIB for the Jobs Center
- Advance on West Oakland Community Fund
- Billboard revenue
- Commercially viable community fee on tenants

- Possessory interest (property taxes) targeted to support OARB Community Benefits
- Business License Tax revenue targeted to support OARB Community Benefits
- Private contributions

WHEREAS, staff will return to the City Council to seek authorization for funding once costs and sources have been established; and

WHEREAS, the City previously prepared and certified/adopted the 2002 Oakland Army Base ("OARB") Redevelopment Plan Environmental Impact Report, which was a "project level" EIR pursuant to CEQA Guidelines section 15180(b); the 2006 OARB Auto Mall Supplemental EIR and 2007 Addendum; and the 2009 Addendum for the Central Gateway Aggregate Recycling and Fill Project; while the Port prepared and adopted the Port's 2006 Maritime Street Addendum (collectively called "Previous CEQA Documents); now, therefore be it

RESOLVED: That the City Administrator is hereby authorized to negotiate and execute a Cooperation Agreement among the City of Oakland and Alameda County Building and Construction Trades Council, Alameda County Central Labor Council, and specified community-based organizations, relating to the application of specified community benefits regarding the development of the former Oakland Army Base, in a form and content substantially in conformance with the documents attached hereto as Exhibit A, without returning to City Council; and be it

FURTHER RESOLVED: That the City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating preparation of additional CEQA are present. Thus, prior to approving the Cooperation Agreement, the City can rely on the Previous CEQA Documents and the 2012 OARB Initial Study/Addendum; and be it

FURTHER RESOLVED: That, specifically, the City Council affirms and adopts as its own findings and determinations the June 12, 2012, City Council Agenda Report, including without limitation the discussion, findings, conclusions, specified conditions of approval (including the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program ("SCA/MMRP")), and the CEQA findings contained in ***Attachment C*** to the June 12 City Council Agenda Report, each of which is hereby separately and independently adopted by this Council in full, as if fully set forth herein; and be it

FURTHER RESOLVED: That the City Council finds and determines that this action 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 this action, includes without limitation those items listed in ***Attachment C*** to the June 12 City Council Agenda Report, as if fully set forth herein, which are available at the locations listed in said Exhibit; and be it

FURTHER RESOLVED: That the City Administrator and his or her designee is authorized to take whatever action is necessary with respect to negotiating and executing the Cooperation Agreement contemplated herein in support of the development on the former Oakland Army Base consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

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

DATE OF ATTESTATION: _____

COOPERATION AGREEMENT AMONG THE CITY OF OAKLAND, [AND SPECIFIED LOCAL LABOR AND COMMUNITY-BASED ORGANIZATIONS] REGARDING THE OAKLAND ARMY BASE PROJECT

This Cooperation Agreement ("Agreement") dated this __ day of June, 2012 ("Effective Date"), is by and among the CITY OF OAKLAND, a California municipal corporation ("City"); and [TO COME] (together, the "Parties").

RECITALS

A. The City is working to advance development of the former Oakland Army Base site, and has entered into an Exclusive Negotiating Agreement ("ENA") with developers Prologis and California Capital and Investment Group ("Developers") for the development of the project on the Oakland Army Base that is the subject of the ENA.

B. The parties to this Agreement other than the City (together, "Community Parties") wish to secure the commitment of the City as to the number and nature of jobs created by the construction and operations phases of the Army Base project(s), and as to workforce development in West Oakland.

C. The City wishes to provide a strong slate of benefits and opportunities for West Oakland and the wider Oakland community by way of the Project, and it wishes to secure the support of the Community Parties for the Project.

The Parties hereby agree as follows:

I. DEFINITIONS

As used in this Agreement, the following capitalized terms will have the following meanings. All definitions include both the singular and plural form.

"ENA" will mean the Exclusive Negotiating Agreement dated January 22, 2010 by and between the City of Oakland Redevelopment Agency and Developers, and relating to development of Agency-owned land within the former Oakland Army Base, attached to this Agreement as Attachment C.

"Agreement" will mean this Cooperation Agreement, including all attachments.

"City" will mean the City of Oakland, California.

"Construction Jobs Policy" will mean Attachment [] to this Agreement.

"Contractor" will mean any entity employing individuals to perform Project Work, including contractors and subcontractors of any tier, and any entity with a prime contract or construction management contract for performance of Project Work.

"Community Parties" is defined in Recital B.

"Developers" is defined in Recital A.

"ENA" is defined in Recital A.

"Effective Date" will mean the date set forth in Section [X].

"LDDA" will mean the Lease Disposition and Development Agreement or similar agreement entered into by City and Developers respecting the development of the Project.

"On-Site Job" will have the meaning set forth in the Operations Jobs Policy.

"Operations Jobs Policy" will mean Attachment [] to this Agreement.

"Project" will mean development of the Oakland Army Base as contemplated in the LDDA.

"Project Approval" shall mean [to come].

"Project PLA" will mean a project labor agreement or project stabilization agreement covering Project Work.

"Project Site" will mean the parcels depicted in Exhibit A of the ENA.

"Project Work" will mean constmction work performed on the Project Site.

"Successor" will mean successors in interest, transferees, assigns, agents, and representatives.

II. CITY RESPONSIBILITIES.

A. Capacity Study. Within three (3) months of the Effective Date, City will commence or cause to be commenced a capacity study of the skills, needs, and demographics of the existing, trained workforce in Oakland and West Oakland.

B. Inclusion of Terms in LDDA. The City will include the Constmction Jobs Policy attached as Attachment A hereto and the Operations Jobs Policy attached as Attachment B hereto (together, the "Policies") in substantially the same form and content as those attached, as material terms of the LDDA, and require Developers and their Successors to (i) comply with the Policies, and (ii) ensure inclusion of the Policies as material terms in all contracts under which any On-Site Jobs will be performed. performed. [limitations on amendment of jobs policies is still under negotiation] The City will require any development entity that participates in the Project to ensure inclusion of the Policies as material terms in all contracts under which any On-Site Jobs will be performed.

C. Labor Peace. The City will include a term in the LDDA requiring Developers to ensure labor peace during all portions of Project constmction, and requiring that any project labor agreement or project stabilization agreement be consistent with and facilitate compliance

with the Construction Jobs Policy.

D. Jobs Center.

1. Establishment. Without committing any City funds, the City will, with the assistance of the Community Parties as described in Section III, take the following steps to establish a "Jobs Center" in West Oakland:

i. Not later than August 15, 2012, the City will finalize the Scope of Work and selection criteria of an operator of the Jobs Center;

ii. Not later than September 15, 2012, the City will release an RFP for an operator of the Jobs Center;

iii. Not later than April 2013, the City will select an operator of the Jobs Center; and

iv. On an annual basis, use best efforts to ensure adequate resources to sustain the Jobs Center's start-up and ongoing operations.

2. Services. The Jobs Center will serve as a resource for contractors, employers and job seekers during Construction and Operations phases by providing the following services:

i. Connect job seekers with job training, education and other support services, such as transportation;

ii. Receive notifications of job opportunities from Project employers;

iii. Circulate such notifications to a network of local job training programs;

iv. Refer qualified workers to Project employers in response to notifications of job opportunities;

v. Provide technical support to employers, to assist them in complying with this Agreement;

vi. Work with apprentice programs, community-based training organizations and the City to move applicants into construction trades and onto job sites;

vii. Recruit existing workers in Oakland for job opportunhies, on a priority basis;

viii. Collect and report job placements, job retention and advancement data to meet goals and benchmarks and to track workers' career pathway advancement; and

ix. Convene a sector-focused employer advisory group to plan for implementation, review progress in meeting benchmarks and goals, adopt 'course corrections', if needed, and identify ways to improve job placements and retention.

3. Operation. The Jobs Center will be operated by a nonprofit corporation, with a board governing Jobs Center operations.

E. Designation of Pre-Apprenticeship Programs. At least four (4) months prior to commencement of Project construction, the City will designate one or more pre-apprenticesbip programs for purposes related to this Agreement. In order to be designated, pre-apprenticeship programs will satisfy the standards to be developed at a later date.

F. Workforce Development Plan. Within one year of the Effective Date, the City will release a workforce development plan for the Project. The City will make the workforce development plan consistent with the Oakland Workforce Investment Board's Strategic Plan. The workforce development plan will incorporate the following principles:

1. Encourage community colleges to offer certificates that are 'stackable' and lead to an AA/transfer degrees;

2. Maximize utilization of existing workforce development programs to train and case manage workers and develop linkages to the community colleges for technical training for entry-level and advancement training;

3. Enhance linkages with Peralta Community College District, particularly for basic education skills, career counseling and career pathway training;

4. Maximize job training and placement opportunities for young adults (18 to 25) and for youth (under 18);

5. Begin basic math and reading foundational skills training in middle schools;

6. Develop funding sources for local public high schools (including McClymonds High School and others) to offer pre-apprenticeship training tailored to Project opportunities, and linkages to career pathway programs aligned with construction and operations jobs;

7. Ensure outreach and education to both employers and potential employees, including targeted workers like young adults and the formerly incarcerated; and

Encourage the use of coordinated support services to assist youth, the formerly incarcerated and long-term unemployed for successful outcomes for completion of training, job placement and job retention.

G. Monitoring and Enforcement.

1. City Staff. The City will provide staffing to monitor and enforce the terms of this Agreement and the terms of the Policies.

2. Resources for Community Representatives. The City will assist the Community Parties to find or raise funds to train and provide stipends to community representatives serving on the Oversight Committee described in Section II.J. herein.

3. Investigation. The City will investigate any written complaint made to the City of non-compliance with the Policies. [subject to negotiation]

H. Worker Assistance Fund. Without committing City funds, the City will establish and administer a Worker Assistance Fund for the purpose of payment of initiation fees for individuals who become new apprentices engaged in Project Work. The City will help find resources to be used for administration of the fund and to provide loans.

I. Use of Liquidated Damages. Any monetary damages, including liquidated damages, collected by the City pursuant to this Agreement will be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Agreement.

J. Federal and State Funding.

1. Segregation. Where the application of the Construction Jobs Policy or the Operations Jobs Policy is determined by a court of competent jurisdiction to violate federal or state law, or where such application would be inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or the State of California, then the City will, where administratively feasible, segregate federal or state funds from City funds, and/or segregate project administration and contracts, so as to maximize application of the Constmction Jobs Policy and the Operations Jobs Policy to the Project.

2. Alternative Terms in Case of Conflict. Where a court of competent jurisdiction determines that apphcation of provisions of the Constmction Jobs Policy or the Operations Jobs Policy is prohibited by federal or state law, or where such application would violate or be inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or the State of Califomia, and where segregation of funds pursuant to subsection 1 herein is not administratively or financially feasible with regard to portions of the Project, then the City will adapt requirements of the Constmction Jobs Policy and/or the Operations Jobs Policy into a set of contract provisions that advance the purposes of this Agreement to the maximum extent feasible without conflicting with federal or state law or with terms or conditions of the state or federal grant or contract in question. Such contract provisions will then replace relevant terms of the Constmction Jobs Policy and/or the Operations Jobs Policy with regard to portions of the project for which this Policy would conflict with federal or state requirements. The Parties agree to comply with such replacement provisions, using the same procedures as this Agreement sets forth with regard to initial requirements.

K. Oversight Commission.

1. Reservation of Legislative Power. City commitments in this Section II are subject to reservation of the City Council's legislative authority. This Section states the City's intention, but does not bind the City Council to particular commitments or limitations in the enactment of legislation to advance the purposes of this Section.

2. Establishment. Through City ordinance, the City will establish and convene an Oversight Commission to assist in monitoring and enforcement of this Agreement.

The establishing ordinance will set forth basic mles of operation of the Oversight Commission and committee member number and qualifications. Additional mles of operation may be established by the Oversight Commission after initiation.

3. Composition. Membership on the Oversight Commission shall include representatives from the Oakland and West Oakland communities, organized labor, govemment, and employers. At least one of the community representatives will be appointed by and represent the West Oakland Community Advisory Group. [subject to negotiation]

4. Authority. The Oversight Commission will have the authority to:

i. review implementation of this Agreement, and work with Parties to attempt to resolve issues that arise in implementation; and

ii. review compliance of Project employers with the Constmction Jobs Policy and the Operations Jobs Policy;

iii. in cases where the Oversight Committee deems a Project employer to be out of compliance, directly negotiate with that employer a remedy for the alleged violation, through a Negotiated Compliance Plan, which may include increased percentage goals on future work;

iv. in cases where a negotiated remedy cannot be reached, act on behalf of the City to enforce the Policies.

5. Engagement with Implementation Committees. The Oversight Committee may engage the Implementation Committees described in this Agreement for advice and assistance in performance of investigative functions and negotiation of compliance plans.

III. COMMUNITY PARTIES' RESPONSIBILITIES.

The Community Parties will assist the City in the establishment and operation of the Jobs Center described in Section II(C)(I) of this Agreement by doing the following:

i. Not later than _____, provide to the City suggestions for suitable locations readily accessible to West Oakland residents;

ii. Not later than _____, provide input regarding the criteria for the selection of an operator of the Jobs Center;

iii. Not later than _____, provide input to the City regarding the RFP for an operator of the Jobs Center;

iv. Not later than _____, participate in the City's process to recmit and select an operator of the Jobs Center.

v. On an annual basis, participate in fundraising efforts to support the Jobs Center's ongoing operations.

IV. BUILDING TRADES COUNCIL'S RESPONSIBILITIES. The Building Trades Council will enter into, and recommend that affiliated local unions enter into, a Project PLA that is consistent with and that facilitates the achievement of the goals of the Construction Jobs Policy. [subject to negotiation]

V. PROJECT SUPPORT AND CLAIMS RELEASE.

A. Project Support. [subject to negotiation] Each Community Party agrees that the terms of this Agreement, including the Community Jobs Policy and the Operations Jobs Policy, provide a strong slate of benefits and opportunities for West Oakland and the wider community. Therefore, each Community Party agrees to take a public position, denoted in writing provided to all Parties and available to the public, in favor of any necessary Project Approvals. Through such time as all Project Approvals have been granted, each Community Party will refrain from demanding from the City, any public entity, or Developers, through either public positions or private lobbying activities, additional community benefits or mitigations related to job access or job quality with regard to the Project, or assisting other organizations or individuals in such public or private activities.

B. Litigation Release. [subject to negotiation] Each Community Party does hereby release and forever discharge and hold harmless the City and its agents, servants, employees, predecessors, successors and assigns, and each of them ("City Parties"), of all administrative challenges, claims, demands, accounts, actions, causes of action, obligations, proceedings, losses, liabilities and sums of money of every kind and character whatsoever, whether now known or unknown, whether based upon contract, statute, and/or other legal or equitable theory of recovery, including attomeys fees and costs which the Community Parties, their successors, or assigns can, shall or may have against any of the City Parties, arising out of this Agreement, or out of the Project Approvals, or out of the Project. Each Community Party agrees that this is a full and fmal release applying to all unknown and unanticipated injuries or damages, including any and all claims now existing or which may arise in the future, arising out of Project Approvals, including those not known or disclosed, and the undersigned expressly waive any right or claim of right to assert hereafter that any claim, demand, obligation and/or cause of action has, through ignorance, oversight or error, been omitted from the terms of this release, and further waive any right or claim of right that they, or any of them, may have under the law of any jurisdiction that releases such as those herein given do not apply to unknown or unstated claims.. It is the express intent of the undersigned to waive any and all claims that they may have against the persons or entities herein released, including any which are presently unknown, unsuspected, unanticipated or undisclosed. This release does not preclude advancement of or otherwise affect any claim that the City has violated terms of this Agreement.

C. Changes in Project Plans. Provisions of Sections V.A. and V.B. will not apply to aspects of Project scope and plans that substantially deviate from scope and plans set forth in the ENA.

VI. IMPLEMENTATION COMMITTEES.

[subject to negotiation]

VII. MISCELLANEOUS

A. Contact Person. Within 30 days of having entered into a lease disposition and development agreement or a similar agreement related to development of the Project, each Party will designate a contact person for all matters related to implementation of this Agreement. Each Party will forward the name, address and phone number of the designated individual to all Parties. If the contact person changes, all Parties will promptiy be notified.

B. Successors and Assigns. This Agreement wiil be binding upon and inure to the benefit of Successors to any party, and to Successors of Successors to any Party. References in this Agreement to any entity will be deemed to apply to any Successor of that entity..

C. Entire Agreement. The Agreement contains the entire agreement between the Parties and supersedes any prior agreements, whether written or oral. This Agreement may not be altered, amended or modified except by an instrument in writing signed by the Parties.

D. Authority, Representations and Warranties. Each signatory to this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the entity for whom he or she is signing. Upon proper execution and delivery, this Agreement will have been duly entered into by the Parties, will constitute as against each Party a valid, legal and binding obligation, and will be enforceable by each Party and against each Party in accordance with the terms herein. Each Party agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Agreement in any judicial action or arbitration proceeding, provided that the parties have complied with the procedural prerequisites to initiation of judicial action or arbitration as set forth in this Agreement.

E. Community Parties' Scope of Responsibilities. Obligations of a Community Party will be obligations only of the organization itself as distinct from its associated organizations, constituent organizations or any natural persons. Actions of a Community Party include only those actions taken by staff members or members of the Board of Directors of a Community Party when those persons are authorized to act on behalf of the organization by the Board of Directors. When this Agreement sets out a responsibility of "each Community Party," then each Community Party must satisfy that responsibility. When this Agreement sets out a responsibility of "the Community Parties," then that responsibility is satisfied for all Community Parties when any Community Party satisfies that responsibility.

F. Applicable Law and Compliance with Law. This Agreement will be govemed by and construed in accordance with federal, state, and local laws, and will be enforced only to the extent that it is consistent with those laws. Parties agree that their understanding is that all terms of this Agreement are consistent with federal, state, and local law; and that this Agreement will be reasonably interpreted so as to comply with any conflicting law.

G. Severability. If any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding will in no way affect, impair, or invalidate any of the other provisions of this Agreement.

H. Attorneys' **Fees.** In any litigation or other proceeding arising out of this Agreement, each Party will be responsible for its own attomeys' fees and other costs incurred therein.

I. Default and **Remedies.**

1. Default. Failure by any Party to perfonn or comply with any term or provision of this Agreement, if not cured, will constitute a defauh under this Agreement.

2. Sixty-Day **Right** to Cure. If any Party believes that another Party is in default of this Agreement, it will provide written notice to the allegedly defaulting Party of the alleged default; offer to meet and confer in a good-faith effort to resolve the issue; and, except where a delay may cause irreparable injury, provide sixty days to cure the alleged default, commencing at the time of the notice. Any notice given pursuant to this provision will specify the nature of the alleged default, and, where appropriate, the manner in which the alleged default may be cured.

3. Remedies. In the event that another Party is allegedly in default under this Agreement, then the Party alleging default (a "Complaining Party"), may elect to waive the default or to pursue remedies as described in this Section. Such remedies may be pursued only after exhaustion of the sixty-day right to cure period described above, except where an alleged default may result in irreparable injury, in which case the Complaining Party may immediately pursue the remedies described herein, in any court of proper jurisdiction. A Complaining Party may seek rehef ordering, and the court will have the power to order, affirmative equitable and/or affirmative injunctive relief, temporary or permanent, requiring another Party to comply with this Agreement. No Party wiil seek relief awarding, and the court will not have power to award, any money damages, although to the extent that funds are required to be expended or provided by this Agreement, or liquidated damages are specified, the court will have power to compel the party in question to expend or provide those funds. Each Party will bear its own fees and other costs of such court action.

J. Effective Date. The Effective Date of this Agreement will be the first date after this Agreement has been executed by each Party. Except as described in Section VII.**K**, below, all commitments of the Parties described herein are effective upon the Effective Date, unless otherwise specified.

K. Limited Responsibilities if Project Not Approved. The City will have no responsibilities pursuant to Sections II.A, II.E, II.F, II.G, II.H, ILI, II.J, and ILL of this Agreement prior to issuance of all Project Approvals. **Notwithstanding** the above, after the Effective Date, the City will not take any action inconsistent with this Agreement or that would impede eventual satisfaction of terms of this Agreement. [subject to negotiation]

L. **No Public Responsibility for Financial Commitments.** The LDDA may describe certain financial and operational commitments made by Developers and other private entities. This Agreement does not make the City responsible for satisfaction of such commitments. This Agreement does not provide enforcement rights against the City or any other public entity with regard to Developers' and other private entities' commitments made in the LDDA or other documents or agreements.

M. Waiver. The waiver by any Party of any provision or term of this Agreement will not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, will not be deemed a waiver of any provision or term of this Agreement.

N. Construction. Each of the Parties has had the opportunity to be advised by counsel with regard to this Agreement. Accordingly, this Agreement will not be strictly constmed against any Party, and any rule of constmction that any ambiguities be resolved against the drafting Party will not apply to this Agreement.

O. Correspondence. All correspondence will be in writing and will be addressed to the affected parties at the addresses set forth below. A Party may change its address by giving notice in compliance with this Section. The addresses of the parties are

If to Community Parties:

If to the City:

[address]

P. Counterparts. This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which will constitute one and the same document.

Q. Further Acts. The Parties will execute and deliver such further documents and instruments and take such other further actions as may be reasonably necessary to carry out the intent and provisions of this Agreement.

IN WITNESS WHEREOF, the following Parties have executed this Agreement:

THE CITY OF OAKLAND,
a Califomia municipal corporation

By:_____

Its:_____

[INSERT OTHER SIGNATORIES HERE]

List of Attachments:

Attachment A: Construction Jobs Policy

Attachment B: Operations Jobs Policy

Attachment C: ENA

ATTACHMENT A

Construction Jobs Policy

Oakland Army Base Project

ATTACHMENT B

Operations Jobs Policy

Oakland Army Base Project

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 MAY 31 PM 4:44

Approved as to form and legality

Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO._____C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN ENVIRONMENTAL REVIEW FUNDING AND INDEMNITY AGREEMENT WITH PROLOGIS PROPERTY, LP, A DELAWARE LIMITED PARTNERSHIP AND CCIG OAKLAND GLOBAL, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (OR THEIR RELATED OR AFFILIATED ENTITIES) (COLLECTIVELY "DEVELOPER") REGARDING THE PROPOSED MIXED-USE PROJECT ON THE FORMER OAKLAND ARMY BASE ("PROJECT") WITH RESPECT TO: (1) ALLOCATING RESPONSIBILITY FOR ENVIRONMENTAL REVIEW COSTS BETWEEN THE CITY AND THE DEVELOPER AND (2) DEFINING THE PROCEDURE FOR DEFENDING AND INDEMNIFYING THE CITY OF OAKLAND FOR THE INITIAL PROJECT APPROVALS IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED DOCUMENTS, WITHOUT RETURNING TO CITY COUNCIL

WHEREAS, the City of Oakland, through its predecessor in interest, the Redevelopment Agency of the City of Oakland ("Agency"), and Developer's predecessors in interest entered into that certain Exclusive Negotiating Agreement ("ENA"), dated January 22, 2010, for the potential redevelopment of a portion of the former Oakland Army Base ("OARB"), including City development of the public infrastructure ("Public Improvements"), and Developer construction and operation of a mixed use (logistics and warehousing), commercial, including billboards, maritime, rail, and open space uses ("Private Improvements"). Together the Public Improvements and the Private Improvements constitute the "Project"; and

WHEREAS, to effectuate the Project, the City Council will consider for approval a Lease Disposition and Development Agreement ("LDDA") for approximately 130 acres of the OARB ("LDDA Property") and related attached agreements, together with the associated environmental compliance documentation, the "Environmental Document" (together, "Initial Project Approvals"); and

WHEREAS, to address the costs associated with the preparation, review and production of the Environmental Document, among other things, the ENA was amended on August 10, 2010 by a First Amendment to the ENA (the "First Amendment"); and

WHEREAS, the First Amendment provided that the Agency shall contract with LSA Associates, Inc. ("LSA") to prepare the Environmental Document. LSA's contract for the

Environmental Document was not to exceed $360,000, with a cap on the Agency's contribution toward the contract amount of $240,000 and with Developer being responsible for all costs exceeding the Agency's cap; and

WHEREAS, LSA's costs have exceeded the agreed upon maximum contract cost of $360,000, and the final amount has not been determined; and

WHEREAS, in accordance with the public-private nature of this Project and additional Environmental Document costs beyond those originally anticipated, the City and Developer (together, the "Parties") desire to set forth their final cost sharing agreement for Environmental Document preparation and processing ("Environmental Document Preparation Costs"); and

WHEREAS, in accordance with the public-private nature of the Project, the Parties also desire to set forth the litigation review process and indemnity provisions related to the Initial Project Approvals; and

WHEREAS, the Parties enter this Agreement separately from the LDDA and hs attached agreements associated with the Initial Project Approvals so that if any of those agreements are not executed, or if executed and subsequentiy terminated or invalidated, this Agreement will survive such non-execution or termination; now, therefore be it

RESOLVED: This Agreement is not a Project under CEQA. Moreover, the activities covered under this Agreement are not projects under CEQA, and/or are exempt from environmental review under CEQA. Specifically, this Agreement only sets forth the terms and conditions for the City and Developer funding obligations for planning and feasibility studies under CEQA Guidelines section 15262, and/or litigation expenses related to such studies, so it can be seen with certainty that there is no possibility that the Agreement may have a significant effect on the environment and therefore is also exempt under Section 15061(b)(3) of the CEQA Guidelines. Moreover, by entering into this Agreement, the City is not committing itself or agreeing to undertake any definite course of action or project. The City retains the absolute sole discretion to make decisions under CEQA, including deciding not to proceed with any project. No development shall proceed unless and until the parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process and on other public review and hearing processes and subject to all govemmental approvals; and be it

FURTHER RESOLVED: The City Council finds and determines that this action complies with CEQA for the reasons stated above and the Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies; and be it

FURTHER RESOLVED: That the City Administrator is authorized to negotiate and execute an Indemnity Agreement with the Developer indemnifying the City of Oakland regarding the Proposed Mixed-Use Project on the OARB with respect to: (1) allocating responsibility for Environmental Review costs between the City and the Developer and (2) defining the procedure for defending and indemnifying the City of Oakland for the Initial Project Approvals in a form and content substantially in conformance with Exhibit A, attached hereto and incorporated

herein by reference without returning to City Council; and be it

FURTHER RESOLVED: That the City Administrator and his or her designee is authorized to take whatever action is necessary with respect to negotiating and executing the Indemnity Agreement and CEQA/NEPA Funding Reimbursement Agreement consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

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

DATE OF ATTESTATION: _____

EXHIBIT A

ENVIRONMENTAL REVIEW FUNDING AND INDEMNITY AGREEMENT

OAKLAND ARMY BASE ENVIRONMENTAL REVIEW FUNDING AND INDEMNITY AGREEMENT ASSOCIATED WITH INITIAL PROJECT APPROVALS

This Oakland Army Base ("OARB") Environmental Review Funding and Indemnity Agreement ("Agreement") is made and entered into this day ___ of _____, 2012, by and between Prologis Property, LP, a Delaware limited partnership ("Prologis"), and CCIG Oakland Global, LLC, a Califomia limited liability company ("CCIG") (or Prologis' and CCIG's related or affiliated entities) (collectively "Developer"), and the City of Oakland, acting both in its capacity as an independent municipal corporation and as the successor agency to the Redevelopment Agency of the City of Oakland (together the "City"), each a "Party," collectively the "Parties," to this Agreement.

RECITALS

A. The City, through its predecessor in interest, the Redevelopment Agency of the City of Oakland ("Agency"), and the Developer, themselves or through their respective predecessors in interest, entered into that certain Exclusive Negotiating Agreement ("ENA"), dated January 22, 2010, for the potential redevelopment of a portion of the former OARB, including (inter aha) the City's remediation of Hazardous Materials and development of the public infrastructure ("Public Improvements") and Developer's construction and operation of a mixed-use project, including logistics and warehousing, commercial, including billboards, maritime, rail, open space uses and other approved uses ("Private Improvements"). Together the Public Improvements and the Private Improvements constitute the "Project".

B. To effectuate the Project, the City Council will consider (1) the approval a Lease Disposition and Development Agreement ("LDDA") for approximately 140 acres of the OARB ("LDDA Property") and related, attached agreements and (2) the adoption of an Initial Study/Addendum , the "Environmental Document" (together, "Initial Project Approvals").

C. The ENA was amended on August 10, 2010 by a First Amendment to the ENA (the "First Amendment").

D. The First Amendment provided that the Agency shall contract with LSA Associates, Inc. ("LSA") to prepare the Environmental Document. LSA's contract for the Environmental Document was not to exceed three hundred and sixty thousand dollars ($360,000). The LSA costs have exceeded the agreed upon maximum contract cost of three hundred and sixty thousand dollars ($360,000). The final amount of all third-party contractor Environmental Document Preparation Costs (defined below) has not been determined, but is currently anticipated be about five hundred and three thousand dollars ($503,000).

E. In accordance with the public-private nature of this Project and additional Environmental Document costs beyond those originally anticipated and to avoid any disputes, the Parties desire to set forth their final cost sharing agreement for Environmental Document preparation and processing ("Environmental Document Preparation Costs") associated with Initial Project Approvals.

F. In accordance with the public-private nature of the Project, the Parties also desire to set forth the litigation review process and indemnity provisions related to the Initial Project Approvals.

G. The Parties enter this Agreement separately from the LDDA and its attached agreements associated with the Initial Project Approvals such that if any of those agreements are not executed, or if executed and subsequently terminated or invalidated, this Agreement will survive such non-execution or termination.

AGREEMENT

NOW THEREFORE, in accordance with the following terms, the Parties agree as follows:

1. **Incorporation of Recitals.** The Parties agree that the Recitals set forth above are tme and correct and are incorporated herein.

2. **Funding of Environmental Document Preparation Costs.** The Environmental Document Preparation Costs associated with Initial Project Approvals shall be shared by the City and Developer pursuant to the terms of this section.

a) The Parties shall equally share the portion of the Environmental Document Preparation Costs related to costs and fees charged to the City by any third-party contractor (excluding attomey fees, which shall be the responsibility of the party retaining the attomey) up to five hundred and three thousand dollars ($503,000).

b) Developer's payment of its share of Environmental Document Preparation Costs is due upon the LDDA Effective Date, as that term is defined in the LDDA.

c) Any Environmental Document Preparation Costs in excess of fiye hundred and three thousand dollars ($503,000) shall be paid for by the City.

d) Developer shall not pay Environmental Document Preparation Costs associated with City staff or City attomey review or processing.

e) The City shall seek reimbursement of the Environmental Document Preparation Costs from all other developers with projects on the City-owned OARB property that rely on the Environmental Document. Such reimbursement shall be based on a "fair share" allocation calculated on a per acre basis (of the City-owned OARB property) and due no later than the earlier to occur of (i) the effective date of any conveyance agreement between the City and such developer (including, but not limited to, any purchase agreement, lease, ground lease, (lease) disposition and development agreement or similar document) and (ii) the approval of the applicable project. Such payments shall be distributed by the City to the City and Developer on a pro rata basis, based on the percentage of costs paid by a Party pursuant to Sections 2(a) and 2(c) above.

f) In the event the LDDA with Developer is terminated for any reason other than default by Developer, the City shall undertake commercially reasonable efforts to seek reimbursement from any future developer of a project on the LDDA Property (or portion thereof) that relies on the Environmental Document for its approval. Such payments shall be distributed first to Developer to reimburse its full share of the Environmental Document Preparation Costs, after which time any additional reimbursement shall be kept solely by the City. If the LDDA terminates because of a default by Developer, then the City has no obligation to reimburse Developer for Environmental Document Preparation Costs pursuant to this Section 2(g).

3. Initial Project Approval Litigation Review Process and Indemnification. The litigation defense indemnification required for Initial Project Approvals shall be pursuant to the terms of this section. As a public-private partnership, the City and Developer agree to the following process for indemnifying the City and determining whether to proceed in defending any litigation action that may be brought by a third party against the City to attack, set aside, void or annul the Initial Project Approvals ("Action"):

a) Developer's ENA deposit of fifty thousand dollars ($50,000) shall, at the time the ENA is terminated, remain with the City as security for litigation costs related to defense of any Action associated with the Initial Project Approvals until distributed pursuant to Section 3(e) below. Said security deposit may be drawn down as provided for in subsection (e), below.

b) If an Action is filed, upon receipt of the petition, the Parties will have 20 days to meet and confer regarding the merits of the Action and to determine whether to defend against the Action, which period may be extended by the Parties' mutual agreement so long as it does not impact any litigation deadlines. The City and Developer mutually commit to meet all required litigation timelines and deadlines.

c) If the Parties mutually agree to defend against the Action, the Parties shall defend jointly, with counsel acceptable to the City and Developer, and enter a joint defense agreement, which will include among other things, provisions regarding confidentiality, appeals and a cost allocation pursuant to which Developer shall reimburse the City for its prorata share of costs (to be calculated based on the lease area as compared to the overall acreage of land covered in the Environmental Document project description) incurred defending the Action and fulfilling any judgment, including all appeals as set forth in that agreement.

d) If the City elects, in its sole and absolute discretion, not to defend against the Action, it shall deliver written notice to Developer, and if Developer elects to defend against the Action without the City's participation, Developer shall defend, indemnify, and hold harmless the City, the City Council, and its respective agents, officers, and employees from any liability, damages, claim, action, cause of action, judgment (including City costs to effectuate such judgment), loss (direct or indirect), or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs).

e) If Developer elects, in its sole and absolute discretion, not to defend against the Action, it shall deliver written notice to the City regarding such decision. Developer shall owe the City for its prorata share (based on the lease area as compared to the overall acreage of land covered in the Environmental Document project description) of (i) any third party or City attorney fees and legal costs incurred by the City through date of such notice, and (ii) any petitioner incurred attomey fees and legal costs through the date of such notice. Because the final accounting of petitioner-incurred attomey fees and legal costs will not be definitively known until the close of the Action, including all appeals and motions for attomey's fees, the Parties agree they shall, within ten (10) days of the Developer's notice, meet and confer in an effort to estimate the attomeys' fees and costs incurred by the petitioner in filing the Action. If the sum of the amount in clause (i) of the preceding sentence plus one hundred and fifty percent (150%) of the amount set forth in clause (ii) of the preceding sentence is less than the ENA deposit, the City shall refund the excess amount to Developer. If the sum is higher, Developer shall pay any shortfall to the City. The refund or payment, as applicable, shall be paid within ninety (90) days after the City's receipt of Developer's notice of its election not to defend against the Action. If the City is ultimately required to or agrees to pay petitioner's legal fees/costs, in conjunction with any settlement or judgment, the City shall request an accounting through the date of Developer's notice in order to facilitate the final accounting. To the extent the amount of the remaining ENA deposit exceeds Developer's obligation, the City shall pay such excess amount to Developer within thirty (30) days after the determination of petitioner's fees/costs award. If the remaining ENA deposit amount is insufficient, the City shall retain the remaining ENA deposit and the Developer shall pay the amount of the shortfall to the City within thirty (30) days of receiving an invoice from the City.

f) If Developer elects not to defend, the City has the right to proceed to defend against the Action at its sole cost and expense, except that the City shall collect such reimbursements as provided for in subsection (e), above.

g) If Developer elects not to defend or share in the City's defense, the City has right to terminate the LDDA and its associated agreements as to Developer.

h) To the extent any costs are recovered from petitioners as a result of the disposition of the Action, such recovered costs shall be distributed to the Parties pro rata pursuant to the amounts incurred by the Parties pursuant to this Agreement.

4. **No Agency Relationship.** This Agreement shall not create any agency or similar relationship among the Parties. Nothing contained in this Agreement is intended to or shall in any way be construed as a waiver of any privilege, protection, claim, right, or defense between any of the Parties on any subject whatsoever.

5. **Notice.** All notice required by this Agreement shall be provided by e-mail and overnight mail at the following addresses:

To City:

_____

_____

_____

To Developer:

Prologis Corporation_____

_Pier 1, Bay 1_____

_San Francisco, CA 94111

Attention: Legal Department_____

To Developer:

CCIG Oakland Global, LLC

c/o California Capital & Investment Group, Inc.

300 Frank H. Ogawa Plaza, Suite 340

Oakland, CA 94612

6. **Termination.** This Agreement shall remain in full force and effect until all payments and reimbursements required by Section 2 have been made and until any Action against the Initial Project Approvals addressed by Section 3 has been full disposed and all payments and reimbursements required by that Section 3 are made in full.

7. **Waiver.** The failure of any Party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by any Party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other Party.

8. **Remedies.** Each Party acknowledges that specific performance and immediate injunctive relief is an appropriate and necessary remedy for any violation or any threatened violation of this Agreement.

9. **Successors.** This Agreement shall remain in effect and be binding upon successors and assigns, except that Section 2 is personal to Developer and the City's obligation to reimburse Developer shall not be transferred or assigned.

10. **No Third Party Beneficiaries.** As a result of this Agreement, the Parties do not intend to provide any third party with any benefit or enforceable legal or equitable right or remedy.

11. **Full Agreement.** This Agreement sets forth the agreement of the Parties and supersedes and replaces any prior written or verbal agreement on these issues.

12. **Amendments.** Any amendments to this Agreement shall be in writing and signed by all Parties.

13. **Effective.** The foregoing provisions are agreed to and become effective upon signature of each Party set forth below as of the date set forth next to the signature of each Party.

14. **Governing Law.** The rights and obligations of the Parties and the interpretation and performance of this Agreement shall be governed by the laws of California. Any legal action concerning the rights and obligations of the Parties pursuant to this Agreement shall be commenced in Alameda County.

15. **Authority.** The person signing this Agreement on behalf of each Party affirms that such person is authorized to execute this Agreement on that Party's behalf

16. **Severability.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

17. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document and each signed counterpart shall be deemed an original. Faxed or emailed signature shall be of the same force and effect as original signatures.

[WE GENERALLY DO NOT INCLUDE AF PROVISISIONS IN OUR AGREEMENTS]
SO AGREED:

[Signatures on following page.]

"CITY"

City of Oakland, a municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

"DEVELOPER"

_____
Print Name

By: _____

Its: _____

Date: _____

_____
Print Name

By: _____

Its: _____

Date: _____