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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: Supplemental Report Regarding Army Base
Rezoning & Development Agreement

DATE: June 24, 2013

City Administrator
Approval

Date

6/27/13

COUNCIL DISTRICT: #3

RECOMMENDATION

Staff Recommends that the Council Receive this Supplemental Report, Conduct a Public Hearing and Upon Conclusion, Consider Adopting, as Recommended by the Planning Commission:

1. An Ordinance Amending the Oakland Planning Code to Create the Gateway Industrial District (D-GI) Zone and Make Conforming Changes to Other Planning Code Sections and the Oakland Zoning Map to Apply the D-GI Zone to Approximately 160 Acres in the Gateway Development Area of the Former Oakland Army Base;
2. An Ordinance Authorizing the City Administrator to Execute a Development Agreement Between the City of Oakland and Prologis CCIG Oakland Global, LLC, a Delaware Limited Liability Corporation, for the Development on Approximately 160 Acres in the Gateway Development Area of the Former Oakland Army Base to be in a Form and Content Substantially in Conformance with the Attached Documents, Without Returning to the City Council; and
3. A Resolution Adopting the Design Standards for the Gateway Industrial District (D-GI) Zone Located on Approximately 160 Acres in the Gateway Development Area of the Former Oakland Army Base and Authorizing Staff to Make Minor Ongoing Revisions to the Adopted Design Standards Consistent with the D-GI Zone and Oakland Planning Code, but Major Revisions to be Made by the City Planning Commission, Without Returning to the City Council.

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REASON FOR SUPPLEMENTAL REPORT

The City Council discussed this item at its meeting on June 4, 2013, and directed staff to provide additional information on the item, which is provided in this supplemental report. At the meeting, the Council originally continued the item to the June 18, 2013, meeting but this matter was further continued until July 2, 2013, to allow more time to respond to Council's questions and concerns.

OVERVIEW/BACKGROUND FOR REQUESTED ACTIONS

The City Planning Commission, and the Community and Economic Development Committee of the City Council, voted unanimously to recommend approval of the proposed Rezoning, Development Agreement, and Design Standards to the City Council because the actions would be consistent with the Oakland General Plan and would facilitate implementation of the approved Army Base project.

The Army Base project will bring significant benefits to the City, including economic development, construction and permanent jobs, revenue from land sales, increased property tax revenue, rental income, funding for the West Oakland Community Fund and Jobs Center, increased public access to parks and open space, an improved visual environment, and remediation of environmental contamination.

The proposed Development Agreement was contemplated in the Lease Disposition and Development Agreement (LDDA) with the Master Developer for the project as a piece of implementing legislation. Ideally, the Development Agreement would have been negotiated at the same time as the LDDA, but due to the time constraints of the California Transportation Commission grant deadline, there was insufficient time to deal with the Development Agreement and LDDA concurrently. The Development Agreement provides long-term certainty to the City and the Developer concerning the project so that the project is successfully implemented and the benefits in the LDDA intended for the Developer and the City are realized.

Staff has made revisions to the previous version of the Development Agreement in response to questions and concerns from the City Council, as explained below, and continues to recommend approval of the Development Agreement.

RESPONSE TO CITY COUNCIL QUESTIONS/CONCERNS

Below is staff's response to the questions and concerns raised by the City Council, organized by the legislative actions requested of the Council.

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Development Agreement Ordinance

1. Authority of City Administrator (section 3): Section 3 of the proposed Development Agreement ordinance delegates authority to the City Administrator to make certain changes to the Development Agreement before it is executed by the parties. The City Council expressed concerns that this delegation of authority is too broad. The language has been revised to clarify that the City Administrator's authority is to execute, and not negotiate, the Development Agreement, and any changes would be limited to amendments or other modifications which are necessary to conform to City Council direction or to refine, clarify, or correct technical errors or internal inconsistencies in drafting (including, attachment of 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, consistent with Council direction.
2. Conflicts with Other Regulations (section 6): At the June 18, 2013, City Council meeting, Council asked whether the billboards approved as part of the project were consistent with existing City ordinances. The Development Agreement ordinance was revised to remove any ambiguity with respect to any alleged or potential inconsistency. Also see discussion of Rezoning Ordinance, section 8, below.

Development Agreement

Included in the Agenda packet is an annotated, redline version of the Development Agreement (showing revisions from the version at the June 4, 2013, Council meeting in underline and strike-out) which provides the explanations below in context, along with any revised language. Additional, clarifying revisions were also made to the Development Agreement (including those relating to notice), which are shown on the annotated, redline version but are not discussed below. (Page numbers below refer to the annotated, redline version of the Development Agreement.)

3. City Development Fee Provisions (section 1.1, pages 8-9): Council asked staff why the fee provision was fair – why would not the provision provide that ALL fees are either (1) “locked in” for the Term or (2) “float” for the Term. This issue was reviewed with the Developer and the response is that the obligations and cost structure contemplated by the LDDA/Ground Leases – which includes (a) base rent which escalates over time and is intended to be pegged at or above market and (b) Community Benefits which impose requirements on the Developer and the project which are above and beyond what may be required under applicable law – were negotiated by the parties in the context of the current fee structure. The intent of this provision is to maintain the integrity of this economic structure. As is typical for Development Agreements, the obligations of Developer which exceed what may be required under applicable law (the Community Benefits) are the consideration for “locking in” the fees/preventing increases. The provision that allows the fees to be reduced prevents the potential delta in base rent versus the market rent from

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putting the project at such a competitive disadvantage that it cannot compete for tenants. Staff and Developer recommend no change to this provision.

4. “Fee Simple” Language (section 2.1, page 15; section 3.1, page 17): Council requested that the provision pertaining to a fee simple land acquisition be deleted because it is inapplicable to the underlying transaction. Staff and Developer concur with the proposed deletion.
5. Conflicts with City Regulations (Applicable and Future) (sections 3.4 and 3.4.1; pages 19-21): At the June 18, 2013, City Council meeting, Council asked whether the billboards approved as part of the Project were consistent with existing City ordinances. The revision removes any ambiguity with respect to any alleged or potential inconsistency.

In addition, Council asked whether a Development Agreement may prohibit imposition of inconsistent future City regulations adopted via local initiative or local referendum. Subject to certain exceptions, the California Government Code permits cities to enter into Development Agreements which vest the Developer’s rights to develop the subject project under the then current City regulatory scheme. Subsequent regulations adopted via local initiative or local referendum would still be an enactment of a new City law (rather than a new state or federal law, the imposition of which may not be prohibited by a City Development Agreement). As such, a Development Agreement may legally prohibit the imposition of a future regulation adopted by a local initiative or local referendum. The intent of the parties is to vest the current regulatory scheme, subject to the express exceptions included in the Development Agreement. Staff and Developer recommend revisions to clarify that the restriction is limited to local-level initiatives and referenda. However, the Development Agreement itself is subject to local referendum.

6. Fee Reduction or Credits (section 3.7; pages 25-26): Council inquired as to the intent of this provision. The intent is to prohibit the Developer and project from being required to pay twice for the same obligation where the subject matter is subject to both a fee and an obligation under this Agreement. An example would be where the Developer and project are subject to both an in-lieu fee regarding the construction of new public infrastructure required to serve the project and an obligation to build such public infrastructure at Developer’s cost. No such obligations are provided in this Agreement and Developer is adequately protected from new fees in other provisions. As such, staff and Developer recommend deletion of the provision.
7. Community Benefits (section 4.1; page 29): The LDDA contains a variety of community benefits provided by the Developer, including the following:
 - Developer to pay \$16,000 per net developable acre to the West Oakland Community Fund.

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- Establishment of the West Oakland Jobs Center, with funding from the Developer (including one-time payment of \$4.50 per square-foot of building space at the time of construction, annual fee based on ground lease, and monthly payments of \$0.005 per leasable square-foot).
- Construction Jobs Policy for Public Improvements with provisions for construction jobs such as hiring local residents, disadvantaged workers, and apprentices, and a Project Labor Agreement with the Building and Construction Trades Council of Alameda County.
- Construction Jobs Policy for Private Vertical Improvements with provisions for construction jobs for hiring local residents and apprentices, and a Project Labor Agreement with the Building and Construction Trades Council of Alameda County.
- Operations Jobs Policy with provisions for jobs related to ongoing operations such as local hiring and living wages.
- Compliance with environmental requirements contained in the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCA/MMRP) for the project.
- Implementation of an air quality monitoring program.

The list of community benefits originally envisioned for the Army Base project when the City Council approved the Exclusive Negotiating Agreement (ENA) with the Master Developer and the final list of community benefits in the LDDA are attached (see *Attachment A*). Certain items on the list from the ENA, specifically those relating to community services and amenities, green industries, green building, and open space, were ultimately not included in the LDDA because the project became focused on port-related logistics and the items would be addressed through other programs or requirements, as explained in *Attachment A*.

The proposed Development Agreement was contemplated in the LDDA as a piece of implementing legislation. Ideally, the Development Agreement would have been negotiated at the same time as the LDDA, but due to the time constraints of the California Transportation Commission grant deadline, there was insufficient time to deal with the Development Agreement and LDDA concurrently. Additional community benefits are not proposed to be included separately within the Development Agreement because the set of community benefits for the project were negotiated with the LDDA.

One specific community benefit raised by the City Council – Army Base Construction Jobs Policies – is discussed in detail below.

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On October 23, 2012, the CED Committee forwarded to the City Council a recommendation to adopt proposed amendments to the Army Base LDDA Construction Jobs Policies. The proposed amendments (“Jobs Policies Amendments”) required, among other things, contractor/subcontractor weekly reporting and establishment of a website to post real-time compliance information.

The City Attorney’s office submitted to the CED Committee a letter advising that, if the LDDA were to be executed by the City and the Developer before the Council adopted any Jobs Policies Amendments, the Developer would have to agree to amend the LDDA to incorporate the new requirements (see *Attachments B-1 and B-2*).

On October 23, 2012, pursuant to previous Council authorization, the City and the Developer executed the Army Base LDDA.

On October 30, 2012, the City Council passed Resolution No. 84071 C.M.S. adopting the Jobs Policies Amendments (see *Attachment B-3*). The Jobs Policies Amendments were adopted after the parties had already executed the LDDA. They have not been incorporated into the LDDA and therefore are not currently legally binding on the Developer.

The City Council could direct that Jobs Policies Amendments be included as part of the Development Agreement, but this too would require approval of the Developer. With the exception of agreeing to add the weekly workforce charts and weekly reporting for the Construction Jobs Policies for the Public Improvements, Developer has declined to re-open negotiations on community benefits. See Developer’s letter dated June 25, 2013, which provides a more detailed response (*Attachment E*).

Specifically, after the Construction Jobs Policies were approved in the LDDA, the City Council approved two proposed amendments to those policies: (1) revisions to the reporting requirements to require weekly reporting (instead of monthly reporting) of certified payroll charts and to require real time public disclosure of these charts on the web using the City’s LCTracker system; and (2) revision to the employment projection requirements to clarify and add a requirement that prime contractors and subcontractors “work with the unions to specify training needed for entry level and semi-skilled positions by title” and submit the weekly workforce charts noted above to the Jobs Center. With respect to the first amendment, Developer has agreed to amend the Construction Jobs Policy for Public Improvements to submit weekly workforce charts and, rather than the LCTracker system, which only tracks job hours works and not the hiring process required in the policy, utilize a CCIG-developed website for real-time tracking and reporting. The Developer has not agreed to include these changes in the Construction Jobs Policy for Vertical Development as the purported reason for the City Council’s amendment was to track prevailing wage compliance, and the private improvements are not subject to prevailing wage. With respect to the second amendment, the Developer has not agreed to revise the policies, as working with the unions on training

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should be adequately addressed by the Jobs Center and the need for weekly workforce charts is redundant with the first amendment.

8. Authority of City Administrator (section 11.2; pages 45-46): Council questioned the breadth of the City Administrator's authority under the Development Agreement as previously drafted and recommended a stricter standard related to the definition of "minor modifications." The Council also requested that it be provided notice of all minor modifications. This section was revised to provide that modifications related to the Term, City Development Fees, Community Benefits, the allocations of SCA/MMRP as set forth in this Agreement or modifications that would increase the obligations of the City under this Agreement are expressly excluded from the definition of a "minor modifications" and shall require the approval of the City Council. The City Council shall also be provided notice of all "minor" amendments.
9. Approvals (section 14.2; pages 49-50): Council questioned whether this provision improperly restricted the discretion of the Council to condition, revise, or disapprove matters subject to the Development Agreement. The intent of this provision was to make it clear that the Council's right to modify or disapprove matters is subject to the prohibition regarding the imposition of subsequent or new regulations that are inconsistent with the vesting provisions of this Agreement. Upon review, staff and Developer believe this concept is adequately addressed in other provisions and therefore staff and Developer recommend deletion of this provision.

Rezoning Ordinance

10. Conflicts with Other Regulations (section 8): Section 8 of the proposed rezoning ordinance currently states:

Except as specifically set forth herein, this Ordinance suspends and supersedes all conflicting resolutions, ordinances, plans, codes, laws and regulations.

This language is frequently included in rezoning/Planning Code amendments and merely states the basic purpose and intent of every rezoning – to change the current rules and regulations. Pursuant to the Oakland Planning Code, section 17.32.020, the Planning Director is charged with making determinations and/or interpretations under the zoning regulations (which would include determining whether there is conflicting legislation), with appeals to the City Planning Commission, which is generally the final decision-making body. If someone disagrees with the final administrative decisions of the City Planning Commission, a lawsuit can be filed under state law and the City cannot restrict/prohibit such lawsuits. No change is recommended to this language.

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Other Concerns

11. Measures to Reduce Environmental Impacts on West Oakland: Measures to reduce environmental impacts on West Oakland, specifically related to air quality and truck traffic and parking, are listed below. These measures are being implemented by the City, the Master Developer, and the Port. The three parties are coordinating these efforts where appropriate. The City is also working with community stakeholders on the development of the air quality plans.

- *Rail Improvements* – One of the primary goals of the Army Base project is to increase the efficiency of rail operations which would reduce the amount of truck traffic associated with the Port. Rail improvements in the combined City and Port project would reduce approximately 140,000 annual truck trips, thereby reducing existing truck trips through West Oakland.
- *AMS Facility* – An Ancillary Maritime Support (AMS) facility is proposed at the former Army Base which would provide a site for truck parking and trucking-related services. The AMS facility would eliminate the need for truckers to enter the surrounding neighborhoods for these services, thereby reducing existing truck traffic and parking in West Oakland.
- *SCA/MMRP Requirements* – The following measures are required as part of the project's Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCA/MMRP) (note that the standard conditions of approval are the functional equivalent of mitigation measures and are as legally enforceable as mitigation measures):
 - Construction Management Plan – SCA AIR-1 requires a construction management plan that identifies measures to reduce construction-related impacts. This plan is being developed and will soon be released for public review and comment.
 - Construction-Related Air Pollution Controls – SCA AIR-2 requires measures to control dust and reduce equipment emissions during construction.
 - Truck Management Plan – Mitigation 4.3-7 requires a truck management plan to reduce the effects of trucking on neighborhood streets in West Oakland.
 - Maritime and Rail-Related Emissions Reduction Plan – Mitigation 4.4-3 requires an emissions reduction plan to reduce emissions related to maritime and rail-related operations. As discussed at the June 4, 2013, Council meeting, the Master Developer requested that the mitigation be revised to clarify that the requirement applies to both the Port project and the City

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project (see *Attachment C*). Staff continues to recommend that the SCA/MMRP be readopted with this revision.

- Truck Diesel Emission Reduction Plan – Mitigation 4.4-4 requires an emission reduction plan to reduce truck diesel emissions.
 - Transportation Control Measures – Mitigation 4.4-5 requires measures to reduce vehicle emissions.
 - Demonstration Projects – Mitigation 5.4-1 encourages emission reduction demonstration projects that promote technological advances in improving air quality.
 - Parking and Transportation Demand Management – SCA TRANS-1 requires a parking and transportation demand management plan to reduce parking and traffic demand related to the project.
 - Construction Traffic and Parking – SCA TRANS-2 requires strategies to reduce traffic congestion and parking issues associated with construction of the project.
 - Traffic Control Plan – Hazardous Materials – Mitigation 4.3-13 requires a traffic control plan that includes measures to ensure that hazardous materials are transported in a manner that is safe and protective of human health and the environment.
- *MAQIP (Port of Oakland)* – In 2009 the Port adopted the Maritime Air Quality Improvement Plan (MAQIP) which is a comprehensive plan for reducing air pollution associated with maritime-related activities at the port.
 - *Truck Management Program (Port of Oakland)* – In 2009 the Port adopted the Maritime Comprehensive Truck Management Program which sets forth plans and actions for addressing impacts related to trucking, including truck parking and truck routes.
 - *Truck Routes* – In 2006 the City conducted a study of truck volumes and movement through West Oakland and established truck routes to control the flow of trucks in residential areas.
 - *Recyclers' Sites* – The City is negotiating with California Waste Solutions (CWS) and CASS to relocate from West Oakland into the sites in the Army Base project designated for recyclers. Relocation would reduce truck traffic in West Oakland.

City staff intends to recommend restrictions for the former CWS and CASS sites in West Oakland to limit trucking-related activities at those sites.

- *West Oakland Specific Plan* – The City is preparing the West Oakland Specific Plan which discourages new trucking-related activities in West Oakland and encourages relocation of existing trucking-related activities out of the area. A detailed outline of the Specific Plan was released for public review in October 2012 and the final Plan is expected to be adopted by the end of 2013.

12. Additional Environmental Information: The following is additional environmental information concerning the Army Base project relevant to the discussion at the June 4, 2013, City Council meeting and the actions being considered by the Council:

- *Green Building Requirements* –The Army Base project is subject to the City’s Green Building Ordinance. The Green Building Ordinance typically requires new construction to achieve a LEED Silver certification. Projects that result in the removal of a historic resource are required to achieve LEED Gold certification. A portion of the Army Base is located within the Army Base Historic District. The historic buildings would be removed during installation of the public improvements/infrastructure by the City. The City and the Developer are discussing the potential application of LEED Gold requirements (vs. LEED Silver requirements) to the portion of the Developer’s vertical construction project within the former Army Base Historic District under these circumstances. The Green Building Ordinance contains a provision that allows the City to excuse certain requirements if a developer demonstrates that compliance with the ordinance results in an unreasonable hardship. The design constraints inherent in the type of warehouse facilities planned by the Developer may present substantial challenges to achieving the requirements of the Green Building Ordinance.
- *Correction to SCA/MMRP (Parking Study)* – Mitigation 4.3-10 requires the developers of the Army Base project to fund a parking demand study for the project and provide an adequate supply of parking spaces in the project. The preparation of the parking demand study would occur in conjunction with the required Parking and Transportation Demand Management Plan discussed above (SCA TRANS-1). This mitigation was included in the 2002 EIR and the 2012 Addendum but was inadvertently omitted from the final version of the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCA/MMRP) for the project. Similar to the clarification concerning the Maritime and Rail-Related Emissions Reduction Plan (Mitigation 4.4-3) discussed above, staff recommends that the SCA/MMRP be readopted with this additional revision concerning the parking study. The mitigation is included in *Attachment D*.

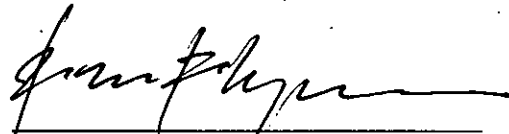
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POLICY ALTERNATIVES

If the Council is not prepared to take action on the proposed development agreement but supports the proposed rezoning and design standards, the rezoning and design standards could be adopted separately from the development agreement.

For questions regarding this report, please contact Darin Ranelletti, Planner III, at (510) 238-3663.

Respectfully submitted,



RACHEL FLYNN

Director, Department of Planning and Building

Reviewed by:
Scott Miller
Zoning Manager

Prepared by:
Darin Ranelletti, Planner III
Planning and Zoning Division

Attachments:

- A. *Community Benefits Comparison Table: Exclusive Negotiating Agreement (ENA) vs. Lease Disposition and Development Agreement (LDDA)*
- B. *Documents Pertaining to Job Policies Amendments (October 2012)*
 - 1. *Letter from Barbara J. Parker, City Attorney, to Community and Economic Development Committee (October 23, 2012)*
 - 2. *City Attorney Revisions to Proposed Jobs Policies Amendments (October 23, 2012)*
 - 3. *Adopted Jobs Policies Amendments (Resolution No. 84071 C.M.S.; October 30, 2012)*
- C. *Memorandum to Oakland City Council from Marc Stice, Esq. Re: Agenda Item 9.8: Proposed Clarification to Standard Conditions of Approval and Mitigation Monitoring and Reporting Program Mitigation Measure 4.4-3 (6/4/13)*
- D. *Mitigation Measure 4.3-10 (Parking Study): Recommended to be Included in the Revised Standard Conditions of Approval and Mitigation Monitoring and Reporting Program*
- E. *Letter from Mark McClure, California Capital & Investment Group Re: Development Agreement; Community Benefits/Jobs Policy (June 25, 2013)*

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ATTACHMENT A

*Community Benefits Comparison Table:
Exclusive Negotiating Agreement (ENA) vs. Lease Disposition and Development Agreement
(LDDA)*

COMPARISON OF COMMUNITY BENEFITS IN ENA AND LDDA

	Topics	ENA	LDDA	Notes
1	Agreed Uses	Film center, produce market, logistics facilities, class A office, research and development facilities, project-serving retail, waterfront open space, JATC job training facility, recycling facilities, or as negotiated	Logistics facilities, ancillary maritime uses, rail improvements, wharf improvements, bulk oversized terminal, billboards	Film center and produce market removed as mandated uses. The recycling facilities are a separate Army Base development. No JATC parcel reserved.
2	Community Fund	Lessee shall pay its fair share of the two million dollar (\$2,000,000) Community Fund based upon acreage leased within a timeframe to be negotiated during the ENA period.	Developer to pay a fair share contribution to the West Oakland Community Fund (WOCF) – \$16,000 per net developable acre. Payments in phases due as a condition precedent to entering into each phase of ground lease.	
3	City / Agency Contracting Requirements	Lessee to comply with all City/Agency social justice contracting programs in both construction and operations phases, including, without limitation: prevailing wages, living wages, local and small local business, disadvantaged business program, equal benefits, disabled access, and apprenticeship/job training/first source hiring programs. Lessee must agree to comply with compliance monitoring by Agency.	The City and its Manager shall ensure that contract awards for construction of Public Improvements proceed according to 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), 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 California. The City through its Office of Contracting Compliance shall oversee compliance of the Public Improvements contracting with the L/SLBE participation requirements. If the City's receipt of federal funds for	For Public Improvements, contracting elements must comply with the City's L/SLBE Ordinance; job elements must comply with the Construction Jobs Policy for Public Improvements. For private development, which construction work would not otherwise be subject to the L/SLBE Ordinance, the LDDA includes a Construction Jobs Policy that contains local, small local business, disadvantaged business, and apprenticeship

			<p>any portion of the Public Improvements requires compliance with the U.S. Department of Transportation's Disadvantaged Business Enterprise Program, then for such portions of Public Improvements, the City and its Manager shall comply with that program, and in such case, the Disadvantaged Business Enterprise Program shall replace the L/SLBE participation requirements.</p> <p>In the event that the City obtains federal or state funds to support construction of the Public Improvements, the City and its Manager shall ensure, through terms of application for such funds, and through the scope and process of contract awards, that portions of Public Improvements supported by such funds are segregated from the remainder of Public Improvements so as to maximize application of the L/SLBE participation requirements and any other City policies that may conflict with requirements of federal funding sources.</p>	<p>obligations; the Operations Jobs Policies contain resident and disadvantaged worker hiring requirements and living wage requirements; and all jobs policies contain monitoring and enforcement provisions.</p>
4	<p>Local Hire, Retention, Job Training & Apprenticeships for Construction Jobs</p>	<p>To ensure that project construction provides the strongest possible training and employment opportunities for targeted residents, a Labor Peace Agreement for project construction shall include requirements for a share of project hours to be worked by targeted residents and by apprentices. The Agency will require all general contractors to develop</p>	<p>The City and its Manager shall include the Construction Jobs Policy for Public Improvements as a material term of all contracts under which construction of Public Improvements may occur and shall itself comply with such Policy.</p> <p>Developer and Billboard Tenant shall include the Construction Jobs Policy for Vertical Construction as a material term</p>	<p>The Construction Jobs Policies require that both the City PLA and future Developer PLA implement the terms of the policies.</p> <p>The City is in the process of executing a PLA with the Alameda County</p>

		<p>a plan for satisfying these requirements, and to obtain approval from the Agency of that plan prior to commencement of work. Targeted hiring requirements will be monitored and enforced.</p>	<p>of all contracts under which Vertical Construction may occur, and shall itself comply with terms of such Policy.</p> <p>The Construction Jobs Policy for Public Improvements diverges from 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 (“City’s Employment Program”). The City’s Employment Program does not apply to the Private Improvements, which are governed by the Construction Jobs Policy for Vertical Construction.</p>	<p>Building.Trades and Local Unions for the construction of Public Improvements. The private vertical construction, which is also intended to have a PLA, will not occur until the Public Improvements are completed.</p>
7	<p>Local Hire and First Source Hiring for Permanent Jobs</p>	<p>In order to advance the Agency’s goal of providing economic opportunities to residents of communities that have borne the brunt of social, economic and health impacts, the Agency will require Lessee to ensure that all project employers participate in a First Source hiring program for operations-phase jobs (i.e., non-construction jobs). This program will require employers to designate a first source system, prior to hiring; consider targeted applicants referred by the first source system; and hire a percentage of</p>	<p>Developer/Manager shall ensure that any contract under which an On-Site Job may be performed include the Operations Jobs Policy applicable to the relevant portion of the Project site as a material term of the contract in question, and shall itself comply with the Policy. 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 East and Central Gateway Areas, and one that applies to the West</p>	<p>The Operations Jobs Policies set out the local hiring requirements including use of the West Oakland Jobs Center and setting priorities for hiring residents and disadvantaged workers. The Operations Jobs Policies include monitoring and enforcement provisions.</p>

		targeted applicants. The Agency will designate one or more nonprofit entities to refer applicants as part of the first source system. Targeted hiring requirements will be monitored and enforced through a process to be established by the Agency and similar to the Port of Oakland's MAPLA program, through which employers and contractors report progress, and challenges are addressed in a collaborative manner by various stakeholders from a particular industry, including community representatives and any relevant labor unions.	Gateway Area. Inclusion of such Policy in all relevant leases and contracts, and compliance with such Policy by Developer and Manager, as applicable, will fully meet the Developer/Manager obligation.	
8	Labor Peace	Lessee is required to agree to the following language in its lease agreement with the Agency: The parties recognize that in order to protect the Agency's proprietary interests in uninterrupted receipt of the income and public services promised under this contract, labor disputes must be prevented. The parties agree that as a material condition of this agreement, Lessee shall cause each employer of employees rendering Services on the premises to sign a labor peace agreement with any labor organization which has informed the Agency that it represents or seeks to represent such employees, unless the Alameda Labor Council advises that such labor organization is not actively organizing in such industry.	In order to protect the City's proprietary interest in prompt completion of construction, Developer and Billboard Tenant shall use commercially reasonable efforts, prior to commencement of construction, enter into a PLA with the Alameda County Building Trades Council, which agreement requires 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. Lease Agreement form incorporates the LDDA Community Benefit terms.	For the status of the PLAs, see note in item 6, above.

		<p>A “labor peace agreement” means any written agreement which (a) waives the right of the labor organization and its members to engage in picketing, work stoppages, boycotts, or other economic interference with the Agency’s proprietary interests in the premises for the duration of the Agency’s lease; and (b) provides that any services to be performed by employees of the employer’s tenants, subtenants, contractors, or subcontractors will also be done under agreements containing the same labor peace assurance. “Services” for these purposes means janitorial, security, building and grounds maintenance, warehousing and distribution, industrial, mechanics and truck services, retail, hotel (and any restaurant connected thereto), and grocery sales.</p>		
9	<p>Performance Standards and Reporting</p>	<p>To assist the Agency in assuring that project development is proceeding in a timely manner towards the Agency’s goals, Lessee will be required to submit regular progress reports on satisfaction of various project requirements, including construction progress, financial goals, local hire, employment retention, and small/local business utilization, air quality and environmental health. In the Lease Development & Disposition Agreement (LDDA), the Agency will set goals in each of these areas for each phase of construction and operation of the project.</p>	<p>The Construction Jobs Policies require monthly reporting by contractors and subcontractors.</p> <p>Developer has not agreed to comply with Resolution 84701, which was adopted after the LDDA was executed and amends the Policies to require weekly reporting and authorizes establishing a website which will post the information in real time. However, the Developer has agreed to a real time jobs reporting program and the Development Agreement has been revised to reflect this.</p>	

		The LDDA will stipulate penalties if goals are not met and incentives if goals are exceeded.	The City committed to monitoring air quality during the development of Public Improvements and has required the Manager through the PMA to establish an air quality monitoring program that will include a means for keeping the community informed of the air quality readings.	
10	Workforce Training	Lessee should be prepared to coordinate with local workforce training programs to provide trained workers for both construction and relevant permanent jobs and ensure that programs have resources to advance the Agency's goal of sustainable economic development of surrounding neighborhoods.	<p>City and its Manger shall make commercially reasonable efforts to assist in establishment of a West Oakland Jobs Center.</p> <p>Developer to establish a Community Area Maintenance fee equal to \$0.005/month per leasable square foot of building space and pay annual fee into fund to support the Jobs Center. The annual fee shall increase consistent with the Ground Lease CPI structure.</p> <p>Developer to pay, at time of each building permit application, Jobs/Housing Impact Fee (approximately \$4.50/sf). The LDDA contemplates the potential for this funding to be "redirected" into fund to support West Oakland Jobs Center. In order to accomplish this, the Impact Fee would need to be waived by the City Council and the Developer agree to pay an equivalent amount, which can be used for the Jobs Center. There are currently other funding sources for the Jobs Center, so the Development Agreement does NOT provide for the "redirection" of funds.</p>	<p>The West Oakland Jobs Center has been established.</p> <p>Per the Cooperation Agreement among the City, labor and building trades councils, and community-based organizations, the City established the West Oakland Job Resource Center to connect job seekers with job training, education and other support services.</p> <p>Resolution 84312 approved the budget for the West Oakland Job Resource Center for FY 2013-14 and 2014-15, and appropriated and allocated revenue from the Billboard Franchise and Lease Agreement to the West</p>

			<p>The Construction Jobs Policies support workforce training by setting requirements for use of apprentices for 20% of the project work hours.</p>	<p>Oakland Job Resource Center and related Oakland Army Base community benefits uses, including but not limited to staff supporting the Community Jobs Oversight Commission and conducting monitoring and enforcement activities for the Community Jobs Policies, in an amount not to exceed \$500,000 annually.</p>
11	Community Outreach & Engagement	<p>Lessee is required to create and maintain a program of ongoing communication and collaboration with relevant community stakeholders to ensure that there is community understanding and support for the project.</p>	<p>The City shall use commercially reasonable efforts to negotiate a Cooperation Agreement regarding jobs on the Oakland Army Base with labor organizations and community groups.</p> <p>The City and Developer shall cooperate in an air quality monitoring program during construction of the Public Improvements and Private Improvements.</p> <p>The West Oakland Community Advisory Group (WOCAG) is the official public forum for community members to review actions related to Army Base development and to participate in developing advisory recommendations, including regarding air quality monitoring required by the LDDA.</p>	<p>The Cooperation Agreement has been completed and executed December 2012.</p> <p>On air quality, the public will have 17 days to review and comment on the construction management plans related to air quality for the Army Base project after those plans are drafted. Discussion with community and regulatory stakeholders are ongoing.</p>

12	Community Services & Amenities	Lessee should describe how project will result in creation of community services and amenities such as grocery stores, banks and other retail, community centers or child care centers, on or off-site, to benefit the surrounding neighborhoods.	<p>Developer to pay its fair share contribution to the WOCF [West Oakland Community Fund].</p> <p>Developer to establish a Community Area Maintenance fee equal to \$0.005/month per leasable square foot of building space and pay annual fee into fund to support the Jobs Center.</p>	Project focus shifted to trade and logistics. Community services on-site would conflict with the trade and logistics uses planned for the Army Base. Community services are concentrated on jobs and creation and support of the Jobs Center. Economic development in the community as an outgrowth of the project could encourage services to develop off-site.
13	Relocation of Polluting and Other Hazardous Uses from West Oakland	Lessee should describe plan to relocate polluting and other hazardous uses from the adjacent West Oakland neighborhoods onto the project area, including recycling facilities and trucking activities. Plan should include analysis of how project will decrease or increase communities' exposure to pollution.	Under the LDDA and as part of the Public Improvements, the Manager will provide new utilities to serve the sites identified in the Master Plan for Ancillary Maritime Services (AMS) and recycling facilities.	The AMS (trucking) and recycling facilities are separate developments which will be covered by their own LDDA or purchase and sale agreement.
14	Urban Design Principles & Coherent Development Plan	The design of the project should be coherent, incorporate distinctive, innovative architecture, ensure a mix of uses, and be flexible enough to evolve over time.		Rezoning of the Army Base includes design standards which will ensure coherent, distinctive Army Base development.
16	Green Industries	Project should indicate types, numbers and timing of green businesses and industries to be included in project,		The LDDA project is an integrated mixed use trade and logistics development.

		establish recruitment incentives, and describe potential synergies among industries and how they will interact with whole development.		The LDDA does not include specific requirements for number of "green businesses" that are required to become sublessees. Aligning the City's development with the Port assured more economic benefits than trying to recruit green businesses from scratch.
17	Green, Clean Building	<p>"Green" development principles should be applied which meet or exceed City of Oakland's Green Building Ordinance and related policies, including design, construction, building materials, use of alternative energy sources, resource efficiency, waste stream diversion, communications technology and transportation. Plans to meet these standards, including energy generation and/or savings and details of carbon-neutral program, should be provided.</p> <p>All major facilities constructed on the Project site should achieve energy efficiency levels at least 20% better than Title 24 requirements, and receive certification under the U.S. Green Building Council's LEED program at a minimum of the LEED Silver level. Project plans should demonstrate higher levels of green building achievement, including potential certification of the</p>	<p>City and Developer, in conjunction with both the Public Improvements and the Private Improvements, shall comply with CEQA Standard Conditions of Approval and Mitigation Monitoring and Reporting Program, which measures include compliance with the City's green building requirements, energy efficiency requirements, construction recycling, transportation reduction measures and air quality measures, among others.</p> <p>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</p>	<p>The Army Base project is subject to the City's Green Building Ordinance. Projects that involve the removal of a historic resource are required to achieve LEED Gold certification. A portion of the Army Base project is located on the site of the Army Base Historic District and involves removal of historic buildings. New construction in the Army Base project located in the area of the former Army Base Historic District would be required to be certified LEED Gold. The Green Building Ordinance also contains a provision that allows the City to</p>

	<p>Project as a whole under the LEED for Neighborhood Development rating system and/or achievement of additional credits as prescribed under that rating system and other guiding documents such as the Alameda County Waste Management Authority's Bay-Friendly Landscape Guidelines. A significant portion of the Project's ongoing energy requirements should be met with on-site clean, renewable energy technologies.</p> <p>Infrastructure should be installed to enable all facilities to use recycled grey water as an alternative to potable water for uses not requiring potable water (e.g., sewage conveyance). Systems should be designed to treat 100% of stormwater on site, and to make use of rainwater and/or recycled water on-site where possible. Potable water should not be used for site irrigation.</p> <p>Project should describe anticipated vehicle use associated with operations and should provide strategies for reducing transportation-related impacts and local air pollution.</p> <p>Studies estimating air pollution from proposed uses of the project site, including associated vehicle travel, and of cumulative impact with adjacent Port uses should be performed and analyzed to increase perspective on the potential air quality impacts of project.</p>		<p>reduce the minimum required green building certification if a developer can demonstrate that compliance with the ordinance results in an unreasonable hardship. Developer has indicated the design constraints inherent in the type of warehouses envisioned for the project may present challenges to achieving LEED Gold certification.</p>
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		<p>All roof and pavement surfaces should have a solar reflectivity index in order to minimize the urban heat island effect.</p> <p>In compliance with the City's Construction and Demolition ordinance, 100% of concrete and asphalt and a minimum of 65% of all other materials generated should be targeted for reuse or recycling.</p>		
18	Public, Accessible Open Space at Waterfront	<p>Project should demonstrate plan for publicly-accessible connection – by bicycle, foot, and vehicle – from Central Gateway area to future development of the 16.5-acre shoreline open space mandated by the California State Lands Commission and for coordination with the 15-acre Gateway Park being developed by East Bay Regional Park District to help create a world-class destination and amenity.</p>	<p>The Public Improvements include improvements to Maritime and Burma Road, which connects to the Gateway Park. See 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.")</p>	<p>The project was revised to remove the 16.5 acre shoreline open space, as such use is incompatible with a working waterfront. The California State Lands Commission approved this change in the project. However, the City is working with the Gateway Park Group on a plan to create a world-class park at the foot of the new Bay Bridge. The City is committed to provide safe access for visitors by car, bike or foot to the Gateway park area, which will be operated by the East Bay Regional Park District.</p>

ATTACHMENT B

Documents Pertaining to Job Policies Amendments (October 2012)

- 1. Letter from Barbara J. Parker, City Attorney, to Community and Economic Development Committee (October 23, 2012)*
- 2. City Attorney Revisions to Proposed Jobs Policies Amendments (October 23, 2012)*
- 3. Adopted Jobs Policies Amendments (Resolution No. 84071 C.M.S.; October 30, 2012)*

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 5TH FLOOR • OAKLAND, CALIFORNIA 94612

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City Attorney

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October 23, 2012

CITY COUNCIL
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE
Oakland, California

RE: PROPOSED AMENDMENTS TO ARMY BASE JOBS POLICIES
(10/23/12 CED COMMITTEE- ITEM 9)

Dear Chairperson Brunner and Members of the CED Committee:

At its October 23, 2012 meeting, the Community and Economic Development (CED) Committee will consider a staff report and resolution ("Resolution") regarding proposed changes to the Oakland Army Base Community Jobs Policies ("Jobs Policies"). The City Attorney's Office has submitted a revised report and resolution for this item to clarify the authority the Council has at this juncture in light of the Council's approval of the Lease Disposition and Development Agreement ("LDDA"), including the Jobs Policies in June 2012.¹

In June 2012, the Council passed an ordinance that approved the Army Base LDDA and related documents, including the Jobs Policies. The June 2012 ordinance authorized the City Administrator to (1) make changes consistent with the terms the Council approved and (2) execute the documents without returning to the Council (hereinafter referred to as the "June 2012 Ordinance Approving LDDA and Jobs Policies".)

¹ Section 2.20.080(G) of Oakland's Sunshine Ordinance authorizes the City Attorney to conform documents to comply with technical requirements as to form and legality at anytime. "Nothing in this section [2.20.080 which sets deadlines for revising documents] shall prohibit the Office of the City Attorney from conforming a document to comply with technical requirements as to form and legality."

City Council

October 23, 2012

Re: Proposed Amendments to the Army Base Jobs Policies

Page 2

In July 2012, the CED Committee considered a resolution that would have approved proposed amendments to the Jobs Policies ("July 2012 Resolution" or "July 2012 Resolution Amending Jobs Policies"). The Committee took no action on the July 2012 Resolution Amending Jobs Policies. Instead the Committee directed that staff bring the resolution back to the Committee in the Fall.

On Tuesday, October 9, staff submitted to the City Attorney's Office a new report and resolution providing for the amendments that were in the July 2012 Resolution; the resolution was scheduled for the October 23rd CEO Committee meeting and therefore was due to the City Clerk on Thursday, October 12th. This provided insufficient time for our Office to review and make necessary amendments to the resolution. At the Thursday, October 11 Rules Committee, staff presented a revised title to the resolution. The revised title was necessary because the parties may execute the LDDA, including the Jobs Policies, in accordance with the Council's June 2012 Ordinance Approving the LDDA and Jobs Policies, before the Council considers the July Resolution Amending Jobs Policies. The Rules Committee declined to accept staff's revised title. Instead the Rules Committee directed staff to file the July 2012 Resolution.

As of the date of this letter, the City and the Army Base Developer have completed negotiations regarding the LDDA and related documents, including the Jobs Policies. We anticipate that the parties may execute the LDDA and related documents, including the Jobs Policies before the CED's October 23 meeting or before the next Council meeting.

If the City and the Developer execute the LDDA before the Council considers the proposed amendments to the Jobs Policies, the Developer must consent to any amendments to the LDDA and the related documents which include the Jobs Policies. If the parties do not execute the LDDA before the Council considers the proposed amendments to the Jobs Policies, the Council could direct the City Administrator to include the amendments in the LDDA.

For these reasons, this Office advised staff to amend the title of the Resolution to reflect that the City Administrator would need to obtain the Developer's consent to any amendments to the Jobs Policies if the parties execute the LDDA before the Council considers the amendments. The Rules Committee refused to change the agenda title.

Conclusion

Our Office fully supports and recognizes the importance of local hire requirements. However, this Office cannot approve legislation as to form and legality if the language does not conform to legal requirements. In this case, we have revised the resolution to reflect the legal mandate that the City would need Developer consent to

City Council

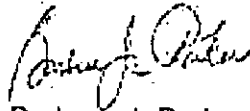
October 23, 2012

Re: Proposed Amendments to the Army Base Jobs Policies

Page 3

any proposed Jobs Policies amendments if the parties execute the LDDA, which includes the Jobs Policies, before the Council considers the amendments.

Very truly yours,



Barbara J. Parker
City Attorney

cc: City Councilmembers
City Administrator

Attorneys assigned:

Dianne Millner, Supervising Deputy City Attorney

Celso Ortiz, Senior Deputy City Attorney

City Attorney revisions

10/23/12

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S. _____

Introduced by Councilmember Desley Brooks

RESOLUTION REGARDING—AMENDING THE OAKLAND ARMY BASE CONSTRUCTION JOBS POLICIES FOR PUBLIC IMPROVEMENTS AND VERTICAL CONSTRUCTION JOBS POLICIES (WHICH ARE ATTACHMENTS TO THE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED DOCUMENTS (“LDDA”) PREVIOUSLY APPROVED BY THE COUNCIL, WHICH WOULD: (1) ESTABLISHING WEEKLY REPORTING REQUIREMENTS FOR CONTRACTORS AND SUB-CONTRACTORS; (2) AUTHORIZING THE ESTABLISHMENT OF A WEBSITE WHICH WILL POST COMPLIANCE INFORMATION IN REAL TIME; (3) MANDATE USE OF THE CITY’S LCE TRACKER PROGRAM; AND (4) ESTABLISHING LIQUIDATED DAMAGES/SANCTIONS ON CONTRACTORS AND SUB-CONTRACTORS FOR NONCOMPLIANCE (COLLECTIVELY THE “JOBS POLICIES AMENDMENTS”) AND

- (A) IF THE LDDA HAS NOT YET BEEN EXECUTED BY THE LDDA PARTIES, DIRECTING THE CITY ADMINISTRATOR TO AMEND THE JOBS POLICIES TO INCLUDE THE JOBS POLICIES AMENDMENTS; AND
- (B) IF THE LDDA HAS BEEN EXECUTED BY THE LDDA PARTIES, AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE WITH THE DEVELOPER TO ACCEPT THE JOBS POLICIES AMENDMENTS AND, IF SUCCESSFUL, TO EXECUTE AN LDDA AMENDMENT INCORPORATING SUCH AMENDMENTS
- WITH OAKLAND’S JOBS POLICY

WHEREAS, On June 19, 2012, the Oakland City Council adopted Ordinance 13131 the Jobs Policies for Public Improvements and Vertical Construction (“Construction Jobs Policies”) under legislation approved June 19, 2012, which authorized the City Administrator to negotiate and execute without returning to the Council several agreements in substantially the form attached to the Ordinance, including a lease disposition and development agreement (which included as an exhibit the Jobs Policies for Public Improvements and Vertical Construction (“Construction Jobs Policies”)), ground leases, a billboard franchise and lease agreement, a property management agreement, and related documents (collectively “LDDA”) with Prologis/CCIG Oakland Global, LLC, 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”); and

WHEREAS, the Construction Jobs Policies govern contracts involving public improvements and vertical construction related to the Project; and

WHEREAS, Certified Payroll Reports (CPR) outline the wages paid to workers employed in government contracted jobs in order to ensure these workers receive fair and reasonable compensation, as determined by the U.S. Department of Labor; and

WHEREAS, the U.S. Department of Labor reviews these certified reports, also known as prevailing wage reports, as part of the federal law stipulated by the Davis-Bacon Act; and

WHEREAS, this act requires documentation of any construction work, including professionals who provide plumbing, electrical work, painting, decorating, HVAC, and drywall on public buildings or public works projects, which includes roads and bridges; and

WHEREAS, companies awarded government contracts must file a weekly Certified Payroll Report with the U.S. Department of Labor for jobs in excess of \$2,000 and which are funded by federal, state, or local government; the most commonly used certified-payroll form is U.S. Department of Labor Form WH-347, and "No Work" reports must also be submitted if work is temporarily suspended for any reason; and

WHEREAS, contractors are governed by state laws relative to the payment of prevailing wage rates and state prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771, workers employed on construction, alteration or demolition projects in California that use public funds are paid the prevailing wage, which is the basic hourly rate the majority of workers in a particular craft or classification earn, and the California Department of Industrial Relations, (Divisions of Labor Statistics and Research) annually determines prevailing wages; and

WHEREAS, the City of Oakland collects Certified Payroll Reports by way of a real-time web-based program, Labor Compliance Program Tracker (LCPTracker) to satisfy Davis-Bacon Act reporting requirements; and

WHEREAS, the City evaluates and determines compliance with prevailing wage laws, the Oakland Apprenticeship and the 50% Local Employment Program; and

WHEREAS, benefits of the LCPTracker system include:

- Construction workers are assured of being paid the correct prevailing wage rates while employed on city funded construction projects;
- Monitoring compliance is made faster and easier using an automated method of entering and reviewing data;
- Allows data entry in a standardized format and the level of accuracy in the data used is increased tremendously;
- Staff time required to analyze data is more efficiently utilized, since paper reporting from contractors is eliminated, and reports can be generated from data quickly and easily;

- Provides a complete audit trail for all affected parties; and

WHEREAS, in its meeting on June 19, 2012, Council requested a report on the existing real-time, web-based monitoring system utilized by the City to conduct real-time assessments of contractor's compliance with Prevailing Wage requirements and the City's resident hiring requirements applied through the 50% Local Employment, and 15% Apprenticeship Programs; and

WHEREAS, in order for the City to provide "real time" compliance monitoring and enforcement with the City's Local Employment Program and 15% Apprenticeship Program resident hiring goals as well as satisfying prevailing wage requirements, the Contracts and Compliance Division of the Office of the City Administrator utilizes the Labor Compliance Program Tracker (LCPtracker); and

WHEREAS, LCPtracker is a web-based labor compliance software for contractor reporting and City monitoring of certified payroll data and the data is validated according to local, state, or federal Davis-Bacon prevailing wage regulations; and

WHEREAS, the City's web-based system allows staff to review and analyze data in "real-time" and reduces the man hours needed to manually review hundreds of certified payroll records for any given project; and

WHEREAS, failure to comply with the jobs policy results in a determination of non-compliance and shortfalls are assessed at one and one half times the base shortfall and shortfalls may be satisfied by employing Oakland residents at one and one half times the shortfall hours or a by payment of liquidated damages to the City in the amount of one and one half times the wages that should have been paid to an affected Oakland resident; now, therefore be it

RESOLVED: The Oakland City Council hereby: (1) if the LDDA has not yet been executed, directs the City Administrator to amend the Construction Jobs Policies; and (2) if the LDDA has been executed, authorizes the City Administrator to negotiate with the Developer and, if the Developer agrees, to execute without returning to Council an LDDA amendment, in both instances (1) or (2), to incorporate the following amendments to the Construction Jobs Policies for Public Improvements and Vertical Construction approved June 19, 2012, as follows:

- Article III, Section D, Damages, p. 4 in the Construction Jobs Policy for Public Improvements – delete the existing language and insert the following in Article IV, Monitoring and Enforcement; and Article IV, Section F.1, Remedies in the Construction Jobs Policy for Vertical Construction – delete the existing language and insert the following:
 1. All contractors and subcontractors are required to submit weekly certified payroll reports or workforce charts through the City's LCPtracker system and format, listing workers by name, residential address, craft, job category, hours worked, sex, and race. These charts will be public records subject to public disclosure.

with redaction of personal/confidential information; the workforce information shall be posted, in real time on a website that the public may view.

- Section H, Employment Projections, Subsection 1, p. 5 – add the following to Subsection 1:

Prime contractor: Within one month of being awarded a contract, the prime contractor shall:

1. Identify the estimated number of job positions to be created by contract;
2. Developer shall work with the unions to specify training needed for entry level and semi-skilled positions by title;
3. Identify the estimated number of apprentices jobs to be created by the contract;
4. Identify the estimated Project Hours needed by trade at each stage of the contract;
5. Information contained in 1 through 5 above shall be forwarded to the Job Center and the City Contract Compliance Office;
6. Said prime contractor shall be required to submit to the Jobs Center and City Contract Compliance Office weekly workforce charts listing workers by name, residential address, craft, job category, hours worked, sex and race;
7. The weekly workforce chart shall be submitted in the format on the attached template; the workforce information shall be posted in real time on a website which the public may view.

- Section H, Employment Projections, p.5 – add the following subsection:

Subsection 2. Subcontractor: Each contractor shall at least one month before commencing performance of any work:

1. Identify the estimated number of job positions to be created by contract;
2. Developer shall work with the unions to specify training needed for entry level and semi-skilled positions by title;
3. Identify the estimated number of apprentices jobs to be created by the contractor;
4. Identify the estimated Project Hours needed by trade at each stage of the contract;
5. Information contained in 1 through 5 above shall be forwarded to the Job Center and the City Contract Compliance Office;
6. Said prime contractor shall be required to submit to the Jobs Center and City Contract Compliance Office weekly workforce charts listing workers by name, residential address, craft, job category, hours worked, sex and race;
7. The weekly workforce chart shall be submitted in the format on the attached template; the workforce information shall be posted in real time on a website which the public may view.

FURTHER RESOLVED: Oakland residents will benefit from the real time monitoring and enforcement.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

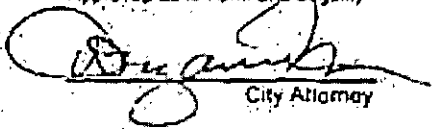
NOES -

ABSENT -

ABSTENTION -

ATTEST:

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California


City Attorney

12 JUL 11 AM 11:40

OAKLAND CITY COUNCIL

RESOLUTION NO. 84071 C.M.S.

Introduced by Councilmember Desley Brooks

RESOLUTION AMENDING THE OAKLAND ARMY BASE CONSTRUCTION JOBS POLICIES FOR PUBLIC IMPROVEMENTS AND VERTICAL CONSTRUCTION; ESTABLISHING WEEKLY REPORTING REQUIREMENTS FOR CONTRACTORS AND SUB-CONTRACTORS; AUTHORIZING THE ESTABLISHMENT OF A WEBSITE WHICH WILL POST COMPLIANCE INFORMATION IN REAL TIME; MANDATE USE OF THE CITY'S LCP TRACKER PROGRAM; AND ESTABLISHING SANCTIONS ON CONTRACTORS AND SUB-CONTRACTORS FOR NONCOMPLIANCE WITH OAKLAND'S JOBS POLICY

WHEREAS, the Oakland City Council adopted the Jobs Policies for Public Improvements and Vertical Construction ("Construction Jobs Policies") under legislation approved June 19, 2012, which authorized several agreements, including a lease disposition and development agreement, ground leases, a billboard franchise and lease agreement, a property management agreement, and related documents (collectively "LDDA") with Prologis GCIG Oakland Global, LLC, 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"); and

WHEREAS, the Construction Jobs Policies govern contracts involving public improvements and vertical construction related to the Project; and

WHEREAS, Certified Payroll Reports (CPR) outline the wages paid to workers employed in government contracted jobs in order to ensure these workers receive fair and reasonable compensation, as determined by the U.S. Department of Labor; and

WHEREAS, the U.S. Department of Labor reviews these certified reports, also known as prevailing wage reports, as part of the federal law stipulated by the Davis-Bacon Act; and

WHEREAS, this act requires documentation of any construction work, including professionals who provide plumbing, electrical work, painting, decorating, HVAC, and drywall on public buildings or public works projects, which includes roads and bridges; and

WHEREAS, companies awarded government contracts must file a weekly Certified Payroll Report with the U.S. Department of Labor for jobs in excess of \$2,000 and which are funded by federal, state, or local government; the most commonly used certified-payroll form is U.S.

Department of Labor Form WH-347, and "No Work" reports must also be submitted if work is temporarily suspended for any reason; and

WHEREAS, contractors are governed by state laws relative to the payment of prevailing wage rates and state prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771; workers employed on construction, alteration or demolition projects in California that use public funds are paid the prevailing wage; which is the basic hourly rate the majority of workers in a particular craft or classification earn, and the California Department of Industrial Relations, (Division of Labor Statistics and Research) annually determines prevailing wages; and

WHEREAS, the City of Oakland collects Certified Payroll Reports by way of a real-time web-based program, Labor Compliance Program Tracker (LCPTracker) to satisfy Davis-Bacon Act reporting requirements; and

WHEREAS, the City evaluates and determines compliance with prevailing wage laws, the Oakland Apprenticeship and the 50% Local Employment Program; and

WHEREAS, benefits of the LCPTracker system include:

- Construction workers are assured of being paid the correct prevailing wage rates while employed on city funded construction projects;
- Monitoring compliance is made faster and easier using an automated method of entering and reviewing data;
- Allows data entry in a standardized format and the level of accuracy in the data used is increased tremendously;
- Staff time required to analyze data is more efficiently utilized, since paper reporting from contractors is eliminated, and reports can be generated from data quickly and easily;
- Provides a complete audit trail for all affected parties; and

WHEREAS, in its meeting on June 19, 2012, Council requested a report on the existing real-time, web-based monitoring system utilized by the City to conduct real time assessments of contractor's compliance with Prevailing Wage requirements and the City's resident hiring requirements applied through the 50% Local Employment and 15% Apprenticeship Programs; and

WHEREAS, in order for the City to provide "real time" compliance monitoring and enforcement with the City's Local Employment Program and 15% Apprenticeship Program resident hiring goals as well as satisfying prevailing wage requirements, the Contracts and Compliance division of the Office of the City Administrator utilizes the Labor Compliance Program Tracker (LCPTracker); and

WHEREAS, LCPTracker is a web-based labor compliance software for contractor reporting and City monitoring of certified payroll data and the data is validated according to local, state, or federal Davis-Bacon prevailing wage regulations; and

WHEREAS, the City's web-based system allows staff to review and analyze data in "real-time" and reduces the man hours needed to manually review hundreds of certified payroll records for any given project; and

WHEREAS, failure to comply with the jobs policy results in a determination of non-compliance and shortfalls are assessed at one and one half times the base shortfall and shortfalls may be satisfied by employing Oakland residents at one and one half times the shortfall hours or a by payment of a penalty in the amount of one and one half times the wages that should have been paid to an affected Oakland resident; now, therefore, let it

RESOLVED: The Oakland City Council hereby amends the Construction Jobs Policies for Public Improvements and Vertical Construction approved June 19, 2012, as follows:

- Article III, Section D, Damages, p. 4 in the Construction Jobs Policy for Public Improvements – delete the existing language and insert the following in Article IV, Monitoring and Enforcement; and Article IV, Section F.1, Remedies in the Construction Jobs Policy for Vertical Construction -- delete the existing language and insert the following:
 1. All contractors and subcontractors are required to submit weekly certified payroll reports or workforce charts through the City's LCPTracker system and format, listing workers by name, residential address, craft, job category, hours worked, sex and race. These charts will be public records subject to public disclosure, with redaction of personal/confidential information; the workforce information shall be posted, in real time on a website that the public may view.
 2. ~~The City is a third-party beneficiary of the jobs policy and developer, prime contractors and subcontractors shall include such provisions in their contracts with prime and sub-contractors. The City shall have the power by means of these third-party contract provisions to impose sanctions on the developer(s), prime contractors and subcontractors found to be in non-compliance with the Jobs Policy. Such sanctions shall include, but not be limited to: i) suspension of payments, ii) termination of the contract, iii) recovery by the city of the contract award price as liquidated damages, and iv) debarment (denial of the right to participate in future City projects) for a period of years as determined by proceeding under the Oakland Debarment Ordinance (OMC Chapter 2.12).~~
- Section H, Employment Projections, Subsection 1, p. 5 – add the following to Subsection 1:

Prime contractor: Within one month of being awarded a contract, the prime contractor shall:

 1. Identify the estimated number of job positions to be created by contract;
 2. Developer shall work with the unions to specify training needed for entry level and semi-skilled positions by title;

3. Identify the estimated number of apprentices jobs to be created by the contract;
4. Identify the estimated Project Hours needed by trade at each stage of the contract;
5. Information contained in 1 through 5 above shall be forwarded to the Job Center and the City Contract Compliance Office;
6. Said prime contractor shall be required to submit to the Jobs Center and City Contract Compliance Office weekly workforce charts listing workers by name, residential address, craft, job category, hours worked, sex and race;
7. The weekly workforce chart shall be submitted in the format on the attached template; the workforce information shall be posted in real time on a website which the public may view.

- Section H: Employment Projections, p.5 – add the following subsection:

Subsection 2. Subcontractor: Each contractor shall at least one month before commencing performance of any work:

1. Identify the estimated number of job positions to be created by contract;
2. Developer shall work with the unions to specify training needed for entry level and semi-skilled positions by title;
3. Identify the estimated number of apprentices jobs to be created by the contract;
4. Identify the estimated Project Hours needed by trade at each stage of the contract;
5. Information contained in 1 through 5 above shall be forwarded to the Job Center and the City Contract Compliance Office;
6. Said prime contractor shall be required to submit to the Jobs Center and City Contract Compliance Office weekly workforce charts listing workers by name, residential address, craft, job category, hours worked, sex and race;
7. The weekly workforce chart shall be submitted in the format on the attached template; the workforce information shall be posted in real time on a website which the public may view.

FURTHER RESOLVED: Oakland residents will benefit from the real-time monitoring and enforcement.

IN COUNCIL, OAKLAND, CALIFORNIA

00T 3 0 2012

PASSED BY THE FOLLOWING VOTE:

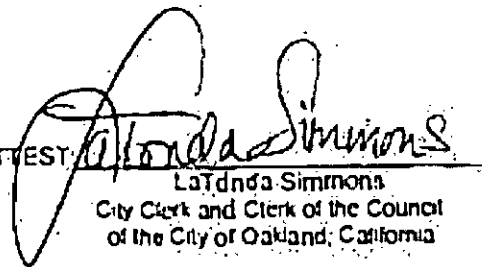
AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:


 LaTonia Simmons
 City Clerk and Clerk of the Council
 of the City of Oakland, California

ATTACHMENT C

*Memorandum to Oakland City Council from Marc Stice, Esq.
Re: Agenda Item 9.8: Proposed Clarification to Standard Conditions of Approval and Mitigation
Monitoring and Reporting Program Mitigation Measure 4.4-3 (6/4/13)*

Memo

Prologis CCIG Oakland Global, LLC

To: Oakland City Council
From: Marc Stice, Esq.
cc: Mark Wald, Esq.
Date: 6/4/2013
Re: Agenda Item 9.8: Proposed Clarification to Standard Conditions of Approval and Mitigation Monitoring and Reporting Program Mitigation Measure 4.4-3

Based on communications between the Developer and City staff in connection with the implementation of the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program ("SCA/MMRP") for the Oakland Army Base Redevelopment Project ("OARB Project"), the Developer and staff agree that it is appropriate to clarify the allocation of certain responsibilities associated with Mitigation Measure 4.4-3 (Emissions Reduction for Rail & Maritime Operations), which currently references action only by the Port of Oakland.

The Developer proposes the following clarification and technical correction to Mitigation Measure 4.4-3 (pages 4-5 of the SCA/MMRP): that the existing Mitigation Measure 4.4-3 be retained and renumbered 4.4-3a (and continue to apply to the Port of Oakland) and that the attached language be added as new Mitigation Measure 4.4-3b (and apply to the West Gateway Ground Lessee).

We would appreciate it if any action taken by the Council this evening could include these technical edits.

We are available during the hearing to address any questions or comments regarding this request.

WEST GATEWAY RAIL AND MARITIME EMISSIONS REDUCTION PROGRAM

Mitigation 4.4-3b: The ground lessee of the West Gateway and the Railroad Right of Way ("WG Ground Lessee") shall develop, for City review and approval, a criteria pollutant reduction program aimed at reducing or off-setting emissions from its rail-related and maritime-related operations, to the extent feasible, to less than significant levels, consistent with applicable federal, state and local air quality standards. The WG Ground Lessee shall implement the approved program and shall periodically review and update the program every one to three years, concurrently with the update of the Bay Area Clean Air Plan.

The review and update shall include, and not be limited to, assessment of potential new reduction strategies based on then-available technologies; funding requirements; technical feasibility; economic feasibility and cost benefit analysis. The updates shall be submitted to the City for its review and approval. The WG Ground Lessee shall implement the City-approved, updated program.

The program shall give priority to emission reduction strategies that address PM₁₀ 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 and shall define measurable reduction goals within specific time periods. Strategies that shall be included in the program may include without limitation:

- Requiring rail terminal operators to use switch engines 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 WG Ground Lessee to exchange information with the goal of investigating options to accelerate compliance with Tier 0, 1 and 2 requirements of the federal regulations.
- Encourage ships to implement source control technologies when in the West Gateway area (such as reduced hoteling).
- Working with tugboat operators to implement emission reduction control measures or to replace tugboat engines to low NO_x technology.

ATTACHMENT D

Mitigation Measure 4.3-10 (Parking Study): Recommended to be Included in the Revised Standard Conditions of Approval and Mitigation Monitoring and Reporting Program

Oakland Army Base Project
Mitigation Measure 4.3-10 (Parking Study)

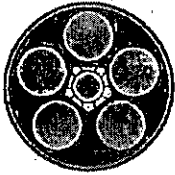
Mitigation Measure 4.3-10 is recommended to be added to the Standard Conditions of Approval and Mitigation and Monitoring Program (SCA/MMRP) for the Army Base project. Recommended revisions to the text of the 2002 mitigation are shown below (added text is underlined and deleted text is struck-out) in order to update the language of the mitigation to reflect the current SCA/MMRP.

Mitigation 4.3-10: The number of parking spaces provided in the project area shall comply with City Code or Port requirements, and/or with recommendations of a developer funded parking demand analysis.

Through project review, the City and/or Port shall ensure an adequate supply of parking spaces will be provided. Major redevelopment project area developers shall fund on a fair share basis a project area-wide, or potentially a sub-area specific parking demand study that shall take into consideration the TDM programs and policies developed through ~~Mitigation Measure 4.3-4~~ the Standard Conditions of Approval and Mitigation and Monitoring Program.

ATTACHMENT E

Letter from Mark McClure, California Capital & Investment Group Re: Development Agreement; Community Benefits/Jobs Policy (June 25, 2013)



CALIFORNIA
CAPITAL & INVESTMENT
GROUP

CALIFORNIAGROUP.COM

June 25, 2013

*Via First Class Mail and Electronic
Mail [fblackwell@oaklandnet.com]*

Mr. Fred Blackwell
Assistant City Administrator
City of Oakland
1 Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612

Re: Proposed Development Agreement

Dear Mr. Blackwell:

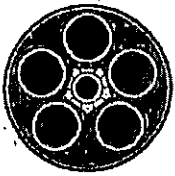
The purpose of this letter is to follow up on comments regarding the proposed Development Agreement made by the City Council at the June 4, 2013, City Council hearing. Prologis CCIG Oakland Global, LLC ("Developer") has reviewed the comments and City staff's proposed changes to the draft document resulting from such comments and I am pleased to report that we have reached agreement on all of the proposed changes with the exception of one as set forth below. And even with respect to this one exception, I believe that the proposal set forth in this letter, which would require weekly reporting for compliance with the Public Improvements Jobs Policy, accomplishes the primary goal of the Council's request.

The exception relates to the Council's request to re-open the negotiations on the Community Benefits to include the changes to the Construction Jobs Policies for Public Improvements and Vertical Improvements proposed by the City Council in the Oakland City Council Resolution No. 84071 and dated October 30, 2012 (copy enclosed). The proposed changes include weekly reporting through the City's LCP Tracker system and additional requirements that the Developer work with the unions regarding training specifications.

As previously expressed to the Council, Developer believes that the Community Benefits package incorporated into the LDDA and the related agreements was negotiated as an entire package with a myriad of stakeholder groups in good faith, over a long period of time and, from the Developer's standpoint, in a manner that balanced the City's policy goals for the project against the economic and market realities of the proposed project. As such, Developer is not prepared to line item negotiate on a specific component of the previously agreed upon Community Benefits package.

CALIFORNIA CAPITAL & INVESTMENT GROUP

THE ROTUNDA BUILDING, 300 FRANK OGAWA PLAZA, SUITE 340, OAKLAND, CA 94612 OFFICE 510.268.8500 FACSIMILE 510.225.3954

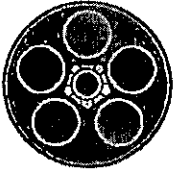


That said, Developer offers the following observations regarding the proposed changes:

1. The weekly reporting of employee and wage information was presented as an item that did not add any additional requirements for the contractors because they were already required to utilize the LCP Tracker reporting due to the prevailing wage requirements associated with the project. This is only true with respect to the Public Improvements project as the Vertical Improvements project is not subject to a prevailing wage requirement. The Developer supports a weekly reporting requirement for the Public Improvements so long as it accurately reports the contractors' efforts and compliance with the requirements of the applicable Jobs Policy. The concern with LCP Tracker is that it only tracks job hours worked and not the referral request and hiring process requirements of the applicable policy. Further, after meeting with City staff to review the capabilities of the LCP Tracker program, the program did not appear to have all of the reporting capabilities discussed in the various staff reports and did not track the contractors' hiring efforts. As such, California Capital & Investment Group, Inc. (the City's Manager under the Property Management Agreement) ("CCIG"), has developed a website for real time reporting that may be utilized by City staff, contractors, the jobs center and applicants to fully participate in and track the implementation of the Public Improvements Jobs policy. CCIG has reviewed this website with City staff and believes that there is agreement that it provides real time reporting capabilities that are superior to the LCP Tracker program and that it tracks more of the information related to compliance with the Jobs Policy. Therefore, if the City is willing to utilize this website for reporting and tracking compliance, Developer and CCIG are willing to amend the Public Improvements Jobs policy to incorporate weekly reporting by the contractors and subcontractors.
2. The proposed language for contractor and subcontractor employment projections is substantially the same as the existing language in Section III(G)(1) and (2) of the Public Improvements Policy and Section III(H)(1) and (2) of the Vertical Improvements Policy, with the material differences being requirements in item (2) of the proposed language that the Developer work with the unions to specify required training and in items (6) and (7) of the proposed language that the (sub)contractors provide weekly workforce reporting on a required form (redundant with the proposed LCP Tracker requirement). The LCP Tracker proposal is discussed above. Developer objects to the requirement to work with the unions on specified training because this function should be adequately addressed and fulfilled by the Jobs Center, funded in part by the Developer's payments into the West Oakland Community Fund required by the LDDA. Developer further notes that it is not involved in the implementation of the Public Improvements Jobs Policy and therefore should not have any requirements related to such policy.

CALIFORNIA CAPITAL & INVESTMENT GROUP

THE ROTUNDA BUILDING, 300 FRANK OAWA PLAZA, SUITE 340, OAKLAND, CA 94612 OFFICE 510.268.8500 FACSIMILE 510.225.3954



Developer believes that if the City agrees to use the improved website for weekly reporting under the Public Improvements Jobs Policy, the majority of the goals set forth in the City Council Resolution will be met (as the others are met by the existing language or the role played by the Jobs Center).

Please do not hesitate to contact me regarding the matters addressed by this letter or the proposed changes to the draft Development Agreement.

Sincerely,

A handwritten signature in cursive script that reads "Mark McClure". A horizontal line is drawn through the end of the signature.

Mark McClure

cc: Mark Wald, Esq.
Phil Tagami
Mark Hansen
Tom Martin
Marc Stice, Esq.

REVISED

REVISIONS SHOWN IN UNDERLINE AND STRIKE-OUT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

REVISED JUNE 24, 2013
APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____

2013 JUN 27 PM 5:45

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, AMENDING THE OAKLAND PLANNING CODE TO CREATE THE GATEWAY INDUSTRIAL DISTRICT (D-GI) ZONE, AND MAKE CONFORMING CHANGES TO OTHER PLANNING CODE SECTIONS AND THE OAKLAND ZONING MAP TO APPLY THE D-GI ZONE TO APPROXIMATELY 160 ACRES IN THE GATEWAY DEVELOPMENT AREA OF THE FORMER OAKLAND ARMY BASE

WHEREAS, on June 12, 2012, the Oakland City Council, via Resolution No. 83930 C.M.S., approved the amended Oakland Army Base (GARB) Reuse Plan (Master Plan), including adopting the 2012 OARB Initial Study/Addendum, making related California Environmental Quality Act (CEQA) findings, and adopting the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP); and

WHEREAS, the Gateway Development Area encompasses approximately 160 acres of the GARB and is comprised of the North Gateway area, West Gateway area, Central Gateway area, East Gateway area, and ancillary maritime services (AMS) site; and

WHEREAS, the Master Plan involves the removal of all buildings in the Gateway Development Area and the redevelopment of the site with new warehousing, recycling, maritime support, trucking-related, office, research and development, and rail-related activities (Project);

WHEREAS, on January 18, 2013, CASS, Inc., and California Waste Solutions, Inc., each submitted an application to amend the zoning in order to permit proposed recycling activities in the North Gateway area consistent with the Master Plan; and

WHEREAS, on March 19, 2013, Prologis CCIG Oakland Global, LLC, submitted an application to amend the zoning in order to permit warehousing, maritime support, and rail-related activities in the West Gateway, Central Gateway, and East Gateway areas consistent with the Master Plan; and

WHEREAS, trucking-related activities are planned for the AMS site consistent with the Master Plan; and

WHEREAS, a new zoning district called the Gateway Industrial District (D-GI) zone has been created to be applied to the Gateway Development Area (Rezoning), which is intended to implement the Master Plan by permitting land uses consistent with the Master Plan; and

WHEREAS, the Rezoning requires new development to comply with design standards to ensure that the design of new development is high quality; and

WHEREAS, the Rezoning is consistent with the Oakland General Plan; and

WHEREAS, the Landmarks Preservation Advisory Board held a duly noticed public hearing on the proposed Rezoning, as well as other planning matters, on April 8, 2013; and

WHEREAS, the City Planning Commission held a duly noticed public hearing on the proposed Rezoning, as well as other related planning matters, on May 1, 2013, and at the close of the hearing recommended approval of the Rezoning to the City Council; and

WHEREAS, the Community and Economic Development Committee held a duly noticed meeting on May 28, 2013, to consider the Rezoning, as well as other related planning matters, and recommended approval of such to the City Council; and

WHEREAS, the City Council held a duly noticed public hearings on the Rezoning, as well as other related planning matters, on June 4, 2013, and July 2, 2013; 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 Rezoning, the City Council finds and determines that it can continue to rely on the previously adopted 2012 GARB Initial Study/Addendum for the reasons stated in the June 12, 2012, and May 28, 2013, City Council Agenda Reports and related attachments/exhibits. The (Final and Corrected) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, dated October 15, 2012, is also hereby reaffirmed/readopted, including the clarifying corrections discussed at the June 4, 2013, City Council hearing (Mitigation Measure 4.4-3b) and in the Agenda Report for the July 2, 2013, City Council meeting (Mitigation Measure 4.3-10).

Section 2. 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 3. Title 17 of the Oakland Planning Code is hereby amended to (a) create the new D-GI zone for the Gateway Development Area and (b) make related text amendments to the Oakland Planning Code; as detailed in Exhibit A, attached hereto and hereby incorporated by reference.

Section 4. The City Council hereby authorizes staff to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors) prior to formal publication of the amendments in the Oakland Planning Code.

Section 5. The Oakland Zoning Map is hereby amended to map the new D-GI zone as indicated

in Exhibit B, attached hereto and hereby incorporated herein by reference.

Section 6. The recitals set forth above are true and correct and are an integral part of this Ordinance.

Section 7. The City Council finds and determines the following:

a) The Project is consistent with the General Plan and all applicable planning and zoning enactments; and

c) The Rezoning is desirable in order to facilitate the successful Project implementation; and

d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs and the catalytic effect the project will have on revitalizing the surrounding neighborhood, which will result in increased property values in the surrounding area and an increase in the viability of existing businesses; and

e) The existing zoning for the Gateway Development Area is inadequate and contrary to public interest and that the public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Rezoning.

Section 8. Except as specifically set forth herein, this Ordinance suspends and supersedes all conflicting resolutions, ordinances, plans, codes, laws and regulations.

Section 9. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of this Ordinance or its application to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Ordinance or the application of this Ordinance to other situations shall remain in full force and effect.

Section 10. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the applications, including all accompanying maps and papers;
2. all relevant plans and maps;
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, Landmarks Preservation Advisory Board, Planning Commission, and City Council before and during the public hearings on the application; and
5. 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) the Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations.

Section 11. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the Office of Neighborhood Investment, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland; (b) the Planning and Building Department, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland.

Section 12. Pursuant to section 216 of the City Charter, this Ordinance is effective as of the date it is adopted if passed by an affirmative vote of at least six council members; otherwise, it is effective seven days after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

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

DATE OF ATTESTATION: _____

REVISED

FILED
OFFICE OF THE CITY CLERK
INTRODUCED BY COUNCILMEMBER

2013 JUN 27 PM 5:45

REVISED JUNE 24, 2013
APPROVED AS TO FORM AND LEGALITY

Mark P. Wald

City Attorney

OAKLAND CITY COUNCIL

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WHEREAS, the Rezoning requires new development to comply with design standards to ensure that the design of new development is high quality; and

WHEREAS, the Rezoning is consistent with the Oakland General Plan; and

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WHEREAS, the City Planning Commission held a duly noticed public hearing on the proposed Rezoning, as well as other related planning matters, on May 1, 2013, and at the close of the hearing recommended approval of the Rezoning to the City Council; and

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WHEREAS, the City Council held duly noticed public hearings on the Rezoning, as well as other related planning matters, on June 4, 2013, and July 2, 2013; now therefore

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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 Rezoning, the City Council finds and determines that it can continue to rely on the previously adopted 2012 OARB Initial Study/Addendum for the reasons stated in the June 12, 2012, and May 28, 2013, City Council Agenda Reports and related attachments/exhibits. The (Final and Corrected) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, dated October 15, 2012, is also hereby reaffirmed/readopted, including the clarifying corrections discussed at the June 4, 2013, City Council hearing (Mitigation Measure 4.4-3b) and in the Agenda Report for the July 2, 2013, City Council meeting (Mitigation Measure 4.3-10).

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Section 3. Title 17 of the Oakland Planning Code is hereby amended to (a) create the new D-GI zone for the Gateway Development Area and (b) make related text amendments to the Oakland Planning Code; as detailed in Exhibit A, attached hereto and hereby incorporated by reference.

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Section 5. The Oakland Zoning Map is hereby amended to map the new D-GI zone as indicated

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Section 6. The recitals set forth above are true and correct and are an integral part of this Ordinance.

Section 7. The City Council finds and determines the following:

a) The Project is consistent with the General Plan and all applicable planning and zoning enactments; and

c) The Rezoning is desirable in order to facilitate the successful Project implementation; and

d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs and the catalytic effect the project will have on revitalizing the surrounding neighborhood, which will result in increased property values in the surrounding area and an increase in the viability of existing businesses; and

e) The existing zoning for the Gateway Development Area is inadequate and contrary to public interest and that the public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Rezoning.

Section 8. Except as specifically set forth herein, this Ordinance suspends and supersedes all conflicting resolutions, ordinances, plans, codes, laws and regulations.

Section 9. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of this Ordinance or its application to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Ordinance or the application of this Ordinance to other situations shall remain in full force and effect.

Section 10. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the applications, including all accompanying maps and papers;
2. all relevant plans and maps;
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, Landmarks Preservation Advisory Board, Planning Commission, and City Council before and during the public hearings on the application; and
5. 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) the Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations.

Section 11. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the Office of Neighborhood Investment, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland; (b) the Planning and Building Department, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland.

Section 12. Pursuant to section 216 of the City Charter, this Ordinance is effective as of the date it is adopted if passed by an affirmative vote of at least six council members; otherwise, it is effective seven days after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

mtw

[NOTE: TEXT BELOW REPRESENTS A NEW CHAPTER IN TITLE 17, OAKLAND PLANNING CODE.]

Chapter 17.101F - D-GI GATEWAY INDUSTRIAL DISTRICT ZONE REGULATIONS

Sections:

- 17.101F.010 - Title, intent, and description.
- 17.101F.020 - Required master plan conformance.
- 17.101F.030 - Permitted and conditionally permitted activities.
- 17.101F.040 - Permitted and conditionally permitted facilities.
- 17.101F.050 - Property development standards.
- 17.101F.060 - Design standards.
- 17.101F.070 - Demolition.
- 17.101F.080 - Other zoning provisions.

17.101F.010 - Title, intent, and description.

The provisions of this Chapter shall be known as the Gateway Industrial District (D-GI) Zone Regulations. The intent of the D-GI zone is to facilitate implementation of the Oakland Army Base Reuse Plan.

17.101F.020 - Required master plan conformance.

All development shall be in substantial conformance with the approved Oakland Army Base Reuse Plan, as amended, and adopted Standard Conditions of Approval and Mitigation Measures, as applicable.

17.101F.030 - Permitted and conditionally permitted activities.

Table 17.101F.01 lists the permitted, conditionally permitted, and prohibited activities in the D-GI zone. The descriptions of these activities are contained in Chapter 17.10. Section 17.10.040 contains permitted accessory activities.

"P" designates permitted activities in the zone.

"C" designates activities that are permitted only upon the granting of a Conditional Use Permit (CUP) in the corresponding zone (see Chapter 17.134 for the CUP procedure).

"L" designates activities subject to certain limitations or notes listed at the bottom of the table.

"—" designates activities that are prohibited except as accessory activities according to the regulations contained in Section 17.010.040.

Table 17.101F.01: Permitted and Conditionally Permitted Activities

Activities	Zone	Additional Regulations
	D-GI	
Residential Activities		
Permanent	—	
Residential Care	—	
Service-Enriched Permanent Housing	—	
Transitional Housing	—	
Emergency Shelter	—	
Semi-Transient	—	
Bed and Breakfast	—	
Civic Activities		
Essential Service	P(L1)	
Limited Child-Care Activities	—	
Community Assembly	P(L2)(L3)	
Recreational Assembly	—	
Community Education	—	
Nonassembly Cultural	P(L4)	
Administrative	P	
Health Care	—	
Special Health Care	—	
Utility and Vehicular	P(L2)	
Extensive Impact	P(L2)	
Commercial Activities		
General Food Sales	P	
Full Service Restaurants	P	
Limited Service Restaurant and Cafe	P	
Fast-Food Restaurant	C	17.102.210 and 8.09
Convenience Market	P(L5)	17.102.210
Alcoholic Beverage Sales	C	17.102.210 and 17.102.040
Mechanical or Electronic Games	—	
Medical Service	P(L2)	
General Retail Sales	P(L2)	
Large-Scale Combined Retail and Grocery Sales	—	
Consumer Service	P(L2)	
Consultative and Financial Service	P	
Check Cashier and Check Cashing	—	
Consumer Cleaning and Repair Service	—	
Consumer Dry Cleaning Plant	—	
Group Assembly	P(L2)(L6)	

Personal Instruction and Improvement Services	P(L2)(L6)	
Administrative	P	
Business, Communication, and Media Services	P	
Broadcasting and Recording Services	P	
Research Service	P	
General Wholesale Sales	P	
Transient Habitation	—	
Wholesale and Professional Building Material Sales	P	
Automobile and Other Light Vehicle Sales and Rental	P(L2)	
Automobile and Other Light Vehicle Gas Station and Servicing	P	
Automobile and Other Light Vehicle Repair and Cleaning	P	
Taxi and Light Fleet-Based Services	P	
Automotive Fee Parking	P	
Animal Boarding	—	
Animal Care	—	
Undertaking Service	—	
Industrial Activities		
Custom Manufacturing	P	
Light Manufacturing	P	
General Manufacturing	P	
Heavy/High Impact	C	
Research and Development	P	
Construction Operations	P(L2)	
Warehousing, Storage, and Distribution		
A. General Warehousing, Storage and Distribution	P	
B. General Outdoor Storage	P	
C. Self-or Mini Storage	P	
D. Container Storage	P	
E. Salvage/Junk Yards	—	
Regional Freight Transportation		
A. Seaport	P	
B. Rail Yard	P	
Trucking and Truck-Related		
A. Freight/Truck Terminal	P	
B. Truck Yard	P	
C. Truck Weigh Stations	P	
D. Truck and Other Heavy Vehicle Sales, Rental, and Leasing	P	
E. Truck and Other Heavy Vehicle Service, Repair, and Refueling	P	
Recycling and Waste-Related		
A. Satellite Recycling Collection Centers	P	
B. Primary Recycling Collection Centers	P(L7)	17.73.035
Hazardous Materials Production, Storage, and Waste Management		

A. Small Scale Transfer and Storage	C	
B. Industrial Transfer/Storage	C	
C. Residuals Repositories	C	
D. Oil and Gas Storage	C	
Agriculture and Extractive Activities		
Plant nursery	—	
Crop and animal raising	—	
Mining and Quarrying	—	
Accessory off-street parking serving prohibited activities	C	17.102.100
Additional activities that are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof	C	17.102.110

Limitations on Table 17.101F.01:

- L1.** Community gardens and botanical gardens are prohibited.
- L2.** These activities are limited to establishments that support or are associated with trucking, warehousing, or maritime-related activities.
- L3.** Community Assembly Activities are limited to public and private nonprofit clubs, lodges, and meeting halls.
- L4.** Nonassembly Cultural Activities are limited to museums and commemorative exhibits pertaining to trucking, warehousing, or maritime-related activities or the history of the site.
- L5.** Convenience Markets are limited to establishments located on the same lot as an Automobile and Other Light Vehicle Gas Station and Servicing Activity or a Truck and Other Heavy Vehicle Service, Repair, and Refueling Activity.
- L6.** Group Assembly Activities and Personal Instruction and Improvement Services Activities are limited to instructional services.
- L7.** Primary Recycling Collection Centers shall comply with the performance standards set forth in Section 17.73.035.

17.101F.040 - Permitted and conditionally permitted facilities.

Table 17.101F.02 lists the permitted, conditionally permitted, and prohibited facilities in the D-GI zone. The descriptions of these facilities are contained in Chapter 17.10.

"P" designates permitted facilities in the corresponding zone.

"C" designates facilities that are permitted only upon the granting of a Conditional Use Permit (CUP) in the corresponding zone (see Chapter 17.134 for the CUP procedure).

"L" designates facilities subject to certain limitations listed at the bottom of the Table.

"—" designates facilities that are prohibited.

Table 17.101F.02: Permitted and Conditionally Permitted Facilities

Facilities	Zone	Additional Regulations
	D-GI	
Residential Facilities		

One-Family Dwelling	—	
One-Family Dwelling with Secondary Unit	—	
Two-Family Dwelling	—	
Multifamily Dwelling	—	
Rooming House	—	
Mobile Home	—	
Nonresidential Facilities		
Enclosed Nonresidential	P	
Open Nonresidential	P	
Drive-In	P	
Sidewalk Cafe	P	17.102.335
Shopping Center	—	
Drive-Through	P/C(L1)	
Telecommunications Facilities		
Micro Telecommunications	P	17.128
Mini Telecommunications	P	17.128
Macro Telecommunications	P	17.128
Monopole Telecommunications	P	17.128
Tower Telecommunications	P	17.128
Sign Facilities		
Residential Signs	—	
Special Signs	P	17.104
Development Signs	P	17.104
Realty Signs	P	17.104
Civic Signs	P	17.104
Business Signs	P	17.104
Advertising Signs	P(L2)	17.104

Limitations for Table 17.101F.02:

L1. Drive-Through Facilities associated with a Fast Food Restaurant are only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the Conditional Use Permit procedure). All other Drive-Through Facilities are permitted.

L2. Advertising Signs are limited to signs permitted pursuant to an agreement authorized by the Oakland City Council.

17.101F.050 - Property development standards.

Table 17.101F.03 below prescribes development standards specific to the D-GI Zone. The number designations in the "Additional Regulations" column refer to the regulations listed at the end of the Table.

Table 17.101F.03: Property Development Standards

Development Standards	D-GI zone	Additional Regulations
Minimum Lot Dimensions		
Width mean	25 ft	1
Frontage	25 ft	1
Lot area	5,000 sf	1
Maximum Building Height	65 ft	2, 3
Minimum Setbacks		
Minimum front	None	
Minimum interior side	None	
Minimum street side	None	
Rear	None	
Maximum Floor-Area Ratio (FAR)	5.0	4
Minimum Required Parking	See Chapter 17.116 for automobile parking and Chapter 17.117 for bicycle parking	

Additional Regulations for Table 17.101F.03:

1. See Sections 17.106.010 and 17.106.020 for exceptions to lot area, width mean, and street frontage regulations.
2. See Section 17.108.030 for allowed projections above height limits.
3. The maximum permitted building height does not apply to equipment, storage areas, or Advertising Signs. The maximum permitted building height may be exceeded upon the granting of a Conditional Use Permit (see Chapter 17.134 for the Conditional Use Permit procedure).
4. The maximum permitted floor-area ratio may be exceeded upon the granting of a Conditional Use Permit (see Chapter 17.134 for the Conditional Use Permit procedure).

17.101F.060 - Design standards.

All development shall comply with the design standards for the D-GI Zone adopted by the City Planning Commission, as amended.

17.101F.070 - Demolition.

The requirement in Section 15.36.070 pertaining to the demolition of structures prior to the issuance of a building permit to construct a replacement structure shall not apply in the D-GI Zone.

17.101F.080 - Other zoning provisions.

Except as expressly provided, all other provisions of the Oakland Municipal Code shall apply in the D-GI Zone, including but not limited to the provisions listed below.

- A. General Provisions. The general exceptions and other regulations set forth in Chapters 17.102, 17.104, 17.106, and 17.108 shall apply in the D-GI Zone.

- B. **Buffering Regulations.** The requirements of the buffering regulations in Chapter 17.110 shall apply in the D-GI Zone.
- C. **Nonconforming Uses.** Nonconforming uses and changes therein shall be subject to the nonconforming use regulations in Chapter 17.114.
- D. **Parking and Loading.** Off-street parking and loading shall be provided as prescribed in the off-street parking and loading requirements in Chapter 17.116.
- E. **Bicycle Parking.** Bicycle parking shall be provided as prescribed in the bicycle parking requirements in Chapter 17.117.
- F. **Recycling Space Allocation Requirements.** The recycling space allocation requirements in Chapter 17.118 shall apply in the D-GI Zone.
- G. **Performance Standards.** The performance standards in Chapter 17.120 shall apply in the D-GI Zone.
- H. **Landscaping and Screening Standards.** The landscaping and screening standards in Chapter 17.124 shall apply in the D-GI Zone.

Oakland Army Base Rezoning: Map of Proposed Zoning

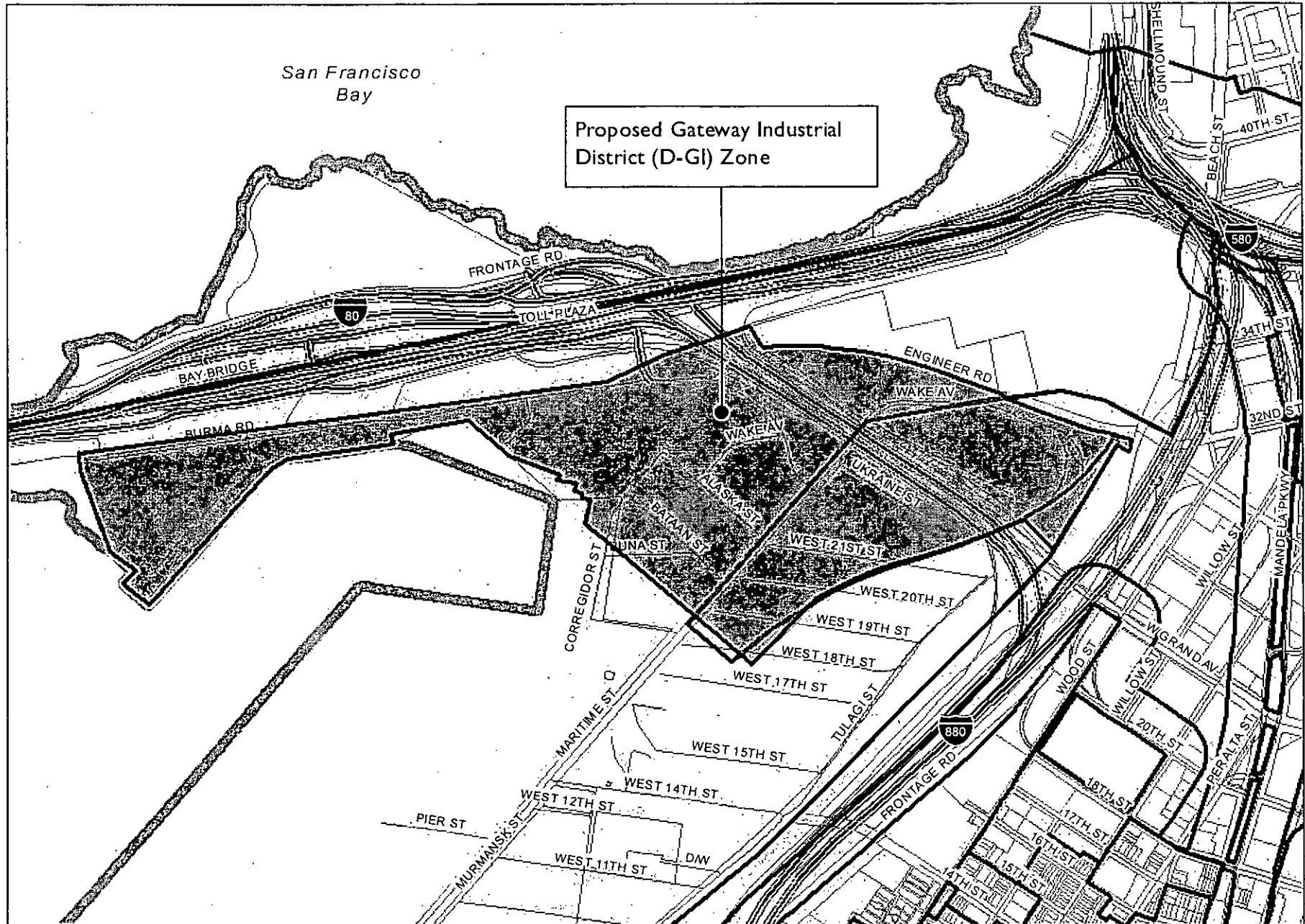


EXHIBIT B

1/10/10

REVISED

INTRODUCED BY COUNCILMEMBER

FILED
OFFICE OF THE CITY CLERK
OAKLANDREVISED JUNE 24, 2013
APPROVED AS TO FORM AND LEGALITY

City Attorney

2013 JUN 27 PM 5:46
OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, AUTHORIZING THE CITY ADMINISTRATOR TO ~~NEGOTIATE—AND—EXECUTE~~ A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND PROLOGIS CCIG OAKLAND GLOBAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR THE DEVELOPMENT ON APPROXIMATELY 160 ACRES IN THE GATEWAY DEVELOPMENT AREA OF THE FORMER OAKLAND ARMY BASE TO BE IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED DOCUMENTS, WITHOUT RETURNING TO CITY COUNCIL

WHEREAS, on June 12, 2012, the Oakland City Council, via Resolution No. 83930 C.M.S., approved the amended Oakland Army Base (OARB) Reuse Plan (Master Plan), including adopting the 2012 OARB Initial Study/Addendum, making related California Environmental Quality Act (CEQA) findings, and adopting the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP); and

WHEREAS, the Gateway Development Area encompasses approximately 160 acres of the OARB; and

WHEREAS, on July 3, 2012, the Oakland City Council approved, via Ordinance No. 13131 C.M.S., a Lease Disposition and Development Agreement (LDDA) with Prologis CCIG Oakland Global, LLC, a Delaware Limited Liability Company (Developer), which provided for the development on approximately 130 acres of the Gateway Development Area of a mixed-use industrial (warehousing and logistics) and commercial, including billboard, maritime, rail, and open space project (Project) and other Project-related matters; and

WHEREAS, Developer now seeks to “vest” its rights for the Project for the term of the LDDA (approximately 70 years) through a Development Agreement with the City; and

WHEREAS, the City Planning Commission held a duly noticed public hearing on the proposed Development Agreement, as well as other related planning matters, on May 1, 2013, and at the close of the hearing recommended approval of the Development Agreement to the City Council; and

WHEREAS, the Community and Economic Development Committee held a duly noticed meeting on May 28, 2013, to consider the Development Agreement and recommended approval of such to the City Council; and

WHEREAS, the City Council held a duly noticed public hearings on the Development Agreement on June 4, 2013, and July 2, 2013; 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 Development Agreement, the City Council finds and determines that it can continue to rely on the previously adopted 2012 OARB Initial Study/Addendum for the reasons stated in June 12, 2012, and May 28, 2013, City Council Agenda Report and related attachments/exhibits. The (Final and Corrected) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, dated October 15, 2012, is also hereby reaffirmed/readopted, including the clarifying corrections discussed at the June 4, 2013, City Council hearing (Mitigation Measure 4.4-3b) and in the Agenda Report for the July 2, 2013, City Council meeting (Mitigation Measure 4.3-10).

Section 2: 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 3: The City Administrator or her designee is hereby authorized to negotiate and execute, in form and content substantially in conformance with the Development Agreement and its Exhibits/Attachments, as set forth in Exhibit A, without returning to City Council: (1) the Development Agreement with the Developer for the Project; (2) the exhibits to the Development Agreement; (3) such other additions, amendments or other modifications to the attached form of the Development Agreement which are necessary (including, without limitation, preparation and attachment of, or changes to conform to City Council direction, refine, clarify and correct technical errors or internal inconsistencies in drafting (including, attachment of; 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 Development Agreement contemplates to be conclusively evidenced by the execution and delivery by the City Administrator of the Development Agreement and any such amendments thereto; and (4) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the Project in order to consummate the transaction under the Development Agreement in accordance with this Ordinance and City Council direction, and, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

Section 4. The recitals set forth above are true and correct and are an integral part of this Ordinance.

Section 5. The City Council finds and determines the following:

a) The Development Agreement contains all information required by State Law and by the Oakland Municipal Code, including all information referenced in Chapter 17.138; and

b) The Project is consistent with the General Plan and all applicable planning and zoning enactments; and

c) The Development Agreement is desirable in order to facilitate the successful Project implementation; and

d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs and the catalytic effect the project will have on revitalizing the surrounding neighborhood, which will result in increased property values in the surrounding area and an increase in the viability of existing businesses; and

e) The public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Development Agreement.

Section 6. Except as specifically set forth herein, this Ordinance suspends and supersedes all conflicting-resolutions, ordinances, plans, codes, laws and regulations conflicting with this Ordinance and/or implementation of the Development Agreement as approved or as may be amended, including without limitation Oakland Municipal Code section 14.04.270 (Chapter 15, Signs Adjacent to Freeways, sections 1501-1506).

Section 7. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of this Ordinance or its application to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Ordinance or the application of this Ordinance to other situations shall remain in full force and effect.

Section 8. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of the Development Agreement that this Ordinance approves or application of the Development Agreement to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of the Development Agreement or the application of the Development Agreement to other situations shall remain in full force and effect.

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

Section 9. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all relevant plans and maps;
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, Planning Commission, and City Council before and during the public hearings on the application; and

5. 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) the Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations.

Section 10. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the Office of Neighborhood Investment, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland; (b) the Planning and Building Department, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland.

Section 11. This Ordinance shall not be codified in the Oakland Municipal Code.

Section 12. Pursuant to section 216 of the City Charter, this Ordinance is effective as of the date it is adopted if passed by an affirmative vote of at least six council members; otherwise, it is effective seven days after final adoption.

Section 13. 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, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

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

DATE OF ATTESTATION: _____

EXHIBIT A
Development Agreement

NO COST RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Oakland
Dept. of Planning & Building
Attention: Rachel Flynn, Director of Planning & Building
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

(Above Space for Recorder's Use Only)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF OAKLAND

AND

PROLOGIS CCIG OAKLAND GLOBAL, LLC

REGARDING THE PROPERTY AND PROJECT KNOWN AS

“GATEWAY DEVELOPMENT/OAKLAND GLOBAL”

Dated _____, 2013

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DEVELOPMENT AGREEMENT
("Gateway Development/Oakland Global")

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of this ___ day of _____, 2013, by and between the CITY OF OAKLAND, a California charter city ("City"), and PROLOGIS CCIG OAKLAND GLOBAL, LLC, a Delaware limited liability company ("Developer"), pursuant to California Government Code Sections 65864, et seq., with respect to the development of the property and project known as the "Gateway Development/Oakland Global." City and Developer shall collectively be referred to herein as the "Parties," and may each individually be referred to as a "Party."

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

A. These Recitals refer to and utilize terms which are defined in this Agreement; and the Parties refer to those definitions in conjunction with their use in these Recitals.

B. The Development Agreement Legislation authorizes City to enter into development agreements in connection with the development of real property within its jurisdiction. The Development Agreement Ordinance establishes the authority and procedure for review and approval of proposed development agreements by City.

C. Developer applied for approval of this Agreement to: (1) vest the land use policies established in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption

Date), and other Existing City Regulations as of the Adoption Date; (2) vest its rights and City's obligations regarding current and future approvals necessary for the Project; (3) allocate responsibility for the cost and implementation of the Mitigation Monitoring and Reporting Program; and (4) memorialize certain other agreements made between City and Developer with respect to the Project. City and Developer acknowledge that development and construction of the Project is a large-scale undertaking involving major investments by Developer, with development occurring in phases over a period of years. Certainty that the Project can be developed and used in accordance with the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and other Existing City Regulations, will benefit City and Developer and will provide the Parties certainty with respect to implementation of the policies set forth in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and the other Existing City Regulations.

D. Development of the Project will meet the key objectives of City embodied in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date) and other Existing City Regulations. Specifically, the development of the Project will provide many benefits to City and the public including, but not limited to: (1) mitigate or avoid potentially significant environmental impacts; (2) provide public improvements and infrastructure; (3) deliver the Community Benefits required by the LDDA and the Ground Leases; (4) strengthen City's economic base with a variety of long term jobs, in addition to shorter term construction jobs; (5) provide for and generate substantial revenues for City in the form of one time fees and

Exactions, rent pursuant to the applicable ground leases, property tax and other fiscal benefits; and (6) otherwise achieve the goals and purposes for which the Development Agreement Ordinance was enacted. City is therefore willing to enter into this Agreement to, among other things: (1) provide certainty to encourage the required substantial private investment in the comprehensive development and planning of the Project; (2) secure orderly development and progressive fiscal benefits for public services, improvements and facilities planning in City; and (3) fulfill and implement adopted City plans, goals, policies and objectives, including, among others, those embodied in City's General Plan.

E. City recognizes the pioneering nature of the Project and the Project Site, and City intends that implementation of the General Plan and Redevelopment Plan policies, objectives and goals, and the zoning ordinance, as amended, will create increased value, operation and function of the Port of Oakland area and the surrounding neighborhoods.

F. City and Developer anticipate that the full build-out of the Gateway/Oakland Global project pursuant to this Agreement will generate economic and community benefits to the City of Oakland and Oakland residents.

G. The Development Agreement Legislation authorizes City to enter into a development agreement with any Person having a legal or equitable interest in real property. Developer has an interest in the Project Site described in Exhibit A, attached hereto, pursuant to the Lease Development and Disposition Agreement, by and among the City, the Oakland Redevelopment Successor Agency and Developer, effective December 4, 2012 (the "LDDA").

H. Developer proposes the development of the Project Site for a mix of trade and logistics uses, a marine terminal for bulk and oversized cargo and other uses and improvements

in accordance with the City Approvals, the LDDA and this Development Agreement, as further described in Exhibits D-1 and D-2.

L City has taken several actions to review and plan for the future development of the Project. These include, without limitation, the following: (1) preparation and certification of the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report and the 2012 OARB Initial Study/Addendum("EIR"); (2) adoption and approval of the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date); (3) adoption and approval of the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date); (4) execution of the LDDA; (5) adoption and approval of the Gateway Industrial zoning district; and (6) adoption and approval of the Gateway Industrial Design Standards. This Agreement also anticipates City will timely consider and grant additional future approvals for the Project and that City will use the Environmental Impact Report prepared in support of this Agreement for those approvals and actions to the fullest extent allowed under applicable law.

J. On May 1, 2013, the City's Planning Commission held a duly noticed public hearing on this Agreement pursuant to the Development Agreement Ordinance, and other relevant provisions of the Planning Code. After due review of and report on Developer's application for this Agreement by City staff, consideration of all evidence heard and submitted at such public hearing and the matters to be considered pursuant to Section 17.138.060 of the Development Agreement Ordinance in enacting a development agreement, the Planning Commission, in relevant part: (1) considered and relied upon the certified the EIR for the Project, and determined that consideration of this Agreement complies with CEQA based on the EIR, and that this Agreement is consistent with the goals, objectives, policies, land uses and programs specified in the General Plan, the Oakland Army Base Redevelopment Plan (as

amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and the other Existing City Regulations pertaining thereto; and(2) recommended that the City Council approve this Agreement based on the foregoing findings. In taking the above actions, the Planning Commission reviewed and heard the report of City's staff on the Agreement and considered all other evidence heard and submitted at the public hearing, including the matters to be considered pursuant to Section 17.138.060 of the Development Agreement Ordinance in recommending to the City Council the approval of a development agreement.

K. On June 4, 2013 and July 2, 2013, the City Council held a-duly noticed public hearings on this Agreement pursuant to the requirements of the Development Agreement Ordinance, and other relevant provisions of the Planning Code. After due review of and report on Developer's application for this Agreement by City staff, consideration of the Planning Commission's recommendations thereon, all other evidence heard and submitted at such public hearing, all other matters considered by the Planning Commission, and the matters to be considered pursuant to Section 17.138.060 of the Development Agreement Ordinance in enacting a development agreement and other relevant provisions of the Planning Code, the City Council: (1) considered and relied upon the certified EIR and determined that consideration of this Agreement complies with CEQA based on the EIR; and (2) introduced Enacting Ordinance No. _____ C.M.S. approving this Agreement, finding and determining in connection therewith that this Agreement is consistent with the goals, objectives, policies, land uses and programs specified in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date) and in the other Existing City Regulations pertaining thereto.

L. At a duly noticed public meeting on July 16th, 2013, the City Council adopted Enacting Ordinance No. ____ C.M.S. enacting this Agreement.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Legislation and the Development Agreement Ordinance, and in consideration of the foregoing Recitals and the mutual covenants and promises of the Parties herein contained, the Parties agree as follows.

AGREEMENT

ARTICLE I

DEFINITIONS

1.1 Defined Terms. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.

Adoption Date: The date the City Council adopted the Enacting Ordinance enacting this Agreement.

Applicable City Regulations: The Existing City Regulations, as defined below, and such other City Regulations, as defined below, otherwise applicable to development of the Project pursuant to the provisions of Section 3.4.

CEQA: The California Environmental Quality Act (Public Resources Code Sections 21000, et seq.) and the Guidelines there under (14 California Code of Regulations, Sections 15000, et seq.) ("CEQA Guidelines").

City Application Fees: Fees City regularly charges for the filing and processing of applications as set forth on City's Master Fee Schedule. City Application Fees shall not include City Development Fees, as defined below, or any fee, the purpose of which, is to compensate for or cover any cost or expense other than the filing and processing of an application.

City Approvals: Permits or approvals required under Applicable City Regulations to develop, use and operate the Project and granted on or before the Adoption Date of this Agreement as identified in Recital I of this Agreement and described in Exhibit B. (See also "Subsequent Approval," defined below.)

City Development Fees: The fees or assessments legislatively imposed by City against development projects as a general matter for capital improvements in effect on the Adoption Date, as set forth in the City's Master Fee Schedule. ~~If subsequent to the Adoption Date, the City ceases to apply or otherwise require a particular City Development Fee within the City, such fee or assessment shall no longer be deemed part of the City Development Fees.~~

EXPLANATORY NOTE:

Council asked staff why this was a fair provision – why would not the provision provide that ALL fees are either (1) “locked in” for the Term or (2) “float” for the Term. This issue was reviewed with the Developer and the response is that the obligations and cost structure contemplated by the LDDA/Ground Leases – which includes (a) base rent which escalates over time and is intended to be pegged at or above market and (b) Community Benefits which impose requirements on the Developer and the Project which are above and beyond what may be required under applicable law - were negotiated by the parties in the context of the current fee structure. The intent of this provision is to maintain the integrity of this economic structure. As is typical for Development Agreements, the obligations of Developer which exceed what may be required under applicable law (the Community benefits) are the consideration for “locking in” the fees/preventing increases. The provision that allows the fees to be reduced prevents the potential

delta in base rent versus the market rent from putting the project at such a competitive disadvantage that it cannot compete for tenants. Staff and Developer recommend no change to this provision.

City Master Fee Schedule: The Master Fee Schedule as adopted by the Oakland City Council (a) with respect to City Application Fees, as adopted and amended by the Oakland City Council and (b) with respect to City Development Fees, in effect as of the Adoption Date, a copy of which shall be included in the binders prepared pursuant to Section 3.4.3.

City Policies: The interpretations made by City of the manner in which Existing City Regulations will be applied to the development of the Project under Applicable City Regulations. "City Policies" shall include (a) those City Policies adopted prior to the Adoption Date, whether consistent or inconsistent with this Agreement, and (b) those City Policies adopted after the Adoption Date that are consistent with this Agreement (and exclude those City Policies adopted after the Adoption Date that are inconsistent with this Agreement). The term "City Policy" shall refer to any or all City Policies as the context may require.

City Regulations: The General Plan of City, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and all other ordinances, resolutions, codes, rules, regulations and policies in effect as of the time in question.

Commence in Earnest: To Commence in Earnest a Phase of the Project shall mean to initiate activities based on a City-issued building permit and other necessary permit(s) and diligently prosecute such permit(s) in substantial reliance thereon and make regular and consistent progress toward the completion of construction and the issuance of a final certificate

of occupancy, including successful completion of building inspections to keep the building permit(s) and other permit(s) active without the benefit of an extension.

Conditions of Approval: Project conditions adopted by the City in connection with City Approvals or Subsequent Approvals.

Construction Codes and Standards: The City Regulations pertaining to or imposing life safety, fire protection, seismic, mechanical, electrical and/or building integrity requirements with respect to the design and construction of buildings and improvements, including the then-current Uniform Building Code as adopted and amended by City and other construction codes, Federal Emergency Management Agency standards, and City's then current design and construction standards for streets, drains, sidewalks and other similar improvements, which codes and standards are applied to comparable development on a City-wide basis.

Dedication: An Exaction comprised of land and/or improvements required to be Dedicated to City.

Development Agreement Legislation: California Government Code Sections 65864 through 65869.5, authorizing City to enter into development agreements as therein set forth.

Development Agreement Ordinance: Chapter 17.138 of City's Planning Code, in effect as of the Adoption Date, establishing City's authority and procedure for review and approval of proposed development agreements.

Effective Date: The date this Agreement becomes effective, which shall be concurrent with the effective date of the Enacting Ordinance.

Enacting Ordinance: Ordinance No. _____ C.M.S., enacted by the City Council on July 2ne-18, 2013, enacting this Agreement.

Environmental Impact Report or EIR: The 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report and the 2012 OARB Initial Study/Addendum.

Exaction: An exaction (other than City Application Fees or City Development Fees), Dedication or reservation requirement, an obligation for on- or off-site improvements or construction of public improvements, or an obligation to provide services. For purposes hereof, Exactions include, but are not limited to, mitigation measures imposed or adopted pursuant to CEQA or as part of the City Approvals.

Existing City Regulations: The City Regulations and City Policies in effect as of the Adoption Date and to the extent such are consistent therewith, the City Approvals as such are adopted from time to time.

Feasible: Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. The term "Feasible" includes any grammatical variant thereof, including "Feasibly" and "Infeasible."

Force Majeure: During such portion of the Term that the LDDA is in effect for any Phase, the definition of Force Majeure for such Phase shall be as defined in the LDDA. During such portion of the Term that a Ground Lease is in effect for any Phase, the definition of Force Majeure for such Phase shall as defined in the applicable Ground Lease.

Ground Lease: Each written Ground Lease that is or may be entered into between City and Developer (or City-approved affiliate of Developer) subsequent to the Effective Date of this Agreement, in substantially the same form required by the LDDA, and covering each Phase of the Project.

Governmental Agencies: All governmental or quasi-governmental agencies (such as public utilities) having jurisdiction over, or the authority to regulate development of, the Project. As used in this Agreement, the term "Governmental Agencies" does not include City or any of the departments of City.

Governmental Agency Approvals: All permits and approvals required by Governmental Agencies under Governmental Agency Regulations for construction, development, operation, use, provision of services to, or occupancy of, the Project.

Governmental Agency Regulations: The Laws, ordinances, resolutions, codes, rules, regulations and official policies of Governmental Agencies in effect as of the time in question.

Laws: The Constitution and Laws of the State, the Constitution of the United States, and any codes, statutes, regulations, or executive mandates thereunder, and any court decision, State or federal, thereunder. The term "Laws" shall refer to any or all Laws as the context may require. "Law" or "Laws" excludes, for the purpose of this Agreement, any local ordinance, regulation, rule or requirement.

LDDA: That certain Lease, Development and Disposition Agreement, by and among the City of Oakland, the Oakland Redevelopment Successor Agency and Prologis/CCIG Oakland Global, LLC, effective December 4, 2012.

Mitigation Monitoring and Reporting Program or SCA/MMRP: The (Final and Corrected) Standard Conditions of Approval and Mitigation Monitoring and Reporting Program, dated October 15, 2012 prepared for the EIR and adopted by the City Council on June 19, 2012, as may be amended or corrected.

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 in a Phase of the Project that is permitted under a Ground Lease and 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.

Person: An individual, partnership, limited liability company, firm, association, corporation, trust, governmental agency, administrative tribunal or other form of business or legal entity.

Phase: Each phase of the Project commonly referred to as the East Gateway, Central Gateway or West Gateway, as applicable.

Private Improvements: The term "Private Improvements" shall have the definition ascribed to the same in the LDDA.

Project: The development, use and occupancy of the Private Improvements on the Project Site pursuant to the City Approvals, the Subsequent Approvals and this Agreement, as identified in Recital H and described in Exhibit D.

Project Site: The real property described on Exhibit A hereto.

Public Improvements: The term "Public Improvements" shall have the definition ascribed to the same in the LDDA.

Subsequent Approvals: Permits or approvals required under Applicable City Regulations to develop, use and/or operate the Project and applied for, considered or granted after the

Adoption Date of this Agreement. Subsequent Approvals may include, without limitation, the following: amendments of the City Approvals, design review approvals, improvement agreements, encroachment permits, use permits, variances, grading pennits, public improvement permits, building permits, tree removal permits, lot line adjustments, sewer and water coimection permits, certificates of occupancy, subdivision maps, rezonings, development agreements, permits, resubdivisions, condominium maps or approvals, and any amendments to, or repealing of, any of the foregoing, each as permitted by this Agreement.

Terminate: The expiration of the Term of this Agreement, whether by the passage of time or by any earlier occurrence pursuant to any provision of this Agreement. "Terminate" includes any grammatical variant thereof, including "Termination" or "Terminated".

Termination shall not relieve Developer of any other obligation, including obligations under this Agreement that survive Termination (such as Indemnity obligations), accrued obligations under this Agreement, and obligations to comply with City Approvals, Governmental Agency Approvals and other Laws.

Transfer: During such portion of the Term that the LDDA is in effect for any Phase, the definition of Transfer for such Phase shall be as defined in the LDDA. During such portion of the Term that a Groumd Lease is in effect for any Phase, the definition of Transfer for such Phase shall as defined in the applicable Ground Lease.

Transferee: The Person to whom a Transfer is effected.

ARTICLE II

TERM

2.1 Effective Date; Term Commencement. This Agreement shall be dated as of the Adoption Date; the rights, duties and obligations of the Parties hereunder shall be

effective, and the Term shall commence, as of the Effective Date. Not later than five (5) days after the Adoption Date, Developer shall execute and acknowledge this Agreement and return the Agreement to City; not later than ten (10) days after the Adoption Date, City, by and through its City Administrator or his/her designee, shall execute and acknowledge this Agreement, and upon receipt of such executed and acknowledged Agreement. The Parties anticipate that Developer may not own or hold any ground leasehold interest in any of the Project Site as of the Effective Date, and that Developer will, if at all, acquire ~~an ownership or~~ ground leasehold or Franchise interest in the Project Site in Phases. In order to make clear that the rights and obligations under this Development Agreement will apply to and run with the property comprising the Project Site (or Developer's ground leasehold interest therein) after such property is acquired by Developer, upon acquisition of a ~~fee or~~ ground leasehold or Franchise interest in such property by Developer, Developer shall cause this Agreement or a memorandum thereof to be recorded against Developer's interest in such property in the Official Records of the County of Alameda pursuant to Section 65868.5 of the Development Agreement Legislation and Section 17.138.070 of the Development Agreement Ordinance. City shall cooperate in such recording, and shall execute, acknowledge and deliver such additional instruments and documents as may be necessary to facilitate such recording.

EXPLANATORY NOTE:

Council requested that reference to ownership or fee interest be deleted because it is inapplicable to the underlying transaction. Staff and Developer concur with the proposed modifications.

2.2 Expiration of Term Unless sooner terminated pursuant to the applicable provisions of this Agreement, the Term of this Agreement shall expire as to a Phase

on the first to occur of the following: (i) if a Ground Lease is not executed by the Parties with respect to a particular Phase, then, with respect to such Phase, upon expiration or earlier termination of the LDDA; or (ii) if a Ground Lease is executed by the Parties with respect to a particular Phase, then, with respect to such Phase, upon expiration or earlier termination of the Ground Lease for such Phase; or (iii) December 31 of the calendar year that is seventy (70) years after the Effective Date. Notwithstanding the foregoing, the Term shall be extended, on a day-for-day basis, for any period of time during which (A) a development moratorium (including, but not limited to, a water or sewer moratorium (or both)), prevents, prohibits or delays the construction of the Project or (B) a lawsuit by a third party challenging any Project development approvals or permits is pending. Such extension shall be established pursuant to the procedure set forth in Section 7.1 below. Notwithstanding anything to the contrary in Section 7.1, the Term shall not be extended for any Force Majeure event except as set forth in this Section 2.2.

2.3 Subsequent Amendments or Termination. If the Parties amend, modify or Terminate this Agreement as herein provided, or as otherwise provided by the Development Agreement Ordinance, or this Agreement is modified or Terminated pursuant to any provision hereof, then the Developer shall, within ten (10) days after such action takes effect, cause an appropriate notice of such action to be recorded in the Official Records of the County of Alameda.

2.4 Effect of Termination of Agreement. Except for obligations a Party has accrued, upon Termination of this Agreement, all of the rights, duties and obligations of the Parties hereunder shall Terminate and be of no further force or effect. The Termination shall not permit City to modify, reduce or terminate any of the rights vested in

Subsequent Approvals made pursuant to this Agreement prior to Termination for any Phase that Developer has Commenced in Eamest prior to the Termination or expiration of the Term. Upon Termination, City shall retain any and all benefits, including money or land, received by City as of the date of Termination under or in connection with this Agreement. No Termination shall prevent Developer from completing and occupying buildings or other improvements authorized pursuant to valid building permits approved by City prior to the date of Termination, except that nothing herein shall preclude City, in its discretion, from taking any action authorized by Laws or City Regulations to prevent, stop or correct any violation of Laws or City Regulations occurring before, during or after constmction.

ARTICLE III

GENERAL REGULATION OF DEVELOPMENT OF PROJECT

3.1 Application of Agreement to Project Site As between the Parties, this Agreement is effective as of the Effective Date and is enforceable by each Party in accordance with its temis. Upon the acquisition by Developer (or a Transferee of Developer) of a ~~fee simple~~ ground lease or Franchise interest ~~(as applicable)~~ in any portion of the Project Site, this Agreement shall automatically become effective as to, and govern, such property as of the earlier of (a) the Effective Date, or (b) the date Developer provides written evidence reasonably acceptable to City that Developer has acquired such interest.

EXPLANATORY NOTE:

Council requested that this provision be deleted because it is inapplicable to the underlying transaction. Staff and Developer concur with the proposed deletion.

3.2 Permitted Uses; Control of Development This Agreement vests in Developer the right to develop the Project in accordance with the terms and conditions of this Agreement, the

City Approvals and the Existing City Regulations; provided that City shall have the right to control development of the Project in accordance with the provisions of this Agreement, the LDDA and each Ground Lease. Notwithstanding any provision herein to the contrary, the permitted uses of each Phase of the Project, the density and intensity of use of each Phase, and the siting, height, envelope, and massing and size of proposed buildings in each Phase, shall consist only of those described in and expressly permitted by, and subject to all terms, conditions and requirements of, the City Approvals, the Subsequent Approvals, the LDDA, and the applicable Ground Lease for each Phase. Nothing in this Agreement shall prohibit Developer from requesting amendments to the City Approvals. The reservation or dedication of land for public purposes shall be as set forth on the appropriate tentative or final subdivision maps for the Project or elsewhere in the City Approvals or Subsequent Approvals. This Agreement, the City Approvals, the LDDA and the Ground Lease, and where such instruments are silent, the Applicable City Regulations, shall control the overall design, development and construction of the Project, and all on- and off-site improvements and appurtenances in connection therewith. In the event of any inconsistency between the Applicable City Regulations and this Agreement, this Agreement shall control, except that if the inconsistency cannot be reconciled by application of this rule of construction, the provision which, as determined by the City Council, best gives effect to the purposes of this Agreement shall control.

3.3 Development Schedule/Sequencing: Developer shall develop each Phase of the Project strictly in accordance with, and in all respects subject to, the scope, timing, terms, conditions and requirements set forth in the City Approvals, the Existing City Regulations, the LDDA, and the Ground Lease for each Phase. Without limiting the preceding sentence, and notwithstanding any provision in this Agreement to the contrary, Developer shall develop the

Private Improvements for each Phase of the Project in accordance with the "Minimum Project" description, scope, schedule and sequencing set forth in the Ground Lease for each Phase.

Nothing in this Agreement shall be deemed to amend or modify the LDDA or any Ground Lease or to limit, modify, restrict or alter the rights of City, in its capacity as Landlord under each Ground Lease, to control development of each Phase or to otherwise exercise any other rights or remedies of Landlord under each Ground Lease.

3.4 Applicable City Regulations. Except as expressly provided in this Agreement and the City Approvals, the Existing City Regulations shall govern the development of the Project and all Subsequent Approvals with respect to the development of the Project on the Project Site, ~~except that Oakland Municipal Code section 14.04.270 (Chapter 15, Signs Adjacent to Freeways, sections 1501-1506) shall not apply to the Project.~~ City shall have the right, in connection with any Subsequent Approvals, to apply City Regulations as Applicable City Regulations only in accordance with the following terms, conditions and standards:

3.4.1 Future City Regulations. Except as otherwise specifically provided in this Agreement, including, without limitation, the provisions relating to (a) regulations for health and safety reasons under Section 3.4.2 below; (b) regulations for Construction Codes and Standards under Section 3.4.4 below; and (c) provisions relating to the payment of City Application Fees pursuant to Section 3.4.5, below, City shall not impose or apply any City Regulations on the development of the Project Site that are adopted or modified by City after the Adoption Date (whether by action of the Planning Commission or the City Council, or by local initiative, local referendum, ordinance, resolution, mle, regulation, standard, directive, condition, moratorium) that would: (i) be inconsistent or in conflict with the intent, purposes, terms, standards or conditions of this Agreement; (ii) materially change, modify or reduce the permitted

uses of the Project Site, the permitted density or intensity of use of the Project Site, the siting, height, envelope, massing, design requirements, or size of proposed buildings in the Project, or provisions for City Fees specified in Section 3.4.5 below and Exactions as set forth in the City Approvals, including this Agreement; (iii) materially increase the cost of development of the Project (subject to the acknowledgement as to the cost of Exactions specified in Section 3.4.6 below); (iv) materially change or modify, or interfere with, the timing, phasing, or rate of development of the Project; (v) materially interfere with or diminish the ability of a Party to perform its obligations under the City Approvals, including this Agreement, or the Subsequent Approvals, or to expand, enlarge or accelerate Developer's obligations under the City Approvals, including this Agreement, or the Subsequent Approvals; or (vi) materially modify, reduce or terminate any of the rights vested in City Approvals or the Subsequent Approvals made pursuant to this Agreement prior to expiration of the Term. Developer reserves the right to challenge in court any City Regulation that would conflict with this Agreement or reduce the development rights provided by this Agreement, provided that such City Regulation directly affects the Project; provided, however, Developer shall first follow the dispute resolution procedures in Article VIII.

EXPLANATORY NOTE:

Council asked whether the billboards approved as part of the Project were consistent with existing City ordinances. The above insert removes any ambiguity with respect to any alleged or potential inconsistency. In addition, Council asked whether a Development Agreement may prohibit imposition of inconsistent future City regulations adopted via local initiative or local referendum. Subject to certain

exceptions, the California Government Code permits City's to enter into Development Agreements which vest the Developer's rights to develop the subject project under the then current City regulatory scheme. Subsequent regulations adopted via local initiative or local referendum would still be an enactment of a new City law (rather than a new state or federal law, the imposition of which may not be prohibited by a City Development Agreement). As such, a Development Agreement may legally prohibit the imposition of a future regulation adopted by a local initiative or local referendum. The intent of the parties is to vest the current regulatory scheme, subject to the express exceptions included in the Development Agreement. Staff and Developer recommend change above to clarify that restriction is limited to local-level initiatives and referenda. However, the Development Agreement itself is subject to local referendum.

3.4.2 Regulation for Health and Safety. Notwithstanding any other provision of this Agreement to the contrary, City shall have the right to apply City Regulations adopted by City after the Adoption Date, if such application (a) is otherwise permissible pursuant to Laws (other than the Development Agreement Legislation), and (b) City determines based on substantial evidence and after a public hearing that a failure to do so would place existing or future occupants or users of the Project, adjacent neighbors, or any portion thereof, or all of them, in a condition substantially dangerous to their health or safety. The Parties agree that the foregoing exception to Developer's vested rights under this Agreement is in no way intended to allow City to impose additional fees or exactions on the Project, beyond the City Fees described below in Section 3.4.5, that are for the purpose of general capital improvements or general services (except in the event of a City-wide emergency).

3.4.3 Existing City Regulations. The City shall, at the Developer's sole cost and expense, compile two binders which include copies of all Existing City Regulations within ninety (90) calendar days after the Adoption Date, sign both copies, and deliver one copy to Developer. The City shall make every reasonable effort to include all Existing City Regulations.

3.4.4 Construction Codes and Standards. The City shall have the right to apply to the Project at any time, as a ministerial act, the Construction Codes and Standards in effect at the time of the approval of any City Approval or Subsequent Approval thereunder.

3.4.5 City Fees. Except as otherwise specified in this Agreement, the City Development Fees and the City Application Fees shall be the only fees or assessments charged by City in connection with the development or construction of the Project. The City Development Fees applicable to the Project shall only be those fees in effect on the Adoption Date, as set forth in the City's Master Fee Schedule. The Project shall not be subject to any increases in City Development Fees, and shall not be subject to any new City Development Fees adopted after the Adoption Date. Notwithstanding any other provision of this Agreement, Developer shall pay City Application Fees chargeable in accordance with City Regulations (including any action by the City Council to increase or otherwise adjust City Application Fees listed in the City's Master Fee Schedule) in effect and generally applicable at the time the relevant application is made.

3.4.6 Project Exactions. Developer and City acknowledge that the City Approvals and Subsequent Approvals authorize and require implementation of Exactions in connection with the development of the Project and that the specific costs of implementing such Exactions currently cannot be ascertained with certainty, but notwithstanding such uncertainty, except as otherwise provided in this Agreement, Developer shall be solely responsible for such

costs in connection with implementing such Exactions as and when they are required to be implemented. Subject to the terms and conditions of this Agreement, no new Exactions shall be imposed by City on the Developer or the development of the Project, or on any application made by Developer for any City Approval or Subsequent Approval concerning the development of the Project, or in enacting any City Approval or Subsequent Approval concerning the development of the Project, or in connection with the development, construction, use or occupancy of the Project; provided, however, subject to the provisions of Section 3.5 below, that Exactions may be imposed if required by CEQA (e.g., further CEQA review is undertaken for Subsequent Approvals and such review identifies the need for additional or modified mitigation measures, or previously imposed mitigation measures are no longer Feasible).

3.4.7 Term of City Approvals and Subsequent Approvals. Notwithstanding anything to the contrary in Applicable City Regulations, the term of any City Approval (other than this Agreement) and the Subsequent Approvals for the Project shall be for the longer of the Term of this Agreement (including any extensions) or the term otherwise applicable to such City Approval or Subsequent Approval if this Agreement is no longer in effect. Upon the later to occur of (a) the expiration or termination of this Agreement or (b) any Ground Lease (as such Ground Lease may be extended from time to time), any City Approval or Subsequent Approval related to the applicable Ground Lease premises in effect beyond the term of this Agreement shall be quitclaimed and assigned to the City or its designee pursuant to Section 30.1.5 of the applicable Ground Lease.

3.5. Review and Processing of Subsequent Approvals.

3.5.1 Reliance on Project EIR. The EIR, which has been certified by City as being in compliance with CEQA, addresses the potential environmental impacts of the entire

Project as it is described in the Project Approvals. Nothing in this Development Agreement shall be construed to require CEQA review of Ministerial Approvals. It is agreed that, in acting on any discretionary Subsequent Approvals for the Project, City will rely on the EIR to satisfy the requirements of CEQA to the fullest extent permissible by CEQA and City will not require a new initial study, negative declaration or subsequent or supplemental EIR unless required by CEQA, as determined by City in its capacity as the Lead Agency, and will not impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the City Approvals, specifically required by the Existing City Regulations or by subsequent CEQA review.

3.5.2 Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City, in its capacity as the Lead Agency, shall conduct such CEQA review as expeditiously as possible at Developer's sole cost and expense, including, without limitation, the payment of the applicable City Application Fee.

3.5.3 Request for Amendments to City Approvals. In the event that Developer requests an amendment to the City Approvals which proposes to increase the permitted square footage of development uses for the Project and (a) the approval by the City of such request would be a discretionary approval subject to CEQA and (b) at the time of the City's consideration of such request the project defined in the EIR has not been fully constructed, then the City shall, to the maximum extent permissible by law and other applicable agreements, take into consideration during the City's CEQA review of the requested amendment to the City

Approvals the capacity/project envelope previously studied under the EIR that has not been previously constructed and is not the subject of a then current application for a land use related permit or a building permit to minimize the effects of such proposed amendment(s) that may otherwise require additional review under CEQA.

3.6 Exempting Fees Imposed by Outside Agencies. City agrees to exclude Developer from any and all collection agreements regarding fees, including, but not limited to, development impact fees, which other public agencies request City to impose at City's sole and absolute discretion with no conditions on the Project during the Term of this Agreement. Developer shall reimburse City for all costs and expenses (including without limitation consultants, City staff and/or City attorney or outside counsel time) incurred to implement this section.

~~3.7 Fee Reductions or Credits Intentionally Omitted. City and Developer intend that the fees and other commitments described in this Agreement will be in lieu of any Exactions, taxes or assessments generally intended to address similar uses or purposes, and that Developer shall not be required to pay more than once for any such Exaction, fee or assessment. Accordingly, the fees and other commitments described in this Agreement shall be subject to reductions/credits in an amount equal to Developer's actual cost of complying with any such lawfully imposed Exaction, tax, or assessment generally intended to address similar uses or purposes, whether imposed on the Project, the City, Approvals or the Subsequent Approvals. Notwithstanding the foregoing, no such reduction/credit shall be provided as a result of any assessment that arises from an assessment district requested or agreed to by Developer under this Agreement.~~

EXPLANATORY NOTE:

Council inquired as to the intent of this provision. The intent is to prohibit the Developer and project from being required to pay twice for the same obligation where the subject matter is subject to both a fee and an obligation under this Agreement. As example would be where the Developer and project are subject to both an in-lieu fee regarding the construction of new public infrastructure required to serve the project and an obligation to build such public infrastructure at Developer's cost. No such obligations are provided in this Agreement and Developer is adequately protected from new fees in other provisions. As such, Staff and Developer recommend deletion of the provision.

3.8 Allocation of SCA/MMRP.

3.8.1 Developer's Allocation of SCA/MMRPs. If the Developer elects to proceed with the development of the Project pursuant to the terms of the LDDA and the applicable Ground Leases, the Developer shall be responsible, at its sole cost and expense (as between the Parties), for the implementation of the applicable SCA/MMRPs allocated to Developer on Exhibit C. If the Developer elects to proceed with the development of the Project pursuant to the terms of the LDDA and the applicable Ground Leases, the failure of the Developer to implement the SCA/MMRP allocated to Developer pursuant to Exhibit C at the time set forth for such SCA/MMRP shall be an Event of Default of Developer under this Agreement.

3.8.2 City's Allocation of SCA/MMRPs. The Parties agree that any SCA/MMRP allocated to the City under Exhibit C shall be deemed to be a "Public Improvement" as defined in the LDDA and as such, the City's obligations related to the implementation of the applicable SCA/MMRPs allocated to the City on Exhibit C shall be controlled exclusively by the LDDA,

including, but not limited to, the City's obligation to Complete (as defined in the LDDA) the Public Improvements pursuant to the LDDA and the City's maximum financial contribution pursuant to Section 3.3.1.1.1 of the LDDA. Any failure of the City to Complete any Public Improvement, including any SCA/MMRPs allocated to the City on Exhibit C and any related remedies of the Developer shall be controlled exclusively by the LDDA, and therefore shall not be an Event of Default under this Agreement.

3.8.3. SCA/MMRPs Allocated to Developer and City. Unless otherwise agreed in writing among the Parties as an amendment to this Agreement pursuant to Article XI, where both the City and Developer are identified as being responsible for implementation of an SCA/MMRP: (a) the City shall be responsible with respect to the construction of the Public Improvements, subject to Section 3.8.2, and (b) Developer shall be responsible with respect to the construction and operation of the Private Improvements, as applicable, subject to Section 3.8.1.

3.8.4 Revisions to SCA/MMRPs Subsequent to Environmental Review. The Parties acknowledge the provisions of Item 14 of Exhibit 15 to the LDDA which states in part:

“More feasible and/or cost effective measures may be considered by the Parties so long as those measures meet CEQA requirements and do not themselves cause any potentially significant effect on the environment, as determined by the City through the DA/PUD process.”

Consistent with this language, the Parties further agree that with respect to the following SCA/MMRPs, if the events identified in the EIR which require the implementation of a SCA/MMRP associated with a cumulative impact have not occurred within the time period contemplated in the EIR or a Party proposes a more cost effective or feasible

mitigation measure that meets the applicable CEQA requirements and do not themselves cause any potentially significant effect on the environment, the City may delete or amend the applicable SCA/MMRPs, so long as the City, in its capacity as the Lead Agency under CEQA for the Project, takes the appropriate action under CEQA to amend or delete the applicable SCA/MMRP, as follows:

- a. at the request of Developer and with the City's prior written consent which shall not be unreasonably withheld or delayed, the SCA/MMRPs allocated to Developer pursuant to Exhibit C and Sections 3.8.1 and/or 3.8.3 of this Agreement; and
- b. in the sole and absolute discretion of the City, the Delayed Public Improvements, which the Parties hereby agree refer specifically to the cumulative off-site traffic improvements listed in Mitigation Measures 3.16-17 through 33 and related Recommended Measures, inclusive, of the SCA/MMRP and are a subset of the Public Improvements).

In the event a SCA/MMRP is deleted pursuant to this Section, the applicable Party shall have no obligation to implement the applicable SCA/MMRP under this Agreement, the LDDA and/or CEQA, as applicable. In the event that a SCA/MMRP is amended pursuant to this Section, the applicable Party shall be deemed to have satisfied its obligation under this Agreement, the LDDA and CEQA, as applicable, by implementing the amended SCA/MMRP.

3.8.5 Survival of Termination. The Parties agree that Section 3.8 shall survive any termination of this Agreement.

3.8.6 Corrections to SCA/MMRP. The Parties agree that technical corrections made by the City to the SCA/MMRP, including previously adopted but omitted Standard Conditions and/or Mitigation Measures, will be incorporated herein and allocated in the same manner as the foregoing.

ARTICLE IV

COMMUNITY BENEFITS

4.1 **Community Benefits.** During such portion of the Term that the LDDA is in effect for any Phase, Developer shall comply with the Community Benefit requirements set forth in Article IV of the LDDA for such Phase. During such portion of the Term that a Ground Lease is in effect for any Phase, Developer shall comply with the Community Benefit requirements set forth in Section 37.6 of the applicable Ground Lease for such Phase. In addition, the parties hereby agree to amend the Construction Jobs Policy for the Public Improvements to require weekly compliance reporting through the website proposed by the California Capital & Investments Group, Inc.

EXPLANATORY NOTE:

Council posited whether the request for this Agreement should be used to obtain changes to the Community Benefits included in the LDDA that were approved by Council but not agreed to by the Developer. With the exception of agreeing to add the weekly reporting for the Construction Jobs policy for the Public Improvements, Developer has declined to re-open negotiations on Community Benefits. See Developer letter dated June 25, 2013, which provides a more detailed response (Attachment E to Supplemental Agenda Report); see also Staff prepared Community Benefits Comparison Table (Attachment A to Supplemental Agenda Report).

ARTICLE V

INDEMNITY AND INSURANCE

5.1 Prior Indemnity Agreement. The Parties acknowledge that they have previously entered into that certain Oakland Army Base Environmental Review Funding and Indemnity Agreement Associated with Initial Project Approvals, dated October 23, 2012 (the “Prior Indemnity Agreement”). Nothing in this Agreement shall amend the provisions of the Prior Indemnity Agreement.

5.2 Developer Indemnity Regarding City Approvals. To the maximum extent permitted by law, Developer shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission and their respective agents, officers, employees and volunteers (hereafter collectively called “City Parties”) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys’ fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called “Action”) against the City to attack, set aside, void or annul this Agreement or any City Approvals approved concurrently herewith or any Subsequent Approval or the implementation of the same. The City may elect, in its sole discretion, to participate in the defense of said Action and Developer shall reimburse the City for its reasonable legal costs and attorneys’ fees.

Within ten (10) calendar days of the filing of any Action as specified in the preceding paragraph, Developer shall execute a Joint Defense Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the City Approval or any Subsequent Approval requested by Developer. Failure

to timely execute the Letter Agreement does not relieve the Developer of any of the obligations contained in this Section or other requirements or Conditions of Approval that may be imposed by the City.

5.3 Developer Indemnity Regarding Other Matters. Subject to the provisions of Section 5.1 and 5.2 with respect to such matters included within the scope of such Sections, during such portion of the Term that a Ground Lease is in effect for any Phase, Developer shall defend, indemnify, protect and hold harmless the City Parties, from and against any and all Actions related to such Phase, in accordance with the indemnification obligations of the tenant as set forth in the applicable Ground Lease.

5.4 Insurance. During such portion of the Term that a Ground Lease is in effect for any Phase, Developer shall, at no cost to City, maintain and cause to be in effect with respect to each Phase, the same types and amounts of insurance required of the tenant under the Ground Lease for such Phase.

ARTICLE VI

ANNUAL REVIEW OF COMPLIANCE

6.1 Annual Review. City and Developer shall annually review this Agreement, and all actions taken pursuant to the terms of this Agreement with respect to the Project, in accordance with the provisions of Section 17.138.090 of the Development Agreement Ordinance and this Article VI. Nothing herein is intended to, nor does, (a) preclude earlier review by City at its reasonable request with thirty (30) days' notice to Developer, or (b) either Party providing notice of noncompliance, breach or default of this Agreement to the other Party in accordance with, as applicable, the terms of the LDDA (for Events of Default arising under the LDDA), the terms of the applicable Ground Lease (for Events of Default arising under the applicable Ground Lease)

or the applicable dispute resolution provisions of this Agreement detailed in Article VIII (for all other Events of Default under this Agreement).

6.2 Developer's Submittal. Not later than the first anniversary date of the Effective Date, and not later than each anniversary date of the Effective Date thereafter during the Term, Developer shall apply for annual review of this Agreement, as specified in Section 17.138.090.A of the Development Agreement Ordinance. Developer shall pay with such application the City Application Fee for annual review of Development Agreements under Existing City Regulations in effect at the time the application is submitted. Developer shall submit with such application a written report to City's Director, Department of Planning and Building ("Director of City Planning"), with a copy to the City Attorney, describing Developer's good faith substantial compliance with the terms of this Agreement during the preceding year. Such report shall include a statement that the report is submitted to City pursuant to the requirements of Government Code Section 65865.1, and Section 17.138.090 of the Development Agreement Ordinance, on the top of the first page of the report, in clearly marked bold, twelve point typeface, substantially as follows:

**"THIS REPORT IS SUBMITTED UNDER GOVERNMENT
CODE SECTION 65865.1 AND SECTION 17.138.090 OF
THE DEVELOPMENT AGREEMENT ORDINANCE. CITY
HAS 45 DAYS TO RESPOND."**

6.3 Finding of Compliance. Within forty-five (45) days after Developer submits its report hereunder, the Director of City Planning shall review Developer's submission to ascertain whether Developer has demonstrated good faith substantial compliance with the material terms of this Agreement. If the Director of City Planning finds and determines that Developer has in

good faith substantially complied with the material terms of this Agreement, the Director of City Planning shall prepare and issue a certificate of compliance pursuant to Section 6.5 below. If the Director of City Planning does not make a determination and issue a certificate of compliance within forty-five (45) days of receipt of Developer's report under Section 6.2 above (unless extended by Developer in writing), Developer shall submit a second letter notifying the Mayor, Council President, Director of City Planning, and City Administrator, and City Attorney that the 45-day determination period has expired. The second notification letter shall inform the City representatives that if the Director of City Planning does not make a determination and issue a certificate of compliance, within 30 days after receipt of the second notification letter, the annual review shall be deemed concluded and Developer shall be entitled to a certificate of compliance pursuant to Section 6.5.

If the Director of City Planning initially determines that such report is inadequate in any respect, he or she shall provide written notice to that effect to Developer, and Developer may supply such additional information or evidence as may be necessary to demonstrate good faith substantial compliance with the material terms of this Agreement. Developer's written response of additional information/evidence must be submitted within 30 days of City notification. If the Director of City Planning again concludes that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, he or she shall so notify Developer within 30 days after receipt of Developer's additional information or evidence. If the Director of City Planning does not agree with Developer's response, then he/she shall provide written notice of the commencement of the Meet and Confer/Mediation Process within 30 days of the receipt of the response, and the dispute resolution procedures and process detailed in Article VIII will apply, commencing with Section 8.4 (Meet and Confer/Mediation Process).

6.4 Failure to Conduct Annual Review. Failure of the City to conduct an annual review shall not be an Event of Default under this Agreement by the City and shall not constitute a waiver by the City of its rights to require subsequent annual reviews pursuant to this Article VI. Failure of the City to conduct an annual review shall not cause the Developer to be in Default under this Agreement, but it does not relieve the Developer of the obligation to submit the Annual Review report as required by Section 6.2.

6.5 Certificate of Compliance. Upon Developer's written request following the annual review process described in Article VI, if the Director of City Planning (or the City Council, if applicable) finds good faith substantial compliance by Developer with the material terms of this Agreement (or the City fails to timely conduct an annual review and the Developer has complied with all submittal requirements of Section 6.2), the Director of City Planning shall issue a certificate of compliance within twenty (20) days thereafter, certifying Developer's good faith compliance with the material terms of this Agreement through the period of the applicable annual review. Such certificate of compliance shall be in recordable form and shall contain such information as may be necessary to impart constructive record notice of the finding of good faith compliance hereunder. Developer shall have the right to record the Certificate of Compliance in the Official Records of the County of Alameda.

ARTICLE VII

FORCE MAJEURE; SUPERSEDURE BY SUBSEQUENT LAWS

7.1 Force Majeure. During such portion of the Term that the LDDA is in effect for any Phase, the provisions of Section 10.1 of the LDDA shall apply to such Phase. During such portion of the Term that a Ground Lease is in effect for any Phase, the provisions of Article 16 of the applicable Ground Lease shall apply to such Phase.

7.2 Supersedure By Subsequent Laws.

7.2.1 Effect of Conflicting Law. Except as prohibited by Government Code Section 65869.5 or other applicable state or federal law, to the extent any future rules, ordinances, regulations or policies applicable to development of the Project Site are inconsistent with the land use designations or permitted or conditionally permitted uses on the Project Site, density and intensity of use, rate or timing of construction, design requirements, maximum building height and size, or provisions for reservation and dedication of land or other conditions of approval or terms under the City Approvals as defined herein and as provided in this Agreement, the terms of the City Approvals and this Agreement shall prevail. As specified in Government Code Section 65869.5, if any Law enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent Feasible, be modified or suspended by City as may be necessary to comply with such new Law. Immediately after becoming aware of any such new Law, the Parties shall meet and confer in good faith to determine the Feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. At the conclusion of such meet and confer process, and to the extent Feasible in any event no later than ninety (90) days after such new Law takes effect, City shall initiate proceedings for the modification or suspension of this Agreement as may be necessary to comply with such new Law. Such proceedings shall be initiated by public notice given in accordance with the Applicable City Regulations, and the City Council shall make the determination of whether modifications to or suspension of this Agreement is necessary to comply with such new Law. The City Council's determination shall take into account the results of the meet and confer process between the Parties, including all data and information exchanged

in connection therewith. To the extent Feasible, the City Council shall make its determination hereunder within sixty (60) days after the date the proceedings hereunder are initiated.

7.2.2 Contest of New Law. Either Party shall have the right to contest the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. The City Council, in making its determination under Section 7.2.1, shall take into account the likelihood of success of any contest pending hereunder, and if the contesting Party has obtained interim relief preventing enforcement of such new Law, then the City Council shall delay consideration of action on modifications to or suspension of this Agreement pursuant to Section 7.2.1 above until such contest is concluded or such interim relief expires.

ARTICLE VIII

EVENTS OF DEFAULT; REMEDIES; ESTOPPEL CERTIFICATES

8.1 Events of Default. Subject to the provisions of this Agreement, any failure by a Party to perform any material term or provision of this Agreement shall constitute an "Event of Default," if, following the notice, meet and confer and cure processes specified below, the Party in default has not timely cured said default. Notwithstanding the foregoing to the contrary, (a) subject to the applicable limitations under the LDDA on cross-defaults between the Phases, during such portion of the Term that the LDDA is in effect for any Phase, any "Event of Default" (as defined in the LDDA) related to such Phase under the LDDA shall be deemed an Event of Default under this Agreement, (b) subject to the applicable limitations under the Ground Leases on cross-defaults between the Ground Leases, during such portion of the Term that a Ground Lease is in effect for any Phase, any "Event of Default" (as defined in the applicable Ground Lease) related to such Phase under the applicable Ground Lease shall be deemed an Event of Default under this Agreement and (c) the provisions of Section 8.2 through 8.6, inclusive, and

the notice provisions of Section 8.8 shall not apply to “Events of Default” under the LDDA or the applicable Ground Lease.

8.2 Notice of Noncompliance. If either Party determines there is noncompliance with this Agreement, said Party must provide the other Party written notice of such noncompliance, which shall specify in reasonable detail the grounds therefor and all facts demonstrating such noncompliance or failure, so the other Party may address the issues raised in the notice of noncompliance or failure on a point-by-point basis.

8.3 Response to Notice of Noncompliance. Within thirty (30) days of receipt of the notice of noncompliance, the Party receiving such notice shall respond in writing to the issues raised in the notice of noncompliance on a point-by-point basis. If the noticing Party agrees with and accepts the other Party’s response, no further action shall be required. If the noticing Party does not agree with the response, then it shall provide to the other Party written notice of the commencement of the Meet and Confer/Mediation Process within thirty (30) days of the receipt of the response.

8.4 Meet and Confer/Mediation Process. Within fifteen (15) days of receipt of a meet and confer notice, the Parties shall initiate a Meet and Confer/Mediation Process pursuant to which the Parties shall meet and confer in good faith in order to determine a resolution acceptable to both Parties of the bases upon which either Party has determined that the other Party has not demonstrated good faith substantial compliance with the material terms of this Agreement.

8.5 Hearing Before City Council to Determine Compliance.

(a) Pursuant to the Annual Review Process of Article VI, or if City determines, after the Meet and Confer/Mediation Process, that there still remain outstanding

noncompliance issues, the City Council shall conduct a noticed public hearing pursuant to Section 17.138.090 of the Development Agreement Ordinance to determine the good faith substantial compliance by Developer with the material terms of this Agreement. At least ten (10) days prior to such hearing, the Director of City Planning shall provide to the City Council, Developer, and to all other interested Persons requesting the same, copies of the City Council agenda report, agenda related materials and other information concerning the Annual Review Process of Article VI and/or Developer's good faith substantial compliance with the material terms of this Agreement and the conclusions and recommendations of the Director of City Planning. The results and recommendations of the Meet and Confer/Mediation Process shall be presented to the City Council for review and consideration. At such hearing, Developer and any other interested Person shall be entitled to submit evidence, orally or in writing, and address all the issues raised in the staff report on, or with respect or germane to, the issue of Developer's good faith substantial compliance with the material terms of this Agreement.

(b) The City Council may, in its sole discretion, require an additional Meet and Confer/Mediation Process with a designated third party or mediator. The results and recommendations of said process shall be presented to the City Council for review and consideration at a duly noticed meeting.

(c) If, after receipt of any written or oral response of Developer, and/or results and recommendations from the Meet and Confer/Mediation Process that may have occurred, and after considering all of the evidence at such public hearing, or a further public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not substantially complied in good faith with the material terms of this Agreement, the City Council shall specify to Developer the respects in which Developer has failed to comply, and shall also

specify a reasonable time for Developer to meet the terms of compliance that shall reasonably reflect the time necessary to adequately bring Developer's performance into good faith substantial compliance with the material terms of this Agreement. If the areas of noncompliance specified by the City Council are not corrected within the time limits prescribed by the City Council hereunder, subject to the Permitted Delay provisions of Section 7.1, above, the City Council may by subsequent noticed hearing extend the time for compliance for such period as the City Council may determine (with conditions, if the City Council deems appropriate), Terminate or modify this Agreement, or take such other actions as may be specified in the Development Agreement Legislation and the Development Agreement Ordinance.

8.6 Effect of City Council Finding of Noncompliance; Rights of Developer. If the City Council determines that Developer has not substantially complied in good faith with the material terms of this Agreement pursuant to this Article VIII, and takes any of the actions specified in this Article VIII with respect to such determination of noncompliance, Developer shall have the right to contest any such determination of noncompliance by City Council pursuant to Section 8.7, below.

8.7 Remedies. Upon the occurrence of an Event of Default, each Party shall have the right, in addition to all other rights and remedies available under this Agreement, to (a) bring any proceeding in the nature of specific performance, injunctive relief or mandamus, and/or (b) bring any action at law or in equity as may be permitted by Laws or this Agreement. Notwithstanding the foregoing, however, neither Party shall ever be liable to the other Party for any consequential or punitive damages on account of the occurrence of an Event of Default (including claims for lost profits, loss of opportunity, lost revenues, or similar consequential damage claims), and the Parties hereby waive and relinquish any claims for punitive damages on account of an Event of

Default, which waiver and relinquishment the Parties acknowledge has been made after full and complete disclosure and advice regarding the consequences of such waiver and relinquishment by counsel to each Party.

8.8 Time limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. In the event a Party determines that the other Party has not complied with any applicable time limit governing performance under this Agreement by such other Party or governing the time within which such other Party must approve a matter or take an action, then the Party affected by such circumstance shall, prior to taking any other action under this Agreement or exercising any other right or remedy under this Agreement, notify such other Party of such failure of timely performance or such failure to render an approval or take an action within the required time period.

In the case of City, Developer shall send such notice to Director of Planning with copy to the head of any board or commission, the President of the City Council, or the Mayor, having responsibility for performance, approval or action, as applicable, and to the City Administrator, and City Attorney.

Any such notice shall include a provision in at least twelve point bold face type as follows:

**"YOU HAVE FAILED TIMELY TO PERFORM OR
RENDER AN APPROVAL OR TAKE AN ACTION
REQUIRED UNDER THE AGREEMENT: [SPECIFY IN
DETAIL]. YOUR FAILURE TO COMMENCE TIMELY**

**PERFORMANCE AND COMPLETE SUCH
PERFORMANCE AS REQUIRED UNDER THE
AGREEMENT OR RENDER SUCH APPROVAL TO TAKE
SUCH ACTION WITHIN THIRTY (30) DAYS AFTER THE
DATE OF THIS NOTICE SHALL ENTITLE THE
UNDERSIGNED TO TAKE ANY ACTION OR EXERCISE
ANY RIGHT OR REMEDY TO WHICH IT IS ENTITLED
UNDER THE AGREEMENT AS A RESULT OF THE
FOREGOING CIRCUMSTANCES."**

The failure of the Party receiving such notice to proceed to commence timely performance and complete the same as required, or render such approval or take such action, within such thirty (30) day period shall entitle the Party giving such notice to take any action or exercise any right or remedy available under this Agreement, subject to any additional notice, cure or other procedural provisions applicable thereto under this Agreement.

Any deadline in this Agreement that calls for action by the City Council or other body that is subject to the requirements of the Ralph M. Brown Act (Government Code Sections 54950 et seq.), City Sunshine Ordinance (Oakland Municipal Code Chapter 2.20), or other noticing and procedural requirements, shall be automatically extended as may be reasonably necessary to comply with such requirements and with City's ordinary scheduling practices and other procedures for setting regular public meeting agendas.

No waiver by a Party of any failure of performance, including an event of default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such

failure. No express written waiver shall affect any other action or inaction, or cover any other period of time, other than any action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent action or inaction, and the performance of the same or any other term or provision contained in this Agreement.

Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

8.9 Effect of Court Action. If any court action or proceeding is brought within the applicable statute of limitations by any third Person to challenge the City Council's approval of (a) this Agreement or any portion thereof, or (b) any Project approval concurrently adopted with this Agreement, then (i) Developer shall have the right to Terminate this Agreement upon thirty (30) days' notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination, and (ii) any such action shall constitute a permitted delay under Article VII.

8.10 Estoppel Certificate. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such other Party to certify in writing that: (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and identifying any administrative implementation memoranda entered into by the Parties, and (c) to the knowledge of such other Party, neither Party has committed an event of default under this Agreement, or if an event of default has to such other Party's knowledge

occurred, to describe the nature of any such event of default. A Party receiving a request hereunder shall execute and return such certificate within forty five (45) days following the receipt thereof, and if a Party fails so to do within such 45-day period, the requesting Party may submit a second request (which shall also be sent to the City Council President, City Administrator and City Attorney) and if a Party fails to execute and return such certificate within thirty (30) days after the receipt of the second request, the information in the requesting Party's notice shall conclusively be deemed true and correct in all respects. The Director of City Planning, as to City, shall execute certificates requested by Developer hereunder. Each Party acknowledges that a certificate hereunder may be relied upon by Transferees and Mortgagees. No Party shall, however, be liable to the requesting Party, or third Person requesting or receiving a certificate hereunder, on account of any information therein contained, notwithstanding the omission for any reason to disclose correct and/or relevant information, but such Party shall be estopped with respect to the requesting Party, or such third Person, from asserting any right or obligation, or utilizing any defense, which contravenes or is contrary to any such information.

8.11 Special Cure Provisions. During such portion of the Term that a Ground Lease is in effect for any Phase, the provisions of Section 18.3 of the applicable Ground Lease shall apply to such Phase.

ARTICLE IX

MORTGAGES/MORTGAGEE PROTECTION

9.1 Mortgages/Mortgagee Protection. During such portion of the Term that a Ground Lease is in effect for any Phase, the provisions of Article 34 ("Mortgages") and Section 18.2 ("Special Provisions Concerning Mortgages and Events of Default") of the applicable Ground Lease govern and shall apply to all Mortgages with respect to such Phase.

ARTICLE X

TRANSFERS AND ASSIGNMENTS

10.1 Transfer/Assignment; Release. During such portion of the Term that the LDDA is in effect for any Phase, (a) Developer shall not be entitled to Transfer all or any portion of its rights or obligations under this Agreement related to such Phase separate or apart from a Transfer that is permitted pursuant to the LDDA and (b) if Developer makes a permitted Transfer of all or any portion of its rights or obligations under the LDDA with respect to any Phase, Developer's rights and obligations under this Agreement related to such Phase with respect to such Phase shall automatically transfer to the Transferee under the LDDA. During such portion of the Term that a Ground Lease is in effect for any Phase, (y) Developer shall not be entitled to Transfer all or any portion of its rights or obligations under this Agreement related to such Phase separate or apart from a Transfer that is permitted pursuant to the applicable Ground Lease and (z) if Developer makes a permitted Transfer all or any portion of its rights or obligations under the applicable Ground Lease with respect to any portion of the Project Site, Developer's rights and obligations under this Agreement with respect to such portion of the Project Site shall automatically transfer to the Transferee under the applicable Ground Lease (other than such a Transferee that is a subtenant under such Ground Lease). In either event, no such Transfer shall release or relieve Developer from any of its obligations under this Agreement unless, and only to the extent, expressly set forth in the documentation for such Transfer under, as applicable, the LDDA or the applicable Ground Lease.

10.2 Effect of Transfer; No Cross Default. A Transferee shall become a Party to this Agreement only with respect to the interest Transferred to it under the Transfer and then only to the extent set forth in Section 10.1 above. Subject to the preceding sentence, from and after the effective date of the Transfer, (a) an Event of Default by the Developer under this Agreement

shall have no effect on the Transferee's rights and obligations under this Agreement; (b) an Event of Default with respect to any Transferee shall have no effect on the Developer's rights and obligations under this Agreement; and (c) an Event of Default by a Transferee under this Agreement shall have no effect on the rights and obligations of any other Transferee under this Agreement.

ARTICLE XI

AMENDMENT AND TERMINATION

11.1 Amendment or Cancellation. Except as expressly provided in this Agreement, this Agreement may be Terminated, modified or amended only by the consent of the Parties made in writing, and then only in the manner provided for in Section 17.138.080 of the Development Agreement Ordinance. Neither this Agreement nor any term, covenant, condition or provision herein contained shall be subject to initiative or referendum after the Effective Date.

11.2 Certain Actions Not an Amendment. Notwithstanding the provisions of Section 11.1 above, a minor modification to this Agreement may be approved by mutual agreement of City and Developer and shall not require a noticed public hearing or any action by the Planning Commission or City Council before the Parties execute such modification, but shall require the giving of notice pursuant to Section 65867 of the Development Agreement Legislation as

specified by Section 65868 thereof. Modifications related to the Term, City Development Fees, Community Benefits, the allocations of SCA/MMRP as set forth in this Agreement or modifications that would increase the obligations of the City under this Agreement are expressly excluded from the definition of a "minor modification" and shall require the approval of the City Council. Subject to the foregoing, For purposes hereof, "minor modification" shall be determined as set forth in Section 10.12 of the LDDA. The Developer shall forward to all City Council members any and all "minor modifications" within ten (10) days after execution of such

Upon the expiration of such notice period, any such matter shall automatically be deemed incorporated into the Project and vested under this Agreement. The granting or amendment of a Project Approval or Subsequent Approval shall not require notice under Section 65867 and shall not be considered an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement.

EXPLANATORY NOTE:

Council questioned the breadth of the City Administrator's authority under this provision as drafted and recommended a stricter standard related to the definition of "minor modifications." The Council also requested that it be provided notice of all minor modifications. This was reviewed with the Developer and Staff and both recommend the incorporation of the above changes.

ARTICLE XII

NOTICES

12.1 Procedure. Subject to the provisions of Section 8.8, all formal notices to a Party shall be in writing and given by delivering the same to such Party in person or by sending the same by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, or by overnight courier delivery, to such Party's mailing address. A Party may provide courtesy notice via electronic mail or facsimile, which notice shall not be deemed official notice under this Agreement. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City: City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, California 94612

Attention: Rachel Flynn, Director of Planning and Building
Email: rflynn@oaklandnet.com

Oakland City Attorney's Office
One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94162
Attention: Mark Wald
Email: mwald@oaklandcityattomey.org

Developer: Prologis CCIG Oakland Global, LLC
Pier 1, Bay 1
San Francisco, CA 94111
Attn: Mr. Mark Hansen
Email: mhansen@prologis.com

With a copies to:

Prologis CCIG Oakland Global, LLC
c/o California Capital & Investments, Inc.
The Rotunda Building
300 Frank Ogawa Plaza, Suite 340
Oakland, CA 94612
Attn: Mr. Phil Tagami
Email: tagami@califomiagroup.com

Prologis, Inc.
4545 Airport Way
Denver, CO 80239
Attn: General Counsel
Facsimile: (303) 567-5761

Stice & Block, LLP
2201 Broadway, Suite 604
Oakland, CA 94612
Attention: Marc Stice, Esq.
Email: mstice@sticeblock.com

Notices and communications with respect to technical matters in the routine performance and administration of this Agreement shall be given by or to the appropriate representative of a Party by such means as may be appropriate to ensure adequate communication of the information, including written confirmation of such communication where necessary or appropriate. All formal notices under this Agreement shall be deemed given, received, made or communicated on

the date personal delivery is effected or, if mailed or sent by courier, on the delivery date or attempted delivery date shown on the return receipt or courier records. Any notice which a Party desires to be a formal notice hereunder and binding as such on the other Party must be given in writing and served in accordance with this Section 12.1.

12.2 Change of Notice Address. A Party may change its mailing address at any time by giving formal written notice of such change to the other Party in the manner provided in Section 12.1 at least ten (10) days' prior to the date such change is effected

ARTICLE XIII

COVENANTS RUNNING WITH THE LAND

13.1 Covenants Running With The Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other Persons that acquire a legal or equitable interest of Developer in the Project Site, or any portion thereof, or any interest therein, or any improvement thereon, whether by operation of Laws or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and permitted assigns as Transferees, as covenants running with the land pursuant to Section 65868.5 of the Development Agreement Legislation. This Agreement and the covenants as set forth herein shall run in favor of City without regard to whether City has been, remains or is an owner of any land or interest in the Project Site.

13.2 Successors to City. For purposes of this Article XIII, "City" includes any successor public agency to which land use authority over the Project may be transferred, which public agency shall, as part of such Transfer, by written instrument satisfactory to City and Developer, expressly (a) assume all of City's rights, duties and obligations under this Agreement;

and (b) release and Indemnify City from all obligations, claims, liability or other Losses under this Agreement.

ARTICLE XIV

MISCELLANEOUS

14.1 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that neither Party is acting as the Agent of the others in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any Person who is not a Party or a Transferee; and nothing in this Agreement shall limit or waive any rights Developer may have or acquire against any third Person with respect to the terms, covenants or conditions of this Agreement.

14.2 Approvals. Unless otherwise provided in this Agreement or, if applicable, the LDDA or any applicable Ground Lease, whenever approval, consent, satisfaction, or decision (herein collectively referred to as an "Approval"), is required of a Party pursuant to this Agreement, it shall not be unreasonably withheld or delayed. If a Party shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. Approval by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests. ~~Whenever, under this Agreement, the term "Approve" (or any grammatical variant thereof, such as "Approved" or "Approval") is used in connection with the right, power or duty of City, or any representative board, commission,~~

~~committee or official of City, to act in connection with any City approval, such term shall only include the right to approve, conditionally approve, or disapprove in accordance with the applicable terms, standards and conditions of this Agreement~~

EXPLANATORY NOTE:

Council questioned whether this provision improperly restricted the discretion of the Council to condition, revise or disapprove matters subject to this Agreement.

The intent of this provision was to make it clear that the Council's right to modify or disapprove matters is subject to the prohibition regarding the imposition of subsequent or new regulations that are inconsistent with the vesting provisions of this Agreement. Upon review, Staff and Developer believe this concept is adequately addressed in other provisions and therefore Staff and Developer recommend deletion of this provision.

14.3 Not a Public Dedication. Except for Exactions made in accordance with this Agreement, and then only when made to the extent so required, nothing herein contained shall be deemed to be a gift or dedication of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development of the Project as private property.

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

application of this Agreement to other situations shall 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, invalid, 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.

14.5 Exhibits. The exhibits listed below, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto:

- Exhibit A: Project Site Legal Description
- Exhibit B: City Approvals
- Exhibit C: Allocation of SCA/MMRP's
- Exhibit D-1: Project Conceptual Site Plan and
- Exhibit D-2: Development Program

14.6 Entire Agreement. This written Agreement and the exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and exhibits hereto, and such administrative implementation memoranda. Neither the conduct or actions of the Parties, nor the course of dealing or other custom or practice between the Parties, shall constitute a waiver or modification of any Term or provision of this Agreement; and this Agreement may be modified or amended only in the manner specified in this Agreement.

14.7 Construction of Agreement. All of the provisions of this Agreement have been negotiated at arms-length between the Parties and after advice by counsel, who have reviewed this Agreement, and other representatives chosen by each Party, and the Parties are fully informed with respect thereto. Therefore, this Agreement shall not be construed for or against

either Party by reason of the authorship or alleged authorship of any provisions hereof, or by reason of the status of either Party. The provisions of this Agreement and the exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party and consistent with the provisions hereof, in order to achieve the objectives and purpose of the Parties hereunder. The captions preceding the text of each article, section and the table of contents hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

14.8 Mitigation of Damages. In all situations arising out of this Agreement, each Party shall attempt to avoid and minimize the damages resulting from the conduct of the other Party. Each Party shall take all necessary measures to effectuate the provisions of this Agreement. Such actions shall include, but not be limited to, good faith and active participation in any meet and confer and cure process.

14.9 Further Assurances; Covenant to Sign Documents. Each Party shall take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

14.10 Covenant of Good Faith and Fair Dealing. Neither Party shall do anything which shall have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement; each Party shall refrain from doing anything which would render its performance under this Agreement impossible; and each Party shall do everything which this Agreement contemplates that such Party shall do in order to accomplish the objectives and purposes of this Agreement. The Parties intend by this Agreement to set forth their entire understanding with respect to the terms, covenants, conditions and standards for the

development, use and occupancy of the Project and by which the performance of the rights, duties and obligations of the Parties hereunder shall be measured or judged.

14.11 Governing Law. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the Laws of the State of California.

14.12 References; Terminology. Unless otherwise specified, whenever in this Agreement, reference is made to the table of contents, any article or section, or any defined term, such reference shall be deemed to refer to the table of contents, article or section or defined term of this Agreement. The use in this Agreement of the words "including," "such as" or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific items or matters, whether or not language of nonlimitation, such as "without limitation" or "but not limited to," or words of similar import, are used with reference thereto, but rather 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.

14.13 Irregularity in Proceeding. No action, inaction or recommendation by a Party pursuant to this Agreement, or of City in connection with a City approval, shall be held void or invalid, or be set aside by a court on the grounds of improper admission or rejection of evidence, or by reason of any error, irregularity, informality, neglect or omission (collectively, an "Error") as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation or any matters of procedure whatsoever, unless after an examination of the entire record with respect to such error, including the evidence, the court finds that the Error complained of was prejudicial, and that by reason of the Error, the complaining Party, or third Person, sustained and suffered substantial injury, and that a different result would have been probable if the Error had not occurred or existed. No presumption shall arise that an Error is

prejudicial, or that injury resulted from an Error, solely as a result of a showing that Error occurred.

14.14 Judicial Proceeding to Challenge Termination. Any challenge made by Developer to City's termination, modification, or amendment of this Agreement pursuant to a right so to do granted by this Agreement, shall be subject to review in the Superior Court of the County of Alameda and solely pursuant to California Code of Civil Procedure Section 1094.5(c).

14.15 Conflicts of Interest. Developer shall use all diligent efforts to ensure that no member, officer, employee, or consultant of City who participates in any way in the Project or in the making of this Agreement, or a member of such Person's immediate family, shall have any personal financial interest in the Project or this Agreement or receive any personal financial benefit from the Project. Developer warrants that it has not paid or given, and will not pay or give, to any third Person any money or other consideration in exchange for obtaining this Agreement. Not in limitation of any other indemnity obligation of Developer, Developer shall Indemnify City from any claims for real estate commissions or brokerage fees, finders or any other fees in connection with this Agreement.

14.16 Nonliability. No member, official, employee, agent, or member of any board or commission of City shall be personally liable to Developer, or any Transferee, in the event of any Event of Default committed by City or for any amount that may become due to Developer or a Transferee under the terms of this Agreement.

14.17 Developer's Warranties. Developer represents and warrants that it: (i) has access to professional advice and support to the extent necessary to enable Developer to fully comply with the terms of this Agreement and otherwise carry out the Project, (ii) is duly organized and validly existing under the Laws of the State of California, and (iii) has the full power and

authority to undertake the Project; and (iv) that the Persons executing and delivering this Agreement are authorized to execute and deliver this Agreement on behalf of Developer.

14.18 Exercise of Police Power. The Parties acknowledge that City has exercised its police power in the interest of the Parties, the citizens of City and the general public, by enacting this Agreement as its legislative act, and that full implementation of this Agreement will confer substantial benefits to the citizens of City and the general public.

14.19 Intentionally Omitted.

14.20 City of Oakland Campaign Contribution Limits. Developer has dated and executed and delivered to City an acknowledgement of campaign contributions limits form as required by Chapter 3.12 of the Oakland Municipal Code.

14.21 Disabled Access. Developer shall construct the Project in compliance with all applicable federal, state, and local requirements for access for disabled Persons.

14.22 City Subject to Brown Act and Sunshine Ordinance Requirements. Developer acknowledges that all City Council and Planning Commission actions are subject to the requirements of the provisions of the Sunshine Ordinance (Oakland Municipal Code Chapter 2.20) and the Ralph M. Brown Act (Government Code Sections 54950, et seq.), and the published agenda of the City Council and Planning Commission and regular procedures applicable thereto. City shall cause all City Council and Planning Commission actions to conform to the foregoing requirements and Developer shall take no action which would violate the foregoing requirements.

14.23 Signature Pages. This Agreement may be executed in counterparts, and in facsimile and/or electronic form, and all so executed, shall constitute one Agreement that shall be

binding upon all Parties hereto, notwithstanding that the signatures of all Parties' designated representatives do not appear on the same page.

14.24 No Third Party Beneficiary. Nothing in this Agreement shall confer any rights in favor of any third party or third parties.

14.25 Time. Time is of the essence of this Agreement and of each and every term and condition hereof

14.26 Recitals True and Correct. The Parties acknowledge and agree that the Recitals are true and correct and are an integral part of this Agreement.

14.27 Conflict with LDDA or Ground Lease. Notwithstanding any provision in this Agreement to the contrary, with the exception of Sections 3.8.4(b) and 3.8.6 and the addition of weekly compliance reporting referenced in Section 4.1, which is-are intended to control, (a) except as otherwise expressly set forth in the LDDA, in the event of any conflict between any provision of this Agreement and any provision of the LDDA, the provision of the LDDA shall govern and control; and (b) except as otherwise expressly set forth in the Ground Lease, in the event of any conflict between any provision of this Agreement and any provision of any applicable Ground Lease, the provision of the applicable Ground Lease shall govern and control.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

AUTHORIZED SIGNATURE OF CITY:

CITY OF OAKLAND, a California charter city,

By: _____

Its: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____

Deputy City Attorney

AUTHORIZED SIGNATURE OF DEVELOPER:

PROLOGIS CCIG OAKLAND GLOBAL,
A Delaware limited liability company,

By: _____

Name: _____

Title: Authorized Individual

EXHIBIT A

Project Site

[See attached]

EXHIBIT B

City Approvals

1. The 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report and the 2012 OARB Initial Study/Addendum ("EIR");
2. The Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date);
3. The Oakland Army Base Reuse Plan (as amended prior to the Adoption Date);
4. The LDDA;
5. The Gateway Industrial zoning district (Ordinance _____ C.M.S.); and
6. The Gateway Industrial Design Standards (Resolution _____ C.M.S).

True and correct copies of the above-mentioned City Approvals shall be included in the binders prepared by the City pursuant to Section 3.4.3.

EXHIBIT C

Allocation of SCA/MMRPs

[See attached]

EXHIBIT C

REVISIONS SHOWN IN UNDERLINE AND STRIKE-OUT

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

Standard Conditions of Approval/Mitigation Measures	Responsibility/Cost
Aesthetics, Wind and Shadows	
SCA-AES-1: Lighting Plan	City Developer
Mitigation 4.11-1: Lighting Design.	City Developer
Mitigation 4.11-3: Active and passive solar systems.	Developer
Mitigation 4.11-4: New construction within the Gateway development area adjacent to parcels containing permitted or existing active or passive solar systems.	Developer
Mitigation 4.11-5: Design of new, permanent buildings constructed along the Port/Gateway boundary to minimize conflicts over solar access.	Developer
Mitigation 4.11-6: Design of new construction adjacent to a public park or open space.	Developer
Air Quality	
SCA AIR-2: Construction-Related Air Pollution Controls (Dust and Equipment Emissions).	City Developer
<u>Mitigation 4.4-3b: Maritime and port-related emission reduction plan.</u>	Developer
Mitigation 4.4-4: Truck diesel emission reduction program.	Developer
Mitigation Measure 4.4-5: Transportation Control Measures (TCMs).	Developer
SCA AIR-1: Construction Management Plan.	City Developer
Mitigation 4.4-6: Title 24 compliance re new construction.	Developer
Mitigation Measure 5.4-1: Emission reduction demonstration projects that promote technological advances in improving air quality.	City Developer
SCA AIR-3: Exposure to Air Pollution (Toxic Air Contaminants: Particulate Matter) Indoor/Outdoor.	City Developer

¹ Standard Conditions of Approval/Mitigation Measures listed herein reference the 2012 OARB Project (Final and Corrected) SCA/MMRP 10-15-2D12.

EXHIBIT C

REVISIONS SHOWN IN UNDERLINE AND STRIKE-OUT

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

Biological Resources	
SCA BIO-1: Tree removal during breeding season.	City Developer
SCA BIO-5: Regulatory permits and authorizations for construction in or near the water.	City Developer
Mitigation Measure 4.12-5: Qualified observer for in-water construction activities near potential herring spawning areas between December 1 and March 1.	City Developer
Mitigation Measure 4.12-6i: Redirection of construction if spawning is observed.	City Developer
Modified Mitigation Measure 4.12-11: For Berths 7 and 5 (Wharves 5½ and 7), development and implementation of carrier ballast water education program.	Developer
Modified Mitigation Measure 4.12-12: For Berths 7 and 8 (Wharves 6½ and 7), support international and U.S. efforts to adopt uniform international or national standards to avoid introduction of exotic species through shipping activities.	Developer
Mitigation Measure 3.4-1a: Landscape Plan. Mitigation Measure 3.4-1b: Lighting Plan with raptor deterrents as required.	Developer
SCA BIO-2: Tree Removal Permit.	City Developer
SCA BIO-3: Tree Replacement Plantings.	City Developer
SCA BIO-4: Tree Protection During Construction.	City Developer
Cultural Resources	
SCA CULT-4: Compliance with Policy 3.7 of the Historic Preservation Element (Property Relocation Rather than Demolition).	City Developer
Mitigation Measure 4.6-2: Commemoration site, including preparation of a Master Plan for such a site, at a public place located within the Gateway development area.	Developer
Mitigation Measure 4.6-3: Public access to commemoration site.	Developer
Mitigation Measure 4.6-5: Military history web site.	Developer
Mitigation Measure 4.6-7: Distribution of copies of "A Job Well Done" documentary video published by the Army.	Developer
Mitigation Measure 4.6-9: Salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed.	City
Mitigation Measure 4.6-10: Brochure describing history and architectural history of the OARB.	Developer
Modified Mitigation Measure 4.6-14: Limits on demolition or deconstruction of contributing structures to the OARB Historic District.	City Developer
SCA CULT-1: Archaeological Resources.	City Developer

EXHIBIT C

REVISIONS SHOWN IN UNDERLINE AND STRIKE-OUT

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

SCA CULT-2: Human Remains.	City Developer
SCA CULT-3: Paleontological Resources.	City Developer
Geology and Soils ²	
SCA GEO-2: Soils Reports.	City Developer
SCA-GEO-8: Geotechnical Reports.	City Developer
Mitigation 4.13-1: Conformance with IBC, 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).	City Developer
Mitigation 4.13-2: Conformance with site-specific geotechnical evaluation.	City Developer
SCA GEO-1: Erosion and Sedimentation Control Plan.	City Developer
Mitigation 4.13-4: Review of available building and environmental records.	City Developer
Mitigation 4.13-5: Due diligence regarding underground utilities and facilities.	City Developer
Greenhouse Gas	
SCA GCC-1: Greenhouse Gas (GHG) Reduction Plan.	Developer
Hazards and Hazardous Materials ²	
SCA HAZ-1: Best Management Practices for Soil and Groundwater Hazards.	City Developer
SCA HAZ-2: Hazards Best Management Practices.	City Developer
SCA HAZ-3: Hazardous Materials Business Plan.	City Developer
SCA HAZ-4: Asbestos Removal in Structures.	City
SCA HAZ-5: Lead-Based Paint/Coatings, Asbestos, or PCB Occurrence Assessment.	City
SCA HAZ-6: Lead-Based Paint Remediation.	City
SCA HAZ-7: Other Materials Classified as Hazardous Waste.	City Developer
SCA HAZ-8: Health and Safety Plan per Assessment.	City

² The parties' allocation of environmental obligations may be more specifically addressed in other written agreements, which are controlling.

EXHIBIT C

REVISIONS SHOWN IN UNDERLINE AND STRIKE-OUT

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

	Developer
Mitigation 4.7-3: Implement RAP/RMP.	City Developer
Mitigation 4.7-4: For the project areas not covered by the DTSC-approved RAP/RMP, investigate potentially contaminated sites.	City Developer
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.	City Developer
Mitigation 4.7-6: LBP sampling prior to demolition.	City
Mitigation 4.7-7: ACM sampling prior to demolition.	City
Mitigation 4.7-8: PCB sampling prior to demolition.	City
Mitigation 4.7-9: Implement RAP/RMP for above-ground and underground storage tanks.	City Developer
Mitigation 4.7-11: Sampling and management of LBP-impacted soil, ground area.	City Developer
Mitigation 4.7-12: Annual ACM assessment.	Developer
Mitigation 4.7-13: Use consistent with Reuse Plan.	Developer
Mitigation 4.7-16: Investigation of oil-filled electrical equipment.	City Developer
Mitigation 4.7-17: Disposal of PCB-containing equipment.	City Developer
Hydrology and Water Quality	
SCA HYD-1: Stormwater Pollution Prevention Plan (SWPPP).	City Developer
Mitigation 4.15-1: Prior to in-water construction, water quality protection plan.	City Developer
Mitigation 4.15-2: Comply with permit conditions from the Corps, RWQCB and BCDC.	City Developer
Mitigation 3.9-1: Coordinate and consult with EBMUD and if necessary construct storm drain improvements resulting from increased elevation in the North Gateway area.	City
SCA HYD-2: Post-Construction Stormwater Management Plan.	City Developer
SCA HYD-3: Maintenance Agreement for Stormwater Treatment Measures.	City Developer
SCA HYD-4: Stormwater and Sewer Improvements and Maintenance.	City Developer
Mitigation 4.15-5: Post-construction controls of stormwater shall be incorporated into the design of new redevelopment elements to reduce pollutant loads.	City Developer

EXHIBIT C

REVISIONS SHOWN IN UNDERLINE AND STRIKE-OUT

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

Mitigation 4.14-1: Prohibition on 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.	City Developer
Mitigation 4.14-2: Minimize extraction of groundwater for construction de-watering or remediation.	City Developer
Mitigation 4.15-6: Site-specific design and best management practices shall be implemented to prevent runoff of recycled water to receiving waters.	City Developer
Recommended Measure: Prepare a Sea Level Rise Adaptation Plan for City of Oakland for review and approval.	City Developer
Noise	
SCA NOI-1: Days/Hours of Construction Operation.	City Developer
SCA NOI-2: Noise Control.	City Developer
SCA NOI-3: Noise Complaint Procedures.	City Developer
SCA NOI-6: Pile Driving and Other Extreme Noise Generators.	City Developer
SCA NOI-4: Interior Noise.	City Developer
SCA NOI-5: Operational Noise-General.	City Developer
Public Utilities	
SCA PSU-1: Underground Utilities.	City
SCA PSU-2: Fire Safety Phasing Plan.	City Developer
Mitigation 4.9-1: Increased firefighting and medical emergency response services via fireboat to serve the OARB sub-district.	Developer
Mitigation 4.9-2: Work with OES to ensure changes in local area circulation are reflected in the revised Response Concept.	Developer
Mitigation 4.9-3: Requirement to notify OES of plans in advance of construction or remediation activities.	City Developer
Traffic and Transportation	
Mitigation Measure 3.16-1: 7th Street & I-880 Northbound Off-Ramp (#12) ³ .	City
Mitigation Measure 3.16-2: San Pablo Ave & Ashby Avenue (#42)	City

³ 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.

EXHIBIT C

REVISIONS SHOWN IN UNDERLINE AND STRIKE-OUT

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

Mitigation Measure 3.16-3: 7 th Street & Harrison Street (#18).	city
Mitigation Measure 3.16-4: 12 th Street & Castro Street (#29). 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.	City
SCA TRANS-1: Parking and Transportation Demand Management.	City Developer
Mitigation 4.3-5: Design of roadways, bicycle and pedestrian facilities, parking lots, and other transportation features.	City Developer
Mitigation 4.3-7: Truck management plan.	Developer
Mitigation 4.3-8: Emergency service program and emergency evacuation plan using waterborne vessels.	Developer
<u>With regard to Maritime Street between 7th Street and West Grand Avenue:</u> Mitigation Measure 3.16-5: Shoulder with a minimum width of 8 feet on the west side of Maritime Street. Mitigation Measure 3.16-6: 9-foot wide area along the entire west side of Maritime Street. Mitigation Measure 3.16-7: 18-foot wide area along the entire east side of Maritime Street.	City
<u>With regard to North Maritime (formerly Wake Avenue):</u> Mitigation Measure 3.16-8: 2 travel lanes in each direction.	City
<u>With regard to Burma Road between Maritime Street and West Oakland (Burma East):</u> Mitigation Measure 3.16-9: 9-foot wide area along the entire north side of Burma Street.	City
Mitigation Measure 3.16-10: 7-foot wide area along the entire south side of Burma Street.	City
<u>With regard to Burma Road between Maritime Street and Railroad Tracks (Burma West):</u> Mitigation Measure 3.16-11: 9-foot wide area along the entire south side of Burma Street. Mitigation Measure 3.16-12: 20-foot wide area along the entire north side of Burma Street.	City
<u>With regard to Burma Road between Railroad Tracks and Gateway Park (Burma Far West):</u> Mitigation Measure 3.16-13: 8-foot wide area along the entire south side of Burma Street.	City
Mitigation Measure 3.16-14: Shoulder along the entire north side of Burma Street.	City
<u>With regard to Emergency Access:</u> Mitigation Measure 3.16-15a: Emergency response plan for the 2012 Army Base Project addressing emergency ingress/egress. Mitigation Measure 3.16-15b: Include West Burma Road turn-outs and turn-arounds at the appropriate locations and dimensions as required by the Fire Department.	City Developer
SCA TRANS-3: Railroad Crossings.	City Developer
Mitigation Measure 3.16-16: Engineers Road, crosswalk just west of the rail crossing on West Burma Road, "KEEP CLEAR," rail crossing angles.	City
Mitigation 4.3-9: Conformance with City of Oakland or Port development standards with facilities that support transportation alternatives to the single-occupant automobile.	City Developer
<u>Mitigation 4.3-10: Developer-sponsored parking demand study.</u>	<u>Developer</u>
SCA TRANS-2: Construction Traffic and Parking.	City Developer

EXHIBIT C

REVISIONS SHOWN IN UNDERLINE AND STRIKE-OUT

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

	City Developer
Mitigation 4.3-13: Traffic Control Plan (TCP).	
Mitigation Measure 3.16-17: West Grand Avenue & I-880 Frontage Road (#2).	City
Mitigation Measure 3.16-18: San Pablo Ave & Ashby Ave (#42).	City
Mitigation Measure 3.16-19: West Grand Avenue & Maritime Street (#1).	City
Mitigation Measure 3.16-20: 7th Street & Union Street (#15).	City
Mitigation Measure 3.16-21: West Grand Avenue & Northgate Avenue (#5).	City
Mitigation Measure 3.16-22: 5th Street & Union Street / I-880 North Ramps (#21).	City
Mitigation Measure 3.16-23: MacArthur Boulevard & Market Street (#33).	City
Mitigation Measure 3.16-24: West Grand Avenue & I-850 Frontage Road (#2).	City
Mitigation Measure 3.16-25: West Grand Avenue & Adeline Street (#4).	City
Mitigation Measure 3.16-26: West Grand Avenue & Market Street (#5).	City
Mitigation Measure 3.16-27: West Grand Avenue & San Pablo Avenue (#6).	City
Mitigation Measure 3.16-28: West Grand Avenue & Harrison Street (#9).	City
Mitigation Measure 3.16-29: 7th Street & Harrison Street (#18).	City
Mitigation Measure 3.16-30: 6th Street & Jackson Street (#20).	City
Mitigation Measure 3.16-31: 12th Street & Brush Street (#28).	City
Mitigation Measure 3.16-32: Powell Street & Hollis Street (#37).	City
Mitigation Measure 3.16-33: Powell Street/Stanford Avenue & San Pablo Avenue (#38).	City
Recommended Measures (Project and Cumulative): W. Grand Avenue & Maritime Street (#1) 7 th Street & Maritime Street (#10) 7 th Street & I-880 northbound off-ramp (#12)	City

EXHIBIT C

REVISIONS SHOWN IN UNDERLINE AND STRIKE-OUT

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

Underground Utilities	
SCA UTL-3: Underground Utilities.	City
SCA UTL-5: Improvements in the Public Right-of Way (Specific).	City
SCA UTL-6: Payment for Public Improvements.	City
Mitigation 4.9-4: Individual actions with landscaping requirements of one or more acres.	City Developer
Mitigation 4.9-5: Dual plumbing.	Developer
Mitigation 4.9-6: Use of recycled water.	City Developer
SCA UTL-1a, UTL-1b: Compliance with the Green Building Ordinance, OMC Chapter 18.02.	City Developer
SCA UTL-2: Waste Reduction and Recycling.	City Developer
Mitigation: 4.9-7: Deconstruction program.	City
Mitigation 4.9-8: Concrete and asphalt removed during demolition/construction.	City

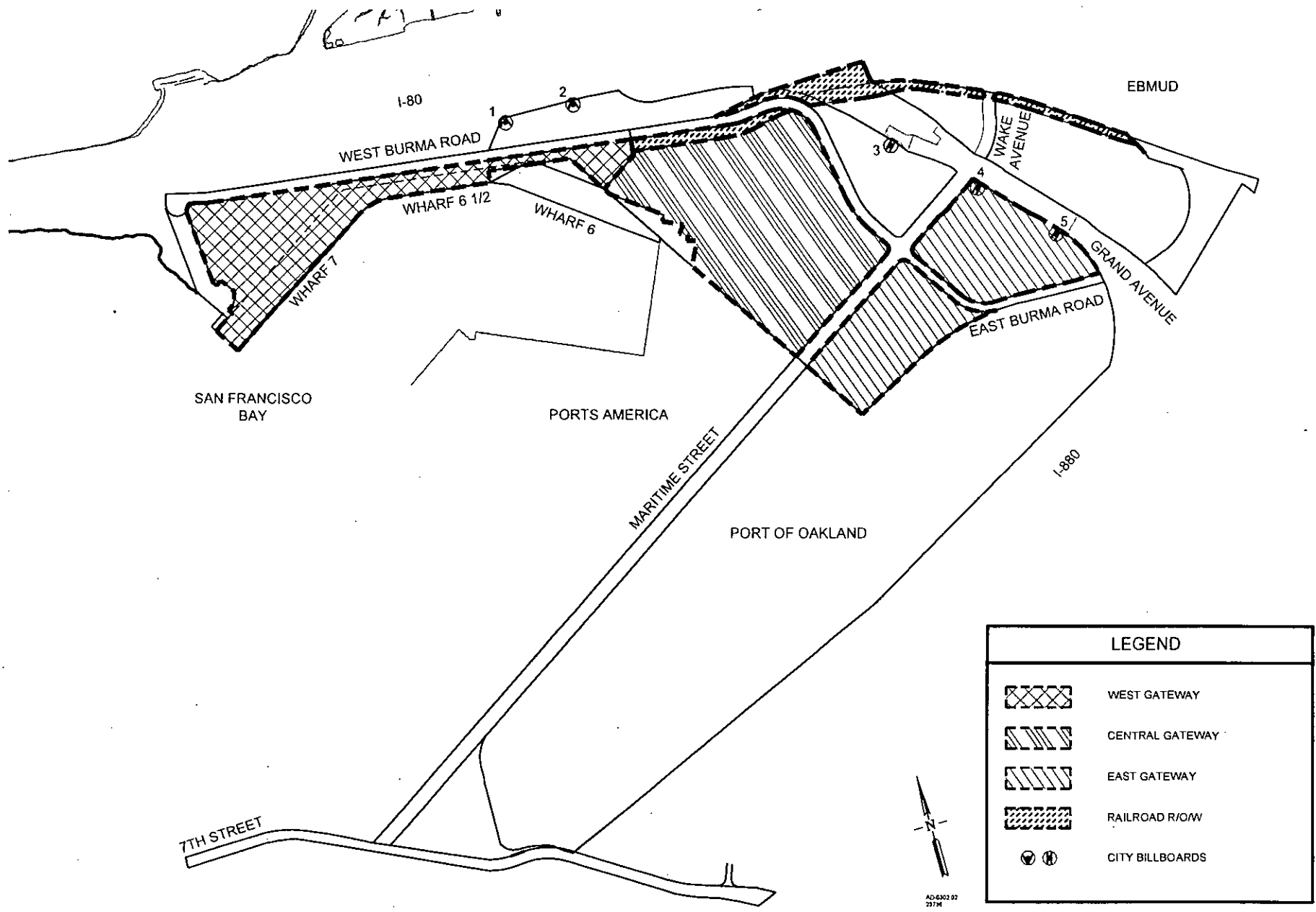
EXHIBIT D-1

PROJECT CONCEPTUAL SITE PLAN

[See attached]

PROJECT CONCEPTUAL SITE PLAN

EXHIBIT D-1



LEGEND	
	WEST GATEWAY
	CENTRAL GATEWAY
	EAST GATEWAY
	RAILROAD R/O/W
	CITY BILLBOARDS

Exhibit D-2

Project Development Program

A. East Gateway: (The development of the following shall be subject to the provisions of the applicable Ground Lease.)

1. Trade & Logistics Uses: Up to 442,560 square feet (at any permissible FAR) of trade and logistics facilities (warehouse, distribution and related facilities), including, but not limited to, general purpose warehouses, cold and refrigerated storage, container freight stations, deconsolidation facilities, truck terminals, and regional distribution centers (collectively, "EGW Trade & Logistics Uses").

2. Ancillary Uses: Developer also may develop and operate, as uses that are ancillary and related to the EGW Trade & Logistics Uses, trailer and container cargo storage and movement, chassis pools, open storage and open truck parking, and other ancillary uses ("EGW Ancillary Uses").

3. Conditional Uses: Trailer and container cargo storage and movement, chassis pools, open storage and open truck parking (collectively, "EGW Conditional Uses"); provided, however, that EGW Conditional Uses may only be developed and operated independent of EGW Trade & Logistics Uses on the continuing condition that, and for so long as, Developer is in compliance with its obligations under the applicable Ground Lease.

4. Support Improvements. Private circulation, utility and rail spur improvements consistent with the Master Plan and ancillary and supplemental to the Public Improvements constructed by the City (collectively, "EGW Support Improvements").

B. Central Gateway: (The development of the following shall be subject to the provisions of the applicable Ground Lease.)

1. Trade & Logistics Uses: Up to 500,210 square feet (at any permissible FAR) of trade and logistics facilities (warehouse, distribution and related facilities), including, but not limited to, general purpose warehouses, cold and refrigerated storage, container freight stations, deconsolidation facilities, truck terminals, and regional distribution centers (collectively, "CGW Trade & Logistics Uses").

2. Ancillary Uses: Developer also may develop and operate, as uses that are ancillary and related to the CGW Trade & Logistics Uses, trailer and container cargo storage and movement, chassis pools, open storage and open truck parking, and other ancillary uses ("CGW Ancillary Uses").

3. Conditional Uses: Trailer and container cargo storage and movement, chassis pools, open storage and open truck parking (collectively, "CGW Conditional Uses"); provided, however, that CGW Conditional Uses may only be developed and operated independent of CGW Trade & Logistics Uses on the continuing condition that, and for so long as, Developer is in compliance with its obligations under the applicable Ground Lease).

4. Support Improvements. Private circulation, utility and rail spur improvements consistent with the Master Plan and ancillary and supplemental to the Public Improvements constructed by the City (collectively, "CGW Support Improvements").

C. West Gateway: (The development of the following shall be subject to the provisions of the applicable Ground Lease.)

1. Bulk Oversized Terminal: A ship-to-rail terminal designed for the export of non-containerized bulk goods and import of oversized or overweight cargo ("Bulk Oversized Terminal").

2. Railroad Improvements: Railroad tracks and related equipment necessary to adequately serve the Bulk Oversized Terminal as shown on the Master Plan. The Railroad Improvements are subject to reduction if Caltrans approves only one (1) rail line pursuant to Section 2.2.6.3 of the Agreement.

3. Ancillary Uses: Developer also may develop and operate, as uses that are ancillary and related to the Bulk Oversized Terminal and, trailer and container cargo storage and movement, chassis pools, open storage and open truck parking, and other ancillary uses (the "WGW Ancillary Uses").

4. Developer Funded Wharf Improvements: If Developer elects to construct the Developer Funded Wharf Improvements pursuant to Section 3.5.1 of the Agreement, Developer shall also construct the Developer Funded Wharf Improvements as defined in the Agreement.

5. Conditional Uses: Trailer and container cargo storage and movement, chassis pools, open storage and open truck parking (collectively, "WGW Conditional Uses"); provided, however, that WGW Conditional Uses may only be developed and operated independent of Bulk Oversized Terminal on the continuing condition that, and for so long as, Developer is in compliance with its obligations under the applicable Ground Lease.

6. Support Improvements: Private circulation, utility and rail spur improvements consistent with the Master Plan and ancillary and supplemental to the Public Improvements constructed by the City (collectively, "WGW Support Improvements").

D. Billboards.

Number	<u>General</u> Billboard Location	Size	Sides	Display Type
1	Bay Bridge <u>approx.</u> 300' East of Toll Plaza – South Line, East & West Face	20'H x 60'W	2	LED
2	Bay Bridge <u>approx.</u> 800' East of Toll Plaza – South Line, West Face	20'H x 60'W	2	Backlit
3	1-880 West Grand <u>approx.</u> 500' North of Maritime – West Line, North & South Face	14'H x 48'W	2	LED
4	1-880 West Grand South of Maritime – West Line, North & South Face	14'H x 48'W	2	Backlit
5	1-880 West Grand <u>approx.</u> 600' South of Maritime– 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.

REVISED

FILED
OFFICE OF THE CITY CLERK
OAKLAND

REVISED JUNE 24, 2013
APPROVED AS TO FORM AND LEGALITY

Mark P. Wall
City Attorney

INTRODUCED BY COUNCILMEMBER _____

2013 JUN 27 PM 5:46

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND PROLOGIS CCIG OAKLAND GLOBAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR THE DEVELOPMENT ON APPROXIMATELY 160 ACRES IN THE GATEWAY DEVELOPMENT AREA OF THE FORMER OAKLAND ARMY BASE TO BE IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED DOCUMENTS, WITHOUT RETURNING TO CITY COUNCIL

WHEREAS, on June 12, 2012, the Oakland City Council, via Resolution No. 83930 C.M.S., approved the amended Oakland Army Base (OARB) Reuse Plan (Master Plan), including adopting the 2012 OARB Initial Study/Addendum, making related California Environmental Quality Act (CEQA) findings, and adopting the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP); and

WHEREAS, the Gateway Development Area encompasses approximately 160 acres of the OARB; and

WHEREAS, on July 3, 2012, the Oakland City Council approved, via Ordinance No. 13131 C.M.S., a Lease Disposition and Development Agreement (LDDA) with Prologis CCIG Oakland Global, LLC, a Delaware Limited Liability Company (Developer), which provided for the development on approximately 130 acres of the Gateway Development Area of a mixed-use industrial (warehousing and logistics) and commercial, including billboard, maritime, rail, and open space project (Project) and other Project-related matters; and

WHEREAS, Developer now seeks to "vest" its rights for the Project for the term of the LDDA (approximately 70 years) through a Development Agreement with the City; and

WHEREAS, the City Planning Commission held a duly noticed public hearing on the proposed Development Agreement, as well as other related planning matters, on May 1, 2013, and at the close of the hearing recommended approval of the Development Agreement to the City Council; and

WHEREAS, the Community and Economic Development Committee held a duly noticed meeting on May 28, 2013, to consider the Development Agreement and recommended approval of such to the City Council; and

WHEREAS, the City Council held duly noticed public hearings on the Development Agreement on June 4, 2013, and July 2, 2013; 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 Development Agreement, the City Council finds and determines that it can continue to rely on the previously adopted 2012 OARB Initial Study/Addendum for the reasons stated in June 12, 2012, and May 28, 2013, City Council Agenda Report and related attachments/exhibits. The (Final and Corrected) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, dated October 15, 2012, is also hereby reaffirmed/readopted, including the clarifying corrections discussed at the June 4, 2013, City Council hearing (Mitigation Measure 4.4-3b) and in the Agenda Report for the July 2, 2013, City Council meeting (Mitigation Measure 4.3-10).

Section 2: 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 3: The City Administrator or her designee is hereby authorized to execute, in form and content substantially in conformance with the Development Agreement and its Exhibits/Attachments, as set forth in Exhibit A, without returning to City Council: (1) the Development Agreement with the Developer for the Project; (2) the exhibits to the Development Agreement; (3) such other amendments or other modifications to the attached form of the Development Agreement which are necessary to conform to City Council direction, refine, clarify and correct technical errors or internal inconsistencies in drafting (including, attachment of 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 to complete the transactions which the Development Agreement contemplates to be conclusively evidenced by the execution and delivery by the City Administrator of the Development Agreement and any such amendments thereto; and (4) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the Project in order to consummate the transaction under the Development Agreement in accordance with this Ordinance and City Council direction, and to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

Section 4. The recitals set forth above are true and correct and are an integral part of this Ordinance.

Section 5. The City Council finds and determines the following:

a) The Development Agreement contains all information required by State Law and by the Oakland Municipal Code, including all information referenced in Chapter 17.138; and

b) The Project is consistent with the General Plan and all applicable planning and zoning enactments; and

c) The Development Agreement is desirable in order to facilitate the successful Project implementation; and

d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs and the catalytic effect the project will have on revitalizing the surrounding neighborhood, which will result in increased property values in the surrounding area and an increase in the viability of existing businesses; and

e) The public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Development Agreement.

Section 6. Except as specifically set forth herein, this Ordinance suspends and supersedes all resolutions, ordinances, plans, codes, laws and regulations conflicting with this Ordinance and/or implementation of the Development Agreement as approved or as may be amended, including without limitation Oakland Municipal Code section 14.04.270 (Chapter 15, Signs Adjacent to Freeways, sections 1501-1506).

Section 7. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of this Ordinance or its application to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Ordinance or the application of this Ordinance to other situations shall remain in full force and effect.

Section 8. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of the Development Agreement that this Ordinance approves or application of the Development Agreement to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of the Development Agreement or the application of the Development Agreement to other situations shall remain in full force and effect.

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

Section 9. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all relevant plans and maps;
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, Planning Commission, and City Council before and during the public hearings on the application; and

as (a) the General Plan and the General Plan Conformity Guidelines; (b) the Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations.

Section 10. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the Office of Neighborhood Investment, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland; (b) the Planning and Building Department, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland.

Section 11. This Ordinance shall not be codified in the Oakland Municipal Code.

Section 12. Pursuant to section 216 of the City Charter, this Ordinance is effective as of the date it is adopted if passed by an affirmative vote of at least six council members; otherwise, it is effective seven days after final adoption.

Section 13. 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, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

EXHIBIT A
Development Agreement

mfw

Revised June 25, 2013

NO COST RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Oakland
Dept. of Planning & Building
Attention: Rachel Flynn, Director of Planning & Building
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

(Above Space for Recorder's Use Only)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF OAKLAND

AND

PROLOGIS CCIG OAKLAND GLOBAL, LLC

REGARDING THE PROPERTY AND PROJECT KNOWN AS

“GATEWAY DEVELOPMENT/OAKLAND GLOBAL”

Dated _____, 2013

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DEVELOPMENT AGREEMENT
("Gateway Development/Oakland Global")

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of this ___ day of _____, 2013, by and between the CITY OF OAKLAND, a California charter city ("City"), and PROLOGIS CCIG OAKLAND GLOBAL, LLC, a Delaware limited liability company ("Developer"), pursuant to California Government Code Sections 65864, et seq., with respect to the development of the property and project known as the "Gateway Development/Oakland Global." City and Developer shall collectively be referred to herein as the "Parties," and may each individually be referred to as a "Party."

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

A. These Recitals refer to and utilize terms which are defined in this Agreement; and the Parties refer to those definitions in conjunction with their use in these Recitals.

B. The Development Agreement Legislation authorizes City to enter into development agreements in connection with the development of real property within its jurisdiction. The Development Agreement Ordinance establishes the authority and procedure for review and approval of proposed development agreements by City.

C. Developer applied for approval of this Agreement to: (1) vest the land use policies established in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and other Existing City Regulations as of the Adoption Date; (2) vest its rights and City's obligations regarding current and future approvals necessary for the Project; (3) allocate responsibility for the cost and implementation of the Mitigation Monitoring and Reporting

Program; and (4) memorialize certain other agreements made between City and Developer with respect to the Project. City and Developer acknowledge that development and construction of the Project is a large-scale undertaking involving major investments by Developer, with development occurring in phases over a period of years. Certainty that the Project can be developed and used in accordance with the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and other Existing City Regulations, will benefit City and Developer and will provide the Parties certainty with respect to implementation of the policies set forth in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and the other Existing City Regulations.

D. Development of the Project will meet the key objectives of City embodied in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date) and other Existing City Regulations. Specifically, the development of the Project will provide many benefits to City and the public including, but not limited to: (1) mitigate or avoid potentially significant environmental impacts; (2) provide public improvements and infrastructure; (3) deliver the Community Benefits required by the LDDA and the Ground Leases; (4) strengthen City's economic base with a variety of long term jobs, in addition to shorter term construction jobs; (5) provide for and generate substantial revenues for City in the form of one time fees and Exactions, rent pursuant to the applicable ground leases, property tax and other fiscal benefits; and (6) otherwise achieve the goals and purposes for which the Development Agreement Ordinance was enacted. City is therefore willing to enter into this Agreement to, among other

things: (1) provide certainty to encourage the required substantial private investment in the comprehensive development and planning of the Project; (2) secure orderly development and progressive fiscal benefits for public services, improvements and facilities planning in City; and (3) fulfill and implement adopted City plans, goals, policies and objectives, including, among others, those embodied in City's General Plan.

E. City recognizes the pioneering nature of the Project and the Project Site, and City intends that implementation of the General Plan and Redevelopment Plan policies, objectives and goals, and the zoning ordinance, as amended, will create increased value, operation and function of the Port of Oakland area and the surrounding neighborhoods.

F. City and Developer anticipate that the full build-out of the Gateway/Oakland Global project pursuant to this Agreement will generate economic and community benefits to the City of Oakland and Oakland residents.

G. The Development Agreement Legislation authorizes City to enter into a development agreement with any Person having a legal or equitable interest in real property. Developer has an interest in the Project Site described in Exhibit A, attached hereto, pursuant to the Lease Development and Disposition Agreement, by and among the City, the Oakland Redevelopment Successor Agency and Developer, effective December 4, 2012 (the "LDDA").

H. Developer proposes the development of the Project Site for a mix of trade and logistics uses, a marine terminal for bulk and oversized cargo and other uses and improvements in accordance with the City Approvals, the LDDA and this Development Agreement, as further described in Exhibits D-1 and D-2.

I. City has taken several actions to review and plan for the future development of the Project. These include, without limitation, the following: (1) preparation and certification of

the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report and the 2012 OARB Initial Study/Addendum("EIR"); (2) adoption and approval of the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date); (3) adoption and approval of the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date); (4) execution of the LDDA; (5) adoption and approval of the Gateway Industrial zoning district; and (6) adoption and approval of the Gateway Industrial Design Standards. This Agreement also anticipates City will timely consider and grant additional future approvals for the Project and that City will use the Environmental Impact Report prepared in support of this Agreement for those approvals and actions to the fullest extent allowed under applicable law.

J. On May 1, 2013, the City's Planning Commission held a duly noticed public hearing on this Agreement pursuant to the Development Agreement Ordinance, and other relevant provisions of the Planning Code. After due review of and report on Developer's application for this Agreement by City staff, consideration of all evidence heard and submitted at such public hearing and the matters to be considered pursuant to Section 17.138.060 of the Development Agreement Ordinance in enacting a development agreement, the Planning Commission, in relevant part: (1) considered and relied upon the certified the EIR for the Project, and determined that consideration of this Agreement complies with CEQA based on the EIR, and that this Agreement is consistent with the goals, objectives, policies, land uses and programs specified in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and the other Existing City Regulations pertaining thereto; and(2) recommended that the City Council approve this Agreement based on the foregoing findings. In taking the above actions, the Planning Commission reviewed and heard the report of City's staff

on the Agreement and considered all other evidence heard and submitted at the public hearing, including the matters to be considered pursuant to Section 17.138.060 of the Development Agreement Ordinance in recommending to the City Council the approval of a development agreement.

K. On June 4, 2013 and July 2, 2013, the City Council held duly noticed public hearings on this Agreement pursuant to the requirements of the Development Agreement Ordinance, and other relevant provisions of the Planning Code. After due review of and report on Developer's application for this Agreement by City staff, consideration of the Planning Commission's recommendations thereon, all other evidence heard and submitted at such public hearing, all other matters considered by the Planning Commission, and the matters to be considered pursuant to Section 17.138.060 of the Development Agreement Ordinance in enacting a development agreement and other relevant provisions of the Planning Code, the City Council: (1) considered and relied upon the certified EIR and determined that consideration of this Agreement complies with CEQA based on the EIR; and (2) introduced Enacting Ordinance No. ____ C.M.S. approving this Agreement, finding and determining in connection therewith that this Agreement is consistent with the goals, objectives, policies, land uses and programs specified in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date) and in the other Existing City Regulations pertaining thereto.

L. At a duly noticed public meeting on July 16, 2013, the City Council adopted Enacting Ordinance No. ____ C.M.S. enacting this Agreement.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Legislation and the Development Agreement Ordinance, and in consideration of the

foregoing Recitals and the mutual covenants and promises of the Parties herein contained, the Parties agree as follows.

AGREEMENT

ARTICLE I

DEFINITIONS

1.1 Defined Terms. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.

Adoption Date: The date the City Council adopted the Enacting Ordinance enacting this Agreement.

Applicable City Regulations: The Existing City Regulations, as defined below, and such other City Regulations, as defined below, otherwise applicable to development of the Project pursuant to the provisions of Section 3.4.

CEQA: The California Environmental Quality Act (Public Resources Code Sections 21000, et seq.) and the Guidelines there under (14 California Code of Regulations, Sections 15000, et seq.) ("CEQA Guidelines").

City Application Fees: Fees City regularly charges for the filing and processing of applications as set forth on City's Master Fee Schedule. City Application Fees shall not include City Development Fees, as defined below, or any fee, the purpose of which, is to compensate for or cover any cost or expense other than the filing and processing of an application.

City Approvals: Permits or approvals required under Applicable City Regulations to develop, use and operate the Project and granted on or before the Adoption Date of this Agreement as identified in Recital I of this Agreement and described in Exhibit B. (See also "Subsequent Approval," defined below.)

City Development Fees: The fees or assessments legislatively imposed by City against development projects as a general matter for capital improvements in effect on the Adoption Date, as set forth in the City's Master Fee Schedule. If, subsequent to the Adoption Date, the City ceases to apply or otherwise require a particular City Development Fee within the City, such fee or assessment shall no longer be deemed part of the City Development Fees.

City Master Fee Schedule: The Master Fee Schedule as adopted by the Oakland City Council (a) with respect to City Application Fees, as adopted and amended by the Oakland City Council and (b) with respect to City Development Fees, in effect as of the Adoption Date, a copy of which shall be included in the binders prepared pursuant to Section 3.4.3.

City Policies: The interpretations made by City of the manner in which Existing City Regulations will be applied to the development of the Project under Applicable City Regulations. "City Policies" shall include (a) those City Policies adopted prior to the Adoption Date, whether consistent or inconsistent with this Agreement, and (b) those City Policies adopted after the Adoption Date that are consistent with this Agreement (and exclude those City Policies adopted after the Adoption Date that are inconsistent with this Agreement). The term "City Policy" shall refer to any or all City Policies as the context may require.

City Regulations: The General Plan of City, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and all other ordinances, resolutions, codes, rules, regulations and policies in effect as of the time in question.

Commence in Earnest: To Commence in Earnest a Phase of the Project shall mean to initiate activities based on a City-issued building permit and other necessary permit(s) and diligently prosecute such permit(s) in substantial reliance thereon and make regular and

consistent progress toward the completion of construction and the issuance of a final certificate of occupancy, including successful completion of building inspections to keep the building permit(s) and other permit(s) active without the benefit of an extension.

Conditions of Approval: Project conditions adopted by the City in connection with City Approvals or Subsequent Approvals.

Construction Codes and Standards: The City Regulations pertaining to or imposing life safety, fire protection, seismic, mechanical, electrical and/or building integrity requirements with respect to the design and construction of buildings and improvements, including the then-current Uniform Building Code as adopted and amended by City and other construction codes, Federal Emergency Management Agency standards, and City's then current design and construction standards for streets, drains, sidewalks and other similar improvements, which codes and standards are applied to comparable development on a City-wide basis.

Dedication: An Exaction comprised of land and/or improvements required to be Dedicated to City.

Development Agreement Legislation: California Government Code Sections 65864 through 65869.5, authorizing City to enter into development agreements as therein set forth.

Development Agreement Ordinance: Chapter 17.138 of City's Planning Code, in effect as of the Adoption Date, establishing City's authority and procedure for review and approval of proposed development agreements.

Effective Date: The date this Agreement becomes effective, which shall be concurrent with the effective date of the Enacting Ordinance.

Enacting Ordinance: Ordinance No. _____ C.M.S., enacted by the City Council on July 2, 2013, enacting this Agreement.

Environmental Impact Report or EIR: The 2002 Oakland Anny Base Redevelopment Plan Environmental Impact Report and the 2012 OARB initial Study/Addendum.

Exaction: An exaction (other than City Application Fees or City Development Fees), Dedication or reservation requirement, an obligation for on- or off-site improvements or construction of public improvements, or an obligation to provide services. For purposes hereof, Exactions include, but are not limited to, mitigation measures imposed or adopted pursuant to CEQA or as part of the City Approvals.

Existing City Regulations: The City Regulations and City Policies in effect as of the Adoption Date and to the extent such are consistent therewith, the City Approvals as such are adopted from time to time.

Feasible: Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. The term "Feasible" includes any grammatical variant thereof, including "Feasibly" and "Infeasible."

Force Majeure: During such portion of the Term that the LDDA is in effect for any Phase, the definition of Force Majeure for such Phase shall be as defined in the LDDA. During such portion of the Term that a Ground Lease is in effect for any Phase, the definition of Force Majeure for such Phase shall as defined in the applicable Ground Lease.

Ground Lease: Each written Ground Lease that is or may be entered into between City and Developer (or City-approved affiliate of Developer) subsequent to the Effective Date of this Agreement, in substantially the same form required by the LDDA, and covering each Phase of the Project.

Governmental Agencies: All governmental or quasi-governmental agencies (such as public utilities) having jurisdiction over, or the authority to regulate development of, the Project. As used in this Agreement, the term "Governmental Agencies" does not include City or any of the departments of City.

Governmental Agency Approvals: All permits and approvals required by Governmental Agencies under Governmental Agency Regulations for construction, development, operation, use, provision of services to, or occupancy of, the Project.

Governmental Agency Regulations: The Laws, ordinances, resolutions, codes, rules, regulations and official policies of Governmental Agencies in effect as of the time in question.

Laws: The Constitution and Laws of the State, the Constitution of the United States, and any codes, statutes, regulations, or executive mandates thereunder, and any court decision, State or federal, thereunder. The term "Laws" shall refer to any or all Laws as the context may require. "Law" or "Laws" excludes, for the purpose of this Agreement, any local ordinance, regulation, rule or requirement.

LDDA: That certain Lease, Development and Disposition Agreement, by and among the City of Oakland, the Oakland Redevelopment Successor Agency and Prologis/CCIG Oakland Global, LLC, effective December 4, 2012.

Mitigation Monitoring and Reporting Program or SCA/MMRP: The (Final and Corrected) Standard Conditions of Approval and Mitigation Monitoring and Reporting Program, dated October 15, 2012 prepared for the EIR and adopted by the City Council on June 19, 2012, as may be amended or corrected.

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 in a Phase of the Project that is permitted under a Ground Lease and 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.

Person: An individual, partnership, limited liability company, firm, association, corporation, trust, governmental agency, administrative tribunal or other form of business or legal entity.

Phase: Each phase of the Project commonly referred to as the East Gateway, Central Gateway or West Gateway, as applicable.

Private Improvements: The term "Private Improvements" shall have the definition ascribed to the same in the LDDA.

Project: The development, use and occupancy of the Private Improvements on the Project Site pursuant to the City Approvals, the Subsequent Approvals and this Agreement, as identified in Recital H and described in Exhibit D.

Project Site: The real property described on Exhibit A hereto.

Public Improvements: The term "Public Improvements" shall have the definition ascribed to the same in the LDDA.

Subsequent Approvals: Permits or approvals required under Applicable City Regulations to develop, use and/or operate the Project and applied for, considered or granted after the

Adoption Date of this Agreement. Subsequent Approvals may include, without limitation, the following: amendments of the City Approvals, design review approvals, improvement agreements, encroachment permits, use permits, variances, grading permits, public improvement permits, building permits, tree removal permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps, rezonings, development agreements, permits, resubdivisions, condominium maps or approvals, and any amendments to, or repealing of, any of the foregoing, each as permitted by this Agreement.

Terminate: The expiration of the Term of this Agreement, whether by the passage of time or by any earlier occurrence pursuant to any provision of this Agreement. "Terminate" includes any grammatical variant thereof, including "Termination" or "Terminated". Termination shall not relieve Developer of any other obligation, including obligations under this Agreement that survive Termination (such as Indemnity obligations), accrued obligations under this Agreement, and obligations to comply with City Approvals, Governmental Agency Approvals and other Laws.

Transfer: During such portion of the Term that the LDDA is in effect for any Phase, the definition of Transfer for such Phase shall be as defined in the LDDA. During such portion of the Term that a Ground Lease is in effect for any Phase, the definition of Transfer for such Phase shall as defined in the applicable Ground Lease.

Transferee: The Person to whom a Transfer is effected.

ARTICLE II

TERM

2.1 Effective Date; Term Commencement. This Agreement shall be dated as of the Adoption Date; the rights, duties and obligations of the Parties hereunder shall be effective, and

the Term shall commence, as of the Effective Date. Not later than five (5) days after the Adoption Date, Developer shall execute and acknowledge this Agreement and return the Agreement to City; not later than ten (10) days after the Adoption Date, City, by and through its City Administrator or his/her designee, shall execute and acknowledge this Agreement, and upon receipt of such executed and acknowledged Agreement. The Parties anticipate that Developer may not own or hold any ground leasehold interest in any of the Project Site as of the Effective Date, and that Developer will, if at all, acquire a ground leasehold or Franchise interest in the Project Site in Phases. In order to make clear that the rights and obligations under this Development Agreement will apply to and run with the property comprising the Project Site (or Developer's ground leasehold interest therein) after such property is acquired by Developer, upon acquisition of a ground leasehold or Franchise interest in such property by Developer, Developer shall cause this Agreement or a memorandum thereof to be recorded against Developer's interest in such property in the Official Records of the County of Alameda pursuant to Section 65868.5 of the Development Agreement Legislation and Section 17.138.070 of the Development Agreement Ordinance. City shall cooperate in such recording, and shall execute, acknowledge and deliver such additional instruments and documents as may be necessary to facilitate such recording.

2.2 Expiration of Term. Unless sooner terminated pursuant to the applicable provisions of this Agreement, the Term of this Agreement shall expire as to a Phase on the first to occur of the following: (i) if a Ground Lease is not executed by the Parties with respect to a particular Phase, then, with respect to such Phase, upon expiration or earlier termination of the LDDA; or (ii) if a Ground Lease is executed by the Parties with respect to a particular Phase, then, with respect to such Phase, upon expiration or earlier termination of the Ground Lease for

such Phase; or (iii) December 31 of the calendar year that is seventy (70) years after the Effective Date. Notwithstanding the foregoing, the Term shall be extended, on a day-for-day basis, for any period of time during which (A) a development moratorium (including, but not limited to, a water or sewer moratorium (or both)), prevents, prohibits or delays the construction of the Project or (B) a lawsuit by a third party challenging any Project development approvals or permits is pending. Such extension shall be established pursuant to the procedure set forth in Section 7.1 below. Notwithstanding anything to the contrary in Section 7.1, the Term shall not be extended for any Force Majeure event except as set forth in this Section 2.2.

2.3 Subsequent Amendments or Termination. If the Parties amend, modify or Terminate this Agreement as herein provided, or as otherwise provided by the Development Agreement Ordinance, or this Agreement is modified or Terminated pursuant to any provision hereof, then the Developer shall, within ten (10) days after such action takes effect, cause an appropriate notice of such action to be recorded in the Official Records of the County of Alameda.

2.4 Effect of Termination of Agreement. Except for obligations a Party has accrued, upon Termination of this Agreement, all of the rights, duties and obligations of the Parties hereunder shall Terminate and be of no further force or effect. The Termination shall not permit City to modify, reduce or terminate any of the rights vested in Subsequent Approvals made pursuant to this Agreement prior to Termination for any Phase that Developer has Commenced in Eamest prior to the Terminadon or expiration of the Term. Upon Termination, City shall retain any and all benefits, including money or land, received by City as of the date of Termination under or in connection with this Agreement. No Termination shall prevent Developer from completing and occupying buildings or other improvements authorized pursuant

to valid building permits approved by City prior to the date of Termination, except that nothing herein shall preclude City, in its discretion, from taking any action authorized by Laws or City Regulations to prevent, stop or correct any violation of Laws or City Regulations occurring before, during or after construction.

ARTICLE III

GENERAL REGULATION OF DEVELOPMENT OF PROJECT

3.1 Application of Agreement to Project Site: As between the Parties, this Agreement is effective as of the Effective Date and is enforceable by each Party in accordance with its terms. Upon the acquisition by Developer (or a Transferee of Developer) of a ground lease or Franchise interest in any portion of the Project Site, this Agreement shall automatically become effective as to, and govern, such property as of the earlier of: (a) the Effective Date, or (b) the date Developer provides written evidence reasonably acceptable to City that Developer has acquired such interest.

3.2 Permitted Uses; Control of Development: This Agreement vests in Developer the right to develop the Project in accordance with the terms and conditions of this Agreement, the City Approvals and the Existing City Regulations; provided that City shall have the right to control development of the Project in accordance with the provisions of this Agreement, the LDDA and each Ground Lease. Notwithstanding any provision herein to the contrary, the permitted uses of each Phase of the Project, the density and intensity of use of each Phase, and the siting, height, envelope, and massing and size of proposed buildings in each Phase, shall consist only of those described in and expressly permitted by, and subject to all terms, conditions and requirements of, the City Approvals, the Subsequent Approvals, the LDDA, and the applicable Ground Lease for each Phase. Nothing in this Agreement shall prohibit Developer from requesting amendments to the City Approvals. The reservation or dedicadon of land for

public purposes shall be as set forth on the appropriate tentative or final subdivision maps for the Project or elsewhere in the City Approvals or Subsequent Approvals. This Agreement, the City Approvals, the LDDA and the Ground Lease, and where such instruments are silent, the Applicable City Regulations, shall control the overall design, development and construction of the Project, and all on- and off-site improvements and appurtenances in connection therewith. In the event of any inconsistency between the Applicable City Regulations and this Agreement, this Agreement shall control, except that if the inconsistency cannot be reconciled by application of this rule of construction, the provision which, as determined by the City Council, best gives effect to the purposes of this Agreement shall control.

3.3 Development Schedule/Sequencing: Developer shall develop each Phase of the Project strictly in accordance with, and in all respects subject to, the scope, timing, terms, conditions and requirements set forth in the City Approvals, the Existing City Regulations, the LDDA, and the Ground Lease for each Phase. Without limiting the preceding sentence, and notwithstanding any provision in this Agreement to the contrary, Developer shall develop the Private Improvements for each Phase of the Project in accordance with the "Minimum Project" description, scope, schedule and sequencing set forth in the Ground Lease for each Phase. Nothing in this Agreement shall be deemed to amend or modify the LDDA or any Ground Lease or to limit, modify, restrict or alter the rights of City, in its capacity as Landlord under each Ground Lease, to control development of each Phase or to otherwise exercise any other rights or remedies of Landlord under each Ground Lease.

3.4 Applicable City Regulations. Except as expressly provided in this Agreement and the City Approvals, the Existing City Regulations shall govern the development of the Project and all Subsequent Approvals with respect to the development of the Project on the Project Site,

except that Oakland Municipal Code section 14.04.270 (Chapter 15, Signs Adjacent to Freeways, sections 1501-1506) shall not apply to the Project. City shall have the right, in connection with any Subsequent Approvals, to apply City Regulations as Applicable City Regulations only in accordance with the following terms, conditions and standards:

3.4.1 Future City Regulations. Except as otherwise specifically provided in this Agreement, including, without limitation, the provisions relating to (a) regulations for health and safety reasons under Section 3.4.2 below; (b) regulations for Construction Codes and Standards under Section 3.4.4 below; and (c) provisions relating to the payment of City Application Fees pursuant to Section 3.4.5, below, City shall not impose or apply any City Regulations on the development of the Project Site that are adopted or modified by City after the Adoption Date (whether by action of the Planning Commission or the City Council, or by local initiative, local referendum, ordinance, resolution, rule, regulation, standard, directive, condition, moratorium) that would: (i) be inconsistent or in conflict with the intent, purposes, terms, standards or conditions of this Agreement; (ii) materially change, modify or reduce the permitted uses of the Project Site, the permitted density or intensity of use of the Project Site, the siting, height, envelope, massing, design requirements, or size of proposed buildings in the Project, or provisions for City Fees specified in Section 3.4.5 below and Exactions as set forth in the City Approvals, including this Agreement; (iii) materially increase the cost of development of the Project (subject to the acknowledgement as to the cost of Exactions specified in Section 3.4.6 below); (iv) materially change or modify, or interfere with, the timing, phasing, or rate of development of the Project; (v) materially interfere with or diminish the ability of a Party to perform its obligations under the City Approvals, including this Agreement, or the Subsequent Approvals, or to expand, enlarge or accelerate Developer's obligations under the City Approvals,

including this Agreement, or the Subsequent Approvals; or (vi) materially modify, reduce or terminate any of the rights vested in City Approvals or the Subsequent Approvals made pursuant to this Agreement prior to expiration of the Term. Developer reserves the right to challenge in court any City Regulation that would conflict with this Agreement or reduce the development rights provided by this Agreement, provided that such City Regulation directly affects the Project; provided, however, Developer shall first follow the dispute resolution procedures in Article VIII.

3.4.2 Regulation for Health and Safety. Notwithstanding any other provision of this Agreement to the contrary, City shall have the right to apply City Regulations adopted by City after the Adoption Date, if such application (a) is otherwise permissible pursuant to Laws (other than the Development Agreement Legislation), and (b) City determines based on substantial evidence and after a public hearing that a failure to do so would place existing or future occupants or users of the Project, adjacent neighbors, or any portion thereof, or all of them, in a condition substantially dangerous to their health or safety. The Parties agree that the foregoing exception to Developer's vested rights under this Agreement is in no way intended to allow City to impose additional fees or exactions on the Project, beyond the City Fees described below in Section 3.4.5, that are for the purpose of general capital improvements or general services (except in the event of a City-wide emergency).

3.4.3 Existing City Regulations. The City shall, at the Developer's sole cost and expense, compile two binders which include copies of all Existing City Regulations within ninety (90) calendar days after the Adoption Date, sign both copies, and deliver one copy to Developer. The City shall make every reasonable effort to include all Existing City Regulations.

3.4.4 Construction Codes and Standards. The City shall have the right to apply to the Project at any time, as a ministerial act, the Construction Codes and Standards in effect at the time of the approval of any City Approval or Subsequent Approval thereunder.

3.4.5 City Fees. Except as otherwise specified in this Agreement, the City Development Fees and the City Application Fees shall be the only fees or assessments charged by City in connection with the development or construction of the Project. The City Development Fees applicable to the Project shall only be those fees in effect on the Adoption Date, as set forth in the City's Master Fee Schedule. The Project shall not be subject to any increases in City Development Fees, and shall not be subject to any new City Development Fees adopted after the Adoption Date. Notwithstanding any other provision of this Agreement, Developer shall pay City Application Fees chargeable in accordance with City Regulations (including any action by the City Council to increase or otherwise adjust City Application Fees listed in the City's Master Fee Schedule) in effect and generally applicable at the time the relevant application is made.

3.4.6 Project Exactions. Developer and City acknowledge that the City Approvals and Subsequent Approvals authorize and require implementation of Exactions in connection with the development of the Project and that the specific costs of implementing such Exactions currently cannot be ascertained with certainty, but notwithstanding such uncertainty, except as otherwise provided in this Agreement, Developer shall be solely responsible for such costs in connection with implementing such Exactions as and when they are required to be implemented. Subject to the terms and conditions of this Agreement, no new Exactions shall be imposed by City on the Developer or the development of the Project, or on any application made by Developer for any City Approval or Subsequent Approval concerning the development of the

Project, or in enacting any City Approval or Subsequent Approval concerning the development of the Project, or in connection with the development, construction, use or occupancy of the Project; provided, however, subject to the provisions of Section 3.5 below, that Exactions may be imposed if required by CEQA (e.g., further CEQA review is undertaken for Subsequent Approvals and such review identifies the need for additional or modified mitigation measures, or previously imposed mitigation measures are no longer Feasible).

3.4.7 Term of City Approvals and Subsequent Approvals. Notwithstanding anything to the contrary in Applicable City Regulations, the term of any City Approval (other than this Agreement) and the Subsequent Approvals for the Project shall be for the longer of the Term of this Agreement (including any extensions) or the term otherwise applicable to such City Approval or Subsequent Approval if this Agreement is no longer in effect. Upon the later to occur of (a) the expiration or termination of this Agreement or (b) any Ground Lease (as such Ground Lease may be extended from time to time), any City Approval or Subsequent Approval related to the applicable Ground Lease premises in effect beyond the term of this Agreement shall be quitclaimed and assigned to the City or its designee pursuant to Section 30.1.5 of the applicable Ground Lease.

3.5. Review and Processing of Subsequent Approvals.

3.5.1 Reliance on Project EIR. The EIR, which has been certified by City as being in compliance with CEQA, addresses the potential environmental impacts of the entire Project as it is described in the Project Approvals. Nothing in this Development Agreement shall be construed to require CEQA review of Ministerial Approvals. It is agreed that, in acting on any discretionary Subsequent Approvals for the Project, City will rely on the EIR to satisfy the requirements of CEQA to the fullest extent permissible by CEQA and City will not require a new

initial study, negative declaration or subsequent or supplemental EIR unless required by CEQA, as determined by City in its capacity as the Lead Agency, and will not impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the City Approvals, specifically required by the Existing City Regulations or by subsequent CEQA review.

3.5.2 Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City, in its capacity as the Lead Agency, shall conduct such CEQA review as expeditiously as possible at Developer's sole cost and expense, including, without limitation, the payment of the applicable City Application Fee.

3.5.3 Request for Amendments to City Approvals. In the event that Developer requests an amendment to the City Approvals which proposes to increase the permitted square footage of development uses for the Project and (a) the approval by the City of such request would be a discretionary approval subject to CEQA and (b) at the time of the City's consideration of such request the project defined in the EIR has not been fully constructed, then the City shall, to the maximum extent permissible by law and other applicable agreements, take into consideration during the City's CEQA review of the requested amendment to the City Approvals the capacity/project envelope previously studied under the EIR that has not been previously constructed and is not the subject of a then current application for a land use related permit or a building permit to minimize the effects of such proposed amendment(s) that may otherwise require additional review under CEQA.

3.6 Exempting Fees Imposed by Outside Agencies. City agrees to exclude Developer from any and all collection agreements regarding fees, including, but not limited to, development impact fees, which other public agencies request City to impose at City's sole and absolute discretion with no conditions on the Project during the Term of this Agreement. Developer shall reimburse City for all costs and expenses (including without limitation consultants, City staff and/or City attorney or outside counsel time) incurred to implement this section.

3.7 Intentionally Omitted.

3.8 Allocation of SCA/MMRP.

3.8.1 Developer's Allocation of SCA/MMRPs. If the Developer elects to proceed with the development of the Project pursuant to the terms of the LDDA and the applicable Ground Leases, the Developer shall be responsible, at its sole cost and expense (as between the Parties), for the implementation of the applicable SCA/MMRPs allocated to Developer on Exhibit C. If the Developer elects to proceed with the development of the Project pursuant to the terms of the LDDA and the applicable Ground Leases, the failure of the Developer to implement the SCA/MMRP allocated to Developer pursuant to Exhibit C at the time set forth for such SCA/MMRP shall be an Event of Default of Developer under this Agreement.

3.8.2 City's Allocation of SCA/MMRPs. The Parties agree that any SCA/MMRP allocated to the City under Exhibit C shall be deemed to be a "Public Improvement" as defined in the LDDA and as such, the City's obligations related to the implementation of the applicable SCA/MMRPs allocated to the City on Exhibit C shall be controlled exclusively by the LDDA, including, but not limited to, the City's obligation to Complete (as defined in the LDDA) the Public Improvements pursuant to the LDDA and the

City's maximum financial contribution pursuant to Section 3.3.1.1.1 of the LDDA. Any failure of the City to Complete any Public Improvement, including any SCA/MMRPs allocated to the City on Exhibit C and any related remedies of the Developer shall be controlled exclusively by the LDDA, and therefore shall not be an Event of Default under this Agreement.

3.8.3 SCA/MMRPs Allocated to Developer and City. Unless otherwise agreed in writing among the Parties as an amendment to this Agreement pursuant to Article XI, where both the City and Developer are identified as being responsible for implementation of an SCA/MMRP: (a) the City shall be responsible with respect to the construction of the Public Improvements, subject to Section 3.8.2, and (b) Developer shall be responsible with respect to the construction and operation of the Private Improvements, as applicable, subject to Section 3.8.1.

3.8.4 Revisions to SCA/MMRP. The Parties acknowledge the provisions of Item 14 of Exhibit 15 to the LDDA which states in part:

“More feasible and/or cost effective measures may be considered by the Parties so long as those measures meet CEQA requirements and do not themselves cause any potentially significant effect on the environment, as determined by the City through the DA/PUD process.”

Consistent with this language, the Parties further agree that with respect to the following SCA/MMRPs, if the events identified in the EIR which require the implementation of a SCA/MMRP associated with a cumulative impact have not occurred within the time period contemplated in the EIR or a Party proposes a more cost effective or feasible mitigation measure that meets the applicable CEQA requirements and do not themselves cause any potentially significant effect on the environment, the City may delete or amend

the applicable SCA/MMRPs, so long as the City, in its capacity as the Lead Agency under CEQA for the Project, takes the appropriate action under CEQA to amend or delete the applicable SCA/MMRP, as follows:

- a. at the request of Developer and with the City's prior written consent which shall not be unreasonably withheld or delayed, the SCA/MMRPs allocated to Developer pursuant to Exhibit C and Sections 3.8.1 and/or 3.8.3 of this Agreement; and
- b. in the sole and absolute discretion of the City, the Delayed Public Improvements, which the Parties hereby agree refer specifically to the cumulative off-site traffic improvements listed in Mitigation Measures 3.16-17 through 33 and related Recommended Measures, inclusive, of the SCA/MMRP and are a subset of the Public Improvements.

In the event a SCA/MMRP is deleted pursuant to this Section, the applicable Party shall have no obligation to implement the applicable SCA/MMRP under this Agreement, the LDDA and/or CEQA, as applicable. In the event that a SCA/MMRP is amended pursuant to this Section, the applicable Party shall be deemed to have satisfied its obligation under this Agreement, the LDDA and CEQA, as applicable, by implementing the amended SCA/MMRP.

3.8.5 Survival of Termination. The Parties agree that Section 3.8 shall survive any termination of this Agreement.

3.8.6 Corrections to SCA/MMRP. The Parties agree that technical corrections made by the City to the SCA/MMRP, including previously adopted but omitted Standard Conditions and/or Mitigation Measures, will be incorporated herein and allocated in the same manner as the foregoing.

ARTICLE IV
COMMUNITY BENEFITS

4.1 Community Benefits. During such portion of the Term that the LDDA is in effect for any Phase, Developer shall comply with the Community Benefit requirements set forth in Article IV of the LDDA for such Phase. During such portion of the Term that a Ground Lease is in effect for any Phase, Developer shall comply with the Community Benefit requirements set forth in Section 37.6 of the applicable Ground Lease for such Phase. In addition, the parties hereby agree to amend the Construction Jobs Policy for the Public Improvements to require weekly compliance reporting through the website proposed by the California Capital & Investments Group, Inc.

ARTICLE V
INDEMNITY AND INSURANCE

5.1 Prior Indemnity Agreement. The Parties acknowledge that they have previously entered into that certain Oakland Army Base Environmental Review Funding and Indemnity Agreement Associated with Initial Project Approvals, dated October 23, 2012 (the "Prior indemnity Agreement"). Nothing in this Agreement shall amend the provisions of the Prior Indemnity Agreement.

5.2 Developer Indemnity Regarding City Approvals. To the maximum extent permitted by law, Developer shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission and their respective agents, officers, employees and volunteers (hereafter collectively called "City Parties") from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal

costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Agreement or any City Approvals approved concurrently herewith or any Subsequent Approval or the implementation of the same. The City may elect, in its sole discretion, to participate in the defense of said Action and Developer shall reimburse the City for its reasonable legal costs and attorneys' fees.

Within ten (10) calendar days of the filing of any Action as specified in the preceding paragraph, Developer shall execute a Joint Defense Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the City Approval or any Subsequent Approval requested by Developer. Failure to timely execute the Letter Agreement does not relieve the Developer of any of the obligations contained in this Section or other requirements or Conditions of Approval that may be imposed by the City.

5.3 Developer Indemnity Regarding Other Matters. Subject to the provisions of Section 5.1 and 5.2 with respect to such matters included within the scope of such Sections, during such portion of the Term that a Ground Lease is in effect for any Phase, Developer shall defend, indemnify, protect and hold harmless the City Parties, from and against any and all Actions related to such Phase, in accordance with the indemnification obligations of the tenant as set forth in the applicable Ground Lease.

5.4 Insurance. During such portion of the Term that a Ground Lease is in effect for any Phase, Developer shall, at no cost to City, maintain and cause to be in effect with respect to

each Phase, the same types and amounts of insurance required of the tenant under the Ground Lease for such Phase.

ARTICLE VI

ANNUAL REVIEW OF COMPLIANCE

6.1 Annual Review. City and Developer shall annually review this Agreement, and all actions taken pursuant to the terms of this Agreement with respect to the Project, in accordance with the provisions of Section 17.138.090 of the Development Agreement Ordinance and this Article VI. Nothing herein is intended to, nor does, (a) preclude earlier review by City at its reasonable request with thirty (30) days' notice to Developer, or (b) either Party providing notice of noncompliance, breach or default of this Agreement to the other Party in accordance with, as applicable, the terms of the LDDA (for Events of Default arising under the LDDA), the terms of the applicable Ground Lease (for Events of Default arising under the applicable Ground Lease) or the applicable dispute resolution provisions of this Agreement detailed in Article VIII (for all other Events of Default under this Agreement).

6.2 Developer's Submittal. Not later than the first anniversary date of the Effective Date, and not later than each anniversary date of the Effective Date thereafter during the Term, Developer shall apply for annual review of this Agreement, as specified in Section 17.138.090.A of the Development Agreement Ordinance. Developer shall pay with such application the City Application Fee for annual review of Development Agreements under Existing City Regulations in effect at the time the application is submitted. Developer shall submit with such application a written report to City's Director, Department of Planning and Building ("Director of City Planning"), with a copy to the City Attorney, describing Developer's good faith substantial compliance with the terms of this Agreement during the preceding year. Such report shall

include a statement that the report is submitted to City pursuant to the requirements of Government Code Section 65865.1, and Section 17.138.090 of the Development Agreement Ordinance, on the top of the first page of the report, in clearly marked bold, twelve point typeface, substantially as follows:

**"THIS REPORT IS SUBMITTED UNDER GOVERNMENT
CODE SECTION 65865.1 AND SECTION 17.138.090 OF
THE DEVELOPMENT AGREEMENT ORDINANCE. CITY
HAS 45 DAYS TO RESPOND."**

6.3 Finding of Compliance. Within forty-five (45) days after Developer submits its report hereunder, the Director of City Planning shall review Developer's submission to ascertain whether Developer has demonstrated good faith substantial compliance with the material terms of this Agreement. If the Director of City Planning finds and determines that Developer has in good faith substantially complied with the material terms of this Agreement, the Director of City Planning shall prepare and issue a certificate of compliance pursuant to Section 6.5 below. If the Director of City Planning does not make a determination and issue a certificate of compliance within forty-five (45) days of receipt of Developer's report under Section 6.2 above (unless extended by Developer in writing), Developer shall submit a second letter notifying the Mayor, Council President, Director of City Planning, City Administrator, and City Attorney that the 45-day determination period has expired. The second notification letter shall inform the City representatives that if the Director of City Planning does not make a determination and issue a certificate of compliance, within 30 days after receipt of the second notification letter, the annual review shall be deemed concluded and Developer shall be entitled to a certificate of compliance pursuant to Section 6.5.

If the Director of City Planning initially determines that such report is inadequate in any respect, he or she shall provide written notice to that effect to Developer, and Developer may supply such additional information or evidence as may be necessary to demonstrate good faith substantial compliance with the material terms of this Agreement. Developer's written response of additional information/evidence must be submitted within 30 days of City notification. If the Director of City Planning again concludes that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, he or she shall so notify Developer within 30 days after receipt of Developer's additional information or evidence. If the Director of City Planning does not agree with Developer's response, then he/she shall provide written notice of the commencement of the Meet and Confer/Mediation Process within 30 days of the receipt of the response, and the dispute resolution procedures and process detailed in Article VIII will apply, commencing with Section 8.4 (Meet and Confer/Mediation Process).

6.4 Failure to Conduct Annual Review. Failure of the City to conduct an annual review shall not be an Event of Default under this Agreement by the City and shall not constitute a waiver by the City of its rights to require subsequent annual reviews pursuant to this Article VI. Failure of the City to conduct an annual review shall not cause the Developer to be in Default under this Agreement, but it does not relieve the Developer of the obligation to submit the Annual Review report as required by Section 6.2.

6.5 Certificate of Compliance. Upon Developer's written request following the annual review process described in Article VI, if the Director of City Planning (or the City Council, if applicable) finds good faith substantial compliance by Developer with the material terms of this Agreement (or the City fails to timely conduct an annual review and the Developer has complied with all submittal requirements of Section 6.2), the Director of City Planning shall

issue a certificate of compliance within twenty (20) days thereafter, certifying Developer's good faith compliance with the material terms of this Agreement through the period of the applicable annual review. Such certificate of compliance shall be in recordable form and shall contain such information as may be necessary to impart constructive record notice of the finding of good faith compliance hereunder. Developer shall have the right to record the Certificate of Compliance in the Official Records of the County of Alameda.

ARTICLE VII

FORCE MAJEURE; SUPERSEDURE BY SUBSEQUENT LAWS

7.1 Force Majeure. During such portion of the Term that the LDDA is in effect for any Phase, the provisions of Section 10.1 of the LDDA shall apply to such Phase. During such portion of the Term that a Ground Lease is in effect for any Phase, the provisions of Article 16 of the applicable Ground Lease shall apply to such Phase.

7.2 Supersedure By Subsequent Laws.

7.2.1 Effect of Conflicting Law. Except as prohibited by Government Code Section 65869.5 or other applicable state or federal law, to the extent any future rules, ordinances, regulations or policies applicable to development of the Project Site are inconsistent with the land use designations or permitted or conditionally permitted uses on the Project Site, density and intensity of use, rate or timing of construction, design requirements, maximum building height and size, or provisions for reservation and dedication of land or other conditions of approval or terms under the City Approvals as defined herein and as provided in this Agreement, the terms of the City Approvals and this Agreement shall prevail. As specified in Government Code Section 65869.5, if any Law enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent Feasible, be modified or suspended by City as may be

necessary to comply with such new Law. Immediately after becoming aware of any such new Law, the Parties shall meet and confer in good faith to determine the Feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. At the conclusion of such meet and confer process, and to the extent Feasible in any event no later than ninety (90) days after such new Law takes effect, City shall initiate proceedings for the modification or suspension of this Agreement as may be necessary to comply with such new Law. Such proceedings shall be initiated by public notice given in accordance with the Applicable City Regulations, and the City Council shall make the determination of whether modifications to or suspension of this Agreement is necessary to comply with such new Law. The City Council's determination shall take into account the results of the meet and confer process between the Parties, including all data and information exchanged in connection therewith. To the extent Feasible, the City Council shall make its determination hereunder within sixty (60) days after the date the proceedings hereunder are initiated.

7.2.2 Contest of New Law. Either Party shall have the right to contest the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. The City Council, in making its determination under Section 7.2.1, shall take into account the likelihood of success of any contest pending hereunder, and if the contesting Party has obtained interim relief preventing enforcement of such new Law, then the City Council shall delay consideration of action on modifications to or suspension of this Agreement pursuant to Section 7.2.1 above until such contest is concluded or such interim relief expires.

ARTICLE VIII

EVENTS OF DEFAULT; REMEDIES; ESTOPPEL CERTIFICATES

8.1 Events of Default. Subject to the provisions of this Agreement, any failure by a Party to perform any material term or provision of this Agreement shall constitute an "Event of Default," if, following the notice, meet and confer and cure processes specified below, the Party in default has not timely cured said default. Notwithstanding the foregoing to the contrary, (a) subject to the applicable limitations under the LDDA on cross-defaults between the Phases, during such portion of the Term that the LDDA is in effect for any Phase, any "Event of Default" (as defined in the LDDA) related to such Phase under the LDDA shall be deemed an Event of Default under this Agreement, (b) subject to the applicable limitations under the Ground Leases on cross-defaults between the Ground Leases, during such portion of the Term that a Ground Lease is in effect for any Phase, any "Event of Default" (as defined in the applicable Ground Lease) related to such Phase under the applicable Ground Lease shall be deemed an Event of Default under this Agreement and (c) the provisions of Section 8.2 through 8.6, inclusive, and the notice provisions of Section 8.8 shall not apply to "Events of Default" under the LDDA or the applicable Ground Lease.

8.2 Notice of Noncompliance. If either Party determines there is noncompliance with this Agreement, said Party must provide the other Party written notice of such noncompliance, which shall specify in reasonable detail the grounds therefor and all facts demonstrating such noncompliance or failure, so the other Party may address the issues raised in the notice of noncompliance or failure on a point-by-point basis.

8.3 Response to Notice of Noncompliance. Within thirty (30) days of receipt of the notice of noncompliance, the Party receiving such notice shall respond in writing to the issues raised in the notice of noncompliance on a point-by-point basis. If the noticing Party agrees with

and accepts the other Party's response, no further action shall be required. If the noticing Party does not agree with the response, then it shall provide to the other Party written notice of the commencement of the Meet and Confer/Mediation Process within thirty (30) days of the receipt of the response.

8.4 Meet and Confer/Mediation Process. Within fifteen (15) days of receipt of a meet and confer notice, the Parties shall initiate a Meet and Confer/Mediation Process pursuant to which the Parties shall meet and confer in good faith in order to determine a resolution acceptable to both Parties of the bases upon which either Party has determined that the other Party has not demonstrated good faith substantial compliance with the material terms of this Agreement.

8.5 Hearing Before City Council to Determine Compliance.

(a) Pursuant to the Annual Review Process of Article VI, or if City determines, after the Meet and Confer/Mediation Process, that there still remain outstanding noncompliance issues, the City Council shall conduct a noticed public hearing pursuant to Section 17.138.090 of the Development Agreement Ordinance to determine the good faith substantial compliance by Developer with the material terms of this Agreement. At least ten (10) days prior to such hearing, the Director of City Planning shall provide to the City Council, Developer, and to all other interested Persons requesting the same, copies of the City Council agenda report, agenda related materials and other information concerning the Annual Review Process of Article VI and/or Developer's good faith substantial compliance with the material terms of this Agreement and the conclusions and recommendations of the Director of City Planning. The results and recommendations of the Meet and Confer/Mediation Process shall be presented to the City Council for review and consideration. At such hearing, Developer and any

other interested Person shall be entitled to submit evidence, orally or in writing, and address all the issues raised in the staff report on, or with respect or germane to, the issue of Developer's good faith substantial compliance with the material terms of this Agreement.

(b) The City Council may, in its sole discretion, require an additional Meet and Confer/Mediation Process with a designated third party or mediator. The results and recommendations of said process shall be presented to the City Council for review and consideration at a duly noticed meeting.

(c) If, after receipt of any written or oral response of Developer, and/or results and recommendations from the Meet and Confer/Mediation Process that may have occurred, and after considering all of the evidence at such public hearing, or a further public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not substantially complied in good faith with the material terms of this Agreement, the City Council shall specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance that shall reasonably reflect the time necessary to adequately bring Developer's performance into good faith substantial compliance with the material terms of this Agreement. If the areas of noncompliance specified by the City Council are not corrected within the time limits prescribed by the City Council hereunder, subject to the Permitted Delay provisions of Section 7.1, above, the City Council may by subsequent noticed hearing extend the time for compliance for such period as the City Council may determine (with conditions, if the City Council deems appropriate), Terminate or modify this Agreement, or take such other actions as may be specified in the Development Agreement Legislation and the Development Agreement Ordinance.

8.6 Effect of City Council Finding of Noncompliance; Rights of Developer. If the City Council determines that Developer has not substantially complied in good faith with the material terms of this Agreement pursuant to this Article VIII, and takes any of the actions specified in this Article VIII with respect to such determination of noncompliance, Developer shall have the right to contest any such determination of noncompliance by City Council pursuant to Section 8.7, below.

8.7 Remedies. Upon the occurrence of an Event of Default, each Party shall have the right, in addition to all other rights and remedies available under this Agreement, to (a) bring any proceeding in the nature of specific performance, injunctive relief or mandamus, and/or (b) bring any action at law or in equity as may be permitted by Laws or this Agreement. Notwithstanding the foregoing, however, neither Party shall ever be liable to the other Party for any consequential or punitive damages on account of the occurrence of an Event of Default (including claims for lost profits, loss of opportunity, lost revenues, or similar consequential damage claims), and the Parties hereby waive and relinquish any claims for punitive damages on account of an Event of Default, which waiver and relinquishment the Parties acknowledge has been made after full and complete disclosure and advice regarding the consequences of such waiver and relinquishment by counsel to each Party.

8.8 Time limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. In the event a Party determines that the other Party has not complied with any applicable time limit governing performance under this Agreement by such other Party or governing the time within which such

other Party must approve a matter or take an action, then the Party affected by such circumstance shall, prior to taking any other action under this Agreement or exercising any other right or remedy under this Agreement, notify such other Party of such failure of timely performance or such failure to render an approval or take an action within the required time period.

In the case of City, Developer shall send such notice to Director of Planning with copy to the head of any board or commission, the President of the City Council, or the Mayor, having responsibility for performance, approval or action, as applicable, and to the City Administrator, and City Attorney.

Any such notice shall include a provision in at least twelve point bold face type as follows:

**"YOU HAVE FAILED TIMELY TO PERFORM OR
RENDER AN APPROVAL OR TAKE AN ACTION
REQUIRED UNDER THE AGREEMENT: [SPECIFY IN
DETAIL]. YOUR FAILURE TO COMMENCE TIMELY
PERFORMANCE AND COMPLETE SUCH
PERFORMANCE AS REQUIRED UNDER THE
AGREEMENT OR RENDER SUCH APPROVAL TO TAKE
SUCH ACTION WITHIN THIRTY (30) DAYS AFTER THE
DATE OF THIS NOTICE SHALL ENTITLE THE
UNDERSIGNED TO TAKE ANY ACTION OR EXERCISE
ANY RIGHT OR REMEDY TO WHICH IT IS ENTITLED
UNDER THE AGREEMENT AS A RESULT OF THE
FOREGOING CIRCUMSTANCES."**

The failure of the Party receiving such notice to proceed to commence timely performance and complete the same as required, or render such approval or take such action, within such thirty (30) day period shall entitle the Party giving such notice to take any action or exercise any right or remedy available under this Agreement, subject to any additional notice, cure or other procedural provisions applicable thereto under this Agreement.

Any deadline in this Agreement that calls for action by the City Council or other body that is subject to the requirements of the Ralph M. Brown Act (Government Code Sections 54950 et seq.), City Sunshine Ordinance (Oakland Municipal Code Chapter 2.20), or other noticing and procedural requirements, shall be automatically extended as may be reasonably necessary to comply with such requirements and with City's ordinary scheduling practices and other procedures for setting regular public meeting agendas.

No waiver by a Party of any failure of performance, including an event of default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other action or inaction, or cover any other period of time, other than any action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent action or inaction, and the performance of the same or any other term or provision contained in this Agreement.

Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

8.9 Effect of Court Action. If any court action or proceeding is brought within the applicable statute of limitations by any third Person to challenge the City Council's approval of (a) this Agreement or any portion thereof, or (b) any Project approval concurrently adopted with this Agreement, then (i) Developer shall have the right to Terminate this Agreement upon thirty (30) days' notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination, and (ii) any such action shall constitute a permitted delay under Article VII.

8.10 Estoppel Certificate. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such other Party to certify in writing that: (a) this Agreement is in full force and effect and a binding obligation of the Parties; (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and identifying any administrative implementation memoranda entered into by the Parties, and (c) to the knowledge of such other Party, neither Party has committed an event of default under this Agreement, or if an event of default has to such other Party's knowledge occurred, to describe the nature of any such event of default. A Party receiving a request hereunder shall execute and return such certificate within forty five (45) days following the receipt thereof, and if a Party fails so to do within such 45-day period, the requesting Party may submit a second request (which shall also be sent to the City Council President, City Administrator and City Attorney) and if a Party fails to execute and return such certificate within thirty (30) days after the receipt of the second request, the information in the requesting Party's notice shall conclusively be deemed true and correct in all respects. The Director of City Planning, as to City, shall execute certificates requested by Developer hereunder. Each Party

acknowledges that a certificate hereunder may be relied upon by Transferees and Mortgagees. No Party shall, however, be liable to the requesting Party, or third Person requesting or receiving a certificate hereunder, on account of any information therein contained, notwithstanding the omission for any reason to disclose correct and/or relevant information, but such Party shall be estopped with respect to the requesting Party, or such third Person, from asserting any right or obligation, or utilizing any defense, which contravenes or is contrary to any such information.

8.11 Special Cure Provisions. During such portion of the Term that a Ground Lease is in effect for any Phase, the provisions of Section 18.3 of the applicable Ground Lease shall apply to such Phase.

ARTICLE IX

MORTGAGES/MORTGAGEE PROTECTION

9.1 Mortgages/Mortgagee Protection. During such portion of the Term that a Ground Lease is in effect for any Phase, the provisions of Article 34 (“Mortgages”) and Section 18.2 (“Special Provisions Concerning Mortgages and Events of Default”) of the applicable Ground Lease govern and shall apply to all Mortgages with respect to such Phase.

ARTICLE X

TRANSFERS AND ASSIGNMENTS

10.1 Transfer/Assignment; Release. During such portion of the Term that the LDDA is in effect for any Phase, (a) Developer shall not be entitled to Transfer all or any portion of its rights or obligations under this Agreement related to such Phase separate or apart from a Transfer that is permitted pursuant to the LDDA and (b) if Developer makes a permitted Transfer of all or any portion of its rights or obligations under the LDDA with respect to any Phase, Developer’s rights and obligations under this Agreement related to such Phase with respect to such Phase shall automatically transfer to the Transferee under the LDDA. During such portion

of the Term that a Ground Lease is in effect for any Phase, (y) Developer shall not be entitled to Transfer all or any portion of its rights or obligations under this Agreement related to such Phase separate or apart from a Transfer that is permitted pursuant to the applicable Ground Lease and (z) if Developer makes a permitted Transfer all or any portion of its rights or obligations under the applicable Ground Lease with respect to any portion of the Project Site, Developer's rights and obligations under this Agreement with respect to such portion of the Project Site shall automatically transfer to the Transferee under the applicable Ground Lease (other than such a Transferee that is a subtenant under such Ground Lease). In either event, no such Transfer shall release or relieve Developer from any of its obligations under this Agreement unless, and only to the extent, expressly set forth in the documentation for such Transfer under, as applicable, the LDDA or the applicable Ground Lease.

10.2 Effect of Transfer; No Cross Default. A Transferee shall become a Party to this Agreement only with respect to the interest Transferred to it under the Transfer and then only to the extent set forth in Section 10.1 above. Subject to the preceding sentence, from and after the effective date of the Transfer, (a) an Event of Default by the Developer under this Agreement shall have no effect on the Transferee's rights and obligations under this Agreement; (b) an Event of Default with respect to any Transferee shall have no effect on the Developer's rights and obligations under this Agreement; and (c) an Event of Default by a Transferee under this Agreement shall have no effect on the rights and obligations of any other Transferee under this Agreement.

ARTICLE XI

AMENDMENT AND TERMINATION

11.1 Amendment or Cancellation. Except as expressly provided in this Agreement, this Agreement may be Terminated, modified or amended only by the consent of the Parties

made in writing, and then only in the manner provided for in Section 17.138.080 of the Development Agreement Ordinance. Neither this Agreement nor any term, covenant, condition or provision herein contained shall be subject to initiative or referendum after the Effective Date.

11.2 Certain Actions Not an Amendment. Notwithstanding the provisions of Section 11.1 above, a minor modification to this Agreement may be approved by mutual agreement of City and Developer and shall not require a noticed public hearing or any action by the Planning Commission or City Council before the Parties execute such modification, but shall require the giving of notice pursuant to Section 65867 of the Development Agreement Legislation as specified by Section 65868 thereof. Modifications related to the Term, City Development Fees, Community Benefits, the allocations of SCA/MMRP as set forth in this Agreement or modifications that would increase the obligations of the City under this Agreement are expressly excluded from the definition of a "minor modifications" and shall require the approval of the City Council. Subject to the foregoing, for purposes hereof, "minor modification" shall be determined as set forth in Section 10.12 of the LDDA. The Developer shall forward to all City Council members any and all "minor modifications" within ten (10) days after execution of such.

Upon the expiration of such notice period, any such matter shall automatically be deemed incorporated into the Project and vested under this Agreement. The granting or amendment of a Project Approval or Subsequent Approval shall not require notice under Section 65867 and shall not be considered an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement.

ARTICLE XII

NOTICES

12.1 Procedure. Subject to the provisions of Section 8.8, all formal notices to a Party shall be in writing and given by delivering the same to such Party in person or by sending the

same by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, or by overnight courier delivery, to such Party's mailing address. A Party may provide courtesy notice via electronic mail or facsimile, which notice shall not be deemed official notice under this Agreement. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City: City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, California 94612
Attention: Rachel Flynn, Director of Planning and Building
Email: rflynn@oaklandnet.com

Oakland City Attorney's Office
One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612
Attention: Mark Wald
Email: mwald@oaklandcityattorney.org

Developer: Prologis CCIG Oakland Global, LLC
Pier 1, Bay 1
San Francisco, CA 94111
Attn: Mr. Mark Hansen
Email: mhansen@prologis.com

With a copies to:

Prologis CCIG Oakland Global, LLC
c/o California Capital & Investments, Inc.
The Rotunda Building
300 Frank Ogawa Plaza, Suite 340
Oakland, CA 94612
Attn: Mr. Phil Tagami
Email: tagami@califomiagroup.com

Prologis, Inc.
4545 Airport Way
Denver, CO 80239
Attn: General Counsel
Facsimile: (303) 567-5761

Stice & Block, LLP
2201 Broadway, Suite 604

Oakland, CA 94612
Attention: Marc Stice, Esq.
Email: mstice@sticeblock.com

Notices and communications with respect to technical matters in the routine performance and administration of this Agreement shall be given by or to the appropriate representative of a Party by such means as may be appropriate to ensure adequate communication of the information, including written confirmation of such communication where necessary or appropriate. All formal notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed or sent by courier, on the delivery date or attempted delivery date shown on the return receipt or courier records. Any notice which a Party desires to be a formal notice hereunder and binding as such on the other Party must be given in writing and served in accordance with this Section 12.1.

12.2 Change of Notice Address. A Party may change its mailing address at any time by giving formal written notice of such change to the other Party in the manner provided in Section 12.1 at least ten (10) days' prior to the date such change is effected

ARTICLE XIII

COVENANTS RUNNING WITH THE LAND

13.1 Covenants Running With The Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other Persons that acquire a legal or equitable interest of Developer in the Project Site, or any portion thereof, or any interest therein, or any improvement thereon, whether by operation of Laws or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and permitted assigns as Transferees, as covenants running

with the land pursuant to Section 65868.5 of the Development Agreement Legislation. This Agreement and the covenants as set forth herein shall run in favor of City without regard to whether City has been, remains or is an owner of any land or interest in the Project Site.

13.2 Successors to City. For purposes of this Article XI, "City" includes any successor public agency to which land use authority over the Project may be transferred, which public agency shall, as part of such Transfer, by written instrument satisfactory to City and Developer, expressly (a) assume all of City's rights, duties and obligations under this Agreement; and (b) release and Indemnify City from all obligations, claims, liability or other Losses under this Agreement.

ARTICLE XIV

MISCELLANEOUS

14.1 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that neither Party is acting as the Agent of the others in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any Person who is not a Party or a Transferee; and nothing in this Agreement shall limit or waive any rights Developer may have or acquire against any third Person with respect to the terms, covenants or conditions of this Agreement.

14.2 Approvals. Unless otherwise provided in this Agreement or, if applicable, the LDDA or any applicable Ground Lease, whenever approval, consent, satisfaction, or decision

(herein collectively referred to as an "Approval"), is required of a Party pursuant to this Agreement, it shall not be unreasonably withheld or delayed. If a Party shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. Approval by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

14.3 Not a Public Dedication. Except for Exactions made in accordance with this Agreement, and then only when made to the extent so required, nothing herein contained shall be deemed to be a gift or dedication of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development of the Project as private property.

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

14.5 Exhibits. The exhibits listed below, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto:

- Exhibit A: Project Site Legal Description
- Exhibit B: City Approvals
- Exhibit C: Allocation of SCA/MMRP's
- Exhibit D-1: Project Conceptual Site Plan
- Exhibit D-2: Development Program

14.6 Entire Agreement. This written Agreement and the exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and exhibits hereto, and such administrative implementation memoranda. Neither the conduct or actions of the Parties, nor the course of dealing or other custom or practice between the Parties, shall constitute a waiver or modification of any Term or provision of this Agreement; and this Agreement may be modified or amended only in the manner specified in this Agreement.

14.7 Construction of Agreement. All of the provisions of this Agreement have been negotiated at arms-length between the Parties and after advice by counsel, who have reviewed this Agreement, and other representatives chosen by each Party, and the Parties are fully informed with respect thereto. Therefore, this Agreement shall not be construed for or against either Party by reason of the authorship or alleged authorship of any provisions hereof, or by reason of the status of either Party. The provisions of this Agreement and the exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party and consistent with the provisions hereof, in order to achieve the objectives and purpose of the Parties hereunder. The captions preceding the text of each article, section and the

table of contents hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

14.8 Mitigation of Damages. In all situations arising out of this Agreement, each Party shall attempt to avoid and minimize the damages resulting from the conduct of the other Party. Each Party shall take all necessary measures to effectuate the provisions of this Agreement. Such actions shall include, but not be limited to, good faith and active participation in any meet and confer and cure process.

14.9 Further Assurances; Covenant to Sign Documents. Each Party shall take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

14.10 Covenant of Good Faith and Fair Dealing. Neither Party shall do anything which shall have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement; each Party shall refrain from doing anything which would render its performance under this Agreement impossible; and each Party shall do everything which this Agreement contemplates that such Party shall do in order to accomplish the objectives and purposes of this Agreement. The Parties intend by this Agreement to set forth their entire understanding with respect to the terms, covenants, conditions and standards for the development, use and occupancy of the Project and by which the performance of the rights, duties and obligations of the Parties hereunder shall be measured or judged.

14.11 Governing Law. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the Laws of the State of California.

14.12 References; Terminology. Unless otherwise specified, whenever in this Agreement, reference is made to the table of contents, any article or section, or any defined term, such reference shall be deemed to refer to the table of contents, article or section or defined term of this Agreement. The use in this Agreement of the words "including," "such as" or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific items or matters, whether or not language of nonlimitation, such as "without limitation" or "but not limited to," or words of similar import, are used with reference thereto, but rather 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.

14.13 Irregularity in Proceeding. No action, inaction or recommendation by a Party pursuant to this Agreement, or of City in connection with a City approval, shall be held void or invalid, or be set aside by a court on the grounds of improper admission or rejection of evidence, or by reason of any error, irregularity, informality, neglect or omission (collectively, an "Error") as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation or any matters of procedure whatsoever, unless after an examination of the entire record with respect to such error, including the evidence, the court finds that the Error complained of was prejudicial, and that by reason of the Error, the complaining Party, or third Person, sustained and suffered substantial injury, and that a different result would have been probable if the Error had not occurred or existed. No presumption shall arise that an Error is prejudicial, or that injury resulted from an Error, solely as a result of a showing that Error occurred.

14.14 Judicial Proceeding to Challenge Termination. Any challenge made by Developer to City's termination, modification, or amendment of this Agreement pursuant to a

right so to do granted by this Agreement, shall be subject to review in the Superior Court of the County of Alameda and solely pursuant to California Code of Civil Procedure Section 1094.5(c).

14.15 Conflicts of Interest. Developer shall use all diligent efforts to ensure that no member, officer, employee, or consultant of City who participates in any way in the Project or in the making of this Agreement, or a member of such Person's immediate family, shall have any personal financial interest in the Project or this Agreement or receive any personal financial benefit from the Project. Developer warrants that it has not paid or given, and will not pay or give, to any third Person any money or other consideration in exchange for obtaining this Agreement. Not in limitation of any other indemnity obligation or Developer, Developer shall Indemnify City from any claims for real estate commissions or brokerage fees, finders or any other fees in connection with this Agreement.

14.16 Nonliability. No member, official, employee, agent, or member of any board or commission of City shall be personally liable to Developer, or any Transferee, in the event of any Event of Default committed by City or for any amount that may become due to Developer or a Transferee under the terms of this Agreement.

14.17 Developer's Warranties. Developer represents and warrants that it: (i) has access to professional advice and support to the extent necessary to enable Developer to fully comply with the terms of this Agreement and otherwise carry out the Project, (ii) is duly organized and validly existing under the Laws of the State of California, and (iii) has the full power and authority to undertake the Project; and (iv) that the Persons executing and delivering this Agreement are authorized to execute and deliver this Agreement on behalf of Developer.

14.18 Exercise of Police Power. The Parties acknowledge that City has exercised its police power in the interest of the Parties, the citizens of City and the general public, by enacting

this Agreement as its legislative act, and that full implementation of this Agreement will confer substantial benefits to the citizens of City and the general public.

14.19 Intentionally Omitted.

14.20 City of Oakland Campaign Contribution Limits: Developer has dated and executed and delivered to City an acknowledgement of campaign contributions limits form as required by Chapter 3.12 of the Oakland Municipal Code.

14.21 Disabled Access. Developer shall construct the Project in compliance with all applicable federal, state, and local requirements for access for disabled Persons.

14.22 City Subject to Brown Act and Sunshine Ordinance Requirements. Developer acknowledges that all City Council and Planning Commission actions are subject to the requirements of the provisions of the Sunshine Ordinance (Oakland Municipal Code Chapter 2.20) and the Ralph M. Brown Act (Government Code Sections 54950, et seq.), and the published agenda of the City Council and Planning Commission and regular procedures applicable thereto. City shall cause all City Council and Planning Commission actions to conform to the foregoing requirements and Developer shall take no action which would violate the foregoing requirements.

14.23 Signature Pages. This Agreement may be executed in counterparts, and in facsimile and/or electronic form, and all so executed, shall constitute one Agreement that shall be binding upon all Parties hereto, notwithstanding that the signatures of all Parties' designated representatives do not appear on the same page.

14.24 No Third Party Beneficiary. Nothing in this Agreement shall confer any rights in favor of any third party or third parties.

14.25 Time. Time is of the essence of this Agreement and of each and every term and condition hereof

14.26 Recitals True and Correct. The Parties acknowledge and agree that the Recitals are true and correct and are an integral part of this Agreement.

14.27 Conflict with LDDA or Ground Lease. Notwithstanding any provision in this Agreement to the contrary, with the exception of Sections 3.8.4(b) and 3.8.6 and the addition of weekly compliance reporting referenced in Section 4.1, which are intended to control, (a) except as otherwise expressly set forth in the LDDA, in the event of any conflict between any provision of this Agreement and any provision of the LDDA, the provision of the LDDA shall govern and control; and (b) except as otherwise expressly set forth in the Ground Lease, in the event of any conflict between any provision of this Agreement and any provision of any applicable Ground Lease, the provision of the applicable Ground Lease shall govern and control.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

AUTHORIZED SIGNATURE OF CITY:
CITY OF OAKLAND, a California charter city

By: _____

Its: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Deputy City Attorney

AUTHORIZED SIGNATURE OF DEVELOPER:

PROLOGIS CCIG OAKLAND GLOBAL,
a Delaware limited liability company,

By: _____
Name: _____
Title: Authorized Individual

EXHIBIT A

Project Site

[See attached]

EXHIBIT B

City Approvals

1. The 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report and the 2012 OARB Initial Study/Addendum ("EIR");
2. The Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date);
3. The Oakland Army Base Reuse Plan (as amended prior to the Adoption Date);
4. The LDDA;
5. The Gateway Industrial zoning district (Ordinance _____ C.M.S.); and
6. The Gateway Industrial Design Standards (Resolution _____ C.M.S).

True and correct copies of the above-mentioned City Approvals shall be included in the binders prepared by the City pursuant to Section 3.4.3.

EXHIBIT C
Allocation of SCA/MMRPs

[See attached]

EXHIBIT C

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

Standard Conditions of Approval/Mitigation Measures	Responsibility/Cost
Aesthetics, Wind and Shadows	
SCA-AES-1: Lighting Plan	City Developer
Mitigation 4.11-1: Lighting Design.	City Developer
Mitigation 4.11-3: Active and passive solar systems.	Developer
Mitigation 4.11-4: New construction within the Gateway development area adjacent to parcels containing permitted or existing active or passive solar systems.	Developer
Mitigation 4.11-5: Design of new, permanent buildings constructed along the Port/Gateway boundary to minimize conflicts over solar access.	Developer
Mitigation 4.11-6: Design of new construction adjacent to a public park or open space.	Developer
Air Quality	
SCA AIR-2: Construction-Related Air Pollution Controls (Dust and Equipment Emissions).	City Developer
<u>Mitigation 4.4-3b: Maritime and port-related emission reduction plan.</u>	Developer
Mitigation 4.4-4: Truck diesel emission reduction program.	Developer
Mitigation Measure 4.4-5: Transportation Control Measures (TCMs).	Developer
SCA AIR-1: Construction Management Plan.	City Developer
Mitigation 4.4-6: Title 24 compliance re new construction.	Developer
Mitigation Measure 5.4-1: Emission reduction demonstration projects that promote technological advances in improving air quality.	City Developer
SCA AIR-3: Exposure to Air Pollution (Toxic Air Contaminants: Particulate Matter) Indoor/Outdoor.	City Developer

¹ Standard Conditions of Approval/Mitigation Measures listed herein reference the 2012 OARB Project (Final and Corrected) SCA/MMRP 10-15-2012.

EXHIBIT C

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

Biological Resources	
SCA BIO-1: Tree removal during breeding season.	City Developer
SCA BIO-5: Regulatory permits and authorizations for construction in or near the water.	City Developer
Mitigation Measure 4.12-5: Qualified observer for in-water construction activities near potential herring spawning areas between December 1 and March 1.	City Developer
Mitigation Measure 4.12-6: Redirection of construction if spawning is observed.	City Developer
Modified Mitigation Measure 4.12-11: For Berths 7 and 5 (Wharves 6½ and 7), development and implementation of carrier ballast water education program.	Developer
Modified Mitigation Measure 4.12-12: For Berths 7 and 8 (Wharves 6½ and 7), support international and U.S. efforts to adopt uniform international or national standards to avoid introduction of exotic species through shipping activities.	Developer
Mitigation Measure 3.4-1a: Landscape Plan. Mitigation Measure 3.4-1b: Lighting Plan with raptor deterrents as required.	Developer
SCA BIO-2: Tree Removal Permit.	City Developer
SCA BIO-3: Tree Replacement Plantings.	City Developer
SCA BIO-4: Tree Protection During Construction.	City Developer
Cultural Resources	
SCA CULT-4: Compliance with Policy 3.7 of the Historic Preservation Element (Property Relocation Rather than Demolition).	City Developer
Mitigation Measure 4.6-2: Commemoration site, including preparation of a Master Plan for such a site, at a public place located within the Gateway development area.	Developer
Mitigation Measure 4.6-3: Public access to commemoration site.	Developer
Mitigation Measure 4.5-5: Military history web site.	Developer
Mitigation Measure 4.6-7: Distribution of copies of "A Job Well Done" documentary video published by the Army.	Developer
Mitigation Measure 4.6-9: Salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed.	City
Mitigation Measure 4.6-10: Brochure describing history and architectural history of the OARB.	Developer
Modified Mitigation Measure 4.6-14: Limits on demolition or deconstruction of contributing structures to the OARB Historic District.	City Developer
SCA CULT-1: Archaeological Resources.	City Developer

EXHIBIT C

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

SCA CULT-2: Human Remains.	City Developer
SCA CULT-3: Paleontological Resources.	City Developer
Geology and Soils	
SCA GEO-2: Soils Reports.	City Developer
SCA-GEO-3: Geotechnical Reports.	City Developer
Mitigation 4.13-1: Conformance with IBC, 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).	City Developer
Mitigation 4.13-2: Conformance with site-specific geotechnical evaluation.	City Developer
SCA GEO-1: Erosion and Sedimentation Control Plan.	City Developer
Mitigation 4.13-4: Review of available building and environmental records.	City Developer
Mitigation 4.13-5: Due diligence regarding underground utilities and facilities.	City Developer
Greenhouse Gas	
SCA GCC-1: Greenhouse Gas (GHG) Reduction Plan.	Developer
Hazards and Hazardous Materials²	
SCA HAZ-1: Best Management Practices for Soil and Groundwater Hazards.	City Developer
SCA HAZ-2: Hazards Best Management Practices.	City Developer
SCA HAZ-3: Hazardous Materials Business Plan.	City Developer
SCA HAZ-4: Asbestos Removal in Structures.	City
SCA HAZ-5: Lead-Based Paint/Coatings, Asbestos, or PCB Occurrence Assessment.	City
SCA HAZ-6: Lead-Based Paint Remediation.	City
SCA HAZ-7: Other Materials Classified as Hazardous Waste.	City Developer
SCA HAZ-8: Health and Safety Plan per Assessment.	City

² The parties' allocation of environmental obligations may be more specifically addressed in other written agreements, which are controlling.

EXHIBIT C

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

	Developer
Mitigation 4.7-3: Implement RAP/RMP.	City Developer
Mitigation 4.7-4: For the project areas not covered by the DTSC-approved RAP/RMP, investigate potentially contaminated sites.	City Developer
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.	City Developer
Mitigation 4.7-6: LBP sampling prior to demolition.	City
Mitigation 4.7-7: ACM sampling prior to demolition.	City
Mitigation 4.7-8: PCB sampling prior to demolition.	City
Mitigation 4.7-9: Implement RAP/RMP for above-ground and underground storage tanks.	City Developer
Mitigation 4.7-11: Sampling and management of LBP-impacted soil, ground area.	City Developer
Mitigation 4.7-12: Annual ACM assessment.	Developer
Mitigation 4.7-13: Use consistent with Reuse Plan.	Developer
Mitigation 4.7-16: Investigation of oil-filled electrical equipment.	City Developer
Mitigation 4.7-17: Disposal of PCB-containing equipment.	City Developer
Hydrology and Water Quality	
SCA HYD-1: Stormwater Pollution Prevention Plan (SWPPP).	City Developer
Mitigation 4.15-1: Prior to in-water construction, water quality protection plan.	City Developer
Mitigation 4.15-2: Comply with permit conditions from the Corps, RWQCB and BCDC.	City Developer
Mitigation 3.9-1: Coordinate and consult with EBMUD and if necessary construct storm drain improvements resulting from increased elevation in the North Gateway area.	City
SCA HYD-2: Post-Construction Stormwater Management Plan.	City Developer
SCA HYD-3: Maintenance Agreement for Stormwater Treatment Measures.	City Developer
SCA HYD-4: Stormwater and Sewer Improvements and Maintenance.	City Developer
Mitigation 4.15-5: Post-construction controls of stormwater shall be incorporated into the design of new redevelopment elements to reduce pollutant loads.	City Developer

EXHIBIT C

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

Mitigation 4.14-1: Prohibition on 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.	City Developer
Mitigation 4.14-2: Minimize extraction of groundwater for construction de-watering or remediation.	City Developer
Mitigation 4.15-6: Site-specific design and best management practices shall be implemented to prevent runoff of recycled water to receiving waters.	City Developer
Recommended Measure: Prepare a Sea Level Rise Adaptation Plan for City of Oakland for review and approval.	City Developer
Noise	
SCA NOI-1: Days/Hours of Construction Operation.	City Developer
SCA NOI-2: Noise Control.	City Developer
SCA NOI-3: Noise Complaint Procedures.	City Developer
SCA NOI-6: Pile Driving and Other Extreme Noise Generators.	City Developer
SCA NOI-4: Interior Noise.	City Developer
SCA NOI-5: Operational Noise-General.	City Developer
Public Utilities	
SCA PSU-1: Underground Utilities.	City
SCA PSU-2: Fire Safety Phasing Plan.	City Developer
Mitigation 4.9-1: Increased firefighting and medical emergency response services via fireboat to serve the OARB sub-district.	Developer
Mitigation 4.9-2: Work with OES to ensure changes in local area circulation are reflected in the revised Response Concept.	Developer
Mitigation 4.9-3: Requirement to notify OES of plans in advance of construction or remediation activities.	City Developer
Traffic and Transportation	
Mitigation Measure 3.16-1: 7th Street & I-880 Northbound Off-Ramp (#12) ³ .	City
Mitigation Measure 3.16-2: San Pablo Ave & Ashby Avenue (#42)	City

³ 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.

EXHIBIT C

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

Mitigation Measure 3.16-3: 7 th Street & Harrison Street (#1B).	city
Mitigation Measure 3.16-4: 12 th Street & Castro Street (#29). Submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.15-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval.	City
SCA TRANS-1: Parking and Transportation Demand Management.	City Developer
Mitigation 4.3-5: Design of roadways, bicycle and pedestrian facilities, parking lots, and other transportation features.	City Developer
Mitigation 4.3-7: Truck management plan.	Developer
Mitigation 4.3-8: Emergency service program and emergency evacuation plan using waterborne vessels.	Developer
<u>With regard to Maritime Street between 7th Street and West Grand Avenue:</u> Mitigation Measure 3.16-5: Shoulder with a minimum width of 8 feet on the west side of Maritime Street. Mitigation Measure 3.16-6: 9-foot wide area along the entire west side of Maritime Street. Mitigation Measure 3.16-7: 18-foot wide area along the entire east side of Maritime Street.	City
<u>With regard to North Maritime (formerly Wake Avenue):</u> Mitigation Measure 3.16-8: 2 travel lanes in each direction.	City
<u>With regard to Burma Road between Maritime Street and West Oakland (Burma East):</u> Mitigation Measure 3.16-9: 9-foot wide area along the entire north side of Burma Street.	City
Mitigation Measure 3.16-10: 7-foot wide area along the entire south side of Burma Street.	City
<u>With regard to Burma Road between Maritime Street and Railroad Tracks (Burma West):</u> Mitigation Measure 3.16-11: 9-foot wide area along the entire south side of Burma Street. Mitigation Measure 3.16-12: 20-foot wide area along the entire north side of Burma Street.	City
<u>With regard to Burma Road between Railroad Tracks and Gateway Park (Burma Far West):</u> Mitigation Measure 3.16-13: 8-foot wide area along the entire south side of Burma Street.	City
Mitigation Measure 3.16-14: Shoulder along the entire north side of Burma Street.	City
<u>With regard to Emergency Access:</u> Mitigation Measure 3.16-15a: Emergency response plan for the 2012 Army Base Project addressing emergency ingress/egress. Mitigation Measure 3.16-15b: Include West Burma Road turn-outs and turn-arounds at the appropriate locations and dimensions as required by the Fire Department.	City Developer
SCA TRANS-3: Railroad Crossings.	City Developer
Mitigation Measure 3.16-16: Engineers Road, crosswalk just west of the rail crossing on West Burma Road, "KEEP CLEAR," rail crossing angles.	City
Mitigation 4.3-9: Conformance with City of Oakland or Port development standards with facilities that support transportation alternatives to the single-occupant automobile.	City Developer
Mitigation 4.3-10: Developer-sponsored parking demand study.	Developer
SCA TRANS-2: Construction Traffic and Parking.	City Developer

EXHIBIT C

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

	City Developer
Mitigation 4.3-13: Traffic Control Plan (TCP).	
Mitigation Measure 3.16-17: West Grand Avenue & I-880 Frontage Road (#2).	City
Mitigation Measure 3.16-18: San Pablo Ave & Ashby Ave (#42).	City
Mitigation Measure 3.16-19: West Grand Avenue & Maritime Street (#1).	City
Mitigation Measure 3.16-20: 7th Street & Union Street (#15).	City
Mitigation Measure 3.16-21: West Grand Avenue & Northgate Avenue (#8).	City
Mitigation Measure 3.16-22: 5th Street & Union Street / I-880 North Ramps (#21).	City
Mitigation Measure 3.16-23: MacArthur Boulevard & Market Street (#33).	City
Mitigation Measure 3.16- 24: West Grand Avenue & I-880 Frontage Road (#2).	City
Mitigation Measure 3.16- 25: West Grand Avenue & Adeline Street (#4).	City
Mitigation Measure 3.16- 26: West Grand Avenue & Market Street (#5).	City
Mitigation Measure 3.16- 27: West Grand Avenue & San Pablo Avenue (#6).	City
Mitigation Measure 3.16- 28: West Grand Avenue & Harrison Street (#9).	City
Mitigation Measure 3.16- 29: 7th Street & Harrison Street (#15).	City
Mitigation Measure 3.16- 30: 6th Street & Jackson Street (#20).	City
Mitigation Measure 3.16- 31: 12th Street & Brush Street (#28).	City
Mitigation Measure 3.16- 32: Powell Street & Hollis Street (#37).	City
Mitigation Measure 3.16- 33: Powell Street/Stanford Avenue & San Pablo Avenue (#38).	City
Recommended Measures (Project and Cumulative): W. Grand Avenue & Maritime Street (#1) 7 th Street & Maritime Street (#10) 7 th Street & I-880 northbound off-ramp (#12)	City

EXHIBIT C

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

Underground Utilities	
SCA UTL-3: Underground Utilities.	City
SCA UTL-5: Improvements in the Public Right-of Way (Specific).	City
SCA UTL-6: Payment for Public Improvements.	City
Mitigation 4.9-4: Individual actions with landscaping requirements of one or more acres.	City Developer
Mitigation 4.9-5: Dual plumbing.	Developer
Mitigation 4.9-6: Use of recycled water.	City Developer
SCA UTL-1a, UTL-1b: Compliance with the Green Building Ordinance, OMC Chapter 18.02.	City Developer
SCA UTL-2: Waste Reduction and Recycling.	City Developer
Mitigation: 4.9-7: Deconstruction program.	City
Mitigation 4.9-8: Concrete and asphalt removed during demolition/construction.	City

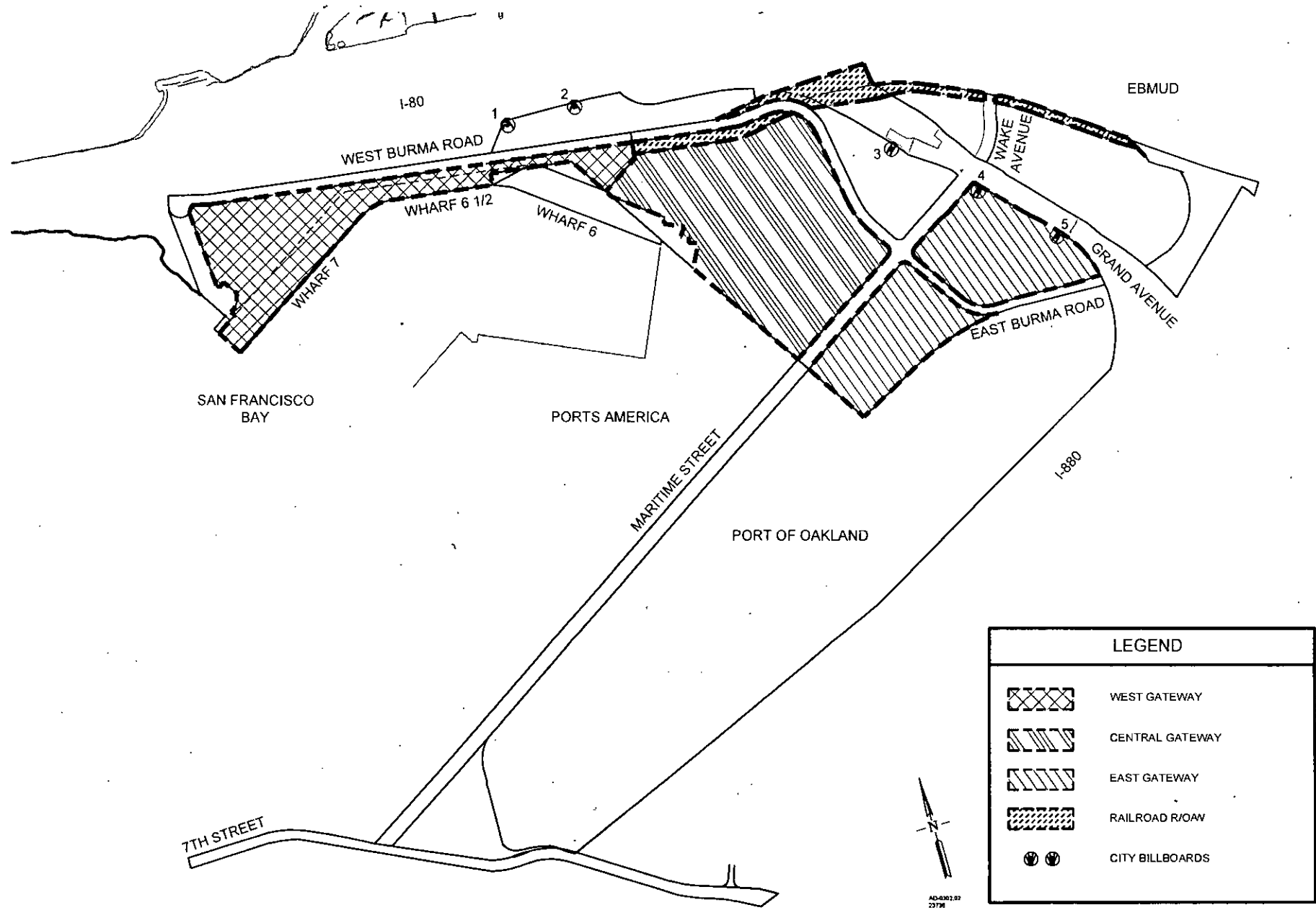
EXHIBIT D-1

PROJECT CONCEPTUAL SITE PLAN

[See attached]

PROJECT CONCEPTUAL SITE PLAN

EXHIBIT D-1



LEGEND	
	WEST GATEWAY
	CENTRAL GATEWAY
	EAST GATEWAY
	RAILROAD R/OAW
	CITY BILLBOARDS



Exhibit D-2

Project Development Program

A. East Gateway: (The development of the following shall be subject to the provisions of the applicable Ground Lease.)

1. Trade & Logistics Uses: Up to 442,560 square feet (at any permissible FAR) of trade and logistics facilities (warehouse, distribution and related facilities), including, but not limited to, general purpose warehouses, cold and refrigerated storage, container freight stations, deconsolidation facilities, truck terminals, and regional distribution centers (collectively, "EGW Trade & Logistics Uses").

2. Ancillary Uses: Developer also may develop and operate, as uses that are ancillary and related to the EGW Trade & Logistics Uses, trailer and container cargo storage and movement, chassis pools, open storage and open truck parking, and other ancillary uses ("EGW Ancillary Uses").

3. Conditional Uses: Trailer and container cargo storage and movement, chassis pools, open storage and open truck parking (collectively, "EGW Conditional Uses"); provided, however, that EGW Conditional Uses may only be developed and operated independent of EGW Trade & Logistics Uses on the continuing condition that, and for so long as, Developer is in compliance with its obligations under the applicable Ground Lease.

4. Support Improvements. Private circulation, utility and rail spur improvements consistent with the Master Plan and ancillary and supplemental to the Public Improvements constructed by the City (collectively, "EGW Support Improvements").

B. Central Gateway: (The development of the following shall be subject to the provisions of the applicable Ground Lease.)

1. Trade & Logistics Uses: Up to 500,210 square feet (at any permissible FAR) of trade and logistics facilities (warehouse, distribution and related facilities), including, but not limited to, general purpose warehouses, cold and refrigerated storage, container freight stations, deconsolidation facilities, truck terminals, and regional distribution centers (collectively, "CGW Trade & Logistics Uses").

2. Ancillary Uses: Developer also may develop and operate, as uses that are ancillary and related to the CGW Trade & Logistics Uses, trailer and container cargo storage and movement, chassis pools, open storage and open truck parking, and other ancillary uses ("CGW Ancillary Uses").

3. Conditional Uses: Trailer and container cargo storage and movement, chassis pools, open storage and open truck parking (collectively, "CGW Conditional Uses"); provided, however, that CGW Conditional Uses may only be developed and operated independent of CGW Trade & Logistics Uses on the continuing condition that, and for so long as, Developer is in compliance with its obligations under the applicable Ground Lease).

4. Support Improvements. Private circulation, utility and rail spur improvements consistent with the Master Plan and ancillary and supplemental to the Public Improvements constructed by the City (collectively, "CGW Support Improvements").

C. West Gateway: (The development of the following shall be subject to the provisions of the applicable Ground Lease.)

1. Bulk Oversized Terminal: A ship-to-rail terminal designed for the export of non-containerized bulk goods and import of oversized or overweight cargo ("Bulk Oversized Terminal").

2. Railroad Improvements: Railroad tracks and related equipment necessary to adequately serve the Bulk Oversized Terminal as shown on the Master Plan. The Railroad Improvements are subject to reduction if Caltrans approves only one (1) rail line pursuant to Section 2.2.6.3 of the Agreement.

3. Ancillary Uses: Developer also may develop and operate, as uses that are ancillary and related to the Bulk Oversized Terminal and, trailer and container cargo storage and movement, chassis pools, open storage and open truck parking, and other ancillary uses (the "WGW Ancillary Uses").

4. Developer Funded Wharf Improvements: If Developer elects to construct the Developer Funded Wharf Improvements pursuant to Section 3.5.1 of the Agreement, Developer shall also construct the Developer Funded Wharf Improvements as defined in the Agreement.

5. Conditional Uses: Trailer and container cargo storage and movement, chassis pools, open storage and open truck parking (collectively, "WGW Conditional Uses"); provided, however, that WGW Conditional Uses may only be developed and operated independent of Bulk Oversized Terminal on the continuing condition that, and for so long as, Developer is in compliance with its obligations under the applicable Ground Lease.

6. Support Improvements: Private circulation, utility and rail spur improvements consistent with the Master Plan and ancillary and supplemental to the Public Improvements constructed by the City (collectively, "WGW Support Improvements").

D. Billboards.

Number	General Billboard Location	Size	Sides	Display Type
1	Bay Bridge approx. 300' East of Toll Plaza – South Line, East & West Face	20'H x 60'W	2	LED
2	Bay Bridge approx. 800' East of Toll Plaza – South Line, West Face	20'H x 60'W	2	Backlit
3	1-880 West Grand approx. 500' North of Maritime – West Line, North & South Face	14'H x 48'W	2	LED
4	1-880 West Grand South of Maritime – West Line, North & South Face	14'H x 48'W	2	Backlit
5	1-880 West Grand approx. 600' South of Maritime – 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.

REVISED

FILED
OFFICE OF THE CITY CLERK
OAKLAND

REVISED JUNE 24, 2013
Approved as to Form and Legality

2013 JUN 27 PM 5:47

OAKLAND CITY COUNCIL

City Attorney

RESOLUTION NO. _____ C.M.S.

Introduced by Councilmember _____

A RESOLUTION, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, ADOPTING DESIGN STANDARDS FOR THE GATEWAY INDUSTRIAL DISTRICT (D-GI) ZONE LOCATED ON APPROXIMATELY 160 ACRES IN THE GATEWAY DEVELOPMENT AREA OF THE FORMER OAKLAND ARMY BASE AND AUTHORIZING STAFF TO MAKE MINOR ONGOING REVISIONS TO THE ADOPTED DESIGN STANDARDS CONSISTENT WITH THE D-GI ZONE AND OAKLAND PLANNING CODE, BUT MAJOR REVISIONS TO BE MADE BY THE CITY PLANNING COMMISSION, WITHOUT RETURNING TO THE CITY COUNCIL

WHEREAS, on June 12, 2012, the Oakland City Council, via Resolution No. 83930 C.M.S., approved the amended Oakland Army Base (OARB) Reuse Plan (Master Plan), including adopting the 2012 OARB Initial Study/Addendum, making related California Environmental Quality Act (CEQA) findings, and adopting the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP); and

WHEREAS, the Gateway Development Area encompasses approximately 160 acres of the OARB; and

WHEREAS, the Master Plan involves the removal of all buildings in the Gateway Development Area and the redevelopment of the site with new warehousing, recycling, maritime support, trucking-related, office, research and development, and rail-related activities (Project); and

WHEREAS, a new zoning district called the Gateway Industrial District (D-GI) zone has been created to be applied to the Gateway Development Area, which is intended to implement the Master Plan by permitting land uses consistent with the Master Plan; and

WHEREAS, new design standards have been created to regulate the design of new development in the D-GI zone, including regulating site design, building design, landscaping, lighting, and signage (Design Standards); and

WHEREAS, the D-GI zone requires new development to comply with the Design Standards to ensure that the design quality of new development is high; and

WHEREAS, the Landmarks Preservation Advisory Board held a duly noticed public hearing on the proposed Design Standards, as well as other planning matters, on April 8, 2013; and

WHEREAS, the City Planning Commission held a duly noticed public hearing on the proposed Design Standards, as well as other related planning matters, on May 1, 2013, and at the close of the hearing recommended approval of the Design Standards to the City Council; and

WHEREAS, the Community and Economic Development Committee held a duly noticed meeting on May 28, 2013, to consider the Design Standards, as well as other related planning matters, and recommended approval of such to the City Council; and

WHEREAS, the City Council held a duly noticed public hearings hearing-on the Design Standards, as well as other related planning matters, on June 4, 2013 and July 2, 2013; now therefore be it

RESOLVED, 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 Design Standards, the City Council finds and determines that it can continue to rely on the previously adopted 2012 OARB Initial Study/Addendum for the reasons stated in the June 12, 2012, and May 28, 2013, City Council Agenda Reports and related attachments/exhibits. The (Final and Corrected) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, dated October 15, 2012, is also hereby reaffirmed/readopted, including the clarifying corrections discussed at the June 4, 2013, City Council hearing (Mitigation Measure 4.4-3b) and in the Agenda Report for the July 2, 2013, City Council meeting (Mitigation Measure 4.3-10); 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 City Council hereby adopts the Design Standards as contained in Exhibit A, attached hereto and hereby incorporated by reference; and be it

FURTHER RESOLVED, the City Council finds that the Design Standards will ensure that new development in the D-GI zone will equal or exceed the design quality of the existing OARB buildings to be removed as part of the Project and will be compatible with the character of the area; and be it

FURTHER RESOLVED, that the City Council hereby authorizes staff to make minor ongoing revisions to the adopted Design Standards consistent with the DG-I zone and Oakland Planning Code, but with major revisions to be made by the Planning Commission, without returning to the City Council; and be it

FURTHER RESOLVED, the recitals set forth above are true and correct and are an integral part of this Resolution; and be it

FURTHER RESOLVED, the City Council finds and determines the following:

a) The Project is consistent with the General Plan and all applicable planning and zoning enactments; and

c) The Design Standards are desirable in order to facilitate the successful Project implementation; and

d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs and the catalytic effect the project will have on revitalizing the surrounding neighborhood, which will result in increased property values in the surrounding area and an increase in the viability of existing businesses; and

e) The public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Design Standards; and be it

FURTHER RESOLVED, if any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of this Resolution or its application to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Resolution or the application of this Resolution to other situations shall remain in full force and effect; and be it

FURTHER RESOLVED, that the record before this Council relating to this Resolution includes, without limitation, the following:

1. the applications, including all accompanying maps and papers;
2. all relevant plans and maps;
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, Landmarks Preservation Advisory Board, Planning Commission, and City Council before and during the public hearings on the application; and
5. 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) the Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED, that the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the Office of Neighborhood Investment, 250 Frank H. Ogawa Plaza, 5th Floor,

Oakland; (b) the Planning and Building Department, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

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

REVISED

FILED
OFFICE OF THE CITY CLERK
OAKLAND

REVISED JUNE 24, 2013
Approved as to Form and Legality

2013 JUN 27 PM 5:47 **OAKLAND CITY COUNCIL**

Mark P. Wald
City Attorney

RESOLUTION No. _____ C.M.S.

introduced by Councilmember _____

A RESOLUTION, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, ADOPTING DESIGN STANDARDS FOR THE GATEWAY INDUSTRIAL DISTRICT (D-GI) ZONE LOCATED ON APPROXIMATELY 160 ACRES IN THE GATEWAY DEVELOPMENT AREA OF THE FORMER OAKLAND ARMY BASE AND AUTHORIZING STAFF TO MAKE MINOR ONGOING REVISIONS TO THE ADOPTED DESIGN STANDARDS CONSISTENT WITH THE D-GI ZONE AND OAKLAND PLANNING CODE, BUT MAJOR REVISIONS TO BE MADE BY THE CITY PLANNING COMMISSION, WITHOUT RETURNING TO THE CITY COUNCIL

WHEREAS, on June 12, 2012, the Oakland City Council, via Resolution No. 83930 C.M.S., approved the amended Oakland Army Base (OARB) Reuse Plan (Master Plan), including adopting the 2012 OARB Initial Study/Addendum, making related California Environmental Quality Act (CEQA) findings, and adopting the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP); and

WHEREAS, the Gateway Development Area encompasses approximately 160 acres of the OARB; and

WHEREAS, the Master Plan involves the removal of all buildings in the Gateway Development Area and the redevelopment of the site with new warehousing, recycling, maritime support, trucking-related, office, research and development, and rail-related activities (Project); and

WHEREAS, a new zoning district called the Gateway Industrial District (D-GI) zone has been created to be applied to the Gateway Development Area, which is intended to implement the Master Plan by permitting land uses consistent with the Master Plan; and

WHEREAS, new design standards have been created to regulate the design of new development in the D-GI zone, including regulating site design, building design, landscaping, lighting, and signage (Design Standards); and

WHEREAS, the D-GI zone requires new development to comply with the Design Standards to ensure that the design quality of new development is high; and

WHEREAS, the Landmarks Preservation Advisory Board held a duly noticed public hearing on the proposed Design Standards, as well as other planning matters, on April 8, 2013; and

WHEREAS, the City Planning Commission held a duly noticed public hearing on the proposed Design Standards, as well as other related planning matters, on May 1, 2013, and at the close of the hearing recommended approval of the Design Standards to the City Council; and

WHEREAS, the Community and Economic Development Committee held a duly noticed meeting on May 28, 2013, to consider the Design Standards, as well as other related planning matters, and recommended approval of such to the City Council; and

WHEREAS, the City Council held duly noticed public hearings on the Design Standards, as well as other related planning matters, on June 4, 2013 and July 2, 2013; now therefore be it

RESOLVED, 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 Design Standards, the City Council finds and determines that it can continue to rely on the previously adopted 2012 OARB Initial Study/Addendum for the reasons stated in the June 12, 2012, and May 28, 2013, City Council Agenda Reports and related attachments/exhibits. The (Final and Corrected) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, dated October 15, 2012, is also hereby reaffirmed/readopted, including the clarifying corrections discussed at the June 4, 2013, City Council hearing (Mitigation Measure 4.4-3b) and in the Agenda Report for the July 2, 2013, City Council meeting (Mitigation Measure 4.3-10); 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 City Council hereby adopts the Design Standards as contained in Exhibit A, attached hereto and hereby incorporated by reference; and be it

FURTHER RESOLVED, the City Council finds that the Design Standards will ensure that new development in the D-GI zone will equal or exceed the design quality of the existing OARB buildings to be removed as part of the Project and will be compatible with the character of the area; and be it

FURTHER RESOLVED, that the City Council hereby authorizes staff to make minor ongoing revisions to the adopted Design Standards consistent with the DG-I zone and Oakland Planning Code, but with major revisions to be made by the Planning Commission, without returning to the City Council; and be it

FURTHER RESOLVED, the recitals set forth above are true and correct and are an integral part of this Resolution; and be it

FURTHER RESOLVED, the City Council finds and determines the following:

a) The Project is consistent with the General Plan and all applicable planning and zoning enactments; and

c) The Design Standards are desirable in order to facilitate the successful Project implementation; and

d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs and the catalytic effect the project will have on revitalizing the surrounding neighborhood, which will result in increased property values in the surrounding area and an increase in the viability of existing businesses; and

e) The public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Design Standards; and be it

FURTHER RESOLVED, if any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of this Resolution or its application to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Resolution or the application of this Resolution to other situations shall remain in full force and effect; and be it

FURTHER RESOLVED, that the record before this Council relating to this Resolution includes, without limitation, the following:

1. the applications, including all accompanying maps and papers;
2. all relevant plans and maps;
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, Landmarks Preservation Advisory Board, Planning Commission, and City Council before and during the public hearings on the application; and
5. 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) the Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED, that the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the Office of Neighborhood Investment, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland; (b) the Planning and Building Department, Planning Division, 250 Frank H. Ogawa

Plaza, 3rd Floor, Oakland; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

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

mfw



GATEWAY INDUSTRIAL DISTRICT DESIGN STANDARDS

INTRODUCTION

A. APPLICABILITY

These Design Standards apply to all projects in the Gateway industrial District (D-GI) Zone, including new construction and alterations.

B. INTENT

The intent of the Design Standards is to:

- Ensure high quality design through the use of quality building materials, pleasing building composition and form, and visual interest;
- Create a functional environment consistent with the industrial nature of the D-GI Zone;
- Enhance the view of the district as seen from the street and nearby freeways;
- Reduce the potential for criminal activity through the use of Crime Prevention Through Environmental Design (OPTED) principles;
- Utilize landscaping to soften the urban industrial character of the district, enhance the architecture of the site, and provide appropriate visual screening and environmental benefits; and
- Create a district with a visual identity that incorporates characteristics of Oakland industrial architecture in a contemporary way, and reflects current industrial design and construction methods.

C. EXCEPTIONS

Exceptions to the Design Standards may be granted by the Director of City Planning in accordance with the Regular Design Review procedure contained in Section 17.136.040(C) if the project complies with the Regular Design Review approval criteria contained in Section 17.136.050 and with the following additional criteria:

1. The proposed design is consistent with the intent of the Design Standards; and
2. One of the following is applicable:
 - a. Strict compliance with the Design Standards would preclude a superior design solution; or
 - b. There are unique circumstances related to the project and/or site and an effective design solution is proposed.

D. AMENDMENTS

Minor non-substantive amendments to the Design Standards, and minor substantive clarifications and refinements that are consistent with the overall intent of the Design Standards, may be approved administratively by the Director of City Planning.

Major substantive amendments to the Design Standards require review and approval by the City Planning Commission.

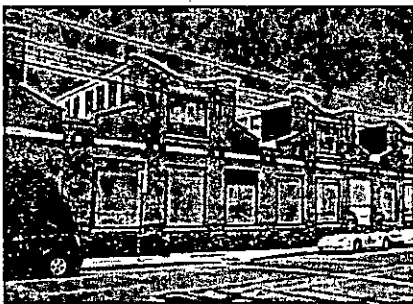
DESIGN STANDARDS

OAKLAND INDUSTRIAL CONTEXT

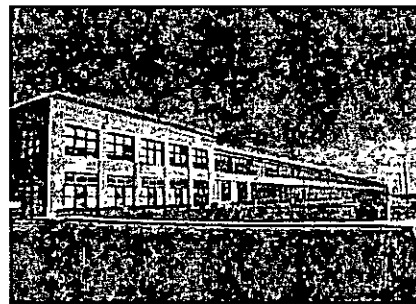
The City of Oakland has a rich legacy of high quality industrial architecture. There are certain characteristics present in Oakland industrial architecture that impart design quality, for example:

- Building forms tend to be articulated into shapes with multiple surfaces;
- Large warehouses typically have a visually differentiated office area;
- Industrial materials, such as metal, masonry, concrete, and glass, predominate; and
- Industrial steel sash windows are common.

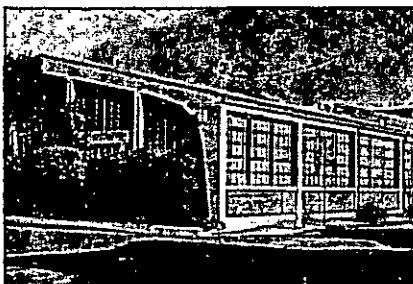
Below are photographs of existing buildings that represent these characteristics of Oakland industrial architecture.¹



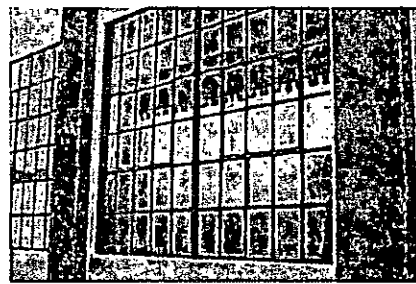
Example of historic building with articulated shape



Example of historic warehouse building with visually differentiated office area



Example of industrial materials – masonry, concrete and glass



Example of industrial steel sash windows

¹ Note that the purpose of the photographs is to provide Visual examples of architectural concepts; not to recommend that new development in the D-GI Zone should match the architectural style of these buildings.

Existing Oakland industrial architecture provides a vocabulary that can be reinterpreted in a contemporary way so that new buildings in the D-GI Zone have an Oakland industrial character. Like most of the historic industrial buildings in Oakland, new development in the D-GI Zone will consist of utilitarian buildings and land uses representative of the period in which they are developed. The design standards below incorporate, where appropriate, concepts from Oakland industrial architecture and present those concepts in a way that provides the flexibility necessary to have a successful contemporary and utilitarian industrial district.

1. SITE DESIGN

1.1. Surfacing: All driveway, parking, and loading areas shall have a durable, dustless, all-weather surface. Examples of allowable surfaces include, but are not limited to, concrete, asphalt, and individual pavers. Examples of prohibited surfaces include, but are not limited to, gravel and turf. This standard does not apply to temporary surfaces or emergency access routes.



Example of pedestrian pathway (crosswalk and sidewalk) to main building entry

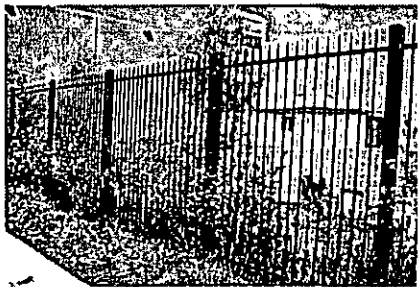
1.2. Pedestrian Pathway: A clearly identifiable pedestrian pathway to the main building entry with a minimum width of 5 feet is required from the street and from parking areas. Examples of techniques to provide identity to the pathway include, but are not limited to, using sidewalks, striping or contrasting materials, textures, or colors.

1.3. Fence/Wall Height: The maximum allowed height of any fence, freestanding wall, dense hedge, or similar barrier is 10 feet.



Example of trash enclosure with roof shape related to roof shape of primary building

1.4. Fence/Wall Transparency: The area above 42 inches on any fence, freestanding wall, dense hedge, or similar barrier shall have a minimum transparency of 70 percent. This standard does not apply to the screening of utility equipment, trash collection areas, and other similar enclosed utility areas.



Example of allowable fencing

1.5. Screening of Utility Equipment and Trash Collection Areas: Utility equipment, trash collection areas, and other similar areas shall be enclosed by a solid fence, wall, or similar barrier no taller than 2 feet above the object(s) being screened and not exceeding 15 feet in height. Trash enclosures shall be covered and contain solid doors and interior concrete curbs, shall be sized to fit both trash and recycling containers that will be necessary to serve the users of the

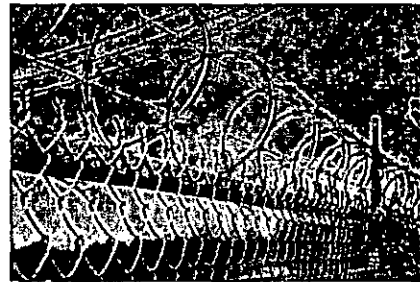
site, and should be designed to be compatible with the industrial character of the site with similar form, materials, and color as the primary building(s) on the site. Enclosed trash compactors adjacent to truck docks are permitted with no screening required.

- 1.6. Secured Areas: Areas of the site not visible from the street shall be secured with a fence, wall, or similar barrier during non-business hours.



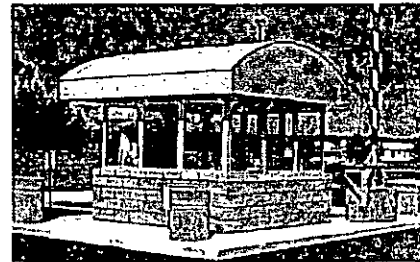
Example of allowable fencing

- 1.7. Perimeter Security Fencing Materials and Color: All perimeter security fencing shall be made of durable materials. Examples of allowable perimeter security fencing materials include, but are not limited to, solid steel, iron, and aluminum. Examples of prohibited materials on perimeter security fencing include, but are not limited to, wood, chain-link, plastic, vinyl, and wire. All perimeter security fencing shall be black in color. These standards do not apply to the screening of utility equipment, trash collection areas, and other similar enclosed utility areas, or to interior site fencing used for delineating storage, equipment, parking, loading, or other similar areas.



Barbed wire and razor wire are prohibited

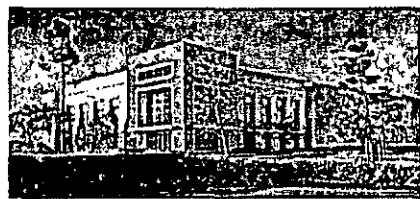
- 1.8. Barbed Wire and Razor Wire: The use of barbed wire and razor wire on fences, walls, and buildings is prohibited.



Example of secured entry kiosk

- 1.9. Secured Entries: Vehicle entry gates, checkpoints, kiosks, and other similar secured entry points shall be set back from the street at least 20 feet, except that secured entries on sites accessed by trucks shall be set back at least 50 feet, to allow adequate queuing space.

- 1.10. Vehicle Maneuvering: Adequate on-site vehicle maneuvering space shall be provided so that all vehicles, including cars and trucks, may exit the site driving forward.

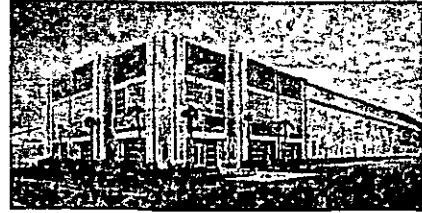


Example of identifiable main entry

2. BUILDING DESIGN

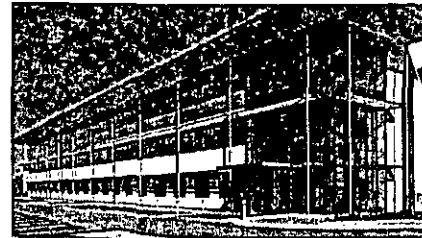
- 2.1. Exterior Building Wall Materials: Allowable exterior building wall materials are concrete, stucco, masonry, fiber cement (and other similar composites), glass, metal, and solid wood. Plywood, plastic, vinyl, and fiberglass are not allowed, except as accent materials.

2.2. Main Building Entry: The main building pedestrian entry shall be clearly identifiable from the street. Examples of architectural techniques to provide identity to the main building entry include, but are not limited to, contrasting textures, distinctive colors and materials, projections/recesses, and fenestration.



Example of distinguishable front office area

2.3. Front Office Space and Loading Docks/Storage Areas: In buildings with two or more use areas, such as office and warehouse/storage areas, these areas shall be clearly visually distinguishable. It is recommended that front office space be articulated into vertical bays appropriate to the design of the building (e.g., 20 to 30 feet wide).



Example of building wall articulation

2.4. Building Wall Articulations: Building walls over 100 feet in length shall contain a system of articulating architectural elements creating visually distinct sub-volumes through the incorporation of changes in two or more architectural elements, such as changes in surface planes (projections/recesses), roofline, colors, materials, textures, and/or fenestration.



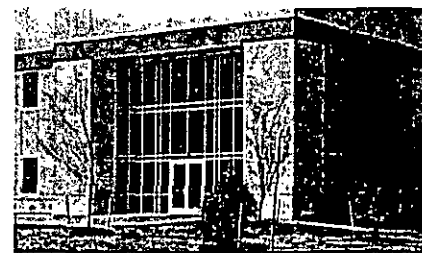
Example of building wall articulation

2.5. Street-Facing Truck Docks and Truck Doors: Truck docks and truck doors facing the street shall be set back from the public right-of-way at least 50 feet, and shall incorporate architectural detailing. Examples of architectural detailing include, but are not limited to, projections, recesses, changes in building textures and colors, and awnings. This standard applies to truck docks and truck doors in buildings and structures; it does not apply to the doors of trucks.



Example of truck docks with awnings

2.6. Secured Entry Buildings: Kiosks at secured entries should be designed to be compatible with the industrial character of the site with similar form, materials, and color, as the primary building(s) on the site.



Example of window articulation

2.7. Window Articulation: Windows shall incorporate articulating details. An example of window articulation is regular, repetitive grid patterns of lights in the window system.

Gateway Industrial District Design Standards

2.8. Window Recess: Windows shall be recessed from the exterior surface of the wall.

2.9. Roof Penetrations/Equipment: Locate building equipment within the building envelope if feasible in order to avoid excessive protrusions on the roof. Roof penetrations (e.g. vents, condensers) should be diverted to other interior locations where feasible. If located on the roof, they shall be an orderly roof design element such as grouped into repetitive roof-top pods. Skylights are encouraged.

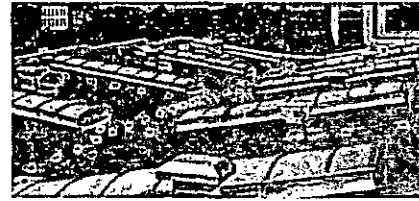
2.10. Solar Panels: If solar panels are proposed, they should be incorporated into the overall project design.

2.11. Visibility in Certain Activities: The following standards apply to buildings associated with Convenience Markets, Automobile and Other Light Vehicle Gas Station and Servicing Activities, and Truck and Other Heavy Vehicle Service, Repair, and Refueling Activities in order to increase visibility:

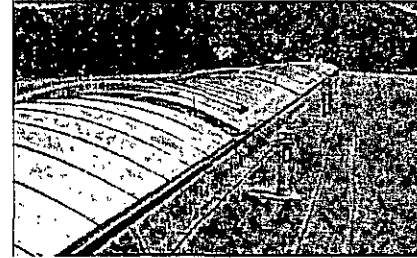
- Windows shall be incorporated to provide clear visibility from inside the building to the site and the street. Window area shall constitute at least 60 percent of each exterior building wall.
- Window signs shall cover no more than 10 percent of the window area.
- Cash registers shall be positioned to allow cashiers to see the building entry.
- Interior shelving and displays shall be no higher than five feet and shall be designed to allow cashiers to see down aisles.
- Interior lighting shall be adequately shielded to a point below the light bulb and reflector to prevent visibility of the bulb from the exterior of the building.

3. LANDSCAPING AND LIGHTING

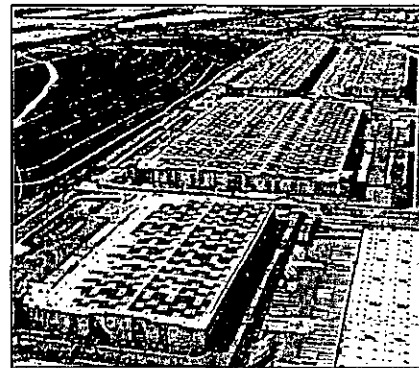
3.1. Tree and Plant List: Trees and plants shall be selected from the approved Tree and Plant List (see Attachment A) unless alternative species are approved by the Director of City Planning. The tree and plant list includes a variety of trees and plants that will provide year-round interest, tolerate wind, and adapt to the soil conditions of



Example of roof penetrations (vents and skylights) arranged in an organized, repetitive design



Example of skylights



Example of rooftop solar panels

the site. All plants are climate-adapted and intended to be in harmony with the shoreline plants that already thrive in the area.

3.2. Canopy Trees – Car Parking Areas: Canopy trees are required in car parking areas. Tree plantings shall be designed to provide at least 40 percent canopy coverage of parking lot surface areas in 15 years. This standard applies to car parking spaces, driveways, and maneuvering aisles. See Attachment B for guidance on calculating canopy coverage. This canopy coverage standard does not apply to truck areas, including parking, storage, loading, or maneuvering areas. Landscaped areas containing trees shall measure no less than 5 feet in any direction. *[Note: Staff is continuing to research the appropriate canopy coverage percentage. The percentage requirement may be adjusted depending on the outcome of that research.]*



Example of canopy trees in parking area

3.3. Canopy Trees – Truck Areas: Canopy trees are required on the perimeter of truck areas, including parking, storage, loading, and maneuvering areas. Tree spacing shall not exceed the canopy spread at full growth.



Example of screening trees

3.4. Landscape Buffer – Parking, Loading, and Storage Areas: A landscape strip at least 5 feet wide is required between off-street car and truck parking, loading, and storage areas and adjacent streets. Landscaping (except trees) shall not exceed 42 inches in height.

3.5. Landscape Buffer – Buildings: A landscape strip at least 5 feet wide is required along the foundation of at least 50 percent of the length of building walls visible from the street, except where building entries, truck docks, truck doors and storage areas are located.

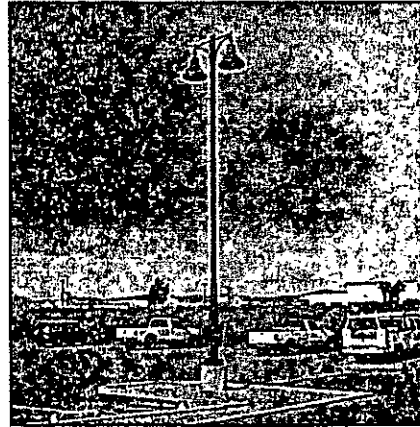


Example of screening trees

3.6. Screening Trees on Sites Adjacent to Freeways: Landscape areas located adjacent to a freeway shall contain trees for visual screening. The species shall be selected based on criteria of fast growth and appropriate significant height for buffering the site. Trees should equal or exceed the height of on-site buildings at full growth. Tree spacing shall not exceed the canopy spread of the trees at full growth.

3.7. Lighting – Minimum Illumination: The following minimum illumination is required during business and non-business hours:

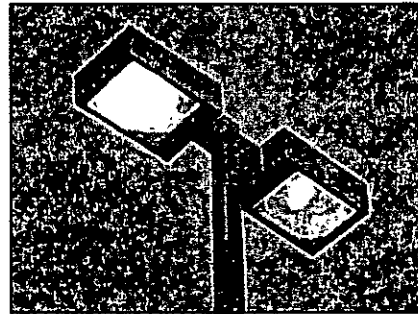
- Commercial Activities: 3 foot-candles
- Industrial Activities – Car Parking Areas: 1 foot-candle
- Industrial Activities – Other Areas: 0.5 foot-candle
- All activities: Minimum-to-maximum uniformity ratio shall not exceed 4:1



Example of freestanding light fixture in parking area

3.8. Lighting Design: All lighting shall be architecturally integrated into the site and reflect and reinforce the industrial character of the D-GI Zone. Lighting for circulation, security, and building/sign identification should be non-obtrusive, except for light fixtures, which are themselves features to the industrial character of the area. Lighting fixture height should be appropriate to the type of lighting use area.

3.9. Lighting – Shielding: Lighting fixtures shall be “full cut-off” to provide adequate shielding to a point below the light bulb and reflector in order to prevent glare onto adjacent properties and minimize contribution to sky glow.



Example of light fixture with shielding

4. SIGNS

4.1. Signs: All signage shall comply with a Master Sign Program for D-GI Zone as approved by the Director of City Planning. The Master Sign Program shall be consistent with the intent of the Design Standards.

5. OTHER STANDARDS

5.1. All projects shall comply with all other applicable requirements, codes, and policies, including, but not limited to, the following:

- Chapter 17.102 – General Regulations
- Chapter 17.104 – Sign Limitations
- Chapter 17.108 – General Height, Yard, and Court Regulations
- Chapter 17.110 – Buffering Regulations
- Chapter 17.116 – Parking Requirements
- Chapter 17.117 – Bicycle Parking Requirements
- Chapter 17.118 – Recycling Space Requirements
- Chapter 17.120 – Performance Standards
- Chapter 17.124 – Landscaping and Screening Standards
- Chapter 17.128 – Telecommunications Regulations

Gateway Industrial District Design Standards

- Chapter 18.02 – Green Building Requirements
- National Pollutant Discharge Elimination System (NPDES) C.3 Stormwater Requirements
- Oakland Building Code
- Oakland Fire Code
- Applicable Standard Conditions of Approval and Mitigation Measures

ATTACHMENT A: TREE AND PLANT LIST

TALL SCREENING TREES TO BUFFER VIEW FROM FREEWAYS		
<i>Botanic name</i>	<i>Common name</i>	<i>Native or Climate adapted</i>
Acer microphyllum	Big leaf maple	Bay native, BCDC list
Acer rubrum	Red alder	Bay native, BCDC list
Casuarina equisetifolia	Beach she-oak	Climate adapted
Celtis australis	European hackberry	Climate adapted
X chitalpa tashkentensis 'pink dawn'	Pink dawn Chitalpa	Climate adapted
Cupressus macrocarpa	Monterrey Cypress	Climate adapted
Geijera parviflora	Australian willow	Climate adapted
Metrosideros excelsus	New Zealand Christmas Tree	Climate adapted
Nyssa sylvatica 'Red Rage'	Tupelo tree	Climate adapted
Pinus eldarica	Elderica pine	Climate adapted
Pinus pinea	Italian stone pine	Climate adapted
Pinus torreyana	Torrey pine	Climate adapted
Populus fremontii 'Nevada'	Fremont poplar (sterile hybrid)	Bay native

CANOPY AND SHADE TREES FOR PARKING AREAS AND SITE PERIMETER		
<i>Botanic name</i>	<i>Common name</i>	<i>Native or Climate adapted</i>
Acer rubrum	Red alder	Bay native, BCDC list
Casuarina equisetifolia	Beach she-oak	Climate adapted
Celtis occidentalis 'Prairie Sentinel'	Hackberry	Climate adapted
X chitalpa tashkentensis 'Pink Dawn'	Pink dawn Chitalpa	Climate adapted
Cupressus macrocarpa	Monterrey Cypress	Climate adapted
Geijera parviflora	Australian willow	Climate adapted
Laurus nobilis 'Saratoga'	Saratoga bay	Climate adapted
Nyssa sylvatica 'Red Rage'	Tupelo tree	Climate adapted
Pinus eldarica	Elderica pine	Climate adapted
Pinus pinea	Italian stone pine	Climate adapted
Pinus torreyana	Torrey pine	Climate adapted
Populus fremontii 'Nevada'	Fremont poplar (sterile hybrid)	Bay native
Umbellularia californica	Californian laurel	Bay native, BCDC list
Quercus robur 'fastigata'	English she-oak	Climate adapted

TALL SHRUBS AND SMALL TREES FOR SCREENING EDGES		
<i>Botanic name</i>	<i>Common name</i>	<i>Native or Climate adapted</i>
Arbutus marina	Arbutus	California native
Arctostaphylos densiflora 'harmony'	'Harmony' manzanita	California native

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<i>Cercis occidentalis</i>	Western redbud	California native, BCDC list
<i>Corylus Coronuta</i> var. <i>californica</i>	Western hazelnut	Bay native, BCDC list
<i>Dodennaea viscosa</i> var. <i>purpurea</i>	Purple Hopseed bush	Climate adapted, BCDC list
<i>Dodennaea viscosa</i> var. <i>purpurea</i>	Flannel bush	California native, BCDC list
<i>Garrya elliptica</i> 'James Roof	Coast silk tassle	Bay native
<i>Hakea suaveolens</i>	Sweet Hakea	Climate adapted, BCDC list
<i>Hetermoles arbutifolia</i>	Toyon	Bay native, BCDC list
<i>Lavatera maritima</i>	Tree Mallow	Climate adapted
<i>Lavatera maritima</i>	California wax myrtle	Bay native, BCDC list
<i>Rhamnus californica</i> 'eve case	Coffeberry	Bay native, BCDC list
<i>Sambucus mexicana</i>	Blue Elderberry	Bay native, BCDC list

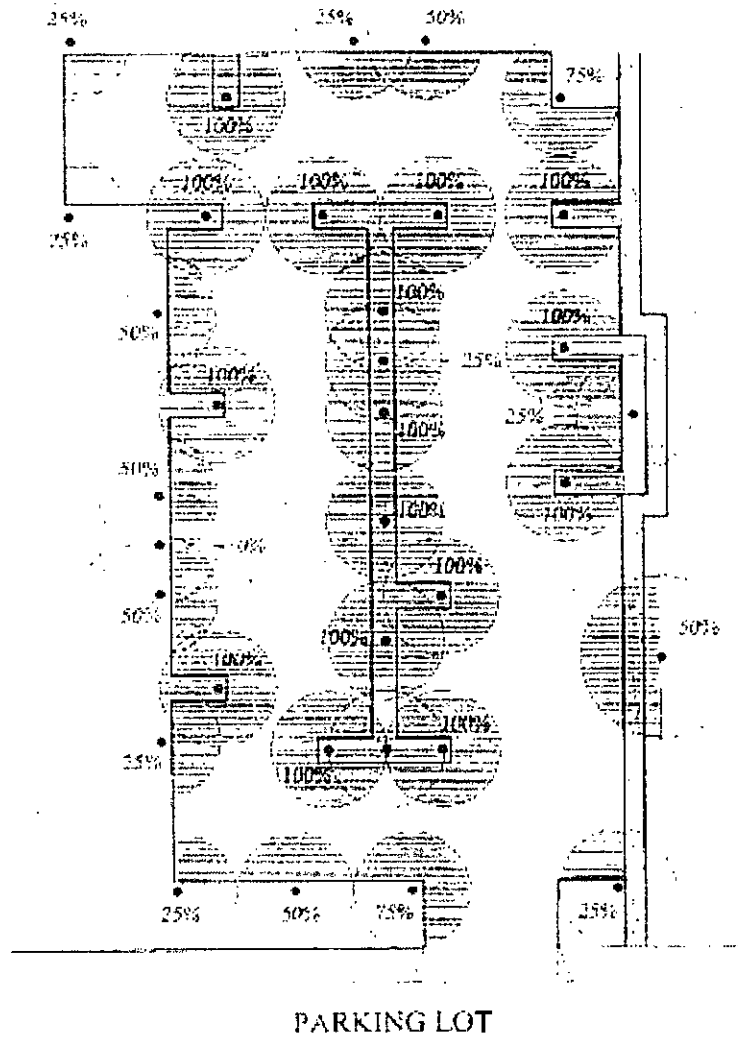
LOWER SHRUBS & GROUNDCOVERS		
Botanical name	Common name	Native or Climate adapted
<i>Anigozanthos</i>	Kangaroo paw	Climate adapted
<i>Arctostaphylos uva-ursi</i> 'Green Supreme'	Arctostaphylos	California native, BCDC list
<i>Arctostaphylos</i> "Pacific Mist"	Arctostaphylos	California native, BCDC list
<i>Artemisia californica</i>	California sagebrush	Bay native, BCDC list
<i>Bacchans pilularis</i> ssp. <i>Pilularis</i>	Dwarf coyote brush	Bay native, BCDC list
<i>Calamagrostis x acutiflora</i>	Feather reed grass	Climate adapted
<i>Carex testacea</i>	Orange sedge	Climate adapted
<i>Carex divulsa</i>	Berkeley sedge	Climate adapted
<i>Carex glauca</i>	Blue sedge	Climate adapted
<i>Ceanothus thyrsiflorus</i> var. <i>Repens</i>	Ceanothus	Bay native, BCDC list
<i>Cistus salviifolius</i>	Rockrose	Climate adapted
<i>Chonropetalum elephantinum</i>	Large cape rush	Climate adapted
<i>Deschampia caespitosa</i>	Tufted hair grass	Climate adapted
<i>Elymus glaucus</i>	Blue wild rye	Bay native, BCDC list
<i>Epilobium californicum</i>	California fuchsia	Bay native, BCDC list
<i>Erigeron glaucus</i>	Seaside daisy	California native, BCDC list
<i>Festuca californica</i>	California festuca	Bay native, BCDC list
<i>Iris douglasiana</i>	Douglas iris	Bay native
<i>Muhlenbergia rigens</i>	Deer grass	California native, BCDC list
<i>Phormium varieties</i>	New Zealand flax	Climate adapted
<i>Polystichum munitum</i>	Western sword fern	Climate adapted
<i>Salvia microphylla</i> grahamii 'Bezerkeley'	Bezerkeley salvia	Climate adapted
<i>Vaccinium ovatum</i>	Evergreen huckleberry	Climate adapted
No mow sod		
<i>Koeleria macrantha</i>	June grass	California native
<i>Nassella pulchra</i>	Purple needlegrass	
<i>Nassella cernua</i>	Nodding needlegrass	
<i>Festuca rubra</i>	Molate fescue	

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<p>Hydroseed mix 1. Seed mix at 70 lbs./acre: Festuca rubra molate blue; Festuca idahoensis 'mt. Tam'; Festuca occidentalis 'mokolumne'. 2. 100% wood fiber at 2,000 lbs./acre 3. M binder tackifier at 120 lbs./acre 4. 16-6-8 commercial fertilizer at 500 lbs./acre</p>	<p>Molate blue fescue Native blue bunch fescue Western fescue</p>	<p>California native</p>
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PLANTS FOR STORMWATER BIOTREATMENT AREAS		
<i>Botanic name</i>	<i>Common name</i>	<i>Native or Climate adapted</i>
TREES		
Acer microphyllum	Big leaf maple	Bay native, BCDC list
Acer rubrum	Red alder	Bay native, BCDC list
Nyssa sylvatica 'Red Rage'	Tupelo tree	Climate adapted
Populus fremontii 'Nevada'	Fremont poplar (sterile hybrid)	Bay native, BCDC list
Washingtonia robusta	Mexican fan palm	Climate adapted
SHRUBS & GROUNDCOVERS		
Carex divulsa	Berkeley sedge	Climate adapted
Carex glauca	Blue sedge	Climate adapted
Iris douglasiana	Douglas iris	Bay native
Deschampia caespitosa	Tufted hair grass	Climate adapted
Phormium varieties	New Zealand flax	Climate adapted
Chonropetalum elephantinum	Large cape rush	Climate adapted
Vaccinium ovatum	Evergreen huckleberry	Climate adapted
HYDROSEED MIXTURE OR SOD		
Festuca rubra Hordeum brachyantherum brachyantherum Hordeum californicum Nassella pulchra	Molate fescue Meadow barley California barley Purple needle grass	Climate adapted

ATTACHMENT B: TREE CANOPY COVERAGE CALCULATION DIAGRAM



Source: City of Sacramento