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OAKLAND

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CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6<sup>TH</sup> FLOOR • OAKLAND, CA 94612

Office of the City Attorney  
John A. Russo  
City Attorney

(510) 238-3601  
FAX: (510) 238-6500  
TDD: (510) 839-6451

May 17, 2011

Honorable City Council and Redevelopment Agency Board  
Oakland, California

**Subject: RESOLUTION APPROVING SETTLEMENT AGREEMENT REGARDING ATTORNEY'S FEES AND COSTS IN COALITION OF ADVOCATES FOR LAKE MERRITT ET AL. V. CITY OF OAKLAND ET AL. (ALAMEDA SUPERIOR COURT CASE NO. RG10514461, FIRST DISTRICT COURT OF APPEAL CASE NO. A130515), WHEREBY DEVELOPERS OAKLAND HARBOR PARTNERS, LLC, ET AL. WILL PAY \$450,000 TO PLAINTIFFS ON BEHALF OF DEVELOPERS AS WELL AS THE CITY OF OAKLAND AND OAKLAND REDEVELOPMENT AGENCY, IN EXCHANGE FOR PARTIES' RESPECTIVE DISMISSALS OF APPEALS OF POST-JUDGMENT ORDER RE: ATTORNEY FEES (CEDA; CHALLENGE TO CERTIFICATION OF EIR AND ENTITLEMENTS, INCLUDING DEVELOPMENT AGREEMENT, FOR OAK TO NINTH MIXED USE DEVELOPMENT PROJECT)**

Dear President Reid and Members of the City Council and Redevelopment Agency Board:

Pursuant to section 401 of the Charter, and the direction of the Council and Redevelopment Agency Board at the May 3, 2011, closed session, the City Attorney/Redevelopment Agency Attorney has prepared and requests your approval of a resolution authorizing settlement in the above-entitled lawsuit—regarding payment of attorney's fees and costs—by the entry of a settlement agreement whereby, among other things, the developers of the Oak to Ninth Mixed Use Project shall pay the \$450,000 to Plaintiffs on behalf of themselves as well as the City and the Agency.

**Honorable City Council and Redevelopment Agency Board**

May 17, 2011

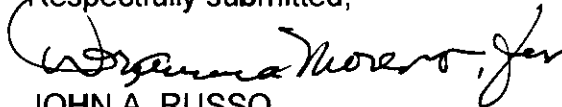
Page Two

Subject: Resolution re. Settlement Agreement

Coalition of Advocates for Lake Merritt v. City of Oakland et al.

Attached hereto are the proposed Resolutions for the City and the Redevelopment Agency as well as the form of the Settlement Agreement, for which we seek authorization to execute.

Respectfully submitted,

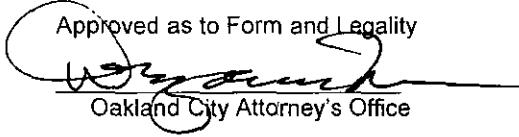
A handwritten signature in black ink, appearing to read "John A. Russo, Jr.", written in a cursive style.

JOHN A. RUSSO  
City Attorney

Attorney Assigned:  
Kevin D. Siegel

11 MAY -5 PM 4:39

Approved as to Form and Legality

  
Oakland City Attorney's Office

## OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

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**RESOLUTION APPROVING SETTLEMENT AGREEMENT REGARDING ATTORNEY'S FEES AND COSTS IN COALITION OF ADVOCATES FOR LAKE MERRITT ET AL. V. CITY OF OAKLAND ET AL. (ALAMEDA SUPERIOR COURT CASE NO. RG10514461, FIRST DISTRICT COURT OF APPEAL CASE NO. A130515), WHEREBY DEVELOPERS OAKLAND HARBOR PARTNERS, LLC, ET AL. WILL PAY \$450,000 TO PLAINTIFFS ON BEHALF OF DEVELOPERS AS WELL AS THE CITY OF OAKLAND AND OAKLAND REDEVELOPMENT AGENCY, IN EXCHANGE FOR PARTIES' RESPECTIVE DISMISSALS OF APPEALS OF POST-JUDGMENT ORDER RE: ATTORNEY FEES (CEDA; CHALLENGE TO CERTIFICATION OF EIR AND ENTITLEMENTS, INCLUDING DEVELOPMENT AGREEMENT, FOR OAK TO NINTH MIXED USE DEVELOPMENT PROJECT)**

**WHEREAS**, Oakland Harbor Partners, LLC, Signature Properties, Inc., and Reynolds & Brown (collectively, "Developers") proposed to develop a mixed-use community (approximately 3,100 residences, retail uses, parks, etc.) on real property located in the City of Oakland—between the Oakland Estuary, the Embarcadero, I-880, Oak Street and Ninth Avenue—commonly known as the Oak to Ninth Project (the "Project"); and

**WHEREAS**, in June and July 2006, after consideration of the environmental issues and the merits of the Project, the City of Oakland (the "City") certified an Environmental Impact Report ("EIR") and the City and Oakland Redevelopment Agency (the "Agency") approved entitlements for the Project, including a Development Agreement ("DA"); and

**WHEREAS**, in July 2006, the Coalition of Advocates for Lake Merritt and Joyce Roy (collectively, "Plaintiffs") filed a lawsuit against the City, the Agency and the Developers (Alameda Superior Court Case No. RG06280471) challenging the certification of the EIR and the approval of Project entitlements, including the DA; and

**WHEREAS**, on February 23, 2010, the Superior Court entered Judgment, in part for Plaintiffs and in part for the City, Agency and Developers; and

**WHEREAS**, on April 14, 2010, the Superior Court entered an Order re: Award of Costs, which granted costs in the amount of \$5,365.70 to Plaintiffs, to be paid by the City, Agency and Developers; and

**WHEREAS**, Plaintiffs filed a motion for attorney's fees which sought a fee award of approximately \$700,000; and

**WHEREAS**, on October 6, 2010, the Superior Court entered an Order re: Attorney Fees, which granting in part and denying in part Plaintiffs' motion for attorney's fees, ordered that the City, Agency and Developers are jointly liable to pay attorney's fees to Plaintiffs in the amount of \$393,276.68; and

**WHEREAS**, all parties (City, Agency, Developers and Plaintiffs) appealed the Order re: Attorney Fees to the First District Court of Appeal (Case No. A130515); and

**WHEREAS**, interest has been accruing on the awards of costs and attorney's fees, in a statutory amount which may be as high as 10% annually; and

**WHEREAS**, the parties participated in a mediation at which they reached a tentative settlement regarding payment to Plaintiffs of \$450,000 and the termination of the above-described litigation, as further described below and in the proposed Settlement Agreement attached hereto;

**WHEREAS**, the Project Conditions of Approval and the DA obligate the Developers to indemnify the City and Agency and to hold them harmless with respect to the any award of litigation costs and fees; and

**WHEREAS**, the Settlement Agreement provides, among other things, that the Developers shall pay the \$450,000 to Plaintiffs on behalf of themselves as well as the City and the Agency (in two installments), that the Plaintiffs may seek an order compelling the City and Agency to pay in the event of a default by the Developers, and that the parties shall take the necessary steps to terminate the litigation in connection with the satisfaction of the payment to Plaintiffs;

**WHEREAS**, there remains significant time, expense and risk involved in continuing the litigation, including the risk that Plaintiffs could prevail in their appeal of the Order re: Attorney Fees (and would thereby seek an award of additional attorney's fees);

**NOW, THEREFORE, BE IT RESOLVED:** The City Administrator, or his designee, is authorized to enter the Settlement Agreement, in substantially the same form as attached hereto, subject to final approval by the City Attorney, and following execution of the Settlement Agreement by Developers.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -  
ABSENT -  
ABSTENTION -

ATTEST:

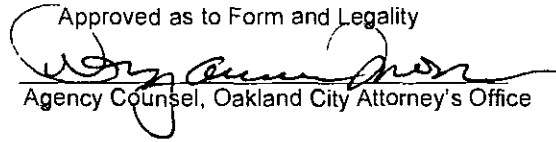
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LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

11 MAY -5 PM 4:39

Approved as to Form and Legality

  
Agency Counsel, Oakland City Attorney's Office

## REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. \_\_\_\_\_ C.M.S.

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**RESOLUTION APPROVING SETTLEMENT AGREEMENT REGARDING ATTORNEY'S FEES AND COSTS IN COALITION OF ADVOCATES FOR LAKE MERRITT ET AL. V. CITY OF OAKLAND ET AL. (ALAMEDA SUPERIOR COURT CASE NO. RG10514461, FIRST DISTRICT COURT OF APPEAL CASE NO. A130515), WHEREBY DEVELOPERS OAKLAND HARBOR PARTNERS, LLC, ET AL. WILL PAY \$450,000 TO PLAINTIFFS ON BEHALF OF DEVELOPERS AS WELL AS THE CITY OF OAKLAND AND OAKLAND REDEVELOPMENT AGENCY, IN EXCHANGE FOR PARTIES' RESPECTIVE DISMISSALS OF APPEALS OF POST-JUDGMENT ORDER RE: ATTORNEY FEES (CEDA; CHALLENGE TO CERTIFICATION OF EIR AND ENTITLEMENTS, INCLUDING DEVELOPMENT AGREEMENT, FOR OAK TO NINTH MIXED USE DEVELOPMENT PROJECT)**

**WHEREAS**, Oakland Harbor Partners, LLC, Signature Properties, Inc., and Reynolds & Brown (collectively, "Developers") proposed to develop a mixed-use community (approximately 3,100 residences, retail uses, parks, etc.) on real property located in the City of Oakland—between the Oakland Estuary, the Embarcadero, I-880, Oak Street and Ninth Avenue—commonly known as the Oak to Ninth Project (the "Project"); and

**WHEREAS**, in June and July 2006, after consideration of the environmental issues and the merits of the Project, the City of Oakland (the "City") certified an Environmental Impact Report ("EIR") and the City and Oakland Redevelopment Agency (the "Agency") approved entitlements for the Project, including a Development Agreement ("DA"); and

**WHEREAS**, in July 2006, the Coalition of Advocates for Lake Merritt and Joyce Roy (collectively, "Plaintiffs") filed a lawsuit against the City, the Agency and the Developers (Alameda Superior Court Case No. RG06280471)

challenging the certification of the EIR and the approval of Project entitlements, including the DA; and

**WHEREAS**, on February 23, 2010, the Superior Court entered Judgment, in part for Plaintiffs and in part for the City, Agency and Developers; and

**WHEREAS**, on April 14, 2010, the Superior Court entered an Order re: Award of Costs, which granted costs in the amount of \$5,365.70 to Plaintiffs, to be paid by the City, Agency and Developers; and

**WHEREAS**, Plaintiffs filed a motion for attorney's fees which sought a fee award of approximately \$700,000; and

**WHEREAS**, on October 6, 2010, the Superior Court entered an Order re: Attorney Fees, which granting in part and denying in part Plaintiffs' motion for attorney's fees, ordered that the City, Agency and Developers are jointly liable to pay attorney's fees to Plaintiffs in the amount of \$393,276.68; and

**WHEREAS**, all parties (City, Agency, Developers and Plaintiffs) appealed the Order re: Attorney Fees to the First District Court of Appeal (Case No. A130515); and

**WHEREAS**, interest has been accruing on the awards of costs and attorney's fees, in a statutory amount which may be as high as 10% annually; and

**WHEREAS**, the parties participated in a mediation at which they reached a tentative settlement regarding payment to Plaintiffs of \$450,000 and the termination of the above-described litigation, as further described below and in the proposed Settlement Agreement attached hereto;

**WHEREAS**, the Project Conditions of Approval and the DA obligate the Developers to indemnify the City and Agency and to hold them harmless with respect to the any award of litigation costs and fees; and

**WHEREAS**, the Settlement Agreement provides, among other things, that the Developers shall pay the \$450,000 to Plaintiffs on behalf of themselves as well as the City and the Agency (in two installments), that the Plaintiffs may seek an order compelling the City and Agency to pay in the event of a default by the Developers, and that the parties shall take the necessary steps to terminate the litigation in connection with the satisfaction of the payment to Plaintiffs;

**WHEREAS**, there remains significant time, expense and risk involved in continuing the litigation, including the risk that Plaintiffs could prevail in their appeal of the Order re: Attorney Fees (and would thereby seek an award of additional attorney's fees);

**NOW, THEREFORE, BE IT RESOLVED:** The Agency Administrator, or his designee, is authorized to enter the Settlement Agreement, in substantially

the same form as attached hereto, subject to final approval by the City Attorney, and following execution of the Settlement Agreement by Developers.

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2011

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, KERNIGHAN, NADEL, SCHAAF, DE LA FUENTE, BROOKS, KAPLAN,  
AND CHAIRPERSON REID

NOES-

ASSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
Secretary of the Redevelopment Agency  
of the City of Oakland, California



## SETTLEMENT AGREEMENT

This Settlement Agreement is made this \_\_\_\_ 2011 by and among (1) Petitioners/Plaintiffs and Respondents/Cross-Appellants Coalition of Advocates for Lake Merritt and Joyce Roy (collectively, "Petitioners"), (2) Respondents/Defendants and Appellants/Cross-Respondents City of Oakland, Oakland City Council, and Oakland Redevelopment Agency (sometimes referred to collectively herein as the "City"), and (3) Real Parties-in-Interest and Appellants/Cross-Respondents Oakland Harbor Partners, LLC., Signature Properties, Inc., and Reynolds & Brown (collectively, "Signature").

### RECITALS

A. Signature proposed to develop a mixed-use community (approximately 3,100 residences, retail uses, parks, etc.) on real property located in the City of Oakland—between the Oakland Estuary, the Embarcadero, 1-880, Oak Street and Ninth Avenue—commonly known as the Oak to Ninth Project (the "Project")

B. In June and July 2006, after consideration of the environmental issues and the merits of the Project, the City certified an Environmental Impact Report ("EIR") and approved entitlements for the Project, including a Development Agreement ("DA").

C. In July 2006, Petitioners filed Civil Action No. RG06280471, entitled Coalition of Advocates for Lake Merritt and Joyce Roy v. City of Oakland et al. in the Alameda Superior Court ("the Action"), challenging the certification of the EIR and the approval of Project entitlements, including the DA. During the course of the Action, the Superior Court entered several orders regarding the merits of Petitioners' claims. On February 23, 2010, the Superior Court entered Judgment. On April 14, 2010, the Superior Court entered an Order re: Award of Costs, which granted costs to Petitioners. On October 6, 2010, the Superior Court entered an Order re: Attorney Fees, which granted in part and denied in part Petitioners' motion for attorney's fees. The Order re: Attorney Fees provides and orders that the City and Signature are "jointly and severally" liable for Petitioners' attorneys fees.

D. The Judgment and Order re: Award of Costs are final. However, the Order re: Attorney Fees is not final. Petitioners, the City and Signature each appealed the Order re: Attorney Fees to the California Court of Appeal, First District ("Court of Appeal"), which appeals are still pending (Case No. A130515).

E. The City and Signature are each liable to Petitioners with respect to the award of costs and Petitioners' attorneys fees. However, as between the City and Signature, Signature is obligated by the Conditions of Approval (§§ 11-14) and the Development Agreement (§ 5.1) for the Project to indemnify the City and hold it harmless with respect to the entirety of any costs and fee award, and thus to pay court-ordered costs and fees to Petitioners on behalf of both Signature and the City.

F. Petitioners, the City and Signature (collectively, the "Parties") each recognize that there remains significant time, expense and risk involved in continuing the litigation regarding the Order re: Attorney Fees. Thus, the Parties enter this Settlement Agreement in order avoid further litigation and the associated time, expense and risk.

G. The Parties further understand and acknowledge that this Settlement Agreement shall not be fully executed or binding upon any of the Parties hereto unless and until the City of Oakland and the Redevelopment Agency of the City of Oakland, by and through the City Council and Redevelopment Agency Board, approve in open session this Settlement Agreement. This date of full execution by all Parties, including the execution by the City and Agency after Oakland City Council and Oakland Redevelopment Agency Board so authorize, shall be referred to in this Settlement Agreement as the "Effective Date."

H. If a date for compliance under this Settlement Agreement falls on a Saturday or Sunday or any other day that is specified or provided for as a holiday in the California Government Code, an obligation will be timely performed if done by the end of the next business day.

NOW, THEREFORE, based on the recitals above, and the mutual covenants and promises set forth herein, the adequacy of which is expressly acknowledged by each of the Parties, the Parties do hereby agree as follows:

#### AGREEMENT

- I. The above recitals are incorporated herein.
2. Payment of \$450,000, in Two Installments. Signature shall pay and Petitioners shall accept \$450,000 ("Payment") in two installments, as described below.
  - a. Within five days of the Effective Date, Signature shall pay and Petitioners shall accept the sum of Two Hundred Thousand Dollars (\$200,000) ("First Installment").
  - b. By no later than March 30, 2012, Signature shall pay and the Petitioners shall accept the sum of Two Hundred Fifty Thousand Dollars (\$250,000) ("Second Installment").
  - c. Payment shall not bear any interest unless and until there is a default as set forth in Section 4 below at the interest rate set forth in Section 4 below.
  - d. The First Installment and the Second Installment shall be made payable to LIPPE GAFFNEY WAGNER, Attorney Client Trust Account, and payment shall be hand delivered to Brian Gaffney, LIPPE GAFFNEY WAGNER, LLP, 329 Bryant Street, Suite 3D, San Francisco, CA 94107 (with a copy to the City, c/o Deputy City Attorney Kevin D. Siegel, Oakland City Attorney's Office, 1 Frank Ogawa Plaza, 6th Floor, Oakland, CA 94612).
3. Dismissal of Appeals, Remittitur, Continuing Jurisdiction under CCP 664.6, and Acknowledgements of Satisfaction of Judgment.
  - a. Within 14 calendar days of the Effective Date, the Parties shall file a stipulation for dismissal of each of their respective appeals and for a remittitur to the

Superior Court, pursuant to Rules 8.244(c)(2) and 8.272(c) of the California Rules of Court, which stipulation shall be in the form attached hereto as Exhibit A.

b. Within 7 calendar days of the issuance of the remittitur, the Parties shall file in the Alameda Superior Court (i) a stipulated joint *ex parte* motion and supporting declaration in the form attached hereto as Exhibit B for the entry of this Settlement Agreement as the Superior Court's modified Order re: Attorneys Fees and (ii) a stipulation, in the form attached hereto as Exhibit C, requesting the Superior Court retain jurisdiction over the Parties to enforce the settlement until performance in full of the terms of this Settlement Agreement, pursuant to section 664.6 of the Code of Civil Procedure.

c. Contemporaneously with the filing of the stipulation requesting the Superior Court to retain jurisdiction under section 664.6 of the Code of Civil Procedure, and upon full payment of the First Installment defined in paragraph 2.a. above, Petitioners shall file a notice of partial satisfaction of judgment in the Alameda Superior Court, which notice shall specify the amount paid to Petitioners.

d. Within 14 calendar days of payment to Petitioners of the Second Installment, Petitioners shall file a notice of full satisfaction of judgment in the Alameda Superior Court in Case No. RG06280471, which notice shall specify the amount paid to Petitioners.

4. Default. If Signature does not timely pay either the First Installment or the Second Installment, the City shall be obligated to pay any such unpaid amount to Petitioners as specified in Paragraph 2 above, subject to the following notice and opportunity to cure requirements. If Signature does not timely pay either the First Installment or the Second Installment, Petitioners shall promptly notify the City, by written notice to Deputy City Attorney Kevin D. Siegel (at the address stated in paragraph 13 and by e-mail at [ksiegel@oaklandcityattorney.org](mailto:ksiegel@oaklandcityattorney.org)). If neither Signature nor the City has cured any such default of the First Installment or the Second Installment within seven calendar days of notice to the City, Petitioners may apply *ex parte* in the Alameda Superior Court for an order compelling the City and Signature immediately to pay the amount, plus simple interest at 10% on said amount (accruing since the due date for the payment specified in paragraph 2 above), and neither City nor Signature shall oppose such motion.

5. Enforcement. This Settlement Agreement is enforceable and binding, and may be enforced by a motion under Code of Civil Procedure section 664.6 in the Alameda Superior Court or by any other procedure permitted by law. The Parties agree that the Alameda Superior Court may retain jurisdiction over the Parties to enforce this Settlement Agreement until performance in full of the terms herein. The terms and conditions of this Settlement Agreement are admissible and subject to disclosure for purposes of enforcing this Agreement pursuant to Code of Civil Procedure section 664.6 or any other proceeding permitted by law.

6. Mutual Release Between Petitioners and the City. Except for the obligations specified in this Settlement Agreement, Petitioners and the City hereby release and forever discharge each other, together with their employees, officers, agents, representatives, trustees,

directors, partners, stockholders, attorneys, successors, assigns, heirs, personal representatives and executors, and all persons, firms, associations, co-partners, co-venturers, insurers, contractors, engineers, subcontractors, subsidiaries, parents, affiliates, or corporations connected therewith, and each of them from any and all claims, debts, liabilities, demands, obligations, costs, expenses, attorneys' fees, actions, and causes of actions of every nature, character, and description whether known or unknown, directly or indirectly arising out of any matter, fact, and/or allegation arising out of any matter, fact, and/or allegation related to the Order re: Attorney Fees or to the Superior Court's Order re: Award of Costs

7. Mutual Release Between Petitioners and Signature. Except for the obligations specified in this Settlement Agreement, Petitioners and Signature hereby release and forever discharge each other, together with their employees, officers, agents, representatives, trustees, directors, partners, stockholders, attorneys, successors, assigns, heirs, personal representatives and executors, and all persons, firms, associations, co-partners, co-venturers, insurers, contractors, engineers, subcontractors, subsidiaries, parents, affiliates, or corporations connected therewith, and each of them from any and all claims, debts, liabilities, demands, obligations, costs, expenses, attorneys' fees, actions, and causes of actions of every nature, character, and description whether known or unknown, directly or indirectly arising out of any matter, fact, and/or allegation arising out of any matter, fact, and/or allegation related to the Order re: Attorney Fees or to the Superior Court's Order re: Award of Costs.

8. Waiver of California Civil Code Section 1542. The parties to the releases in paragraphs 6 and 7 above hereby acknowledge that they are aware of the provisions of section 1542 of the Civil Code, which provides as follows:

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

Having been so informed, the parties to the releases in paragraph 6 and 7 above hereby elect to and do waive the provisions and benefits of Civil Code section 1542, effective upon the execution of this Settlement Agreement.

9. No Admission of Liability. Nothing herein shall be construed as an admission on the part of any of the Parties of any claims, demands, causes of action, obligations, damages or liabilities asserted by any other Party.

10. No Attorneys' Fees and Costs. Except for the Payment, the Parties to this Agreement agree to bear their own attorney's fees and costs incurred in resolving the litigation and reaching this Settlement Agreement, including any fees or costs incurred by any party in seeking to have the Superior Court retain jurisdiction under Code of Civil Procedure section 664.6 as set forth in Section (3)(b) of this Settlement Agreement where there is no claim by the moving party or moving parties that any party is in default. However, in the event legal action is instituted or maintained to enforce this Settlement Agreement arising from a claimed default, the prevailing party shall be entitled to recover its or their reasonable attorney's fees and costs incurred in connection with pursuing such action.

11. Authorization to Settle and to Execute. Each Party represents and warrants that it has the power and authority to enter into and execute this Agreement, to agree to the matters set forth herein and to settle and release claims as set forth herein, and that, with respect to Parties other than natural persons, its signatory is duly authorized and empowered to sign this Agreement on his behalf. Each individual signing this Agreement on behalf of a corporation, association (whether incorporated or unincorporated) or other entity represents and warrants that the Party on whose behalf such individual executes this Agreement has authorized such individual to execute this Agreement on such Party's behalf.

12. Entire Agreement. As to the matters set forth herein, this Settlement Agreement is the entire, integrated agreement and understanding of the Parties and supersedes any prior discussions, negotiations, commitments, contracts, agreements and understandings, whether written or oral, with respect to the subject matter hereof.

13. Notices. All notices under this Agreement shall be in writing and shall be deemed received when (i) personally delivered, (ii) delivered via facsimile with receipt confirmed on the sender's facsimile machine, provided that a "hard copy" thereof is promptly thereafter sent by United States mail, postage prepaid and properly addressed, or (iii) one (1) business day after being sent by a nationally recognized overnight courier service, charges prepaid and properly addressed, for next day delivery, to the Parties at the following addresses (or such addresses as they may from time to time designate by like notice):

Petitioners: Brian Gaffney, Esq.  
Lippe Gaffney Wagner LLP  
329 Bryant Street, Suite 3D  
San Francisco, CA 94107

City: Oakland City Attorney's Office  
c/o Deputy City Attorney Kevin D. Siegel  
1 Frank Ogawa Plaza, 6<sup>th</sup> Floor  
Oakland, CA 94612

Signature: Signature Homes  
Attn. James C. Ghielmetti, President and CEO.  
4670 Willow Road  
Pleasanton, CA 94588 .

14. Modification. This Settlement Agreement may be modified only by a writing signed by the Parties.

15. Severability. If any part of this Settlement Agreement is found to be void, invalid or unenforceable, the remainder shall remain in full force and effect and shall be interpreted to carry out the Parties' intent with respect to their obligations and rights.

16. Drafting of Agreement. The drafting and the negotiation of this Settlement Agreement has been participated in by each of the Parties or their counsel and, for all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by all Parties.

17. Successors and Representatives. This Settlement Agreement shall be binding on and shall inure to the benefit of the heirs, representatives, executors, administrators, successors and assigns of the Parties, and their respective shareholders, partners, managers, agents and family members. .

18. Informed Consent. Each Party declares that prior to the execution of this Settlement Agreement, the Party and/or its or her duly authorized representatives have apprised themselves of sufficient relevant data, either through attorneys, experts or other sources of their own selection, in order to intelligently exercise their judgment in deciding whether to execute, and in deciding the contents of, this Settlement Agreement. Each Party states that this Settlement Agreement is entered into freely and voluntarily, upon the advice and with the approval of its or her counsel.

19. Applicable Law. This Settlement Agreement shall be interpreted in accordance with California law.

20. Execution in Counterparts. This Settlement Agreement may be executed in counterparts, and photo and fax copies shall constitute good evidence of such execution.

This Settlement Agreement is made as of the Effective Date.

COALITION OF ADVOCATES FOR LAKE MERRITT

CITY OF OAKLAND, OAKLAND CITY COUNCIL

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

dated: \_\_\_\_\_

dated: \_\_\_\_\_

Joyce Roy: \_\_\_\_\_

OAKLAND REDEVELOPMENT AGENCY

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

dated: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brian Gaffney, Lippe Gaffney Wagner  
LLP, counsel for Petitioners Coalition of  
Advocates for Lake Merritt and Joyce Roy

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Kevin D. Siegel, Deputy City Attorney,  
counsel for Respondents/Defendants and  
Appellants/Cross-Respondents City of  
Oakland, Oakland City Council, and  
Oakland Redevelopment Agency

Oakland Harbor Partners, LLC., Signature  
Properties, Inc., and Reynolds & Brown

By: \_\_\_\_\_

Its: \_\_\_\_\_

dated: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
David Bonaccorsi, Bernard, Balgley &  
Bonaccorsi, counsel for Real Parties in  
Interest Oakland Harbor Partners, LLC.,  
Signature Properties, Inc., and Reynolds &  
Brown