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OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

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INTRODUCED BY COUNCILMEMBER _____

RESOLUTION UPHOLDING THE APPEAL OF JACK LONDON SQUARE PARTNERS, LLC AS TO FAST FOOD USES ONLY AND PARTIALLY UPHOLDING THE APPEAL OF GARY KNECHT AS TO PARKING MITIGATION AND DESIGN REVIEW ONLY, AND OTHERWISE SUSTAINING THE MARCH 17, 2004 PLANNING COMMISSION APPROVAL FOR THE JACK LONDON SQUARE REVISED PROJECT, AND APPROVING THE JACK LONDON PROJECT AS REVISED

WHEREAS, on February 13, 2003, in accordance with the California Environmental Quality Act (“CEQA”), City staff issued a Notice of Preparation (“NOP”) indicating an intent to prepare an Environmental Impact Report (“EIR”) for certain land use entitlements, including the requested Planned Unit Development (“PUD”) permit, Preliminary Development Plan, Final Development Plans, Design Review, Zoning Boundary Line Adjustment (“ZBA”), Development Agreement, Major Conditional Use Permit and Major Variance for the proposed redevelopment of the Jack London Square area (the “Revised Project”); and

WHEREAS, on May 12, 2003, City staff reissued the NOP, along with a revised Initial Study that reflected a decision to consider recreation and public services in the EIR; and

WHEREAS, on September 8, 2003, a Draft EIR (“DEIR”), State Clearinghouse No. 2003022086, was released by the City for a 46-day public review and comment period and on October 1, 2003, the Planning Commission conducted a public hearing to provide the public with an additional opportunity to comment on the DEIR; and

WHEREAS, on February 13, 2004, a document entitled “Jack London Square Final Environmental Impact Report” (“FEIR”) was released, which included and analyzed a revised version of the proposed project (the “Revised Project”); and

WHEREAS, on February 25, 2004 and on March 17, 2004, the Planning Commission conducted additional public hearings, took testimony and determined that the EIR (consisting of the DEIR, Responses to Comments and other information presented in the FEIR) was adequate for certification and for decision-making on the requested land use entitlements for the Revised Project; and

WHEREAS, on March 17, 2004, the Planning Commission certified the EIR, adopted CEQA Findings and a Statement of Overriding Considerations, adopted a Mitigation Monitoring and Reporting Program, adopted General Findings, granted a PUD permit, approved a Preliminary Development Plan for all nine sites and Final Development Plans for eight of the nine sites within the Revised Project, approved Design Review, approved a Major Conditional Use Permit and a Major Variance (collectively, the “Land Use Entitlements”), recommended that

the City Council grant the proposed ZBA and approve a Development Agreement in substantially the same form and substance as that considered by the Planning Commission, and adopted accompanying Conditions of Approval; and

WHEREAS, on March 26, 2004, Jack London Square Partners, LLC filed an appeal (the “JLSP Appeal”) of the Planning Commission’s approval of the Land Use Entitlements generally, and requesting specifically that the City Council decline to prohibit “national chain” fast food establishments within the Revised Project, as had been requested by the Planning Commission; and

WHEREAS, on March 29, 2004, Gary Knecht filed an appeal (the “Knecht Appeal”) of the Planning Commission’s approval of the Land Use Entitlements, challenging the adequacy of the Planning Commission’s actions as to adequacy of information, conditions of approval, and design drawings, and requesting, among other things a clarification of Mitigation Measure B.4 regarding available parking supply and a request for a more extensive design review process as a part of future project review procedures; and

WHEREAS, on March 30, 2004, the City Council conducted a duly noticed study session at which all interested members of the public were allowed to voice their opinions on the proposed Jack London Project, including the PUD, ZBA and Development Agreement, design characteristics, the March 17, 2004 Planning Commission actions; and

WHEREAS, on June 1, 2004, the City Council conducted a duly noticed public hearing on and took testimony from all interested members of the public regarding the JLSP Appeal, the Knecht Appeal, Revised Project land use entitlements, proposed ZBA and Development Agreement; and

WHEREAS, the appellants and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the JLSP Appeal and the Knecht Appeal was closed by the City Council on June 1, 2004; and

WHEREAS, on May 18, 2004, the City Council, having fully reviewed, considered and evaluated the EIR, staff reports, public testimony and all documents and other evidence submitted on this matter, resolved as follows:

NOW, THEREFORE, BE IT RESOLVED that the City Council, as the final decision-making body of the lead agency, makes the following certifications:

- 1) The EIR, as certified by the Planning Commission, has been completed in compliance with CEQA and the City’s environmental review regulations, as specifically set forth in Exhibit A of this Resolution, which is incorporated by this reference;
- 2) The EIR, as certified by the Planning Commission, reflects the lead agency’s independent judgment; and

- 3) The City Council, as the final decision-making body of the lead agency, reviewed and considered all information in the EIR before approving the Revised Project, as specifically set forth in Exhibit A of this Resolution.

FURTHER RESOLVED: That the City Council, as the final decision-making body of the lead agency, confirms and adopts all of the CEQA findings made and adopted by the Planning Commission, as modified by the City Council and as set forth in Exhibit A – CEQA Findings and Statement of Overriding Considerations.

FURTHER RESOLVED: That the City Council, as the final decision-making body of the lead agency, adopts all of the mitigation measures identified in the DEIR and FEIR, as such have been revised by the City Council subsequent to the Planning Commission hearings regarding the Revised Project and set forth in the Mitigation Monitoring and Reporting Program (“MMRP”) attached as Exhibit B to this Resolution, which is incorporated by this reference, and directs the City Manager to ensure that these are duly and diligently implemented and enforced.

FURTHER RESOLVED: That the City Council, having heard, considered and weighed all of the evidence in the record presented on behalf of all of the parties and being fully informed of the Revised Project, the Planning Commission’s decision, the EIR, the JLSP Appeal and the Knecht Appeal, finds that there should be no prohibition on national fast-food chains with respect to the Revised Project, and the JLSP Appeal is accordingly upheld only with respect to this issue.

FURTHER RESOLVED: That the City Council, having heard, considered and weighed all of the evidence in the record presented on behalf of all of the parties and being fully informed of the Revised Project, the Planning Commission’s decision, the EIR, the JLSP Appeal and the Knecht Appeal, finds that (i) Mitigation Measure B.4 should be modified to clarify the required calculation of available parking supply, as set forth in the MMRP attached as Exhibit B to this Resolution, and (ii) the Development Agreement should be amended to include additional steps in the design review process, as set forth in the Development Agreement attached as Exhibit E to Ordinance No. ____ C.M.S., and the Knecht Appeal is accordingly upheld only with respect to these issues.

FURTHER RESOLVED: That except for the changes listed above, neither appellant has shown, by reliance on the evidence already contained in the record before the Planning Commission, that the Planning Commission’s decision was made in error, that there was an abuse of discretion by the Planning Commission or that the Planning Commission’s decision was not supported by substantial evidence in the record based, in part, on the DEIR, the FEIR, the staff reports for the February 25, 2004 and March 17, 2004 Planning Commission hearings, and the City Council staff report dated June 1, 2004, hereby incorporated by reference as if fully set forth herein. Accordingly, except to the extent specifically discussed above, the JLSP Appeal and the Knecht Appeal are both denied, and the Planning Commission’s CEQA Findings are upheld as modified by the City Council and as set forth in Exhibit A.

FURTHER RESOLVED: That the City Council affirms the Planning Commission’s approval of the Land Use Entitlements for the Revised Project, as modified by the changes listed on Exhibit E attached hereto and incorporated by this reference. The City Council approves the

modified Land Use Entitlements, based in part on the reasons set forth in the General Findings contained in Exhibit D to this Resolution and incorporated by this reference.

FURTHER RESOLVED: That the City Council adopts the Conditions of Approval (“COA”) of the Land Use Entitlements contained in Exhibit C to this Resolution, which is incorporated by this reference.

FURTHER RESOLVED: That the City Council makes the further findings contained in Exhibit D to this Resolution.

FURTHER RESOLVED: That the City staff is directed to undertake the clerical task of amending the approved MMRP and/or the COA, if necessary, to conform to this Resolution.

FURTHER RESOLVED: That the City Council finds and determines that this Resolution complies with CEQA and the Development Director is directed to cause to be filed a Notice of Determination with the appropriate agencies.

FURTHER RESOLVED: That the record before the City Council relating to the Revised Project, the JSLP Appeal and the Knecht Appeal includes, without limitation, the information set forth in Exhibit C, all final staff reports and final documentation and information produced by or on behalf of the City, including without limitation the DEIR and FEIR and supporting final technical studies and appendices, and all related and supporting material, and all final notices relating to the Revised Project and attendant hearings and meetings; all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the Revised Project, the JSLP Appeal and the Knecht Appeal; all written evidence received by relevant City staff before and during public hearings on the Revised Project and appeal; and all matters of common knowledge and all official enactments of the City such as the General Plan and Oakland Municipal Code, other applicable City policies and regulations and all applicable state and federal laws, rules and regulations.

FURTHER RESOLVED: That the custodian of the documents and other materials that constitute the record of proceedings upon which the Commission’s decision is based is Claudia Cappio, Development Director, Community and Economic Development Agency, or her designee. Such documents and other materials are located at 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California 94612.

FURTHER RESOLVED: That the recitals contained in this Resolution are true and correct and are an integral part of the City Council’s decision.

In Council, Oakland, California, ^{JUN 15 2004} _____, 2004


PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, BRUNNER, CHANG, NADEL, REID, QUAN, WAN, DELAFUENTE – 8

NOES – Ø

ABSENT – Ø

ABSTENTION –

ATTEST: 
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

Attachments (5)

Exhibit A – CEQA Findings and Statement of Overriding Considerations

Exhibit B – CEQA Mitigation Monitoring and Reporting Program

Exhibit C – Conditions of Approval

Exhibit D – General Findings

Exhibit E – Changes to Land Use Entitlements

EXHIBIT A
CEQA FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS
RELATED TO APPROVAL OF JACK LONDON SQUARE BY THE
OAKLAND CITY COUNCIL

I. INTRODUCTION

1. These CEQA findings are adopted by the City of Oakland (the “City”), as lead agency for the Jack London Square project. These findings pertain to the Environmental Impact Report prepared for that project, SCH #2003022086 (“EIR”).

2. These CEQA findings are attached as Exhibit A and incorporated by reference into the staff report presented for the May 18, 2004 City Council hearing (the “Council Staff Report”), which was prepared for the appeal to the City Council of the Planning Commission approval of the Jack London Square project and the consideration by the City Council of two ordinances regarding that project. The Council Staff Report also includes Exhibit B that contains the Mitigation Monitoring and Reporting Program (“MMRP”), which references impacts, mitigation measures, and resulting levels of significance. Also attached to the Council Staff Report is an Exhibit C that contains the conditions of approval, as revised and amended by the City Council, and an Exhibit D that contains findings regarding other matters, including compliance with the City planning codes and General Plan consistency. All Exhibits are incorporated by reference into each other, and into the Council Staff Report and City Council actions. These findings are based upon the entire record, described below. Some findings are based especially upon specific references, as noted below. However, all findings are based upon the entire record. References to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the finding. These findings use capitalized terms as they are used in the EIR.

II. THE PROJECT

3. The Jack London Square project would redevelop sites within the existing Jack London Square area, generally located along the Embarcadero between Clay and Alice Streets in downtown Oakland. The project would intensify the retail, dining and entertainment uses within Jack London Square, and would include a combination of office, retail and restaurant space, hotel, conference/banquet space, theatre, supermarket, and associated parking. In addition, the project sponsor would create major open space areas and enhance the main pedestrian walkway.

4. The project described in the Draft EIR, referred to herein as the “DEIR Project,” included eight development sites within Jack London Square plus a full city block bounded by 2nd, Harrison and Alice Streets, and the Embarcadero. The DEIR Project was described by a set of variants for each of the nine proposed development sites, thus allowing flexibility to develop the project in response to future market conditions. The DEIR Project proposed up to approximately 1.2 million net new square feet of office, retail and restaurant space, hotel, conference/banquet space, theatre, supermarket and residential uses, plus associated parking. It also proposed creating

approximately 40,000 square feet of new, permanent open space adjacent to the estuary to the west of the hotel (Site F3), as well as expanding and enhancing other open space areas within the Jack London Square District. Under the DEIR Project, the project sponsor could demolish up to 161,800 square feet of existing commercial space to accommodate the DEIR Project. The DEIR Project provided that Heinold's First and Last Chance Saloon, a designated city landmark, would be incorporated into the building to be constructed on Site F1 and a portion of Heinold's would be demolished.

5. In response to issues raised during a series of public hearings held by the Planning Commission, the Planning Commission Design Review Committee, the Landmarks Preservation Advisory Board and the City Council, as well as during numerous meetings with city staff and members of the public, the project sponsor proposed modifications to the DEIR Project. The result is the Revised Project described in Chapter II of the Final EIR. These findings pertain to the Revised Project, and all references in these findings to the "project" are references to the Revised Project unless the context clearly indicates otherwise.

6. The Revised Project proposes up to approximately 961,000 net new gross square feet of uses plus associated parking. In order to accommodate the Revised Project, the project sponsor could demolish up to 131,800 square feet of existing commercial space on Site D, the Water I Expansion site, and 66 Franklin Street. The Revised Project proposes the same amount of open space as the DEIR Project, plus additional open space made possible by the reconfiguring of the Site F3 hotel and other buildings, creating a total of approximately 70,000 square feet of new, permanent open space. The Revised Project does not include residential uses, which were proposed in the Draft EIR as possible uses on Site G. The Revised Project also redesigned the proposed Site F1 building so that the building footprint would be set back at least twenty feet on all sides from the Heinold's First and Last Chance Saloon. In addition, under the Revised Project, no portion of Heinold's would be demolished or relocated.

7. The Revised Project represents a reduction in the scope and intensity of development proposed by the DEIR Project, and its impacts fall within the range of impacts studied in the EIR. The Revised Project is intended to fulfill the City's goals of making Jack London Square a commercial and entertainment destination that will attract visitors from all over the region and revitalize the area near the Oakland Estuary.

III. ENVIRONMENTAL REVIEW OF THE PROJECT

8. Pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* and the CEQA Guidelines, Cal. Code Regs. Tit. 14, Section 15000 *et seq.* (collectively, "CEQA"), the City determined that an EIR would be prepared. On February 13, 2003, the City issued a Notice of Preparation (NOP), which was circulated to responsible agencies and interested groups and individuals for review and comment. On May 12, 2003, the City reissued the NOP, along with a revised Initial Study that reflected a staff decision to consider recreation and public services in the EIR. A copy of the reissued Notice of Preparation is included in Appendix B of the

Draft EIR, and a copy of the comments thereon is available upon request from the offices of the Community Economic Development Agency.

9. A Draft Environmental Impact Report was prepared for the DEIR Project to analyze its environmental effects. The Draft EIR was circulated for a 46-day public review period, from September 8, 2003 to October 24, 2003. The Planning Commission held a public hearing on the Draft EIR on October 1, 2003.

10. The City received numerous written and oral comments on the Draft EIR. The City prepared responses to comments on environmental issues, and made *changes to the Draft EIR*. The responses to comments, changes to the Draft EIR and additional information were published in a Final EIR on February 13, 2004. The Draft EIR, the Final EIR, and all appendices thereto comprise the “EIR” referenced in these findings.

11. The Planning Commission held additional public hearings on the Revised Project and on the EIR on February 25, 2004, and March 17, 2004. At the public hearings, the City staff and its environmental consultants provided information about the Revised Project, the potential environmental impacts, the CEQA review process, and the schedule for Revised Project implementation. At the hearings, members of the public had the opportunity to ask questions and express their concerns and interests for the Revised Project. At its March 17, 2004 meeting, the Planning Commission took action to approve the project by certifying the EIR, and approving the Planned Unit Development (PUD), Preliminary Development Plan, Final Development Plans for eight of the nine development sites, Design Review, a Major Conditional Use Permit and a Major Variance. The Planning Commission also recommended that the City Council approve a Rezoning and a Development Agreement in connection with the Project.

IV. THE RECORD

12. The record upon which all findings and determinations related to the Project are based includes the following:

a. The EIR, and all documents referenced in or relied upon by the EIR.

b. All information (including written evidence and testimony) provided by City staff to the Planning Commission and the City Council relating to the EIR, the proposed approvals and entitlements, the DEIR Project, the Revised Project and the alternatives set forth in the EIR.

c. All information (including written evidence and testimony) presented to the Planning Commission and the City Council by the environmental consultant and subconsultants who prepared the EIR, or incorporated into reports presented to the Planning Commission and the City Council.

d. All information (including written evidence and testimony) presented to the City from other public agencies relating to the DEIR Project, the Revised Project or the EIR.

e. All applications, letters, testimony and presentations presented to the City by the project sponsor and its consultants in connection with the DEIR Project and the Revised Project.

f. All information (including written evidence and testimony) presented at any public hearing or workshop related to the DEIR Project, the Revised Project and the EIR.

g. For documentary and information purposes, all locally-adopted land use plans and ordinances, including, without limitation, general plans, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the area.

h. The MMRP.

i. All other documents comprising the record pursuant to Public Resources Code Section 21167.6(e).

13. The custodian of the documents and other materials that constitute the record of proceedings upon which the Commission's decision is based is Claudia Cappio, Development Director, Community and Economic Development Agency, or designee. Such documents and other materials are located at 250 Frank H. Ogawa Plaza, Suite 3330, Oakland, California 94612.

14. These findings are based upon substantial evidence in the entire record before the City Council. The references to certain pages or sections of the EIR set forth in these findings are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

V. CERTIFICATION OF THE EIR

15. In accordance with CEQA Guidelines Section 15090(a)(1), the City Council finds that the Final EIR has been completed in compliance with CEQA.

16. In accordance with CEQA, the City Council certifies that the EIR has been completed in compliance with CEQA and that it was certified by the Planning Commission, which reviewed and considered the information in the EIR prior to approving the Revised Project. Similarly, the City Council finds that it has reviewed the record before the Planning Commission and the EIR prior to acting upon the appeals, confirming the Planning Commission action to approve the Revised Project and approving the Revised Project. By these findings, the City Council confirms, ratifies and adopts the findings and conclusions of the EIR, as supplemented and modified by these

findings. The EIR and these findings represent the independent judgment and analysis of the City and the City Council.

17. The City Council recognizes that the EIR may contain clerical errors. The City Council has reviewed the entirety of the EIR and bases its determinations on the substance of the information it contains.

18. The City Council certifies that the EIR is adequate to support the approval of the Revised Project and of each entitlement or approval that is the subject of the Council Staff Report to which these CEQA findings are attached, as well as of each subsequent City action or approval necessary for implementation of the Revised Project. The City Council certifies that the EIR is also adequate to support approval of the DEIR Project, each component of the DEIR Project, any project within the range of alternatives described and evaluated in the EIR, each component of any of those alternatives, and any minor modifications to the Revised Project described in the EIR or the alternatives.

VI. ABSENCE OF SIGNIFICANT NEW INFORMATION

19. The City Council recognizes that the Final EIR incorporates information obtained and produced after the Draft EIR was completed, and that it contains additions, clarifications and modifications, including the Revised Project. The City Council has reviewed and considered the Final EIR and all of this information. The Final EIR does not add significant new information to the Draft EIR that would require recirculation of the EIR under CEQA. The new information added to the Draft EIR does not involve a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a feasible project alternative or mitigation measure considerably different from others previously analyzed that the project sponsor declines to adopt and that would clearly lessen the significant environmental impacts of the DEIR Project. No information indicates that the Draft EIR was inadequate or conclusory.

20. The Revised Project incorporates mitigation measures recommended in the Draft EIR and accommodations made by the project sponsor. The Revised Project would result in the same, or fewer and less severe significant impacts than those identified in the Draft EIR for the DEIR Project, and the impacts of the Revised Project fall within the range of impacts of the range of alternatives studied in the Draft EIR.

21. Accordingly, no information has revealed the existence of (1) a significant new environmental impact that would result from the Revised Project or an adopted mitigation measure; (2) a substantial increase in the severity of an environmental impact; (3) a feasible project alternative or mitigation measure not adopted that is considerably different from others analyzed in the Draft EIR that would clearly lessen the significant environmental impacts of the DEIR Project; or (4) information that indicates that the public was deprived of a meaningful opportunity to review and comment on the Draft EIR. The City Council finds that the changes and modifications made to the EIR after the Draft EIR was circulated for public review and comment do not collectively or

individually constitute significant new information within the meaning of Public Resources Code Section 21092.1 or CEQA Guidelines Section 15088.5.

VII. MITIGATION MEASURES, CONDITIONS OF APPROVAL, AND MMRP

22. Public Resources Code Section 21081.6 and CEQA Guidelines Section 15097 require the City to adopt a monitoring or reporting program to ensure that the mitigation measures and revisions to the Revised Project identified in the EIR are implemented. The MMRP is included in Exhibit B, and is adopted by the City Council. The MMRP satisfies the requirements of CEQA.

23. The mitigation measures recommended by the EIR and required as conditions of approval of the Revised Project are specific and enforceable. As appropriate, some mitigation measures define performance standards to ensure that environmental impacts will be at less than significant levels. The MMRP adequately describes conditions, implementation, verification, a compliance schedule and reporting requirements to ensure that the Revised Project complies with the adopted mitigation measures. The MMRP ensures that the mitigation measures will be in place, as appropriate, throughout the life of the Revised Project.

24. The mitigation measures set forth in Exhibit B and corresponding conditions of approval in Exhibit C are derived from the mitigation measures set forth in the EIR. The City has modified the language of some of the mitigation measures and corresponding conditions for purposes of clarification and consistency, to enhance enforceability, to summarize or strengthen their provisions, and/or to make the mitigation measures more precise and effective, all without making any substantive changes to the mitigation measures. The changes between the mitigation measures set forth in the EIR and the mitigation measures set forth in Exhibit B and corresponding conditions of approval in Exhibit C are set forth below.

25. Mitigation Measure B.4 provides the formula by which to calculate parking demand prior to construction of each new building within the Revised Project. The City Council finds that “Method 1” as defined in Mitigation Measure B.4 would be more precise and effective if it clarified why shared parking is an appropriate measure in the context of the Revised Project. The City Council accordingly modifies the paragraph that begins with “Method 1” in order to make this clarification. Added text is shown in bold font and underlined:

- Method 1: Aggregating the number of parking spaces required for the net new amount of each use, based on the weekday peak parking demand rates set forth below, and then modifying that number to take into account shared parking (**made possible by the different peaking characteristics of parking demand for each of the uses**), and transit shuttle services.

Members of the public voiced concern that Mitigation Measure B.4, as set forth in the EIR, may not be entirely clear about how displaced existing parking spaces would be treated in the calculation of parking demand required to be met. The City Council finds

that Mitigation Measure B.4 would be more precise and effective if it included the numbers of displaced existing parking spaces when it calculated parking requirements for buildings that would displace those parking spaces. The City Council also finds that it would be useful for the project sponsor to provide the City with data regarding existing and proposed off-street parking facilities prior to the issuance of a building permit for each new building. The City Council accordingly adds the following text to Mitigation Measure B.4, directly above the table entitled “Weekend Peak Parking Demand Rates.” Added text is shown in bold font and underlined:

The peak parking demand calculated above under Method 1 and Method 2 shall then be adjusted to include existing demand for the following numbers of existing parking spaces (but modified downward to account for any captive market factor) to the extent that such sites have been, or will be in connection with the new building, developed within the project:

- **Method 1: Site D, 54 spaces; Site F1, 140 spaces; and Site G, 46 spaces.**
- **Method 2: Site D, 54 spaces; Site F1, 200 spaces; and Site F2, 90 spaces; and G, 46 spaces.**

If deemed acceptable by the City of Oakland, shared parking rates may conform to shared parking standards promulgated at the time in question by the Institute of Transportation Engineers (ITE), Urban Land Institute (ULI) or comparable reference source.

Prior to the issuance of the building permit for each new building within the project, or each structural addition to an existing building that creates new gross square footage, the project applicant shall prepare and submit to the City drawings of all existing and any proposed off-street parking facilities providing the required off-street parking spaces. If attendant parking services provide some of the required parking, the location of such stalls shall be clearly shown.

Members of the public also indicated a concern that there were insufficient assurances that any off-site parking spaces provided in compliance with Mitigation Measure B.4 continue to be provided on a long-term basis. The City Council finds that Mitigation Measure B.4 would be more precise and effective if it clarified that the duration of new parking spaces provided for the Revised Project must be assured by the project sponsor. The City Council accordingly modifies the last paragraph of Mitigation Measure B.4 as follows. Added text is shown in bold and underlined, and deleted text is struck through:

Upon occupancy of the new building, the project applicant shall provide an adequate number of parking spaces within the project area, or within a reasonable walking distance from the subject site **(where duration of use**

for such purpose is assured) as determined by the City to meet the higher parking demand calculated above. The calculation of the number of parking spaces to be supplied shall take into account: (i) as applicable, confirmed increase of up to 30 percent in parking capacity due to attendant parking services; (ii) the use of employee shuttles to use off-site parking spaces **(where duration of use for such purpose is assured)**; (iii) existing excess parking supply at the Jack London Square Washington Street garage of 350 parking spaces during the weekday peak period and 250 parking spaces during the weekend peak period; and (iv) ~~any~~ existing excess parking supply on Sites F1, F2 or G1 **(60 parking spaces during the weekday peak period and 0 parking spaces during the weekend peak period), F2/F3 (390 parking spaces during the weekday peak period and 300 parking spaces during the weekend peak period) or G (69 parking spaces during either the weekday or the weekend peak period)**, to the extent that any such sites have not already been developed.

26. Mitigation Measure C.2 requires twelve separate actions in order to encourage people to use public transit to access the project site. In order to further impose and require all feasible mitigation strategies to address air quality, the following text is hereby inserted at the end of the Transit Measures section of Mitigation Measure C.2:

C.2f1: The project sponsor shall post the schedules, fares and routes of local public transit services provided within the project vicinity, including the Water Taxi, the Ferry and AC Transit, at several publicly visible locations throughout the project site.

C.2f2: The project sponsor shall participate in current and future public transportation studies for the Jack London District sponsored by local or regional government agencies, and intended to address long term public transportation solutions/alternatives for the area.

For the same reason, the following text is hereby inserted at the end of the Bicycle and Pedestrian Measures section of Mitigation Measure C.2:

C.2II: The project sponsor shall post information indicating the identified City of Oakland Bicycle Routes serving the project and vicinity, as well as the location of the Bay Trail, at several publicly visible locations throughout the project site.

27. The City Council adopts and imposes the mitigation measures recommended in the EIR, as modified, as enforceable conditions of the Revised Project. These mitigation measures comprise the measures necessary to reduce significant impacts to a level less than significant wherever it is feasible to do so. The City has substantially lessened or eliminated all significant environmental effects where feasible.

28. The mitigation measures incorporated into and imposed upon the Revised Project will not have new significant environmental impacts that were not analyzed in the Draft EIR. In the event that a mitigation measure recommended in the EIR for implementation in connection with the Revised Project has been inadvertently omitted from the conditions of approval or the MMRP, that mitigation measure is adopted and incorporated from the EIR into the MMRP by reference and adopted as a condition of approval.

VIII. FINDINGS REGARDING IMPACTS

29. In accordance with Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 and 15092, the City Council adopts the findings and conclusions regarding impacts and mitigation measures that are set forth in the EIR. These findings do not repeat the full discussions of environmental impacts contained in the EIR. The City Council ratifies, adopts and incorporates the analysis, explanation, findings, responses to comments and conclusions of the EIR. The City Council adopts the reasoning of the EIR, the Planning Commission staff reports presented for the February 25, 2004 and March 17, 2004 Planning Commission hearings, the Council Staff Report, the staff and the presentations provided by the project sponsor.

30. The City Council recognizes that the environmental analysis of the Revised Project raises certain controversial environmental issues, and that a range of technical and scientific opinion may exist with respect to those issues. The City Council acknowledges that there may be differing and conflicting expert and other opinions regarding the Revised Project. The City Council has, by its review of the evidence and analysis presented in the EIR and in the record, acquired a better understanding of the breadth of this technical and scientific opinion and of the full scope of the environmental issues presented by the Revised Project. In turn, this understanding has enabled the City Council to make fully informed, thoroughly considered decisions after taking account of the various viewpoints on these important issues and reviewing the record of the Planning Commission action concerning the Revised Project. These findings are based on full appraisal of all viewpoints expressed in the EIR and in the record, as well as other relevant information in the record of proceedings for the DEIR Project and the Revised Project.

31. Under Public Resources Code Section 21081(a)(1) and CEQA Guidelines Sections 15091(a)(1) and 15092(b)(2)(A), and to the extent reflected in the EIR, the City Council finds that changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment where feasible.

32. The Draft EIR concluded that the significant historic impact of the DEIR Project on the Heinold's building could not be mitigated to a less than significant level, due to the partial demolition of the structure and the adjacency of the building to be constructed on Site F1. As discussed in the Final EIR, the impact of the Revised Project on the Heinold's building will be less than significant because the Heinold's building will be left intact and new construction on Site F1 will be set back at least 20 feet from the

structure consistent with the historic designation for the building. In any event, however, the City Council finds that, even if the historic impact of the Revised Project on the Heinold's building were considered to be significant and unavoidable, this impact would be acceptable due to the overriding considerations described below.

33. Under Public Resources Code Section 21081(a)(2) and CEQA Guidelines Section 15091(a)(2) and 15092(b)(2)(A), the City Council recognizes that some mitigation measures require action by, or cooperation from, other agencies. The City Council also recognizes that some impacts will be feasibly mitigated when other agencies build relevant improvements, which also requires action by these other agencies. For each mitigation measure that requires the cooperation or action of another agency, the City Council finds that adoption and/or implementation of each of those mitigation measures is within the responsibility and jurisdiction of another public agency, and that the measures can and should be adopted by that other agency. To the extent that any of the mitigation measures that are within the responsibility and jurisdiction of any other agency are not adopted or implemented by such agency, as appropriate, the City Council determines that the impacts that such mitigation measures would have mitigated are significant and unavoidable, and are acceptable due to the overriding considerations described below.

34. Under Public Resources Code Section 21081(a)(3) and (b), and CEQA Guidelines Sections 15091(a)(3), 15092(b)(2)(B) and 15093, the City Council determines that the following significant effects on the environment, as reflected in the EIR, are unavoidable and are acceptable due to the overriding considerations described below: traffic (impacts B.1e, B.2e and B.2f), cumulative traffic (impacts B.3f, B.3g and B.11), air quality (impact C.2) and cumulative air quality (impact C.5).

IX. FINDINGS REGARDING ALTERNATIVES

35. The City Council finds that specific economic, social, environmental, technological, legal or other considerations make infeasible the DEIR Project and those alternatives discussed in the EIR that were not incorporated into the Revised Project, and justify approval of the Revised Project despite remaining impacts, as more fully discussed in the Statement of Overriding Considerations, below.

36. The City Council adopts the EIR's analysis and conclusions regarding alternatives eliminated from further consideration, both during the scoping process and in response to comments.

37. The EIR evaluated a reasonable range of alternatives to the DEIR Project described in the Draft EIR. These alternatives included (1) the No Project Alternative; (2) a Modified Development Alternative; (3) an Entertainment Focus Alternative; and (4) an Enhanced Open Space Alternative. The alternatives also included the "Heinold's First and Last Chance Saloon as a Separate Structure" subalternative (the "Heinold's Subalternative"). The analysis examined the environmental impacts of each alternative, and the ability of each alternative to meet the basic project objectives.

38. The City Council certifies that it has independently reviewed and considered the information on alternatives provided in the EIR and in the record. The EIR reflects the City Council's and the City's independent judgment as to alternatives. The City Council finds that the Revised Project (consisting of a slightly smaller version of the Modified Development Alternative without the residential component, coupled with the Heinold's Subalternative) provides the best balance between satisfaction of the project objectives and mitigation of environmental impacts to the extent feasible, as described and analyzed in the EIR. All of the remaining alternatives are rejected as infeasible, for the reasons stated in the EIR and for the reasons set forth in the following paragraphs.

39. The City Council notes that the only significant impacts remaining after mitigation of the Revised Project are traffic (impacts B.1e, B.2e and B.2f), cumulative traffic (impacts B.3f, B.3g and B.11), air quality (impact C.2) and cumulative air quality (impact C.5). CEQA requires the City to consider only those alternatives that would attain most of the project objectives while avoiding or substantially lessening any of the significant effects of the project. None of the development alternatives would avoid the remaining significant impacts.

40. The project traffic and air quality impacts (impacts B.1e, B.2e, B.2f and C.2) would remain significant and unavoidable so long as any substantial development is proposed, though certain specific elements of such impacts may be eliminated by certain alternatives. For example, as discussed on pages V-5 through V-12 of the Draft EIR, the Entertainment Focus Alternative and the Enhanced Open Space Alternative would each have all of the same significant unavoidable impacts to traffic and regional air quality as the Revised Project, except for PM10 emissions for the Entertainment Focus Alternative in 2006. These alternatives each represent significant decreases in square footage from the Revised Project; the Entertainment Focus Alternative's maximum new development area is 241,500 square feet less than that of the Revised Project, while the Open Space Alternative's maximum new development area is 75,700 square feet less than that of the Revised Project. In other words, only still more drastic reductions in the amount of development than those represented by any of the development alternatives would reduce the project's traffic impacts to an amount where they would be less than significant. Such radical decreases in square footage would not fulfill most of the project goals.

41. The significant and unavoidable cumulative traffic impacts (impacts B.3f, B.3g and B.11) would likely be triggered by the other, cumulative development in the area with or without development of any feasible configuration of the project. Impacts B.3f and B.11 both address the effects of the constrained capacity of SR 260 at the Posey/Webster tubes in both the northbound and southbound directions, which is already considered an "issue of multi-jurisdictional concern... [with] no feasible measures to increase the tube's capacity" and therefore will continue to be a concern when any cumulative development is considered, with or without project traffic impacts. Impact B.3g addresses an intersection that is subject to the approval of Caltrans, and therefore any combination of cumulative projects for which the City is the lead agency would have to consider this impact to be significant and unavoidable. Accordingly, any

alternative that achieves most of the project goals is likely to result in these significant cumulative traffic impacts, and there is thus no feasible alternative available that would reduce or avoid those impacts.

42. The significant and unavoidable cumulative air quality impact (impact C.5) would likely be triggered by the other, cumulative development in the area with or without development of any feasible configuration of the project. When the BAAQMD significance thresholds set forth in Table IV.C-4 of the Draft EIR are compared to the Revised Project's total emissions shown in Table III-4 of the Final EIR, the project's impacts (except for ROG and NOx emissions in 2020) are sufficiently in excess of the significance thresholds that other developments in the area would likely trigger the same significant and unavoidable cumulative air quality impact. Accordingly, any alternative that achieves most of the project goals is likely to result in this significant cumulative air quality impact, and there is thus no feasible alternative available that would reduce or avoid this impact. The City Council addresses particular alternatives below.

43. Under the No Project Alternative, the proposed project would not be implemented, and therefore none of the significant impacts of the Revised Project would occur. This alternative is not consistent with any of the project objectives, including: (i) to fulfill the General Plan Land Use and Transportation Element's (LUTE) goals and objectives for the waterfront and Jack London Square, including developing and encouraging mixed use areas along the estuary shoreline, enhancing and promoting economic opportunities and taking advantage of the waterfront's unique character; (ii) to fulfill the goals and objectives identified in the Estuary Policy Plan to intensify retail, dining, office, hotel and entertainment activities in Jack London Square; (iii) to create and maximize additional revenues to the City; (iv) to provide lodging and amenities for the enjoyment and convenience of both visitors to the City and City residents; (v) to provide infill development in furtherance of smart growth principles; and (vi) to create a visually compelling streetscape. Therefore, the City Council rejects the No Project Alternative as infeasible.

44. The Modified Development Alternative would include a lower density of development than that proposed by the DEIR Project, with a maximum of approximately one million net new gross square feet of development. The Revised Project was based on, but is a less intensive version of, the Modified Development Alternative, and in fact is further reduced in both size and scope of permitted uses. Because the size of the project and intensity of uses would be reduced, environmental impacts would be correspondingly reduced as well. Furthermore, the historic impact identified with respect to the Heinold's building would remain significant and unavoidable in this alternative, while the incorporation of the Heinold's Subalternative into the Revised Project lessens the historic impact identified for the Heinold's building to a less than significant level in the Revised Project. Because the Revised Project is based on a less intensive version of the Modified Development Alternative, and furthermore because it would have fewer and less severe significant environmental impacts than the Modified Development Alternative due to its smaller size, no further consideration of the Modified Development Alternative is warranted or required.

45. The Entertainment Focus Alternative would maintain the entertainment uses proposed by the DEIR Project, but eliminate all major office uses. This would result in a maximum project that is approximately 242,000 square feet less than the maximum permissible size of the Revised Project, and would retain office uses only to the extent that they were support or ancillary to the main entertainment uses. Like the Revised Project, the Entertainment Focus Alternative would not include residential units. As discussed on page V-6 of the DEIR, this alternative would still result in a significant unavoidable impact to regional air quality as increases in ROG, NOx, and PM10 emissions would exceed the BAAQMD significance thresholds, though individually PM10 emissions in 2006 and ROG emissions in 2020 would not exceed such thresholds. All of the significant, unmitigable PM peak-hour project impacts at the area intersections under Phase 1 (2005) and buildout (2025) conditions would occur under this alternative. Moreover, the project still would contribute to 2025 changes to traffic conditions on the regional and local roadways. Furthermore, the historic impact identified with respect to the Heinold's building would remain significant and unavoidable in this alternative, while the incorporation of the Heinold's Subalternative into the Revised Project lessens the historic impact identified for the Heinold's building to a less than significant level in the Revised Project. This alternative thus would result in more significant and unavoidable impacts than the Revised Project. This alternative also would not meet the project objectives of (i) fulfilling the LUTE's and Estuary Policy Plan's goals and objectives to provide a broad mix of higher intensity uses at Jack London Square and (ii) specifically creating additional office space to improve the daytime customer base for existing and new retailers and restaurants. This alternative would redevelop current underutilized areas and surface parking lots, but it would not provide office uses in an urban area to further smart growth principles. Therefore, the City Council rejects the Entertainment Focus Alternative on the independent grounds that it is infeasible and that it would not result in fewer significant environmental impacts than the Revised Project.

46. The Enhanced Open Space Alternative would include approximately 885,000 net new gross square feet of development, including office, retail and residential uses. It would enhance open space by relocating the hotel to Site F2 (situated further from the estuary than the current location, Site F1) and extending the permanent open space (the Marina Green) along the estuary shore, as shown in Figure V-1 of the DEIR. As discussed on pages V-9 through V-12 of the DEIR, this alternative still would result in a significant unavoidable impact to regional air quality as increases in ROG, NOx, and PM10 emissions would exceed the BAAQMD significance thresholds, though individually ROG emissions in 2020 would not exceed such thresholds. All of the significant, unmitigable PM peak-hour project impacts at the area intersections under Phase 1 (2005) and buildout (2025) conditions would occur under this alternative. Moreover, the project still would contribute to 2025 changes to traffic conditions on the regional and local roadways. Furthermore, the historic impact identified with respect to the Heinold's building would remain significant and unavoidable in this alternative, while the incorporation of the Heinold's Subalternative into the Revised Project lessens the historic impact identified for the Heinold's building to a less than significant level. This alternative thus would result in more significant and unavoidable impacts than the Revised Project. The land uses contained in this alternative are consistent with most, but

not all, of the LUTE and Estuary Policy Plan land use designations for the area. While in theory this alternative would meet the key Estuary Policy Plan goal to develop a “high-quality hotel and conference center” as part of Phase II of Jack London Square (Policy JL-2.1), from a practical standpoint the potential for actually constructing the hotel component of this alternative would be significantly limited due to the inability to attract a full service hotel / conference facility at the alternative “inland” location away from the water. Therefore, the City Council rejects the Enhanced Open Space Alternative on the independent grounds that it would frustrate a significant Estuary Policy Plan goal and that it would not result in fewer significant environmental impacts than the Revised Project.

47. The Heinold’s Subalternative would maintain the historic Heinold’s First and Last Chance Saloon as an independent structure, with the building on Site F1 to be set back from the historic structure on all sides. In addition, in this subalternative, which could be applied to the DEIR Project or any of the proposed development alternatives, no demolition of the triangular private office and storage space along the side of the building would occur. The Revised Project has in fact incorporated the Heinold’s Subalternative, by setting the Site F1 building a minimum of 20 feet back from Heinold’s on all sides. Because the Heinold’s Subalternative is part of the Revised Project, no further analysis of the Heinold’s Subalternative is warranted or required.

X. STATEMENT OF OVERRIDING CONSIDERATIONS

48. The City Council finds that each of the specific economic, legal, social, technological, environmental and other considerations and the benefits of the Revised Project independently outweigh the remaining significant, adverse environmental impacts and is an overriding consideration independently warranting approval. The remaining significant, adverse environmental impacts of the Revised Project are acceptable in light of each of these overriding considerations:

A. The Revised Project will implement and fulfill the policies and objectives of the Land Use and Transportation Element of the General Plan, including but not limited to the following: Objective I/C3 (to ensure that Oakland is adequately served by a wide variety of commercial uses, appropriately sited to provide for competitive retail merchandising and diversified office uses, as well as personal and professional services); Objective D11.1 (to encourage mixed use developments in the downtown for such purposes as to promote its diverse character, provide for goods and services, support local art and culture, and give incentive to reuse existing vacant or underutilized structures); and Policy W10.7 (stating in part that development in the Jack London Square area should be designed to enhance direct access to and along the water’s edge, maximize waterfront views and vistas, and make inviting public pedestrian access and spaces).

B. The Revised Project will implement and fulfill the policies and objectives of the Estuary Policy Plan for Jack London Square, including but not limited to the following: Policy JL-1 (stating in part that in the RDE-1 District, retail, dining and entertainment uses along the waterfront should be reinforced and extended along Broadway to create a regional entertainment destination); Policy JL-2 (stating in

part that in the WCR-1 district, Phase II of Jack London Square should be encouraged for commercial-recreational and waterfront-oriented uses); and Policy JL-9 (encouraging establishment of a well structured system of water-oriented open spaces).

C. The Revised Project will be a regional draw that will increase the number of visitors to the City and provide open-air and recreational activities for residents and tourists alike.

D. The Revised Project, as a regional commercial and entertainment destination, will result in significant financial benefits for the City. For instance, the project sponsor has estimated that if the Revised Project is constructed in accordance with the Final Development Plans approved by the Planning Commission on March 17, 2004, the Revised Project will generate approximately \$2,922,624 annually in property, sales and other taxes, plus other secondary economic benefits. If development were increased to the maximum use intensity permitted under the Preliminary Development Plan, still more financial benefits likely would be generated.

E. The Revised Project will likely create thousands of permanent and construction jobs. For instance, the project sponsor has estimated that if the Revised Project is constructed in accordance with the Final Development Plans approved by the Planning Commission on March 17, 2004, the Revised Project will create approximately 2,000 permanent jobs and 650 construction jobs. If development were increased to the maximum use intensity permitted under the Preliminary Development Plan, still more jobs likely would be created.

F. The project will stimulate an appreciation in property values and establishment of attractive uses throughout the Jack London Square District, and will accelerate renovation of Broadway corridor.

G. Site G of the Revised Project is located within the Central District Urban Renewal Plan area, and therefore will generate tax increment revenue to assist with other redevelopment projects in the area.

H. The Revised Project is expected to enhance the viability of Heinold's First and Last Chance Saloon as a successful enterprise, thus ensuring retention and appreciation of an important local historic resource.

I. The project sponsor will comply with the small business utilization guidelines of the Port of Oakland, which will help promote small businesses within the Revised Project.

J. Construction of the Revised Project will create an attractive, clean, and safe world-class waterfront destination that will substantially enhance the City's image.

K. The Revised Project will include state-of-the-art energy efficiency features, will use renewable resources and products with low VOC content, and will have an extensive reuse/recycling program.

L. As an urban infill mixed-use project, the Revised Project encourages the use of public/alternative transportation and does not contribute to the negative impact of sprawl.

M. By creating a convincing example of large-scale retail success in Oakland, the Revised Project will act as a catalyst for retail in Downtown and elsewhere in the City.

N. The California Harvest Hall that is authorized to be located on Site F1 would capitalize on the large and growing market for food driven retail locations, as exemplified by the success of Market Hall in Oakland and the Ferry Building in San Francisco. The California Harvest Hall could feature not only specialty food stalls and an everyday fresh market, but also a variety of quick serve restaurants, several full service restaurants, corporate expositions of products produced by East Bay headquartered companies and a high-quality culinary school. Further, it could feature food oriented merchandise for the kitchen and related household products. Such a California Harvest Hall could be a permanent celebration of the food, wine and agricultural industries of California and thus attract customers and visitors from the entire region and beyond.

O. The project sponsor plans to conduct historical walking tours featuring Heinold's First and Last Chance Saloon and Jack London's cabin to highlight Jack London and his association with the waterfront, as well as other historical features of Jack London Square and the waterfront, such as the Potomac. These activities will greatly enrich visitors' appreciation of the historical significance of the area.

EXHIBIT B

MITIGATION MONITORING AND REPORTING PROGRAM
 REVISED PROJECT - JACK LONDON SQUARE REDEVELOPMENT

ENVIRONMENTAL IMPACT	MITIGATION MEASURES	CONDITION OF APPROVAL NOS.	RESULTING LEVEL OF SIGNIFICANCE ¹	MONITORING RESPONSIBILITY	MONITORING TIMEFRAME
SIGNIFICANT UNAVOIDABLE IMPACTS					
B. <u>Transportation, Circulation, and Parking</u>					
B.1: Traffic generated by Phase 1 of the project would affect traffic levels of service at local intersections in the project vicinity in 2005.					
<p>B.1e: The LOS F conditions at the signalized intersection of <i>5th Street and Broadway</i>, which would prevail during the PM peak hour under 2005 baseline conditions, would worsen with the addition of traffic generated by Phase 1 of the project. The project-generated increases in vehicle delay would exceed the two-second threshold of significance.</p>	<p>B.1e: Convert the northbound center lane to a shared right-turn and through lane at the signalized intersection of <i>5th Street and Broadway</i>, and install directional signs indicating lane use (because the northbound right-turn movement serves both the I-880 southbound on-ramp and the Webster tube).</p>		<p>Significant and Unavoidable</p>	<p>City of Oakland Public Works Agency (Transportation Services Division) and Community and Economic Development Agency (Planning and Zoning Division)</p>	<p><i>See next page.</i></p>

¹ This column describes the Level of Significance resulting from the Project, together with imposition of all reasonably feasible mitigation measures. For purposes of this Mitigation Monitoring and Reporting Program, “*Less Than Significant*” means that, under Public Resources Code section 21081(a)(1) and CEQA Guidelines Sections 15091(a)(1) and 15092(b)(2)(A), changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment. “*Significant and Unavoidable*” means that, under Public Resources Code Section 21081(a)(3) and (b), and CEQA Guidelines Sections 15091(a)(3), 15092(b)(2)(B) and 15093, no mitigation measures are available, or specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the EIR or elsewhere; these impacts are acceptable due to the overriding considerations referenced in Exhibit A to the staff report to which this Exhibit B is attached.

MITIGATION MONITORING AND REPORTING PROGRAM

MONITORING TIMEFRAME FOR MITIGATION MEASURE B.1E:

Prior to the initiation of project construction, the project applicant shall submit to the City for its approval a traffic improvement plan that lists all traffic improvement measures required for the project and the number of project-generated trips that trigger the need for each improvement measure, as determined based on the methodologies used in the EIR for the project.

Prior to the issuance of a building permit for each building within the project, the project applicant shall submit to the City a calculation of the total number of net new trips that will be generated by the new building. This total number shall equal the aggregate of the number of trips generated for the net new amount of each use in the building, based on the weekday PM peak adjusted trip rates set forth below.

Weekday PM Peak Adjusted Trip Rates:

Office – 2.08
Retail – 2.22
Supermarket – 7.11
Restaurant – 6.05
Hotel – 0.49
Hotel Restaurant – 3.30
Conference / Banquet – 8.58
Theater – 0.12

The project applicant's obligation to construct each improvement measure shall accrue when the total number of net new trips that will be generated upon construction of a new building, when added to the total number of net new trips already reported to the City pursuant to the requirements above, triggers that particular improvement measure. The project applicant shall complete construction of the improvement measure prior to the issuance of a certificate of occupancy for the new building. The City shall timely process and approve all of the entitlements required for installation of the improvement measure in question in order to enable completion of the improvement measure prior to issuance of the relevant certificate of occupancy.

MITIGATION MONITORING AND REPORTING PROGRAM

ENVIRONMENTAL IMPACT	MITIGATION MEASURES	CONDITION OF APPROVAL NOS.	RESULTING LEVEL OF SIGNIFICANCE	MONITORING RESPONSIBILITY	MONITORING TIMEFRAME
<p>B.2: Traffic generated by buildout of Phases 1 and 2 of the project would affect traffic levels of service at local intersections in the project vicinity in 2025.</p> <p>B.2e: The LOS F conditions at the signalized intersection of <i>5th Street and Broadway</i>, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen with the addition of traffic generated by buildout of Phases 1 and 2 of the project. The project-generated increases in vehicle delay would exceed the two-second threshold of significance (a significant impact).</p>	<p>B.2e: No feasible mitigation measures are available.</p>		Significant and Unavoidable	Not Applicable	Not Applicable
<p>B.3: Traffic generated by buildout of Phases 1 and 2 of the project would contribute to cumulatively significant impacts at local intersections in the project vicinity in 2025.</p> <p>B.3f: Traffic generated by buildout of Phases 1 and 2 of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of <i>5th Street and Broadway</i> during the weekday PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>B.3f: No feasible mitigation measures are available.</p>		Significant and Unavoidable	Not Applicable	Not Applicable
<p>B.11: The project would contribute to 2025 changes to traffic conditions on the regional and local roadways.</p>	<p>B.11: No feasible mitigation measures are available.</p>		Significant and Unavoidable	Not Applicable	Not Applicable
<p>C. <u>Air Quality</u></p>					
<p>C.2: The project would result in an increase in ROG, NOx and PM emissions due to project-related traffic and on-site area sources.</p>	<p>C.2: To reduce the significance of the operational impacts of the project, the project sponsor shall implement the following mitigation measures. Mitigation measures required for reducing motor vehicle emissions are</p>		Significant and Unavoidable		

MITIGATION MONITORING AND REPORTING PROGRAM

ENVIRONMENTAL IMPACT	MITIGATION MEASURES	CONDITION OF APPROVAL NOS.	RESULTING LEVEL OF SIGNIFICANCE	MONITORING RESPONSIBILITY	MONITORING TIMEFRAME
	<p>provided in <i>italics</i> followed by specific measures already included as part of the proposed project.</p> <p><u>Ride Share Measures</u></p> <p><i>C.2a: Encourage tenants at the site to implement carpool/vanpool programs (e.g., carpool, ride matching for employees, assistance with vanpool formation, provision of vanpool vehicles, guaranteed ride home program, etc.).</i></p> <p><i>Distribute information about the Alameda County Congestion Management Agency's Guaranteed Ride Home Program to tenants of the buildings to facilitate alternative transportation modes. As part of this program, a person who uses an alternate mode of travel, including transit or a carpool, is provided with free taxi service in the case of unexpected circumstances. These circumstances might include unscheduled overtime or a family illness or emergency.</i></p> <p><i>C.2b: The project sponsor shall encourage tenants to implement employee rideshare incentive programs providing cash payments or pre-paid fare media such as transit passes or coupons.</i></p> <p><u>Transit Measures</u></p> <p><i>C.2c: Construct transit facilities such as bus turnouts/bus bulbs, benches, shelters, etc., as determined appropriate by AC Transit.</i></p>			<p>City of Oakland Community and Economic Development Agency (Planning and Zoning Division)</p> <p>Same as Mitigation Measure C.2a</p> <p>Same as Mitigation Measure C.2a</p>	<p>Commencing upon issuance of the first Certificate of Occupancy, each time the project sponsor submits the annual review report required by the development agreement for the project, the project sponsor shall concurrently submit to the City a report showing continuing compliance with this mitigation measure. The report shall include copies of any standard information distributed to project tenants.</p> <p>Same as Mitigation Measure C.2a</p> <p>Prior to issuance of each building permit, construction plans shall be reviewed and approved for compliance with this measure.</p>

MITIGATION MONITORING AND REPORTING PROGRAM

ENVIRONMENTAL IMPACT	MITIGATION MEASURES	CONDITION OF APPROVAL NOS.	RESULTING LEVEL OF SIGNIFICANCE	MONITORING RESPONSIBILITY	MONITORING TIMEFRAME
	<i>C.2d: Provide preferential parking for carpool and vanpool vehicles within project parking structures/lots (e.g., near building entrance, sheltered area, etc.) to the extent that there is demand for such spaces.</i>			Same as Mitigation Measure C.2a	Commencing upon issuance of the first Certificate of Occupancy for the project, each time the project sponsor submits the annual review report required by the development agreement for the project the, project sponsor shall concurrently submit to the City evidence showing continuing compliance with this mitigation measure.
	<i>C.2e: Encourage tenants to meet minimum employee ridesharing requirements or provide incentives for them to meet targets.</i>			Same as Mitigation Measure C.2a	Same as Mitigation Measure C.2a
	<i>C.2f: Encourage tenants to implement a parking cash-out program for employees (i.e. non-driving employees receive transportation allowance equivalent to the value of subsidized parking)</i>			Same as Mitigation Measure C.2a	Same as Mitigation Measure C.2a
	<i>C.2f1: The project sponsor shall post the schedules, fares and routes of local public transit services provided within the project vicinity, including the Water Taxi, the Ferry and AC Transit, at several publicly visible locations throughout the project site.</i>			Same as Mitigation Measure C.2a	Same as Mitigation Measure C.2a
	<i>C.2f2: The project sponsor shall participate in current and future public transportation studies for the Jack London District sponsored by local or regional government agencies, and intended to address long term public transportation</i>			Same as Mitigation Measure C.2a	Same as Mitigation Measure C.2a

MITIGATION MONITORING AND REPORTING PROGRAM

ENVIRONMENTAL IMPACT	MITIGATION MEASURES	CONDITION OF APPROVAL NOS.	RESULTING LEVEL OF SIGNIFICANCE	MONITORING RESPONSIBILITY	MONITORING TIMEFRAME
	<p><i>solutions/alternatives for the area.</i></p> <p><u>Shuttle Measures</u></p> <p><i>C.2g: Provide shuttle service from project to transit stations/multimodal centers during peak hours.</i></p> <p>The project sponsor would provide a private shuttle service for employees of, and visitors to, the project site between the project site and the 12th Street BART station during peak traffic hours.</p>			Same as Mitigation Measure C.2a	Commencing upon issuance of the first Certificate of Occupancy for the project, each time the project sponsor submits the annual review report required by the development agreement for the project, the project sponsor shall concurrently submit to the City evidence showing continuing compliance with this mitigation measure. This Mitigation Measure may be satisfied by the existence of either a private shuttle service or a comparable service provided by public or quasi-public transit agencies.
	<p><u>Bicycle and Pedestrian Measures</u></p> <p><i>C.2h: Mitigation Measure B.7 in the Traffic section of this document requires that the project provide adequate amount of bicycle parking at or in the vicinity of the project site.</i></p>			Same as Mitigation Measure B.7	Same as Mitigation Measure B.7
	<p><i>C.2i: Provide secure, weather-protected bicycle parking for employees.</i></p>			Same as Mitigation Measure C.2a	Prior to issuance of each building permit, construction plans shall be reviewed and approved for

MITIGATION MONITORING AND REPORTING PROGRAM

ENVIRONMENTAL IMPACT	MITIGATION MEASURES	CONDITION OF APPROVAL NOS.	RESULTING LEVEL OF SIGNIFICANCE	MONITORING RESPONSIBILITY	MONITORING TIMEFRAME
	<i>C.2j: Provide showers and lockers for employees bicycling or walking to work.</i>			Same as Mitigation Measure C.2a	compliance with this measure. Prior to issuance of each building permit, construction plans shall be reviewed and approved for compliance with this measure.
	<i>C.2k: Provide direct safe, attractive pedestrian and bicycle access to transit stops and adjacent development.</i>			Same as Mitigation Measure C.2a	Prior to issuance of each building permit, construction plans shall be reviewed and approved to ensure that pedestrian and bicycle access is provided within and immediately adjacent to the project site in compliance with this measure.
	<i>C.2l: Provide adequate street lighting within the street right of way immediately adjacent to and within the project site.</i>			Same as Mitigation Measure C.2a	Prior to issuance of each building permit, construction plans shall be reviewed and approved for compliance with this measure.
	<i>C.2ll: The project sponsor shall post information indicating the identified City of Oakland Bicycle Routes serving the project and vicinity, as well as the location of the Bay Trail, at several publicly visible locations throughout the project site.</i>			Same as Mitigation Measure C.2a	Same as Mitigation Measure C.2a
C.5: The project, together with anticipated future cumulative	C.5: Implement Mitigation Measure C.2.		Significant and Unavoidable	Same as Mitigation Measure C.2	Same as Mitigation Measure C.2

MITIGATION MONITORING AND REPORTING PROGRAM

ENVIRONMENTAL IMPACT	MITIGATION MEASURES	CONDITION OF APPROVAL NOS.	RESULTING LEVEL OF SIGNIFICANCE	MONITORING RESPONSIBILITY	MONITORING TIMEFRAME
development in Oakland and the Bay Area in general, would contribute to regional air pollution.					
SIGNIFICANT BUT MITIGABLE IMPACTS					
B. <u>Transportation, Circulation, and Parking</u>					
B.1: Traffic generated by Phase 1 of the project would affect traffic levels of service at local intersections in the project vicinity in 2005.					
B.1a: Traffic generated by Phase 1 of the project would add more than ten vehicles to the unsignalized intersection of <i>Embarcadero and Oak Street</i> , and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the weekday PM peak hour.	B.1a: Install traffic signals at the unsignalized intersection of <i>Embarcadero and Oak Street</i> . The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include optimizing signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.		Less than Significant	Same as Mitigation Measure B.1e	Same as Mitigation Measure B.1e
B.1b: Traffic generated by Phase 1 of the project would add more than ten vehicles to the unsignalized intersection of <i>Embarcadero and 5th Avenue</i> , and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the weekday PM peak hour.	B.1b: Install traffic signals at the unsignalized intersection of <i>Embarcadero and 5th Avenue</i> . The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include optimizing signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.		Less than Significant	Same as Mitigation Measure B.1e	Same as Mitigation Measure B.1e
B.1c: The signalized intersection of <i>3rd Street and Broadway</i> would degrade from LOS C to LOS F during	B.1c: Restripe the eastbound 3rd Street approach at the intersection of <i>3rd Street and Broadway</i> to provide a separate left-		Less than Significant	Same as Mitigation Measure B.1e	Same as Mitigation Measure B.1e

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ENVIRONMENTAL IMPACT	MITIGATION MEASURES	CONDITION OF APPROVAL NOS.	RESULTING LEVEL OF SIGNIFICANCE	MONITORING RESPONSIBILITY	MONITORING TIMEFRAME
<p>the weekday PM peak hour with the addition of traffic generated by Phase 1 of the project.</p>	<p>turn lane onto Broadway.</p>				
<p>B.1d: Traffic generated by Phase 1 of the project would add more than ten vehicles to the unsignalized intersection of <i>3rd Street and Oak Street</i>, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant, during the weekday PM peak hour.</p>	<p>B.1d: Install traffic signals at the unsignalized intersection of <i>3rd Street and Oak Street</i>. The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include optimizing signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>		<p>Less than Significant</p>	<p>Same as Mitigation Measure B.1e</p>	<p>Same as Mitigation Measure B.1e</p>
<p>B.2: Traffic generated by buildout of Phases 1 and 2 of the project would affect traffic levels of service at local intersections in the project vicinity in 2025.</p>					
<p>B.2b: Traffic generated by buildout of Phases 1 and 2 of the project would add more than ten vehicles to the unsignalized intersection of <i>Embarcadero and Webster Street</i>, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the weekday PM peak hour.</p>	<p>B.2b: Install traffic signals at the unsignalized intersection of <i>Embarcadero and Webster Street</i>. The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include optimizing signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>		<p>Less than Significant</p>	<p>Same as Mitigation Measure B.1e</p>	<p>Same as Mitigation Measure B.1e</p>
<p>B.2c: Traffic generated by buildout of Phases 1 and 2 of the project would add more than ten vehicles to the unsignalized intersection of <i>3rd and Market Streets</i>, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the weekday PM peak hour.</p>	<p>B.2c: Install traffic signals at the unsignalized intersection of <i>3rd and Market Streets</i>. The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include optimizing signal phasing and timing (i.e., allocation of green time for</p>		<p>Less than Significant</p>	<p>Same as Mitigation Measure B.1e</p>	<p>Same as Mitigation Measure B.1e</p>

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ENVIRONMENTAL IMPACT	MITIGATION MEASURES	CONDITION OF APPROVAL NOS.	RESULTING LEVEL OF SIGNIFICANCE	MONITORING RESPONSIBILITY	MONITORING TIMEFRAME
<p>B.2d: The LOS F conditions at the signalized intersection of <i>5th and Market Streets</i>, which would prevail during the weekday PM peak hour under 2025 baseline conditions, would worsen with the addition of traffic generated by buildout of Phases 1 and 2 of the project. The project-generated increases in vehicle delay would exceed the two-second threshold of significance.</p>	<p>each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p> <p>B.2d: Optimize the traffic signal timing at the signalized intersection of <i>5th and Market Streets</i>. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>		Less than Significant	Same as Mitigation Measure B.1e	Same as Mitigation Measure B.1e
<p>B.3: Traffic generated by buildout of Phases 1 and 2 of the project would contribute to cumulatively significant impacts at local intersections in the project vicinity in 2025.</p>					
<p>B.3a: Traffic generated by buildout of Phases 1 and 2 of the project would contribute more than five percent of the cumulative traffic increases at the unsignalized intersection of <i>Embarcadero and Broadway</i> during the weekday PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>B.3a: Install traffic signals at the unsignalized intersection of <i>Embarcadero and Broadway</i>. The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include optimizing signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>		Less than Significant	Same as Mitigation Measure B.1e	Same as Mitigation Measure B.1e
<p>B.3b: Traffic generated by buildout of Phases 1 and 2 of the project would contribute more than five percent of the cumulative traffic increases at the unsignalized intersection of <i>Embarcadero and Webster Street</i> during the weekday PM peak hour, as</p>	<p>B.3b: Implement Mitigation Measure B.2b (install traffic signals).</p>		Less than Significant	Same as Mitigation Measure B.1e	Same as Mitigation Measure B.1e

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measured by the difference between existing and cumulative (with project) conditions.					
B.3c: Traffic generated by buildout of Phases 1 and 2 of the project would contribute more than five percent of the cumulative traffic increases at the unsignalized intersection of <i>3rd and Market Streets</i> during the weekday PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.	B.3c: Implement Mitigation Measure B.2c (install traffic signals).		Less than Significant	Same as Mitigation Measure B.1e	Same as Mitigation Measure B.1e
B.3e: Traffic generated by buildout of Phases 1 and 2 of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of <i>5th and Market Streets</i> during the weekday PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.	B.3e: Implement Mitigation Measure B.2d (optimize traffic signal timing).		Less than Significant	Same as Mitigation Measure B.1e	Same as Mitigation Measure B.1e
B.3h: Traffic generated by buildout of Phases 1 and 2 of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of <i>7th and Market Streets</i> during the weekday AM and PM peak hours, as measured by the difference between existing and cumulative (with project) conditions.	B.3h: Optimize the traffic signal timing at the signalized intersection of <i>7th and Market Streets</i> . Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.		Less than Significant	Same as Mitigation Measure B.1e	Same as Mitigation Measure B.1e
B.4: The proposed project would increase the demand for parking in the project area.	B.4: Prior to the issuance of the building permit for each new building within the project, or each structural addition to an existing building that creates new gross square footage, the project applicant shall provide to the City a calculation of the peak parking demand generated by (i) the net		Less than Significant	City of Oakland Public Works Agency (Transportation Services Division) and Community and Economic	During construction as established in Mitigation Measure B.4, on-going until all certificates of occupancy are issued.

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	<p>new amount of each use that has been already developed on Sites C, D, Pavilion 2, Water I Expansion, 66 Franklin Street, F1, F2, F3 and G as part of the project as of the time in question (any change in use or activity shall be clearly shown and taken into account), plus (ii) the net new amount of each use to be provided within the new building. This calculation shall be based on whichever of the following two methods results in a higher demand for parking spaces:</p> <ul style="list-style-type: none"> • <u>Method 1</u>: Aggregating the number of parking spaces required for the net new amount of each use, based on the weekday peak parking demand rates set forth below, and then modifying that number to take into account shared parking (made possible by the different peaking characteristics of parking demand for each of the uses), and transit shuttle services. <p><u>Weekday Peak Parking Demand Rates:</u></p> <p>Office – 1.60 spaces / 1,000 sq. ft. Retail – 1.95 spaces / 1,000 g.l.a.¹ Restaurant – 10.09 spaces / 1,000 g.l.a. Theater – 0.21 spaces / seat Supermarket – 2.59 spaces / 1,000 g.l.a. Hotel – 1.00 space / room Hotel Restaurant – 5.22 spaces / 1,000 g.l.a. Conference / Convention – 15.60 spaces / 1,000 sq. ft. Banquet – 10.09 spaces / 1,000 g.l.a.</p>			Development Agency (Planning and Zoning Division)	
	<p>¹ “g.l.a.” = “gross leasable area.” Gross</p>				

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	<p>leasable area reduces the gross square footages by a factor of 0.95 for retail, restaurant and supermarket uses.</p> <ul style="list-style-type: none"> • <u>Method 2</u>: Aggregating the number of parking spaces required for the net new amount of each use, based on the weekend peak parking demand rates set forth below, and then modifying that number to take into account shared parking (made possible by the different peaking characteristics of parking demand for each of the uses), and transit shuttle services. <p><u>Weekend Peak Parking Demand Rates:</u></p> <p>Office – 0.45 spaces / 1,000 g.l.a.¹ Retail – 3.20 spaces / 1,000 g.l.a. Restaurant – 14.30 spaces / 1,000 g.l.a. Theater – 0.26 spaces / seat Supermarket – 3.25 spaces / 1,000 g.l.a. Hotel – 1.25 space / room Hotel Restaurant – 6.91 spaces / 1,000 g.l.a. Conference / Convention – 19.50 spaces / 1,000 sq. ft. Banquet – 14.30 spaces / 1,000 g.l.a.</p> <p>¹ “g.l.a.” = “gross leasable area.” Gross leasable area reduces the gross square footages by a factor of 0.85 for office uses and 0.95 for retail, restaurant and supermarket uses.</p> <p>The peak parking demand calculated above under Method 1 and Method 2 shall then be adjusted to include existing demand for the following numbers of existing parking spaces (but modified downward to account</p>				

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	<p>for any captive market factor) to the extent that such sites have been, or will be in connection with the new building, developed within the project:</p> <ul style="list-style-type: none"> • <u>Method 1</u>: Site D, 54 spaces; Site F1, 140 spaces; and Site G, 46 spaces. • <u>Method 2</u>: Site D, 54 spaces; Site F1, 200 spaces; Site F2, 90 spaces; and Site G, 46 spaces. <p>If deemed acceptable by the City of Oakland, shared parking rates may conform to shared parking standards promulgated at the time in question by the Institute of Transportation Engineers (ITE), Urban Land Institute (ULI) or comparable reference source.</p> <p>Prior to the issuance of the building permit for each new building within the project, or each structural addition to an existing building that creates new gross square footage, the project applicant shall prepare and submit to the City drawings of all existing and any proposed off-street parking facilities providing the required off-street parking spaces. If attendant parking services provide some of the required parking, the location of such stalls shall be clearly shown.</p> <p>Upon occupancy of the new building, the project applicant shall provide an adequate number of parking spaces within the project area, or within a reasonable walking distance from the subject site (where duration of use for such purpose is assured) as determined by the City to meet the higher parking demand calculated above. The calculation of the number of parking</p>				

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B.7: The project would create demand for bicycle parking.	<p>spaces to be supplied shall take into account: (i) as applicable, confirmed increase of up to 30 percent in parking capacity due to attendant parking services; (ii) the use of employee shuttles to use off-site parking spaces (where duration of use for such purpose is assured); (iii) existing excess parking supply at the Jack London Square Washington Street garage of 350 parking spaces during the weekday peak period and 250 parking spaces during the weekend peak period; and (iv) existing excess parking supply on Sites F1 (60 parking spaces during the weekday peak period and 0 parking spaces during the weekend peak period), F2/F3 (390 parking spaces during the weekday peak period and 300 parking spaces during the weekend peak period) or G (69 parking spaces during either the weekday or the weekend peak period), to the extent that any such sites have not already been developed.</p> <p>B.7: The project shall provide an adequate number of bicycle parking spaces in location(s) either onsite or within a three-block radius, or through payment of appropriate in-lieu fees, as determined by the City and in a manner consistent with the City's current practices.</p>		Less than Significant	City of Oakland Community and Economic Development Agency (Planning and Zoning Division)	Prior to issuance of each building permit, either (i) construction plans shall be reviewed and approved for compliance with this mitigation measure, or (ii) applicant shall pay to the City in full the in-lieu fee associated with the improvements to which the building permit would apply.
B.8: The project would increase the potential for pedestrian safety conflicts.	<p>B.8: The following measures shall be implemented to mitigate the potential safety impact:</p>		Less than Significant	City of Oakland Community and Economic Development Agency (Planning	

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<p>B.9: The project would increase the potential for conflicts among different traffic streams.</p>	<ul style="list-style-type: none"> • Install pedestrian signal heads (with adequate time for pedestrians to cross the Embarcadero) when new traffic signals are installed at the intersections along the Embarcadero, at Broadway (see Mitigation Measure B.3a) and at Webster Street (see Mitigation Measure B.2b). • Install informational signs to indicate to pedestrians where pedestrian bridges are located. • Install warning signs, and/or audible signals, at parking garage access points to alert pedestrians about approaching vehicles. <p>B.9a: The project sponsor shall design vehicular traffic features of project development (e.g., turning radii for buses and service vehicles, project parking garage access driveways, and circulation aisles within the parking garages) to meet the design standards set forth by the American Association of State Highway and Transportation Officials (AASHTO) in <i>A Policy on Geometric Design of Highways and Streets</i>, or other design standards deemed appropriate by the City of Oakland.</p>		<p>Less than Significant</p>	<p>and Zoning Division)</p> <p>City of Oakland Public Works Agency (Transportation Services Division)</p>	<p>Same as Mitigation Measure B.1e</p> <p>Prior to issuance of the building permit for the pedestrian bridge, construction plans shall be reviewed and approved for compliance with this mitigation measure.</p> <p>Prior to issuance of the building permit for the Site G garage, construction plans shall be reviewed and approved for compliance with this mitigation measure.</p> <p>Prior to the issuance of each building permit for the project, construction plans shall be reviewed and approved for compliance with this mitigation measure.</p>

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<p>B.12: Project construction would affect traffic flow and circulation, parking, and pedestrian safety.</p>	<p>B.9b: The proposed parking garage on Site G shall be designed such that the vehicle entry control gate is recessed in from Second Street enough to accommodate at least ten vehicles.</p> <p>B.12: Prior to the issuance of each building permit, the project applicant and construction contractor shall meet with the Traffic Engineering and Parking Division of the Oakland Public Works Agency and other appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the City Traffic Engineering Division. The plan shall include at least the following items and requirements:</p> <ul style="list-style-type: none"> • A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. In addition, the information shall include a construction staging plan for any right-of-way used on the Embarcadero, Broadway, and Franklin, Alice, and 2nd Streets, including sidewalk and lane intrusions and/or closures. 		<p>Less than Significant</p>	<p>Same as Mitigation Measure B.9a.</p> <p>City of Oakland Public Works Agency (Transportation Services Division) and Community and Economic Development Agency (Planning and Zoning Division)</p>	<p>Prior to issuance of a building permit for Site G improvements, construction plans shall be reviewed and approved for compliance with this measure.</p> <p>Traffic management strategy meetings shall take place prior to the issuance of each building permit. Construction management plan shall be submitted, reviewed and approved prior to issuance of first grading permit. Compliance with plan requirements shall be continuous throughout the course of grading and construction.</p>

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	<ul style="list-style-type: none"> • Identification of any transit stop relocations, particularly along the Embarcadero and 2nd Street. • Provisions for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces. • Identification of parking eliminations and any relocation of parking for employees and public parking during construction. • Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur. • Provisions for accommodation of pedestrian flow, particularly along Embarcadero. • Location of construction staging areas for materials, equipment, and vehicles. • Identification of haul routes for movement of construction vehicles that would minimize impacts on vehicular and pedestrian traffic, circulation and safety; and provision for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected by the project applicant. • Temporary construction fences to contain debris and material and to secure the site. • Provisions for removal of trash generated by project construction activity. • A process for responding to, and tracking, complaints pertaining to construction activity, including 				

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C. <u>Air Quality</u>	identification of an onsite complaint manager.				
C.1: Activities associated with demolition, site preparation and construction would generate short-term emissions of criteria pollutants, including suspended and inhalable particulate matter and equipment exhaust emissions.	<p>C.1a: During construction, the project sponsor shall require the construction contractor to implement the following measures required as part of BAAQMD’s basic enhanced dust control procedures required for sites larger than four acres (such as the proposed project) located in close proximity to sensitive receptors:</p> <ul style="list-style-type: none"> • Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible. • Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer). • Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites. • Sweep daily (with water sweepers using reclaimed water if possible) all paved access roads, parking areas and staging areas at construction sites. • Sweep streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried 		Less than Significant	City of Oakland Community and Economic Development Agency (Building Services Division)	During construction activities.

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	<p>onto adjacent paved roads.</p> <ul style="list-style-type: none"> • Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more). • Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.). • Limit traffic speeds on unpaved roads to 15 miles per hour. • Install sandbags or other erosion control measures to prevent silt runoff to public roadways. • Limit the amount of the disturbed area at any one time, where feasible. • Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site. • Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas. • Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph. • Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used. • Replant vegetation in disturbed areas as quickly as feasible. • Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their 				

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	<p>duties shall include holidays and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the BAAQMD prior to the start of construction as well as posted on-site over the duration of construction.</p>				
D. Noise					
D.1: Construction activities would intermittently and temporarily generate noise levels above existing ambient levels in the project vicinity.	<p>D.1a: The project sponsor shall require construction contractors to limit standard construction activities as required by the City Building Department. Such activities are generally limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, with pile driving and/or other extreme noise generating activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday, with no extreme noise generating activity permitted between 12:30 and 1:30 p.m. No construction activities shall be allowed on weekends until after the building is enclosed, without prior authorization of the Building Services Division, and no extreme noise generating activities shall be allowed on weekends and holidays.</p> <p>D.1b: To reduce daytime noise impacts due to construction, the project sponsor shall require construction contractors to implement the following measures:</p> <ul style="list-style-type: none"> • Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible). 	Less than Significant	City of Oakland Community and Economic Development Agency (Building Services Division)	Prior to issuance of each building permit, the project applicant shall submit to the City a copy of the construction contract with its contractor for that building phase, evidencing compliance with this mitigation measure.	
				Same as Mitigation Measure D.1a	Same as Mitigation Measure D.1a

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	<ul style="list-style-type: none"> • Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible. • Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible. • If feasible, the noisiest phases of construction (such as pile driving) shall be limited to less than 10 days at a time to comply with the local noise ordinance. 			Same as Mitigation Measure D.1a	Plan shall be submitted for review and approval by City prior to issuance of the building permit for each building site, and each site shall be monitored for compliance during construction activities.
	<p>D.1c: To further mitigate potential pile driving and/or other extreme noise generating construction impacts, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation will be achieved. These attenuation measures shall</p>				

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	<p>include as many of the following control strategies as feasible:</p> <ul style="list-style-type: none"> • Erect temporary plywood noise barriers around the construction site, particularly along the eastern boundary along Alice Street to shield the adjacent multi-family residential buildings; • Implement “quiet” pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions; • Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site; • Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings; and • Monitor the effectiveness of noise attenuation measures by taking noise measurements. <p>D.1d: Prior to the issuance of each building permit, along with the submission of construction documents, the project sponsor shall submit to the City Building Department a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:</p> <ul style="list-style-type: none"> • A procedure for notifying the City Building Division staff and Oakland 			Same as Mitigation Measure D.1a	List of measures as specified shall be submitted to and approved by City prior to issuance of each building permit; sites shall be monitored for compliance during construction activities.

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	<p>Police Department;</p> <ul style="list-style-type: none"> • A plan for posting signs on-site pertaining to permitted construction days and hours and complaint procedures and who to notify in the event of a problem; • A listing of telephone numbers (during regular construction hours and off-hours); • The designation of an on-site construction complaint manager for the project; • Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of pile-driving activities about the estimated duration of the activity; and • A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed. 				
<p>E. Cultural Resources</p> <p>E.1: Construction of the project may cause substantial adverse changes to the significance of currently unknown cultural resources.</p>	<p>E.1a: The project sponsor shall retain a qualified archaeologist to conduct on-site monitoring and consultation during all ground disturbing activities. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 100 feet of the resource shall be halted. The qualified archaeologist shall evaluate the find and assess the significance of the find. If any find is determined to be significant, representatives of the project sponsor and the qualified archaeologist</p>		<p>Less than Significant</p>	<p>City of Oakland Community and Economic Development Agency (Building Services Division)</p>	<p>Prior to commencement of grading for the project, the project applicant shall submit to City evidence that a qualified archaeologist has been retained pursuant to this mitigation measure; sites shall be monitored for compliance during construction activities.</p>

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ENVIRONMENTAL IMPACT	MITIGATION MEASURES	CONDITION OF APPROVAL NOS.	RESULTING LEVEL OF SIGNIFICANCE	MONITORING RESPONSIBILITY	MONITORING TIMEFRAME
<p data-bbox="79 1339 514 1417">E.2: The proposed project may damage or degrade unidentified paleontological remains.</p>	<p data-bbox="548 302 1014 632">shall meet to determine the appropriate avoidance measures or other appropriate mitigation, subject to approval by the City of Oakland, which shall assure implementation of appropriate mitigation measures recommended by the archeologist. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.</p> <p data-bbox="548 654 1014 1318">E.1b: In the event that human skeletal remains are uncovered during construction activities for the proposed project, the project sponsor shall immediately halt work, contact the Alameda County Coroner to evaluate the remains, and follow the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City will contact the California Native American Heritage Commission, pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities will cease until appropriate arrangements are made. The project sponsor shall identify a Native American monitor/consultant who is either a qualified archaeologist, or who shall work in conjunction with a qualified archaeologist, who shall be on call in the event that Native American remains are discovered.</p> <p data-bbox="548 1339 1014 1450">E.2: The project proponent shall notify a qualified paleontologist of unanticipated discoveries, document the discovery as needed, evaluate the potential resource, and</p>		<p data-bbox="1247 1339 1457 1389">Less than Significant</p>	<p data-bbox="1493 654 1675 703">Same as Mitigation Measure E. 1a</p> <p data-bbox="1493 1339 1675 1450">City of Oakland Community and Economic Development</p>	<p data-bbox="1780 654 1934 703">During construction activities.</p> <p data-bbox="1780 1339 1934 1389">During construction activities.</p>

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	<p>assess the significance of the find under the criteria set forth in Section 15064.5 of the CEQA Guidelines. In the event of an unanticipated discovery of a breas, true, and/or trace fossil during construction, excavations within 100 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, a paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.</p>			<p>Agency (Building Services and Planning and Zoning Divisions)</p>	
<p>E.3: The proposed project would construct multiple story buildings near historic resources, risking damage to the resources during construction. These resources are: Heinold’s First and Last Chance Saloon, a property listed in the National Register, California Register, and an Oakland Landmark; USS Potomac, a property listed in the National Register and an Oakland Landmark; and 101-07 Broadway, a property that may be eligible as an Oakland Landmark.</p>	<p>E.3a: If a registered structural engineer (with geotechnical consultation as necessary) determines that, due to the nature of the existing foundation, the Heinhold's First and Last Chance Saloon would significantly settle during and as a result of the construction of the Site F1 and 66 Franklin buildings, then the Heinhold's building shall be underpinned or otherwise structurally supported during construction on those sites so as to avoid significant settlement.</p>		<p>Less than Significant</p>	<p>City of Oakland Community and Economic Development Agency (Building Services Division)</p>	<p>Prior to the earlier of (i) the issuance of a grading or building permit for the 66 Franklin Building or (ii) the issuance of a grading or building permit for the Site F1 building, a registered structural engineer shall inspect the foundation of Heinold's First and Last Chance Saloon and submit its analysis to the Planning Director, and the Heinold's building shall be underpinned or otherwise structurally supported as</p>

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	<p>E.3b: A protective plywood enclosure shall be constructed above and on all sides of the Heinold's building and signage and shall be in place prior to mass grading and during other construction phases as necessary, in order to protect the building from construction equipment, debris, and dust. The enclosure shall be a free standing structure without structural or other materials touching or being attached to the Heinhold's building. The contractor's design and shop drawings shall be reviewed and approved by a historic preservation architect prior to construction of the protective enclosure.</p>			<p>City of Oakland Community and Economic Development Agency (Building Services Division)</p>	<p>recommended prior to any building, grading or pile driving activity for Site F1.</p> <p>Contractor's design and shop drawings (which shall have been approved by a historic preservation architect) shall be submitted to and approved by the City, and plywood enclosure to be constructed, prior to mass grading. Plywood enclosure must be in place during any construction phase that may physically endanger the Heinold's building, as determined by the City.</p>
	<p>E.3c: A geotechnical engineer and registered structural engineer shall determine the maximum vibration that the Heinold's building could tolerate without damage to the historic integrity of the building. An evaluation of the proposed construction plans and methods shall be conducted prior to construction to determine whether vibration during the construction on the Site F1 or 66 Franklin buildings would exceed this allowable vibration threshold. No construction method or equipment that could cause the allowable vibration threshold to be exceeded shall be used. Specifically, if driven piles could cause the vibration threshold to be exceeded, they shall not be used and augured grouted piles shall be</p>			<p>City of Oakland Community and Economic Development Agency (Building Services Division)</p>	<p>Prior to the earlier of (i) issuance of a grading permit or building permit for the 66 Franklin building or (ii) issuance of a grading permit or building permit for the Site F1 building, the geotechnical engineer or registered structural engineer shall determine the maximum allowable vibration threshold for the Heinold's building. The evaluation shall be submitted to the</p>

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	<p>substituted. A historic preservation architect will be consulted to plan and oversee such evaluation at the applicant's expense.</p> <p>E.3d: Prior to the construction of the protective enclosure, a registered structural engineer and a historic preservation architect with a minimum of five years of experience in the rehabilitation of historic buildings shall document the existing condition of the Heinold's building, including identification of existing deterioration and damage. The documentation shall include photographs and condition descriptions. All documentary photographs (negatives and prints) shall be black and white and shall be processed to meet Historic American Buildings Survey Photographic Standards for processing only; 35mm film format is acceptable.</p> <p>E.3e: The structural engineer and the historic preservation architect who documented the existing condition of the Heinold's building shall periodically monitor the condition of the historic resource during construction of the F1 and 66 Franklin sites. If, in the opinion of the monitoring team, substantial adverse impacts to the historic resource related to construction activities are found during construction, the monitoring team shall so inform the project sponsor and his/her representative responsible for construction of the project. The project sponsor shall adhere to the monitoring team's recommendations for corrective measures,</p>			<p>City of Oakland Community and Economic Development Agency (Planning and Zoning Division)</p> <p>City of Oakland Community and Economic Development Agency (Building Services Division)</p>	<p>historic preservation architect for review and approval prior to construction of either the Site F1 building or the 66 Franklin building.</p> <p>All documentation shall take place and shall be submitted to the City prior to City approval of the design and shop drawings for the protective enclosure (see Mitigation Measure E.3b).</p> <p>Throughout all grading and construction activities on the F1 and 66 Franklin sites. Any recommendations provided by the monitoring team pursuant to this mitigation measure shall simultaneously be submitted to the City.</p>

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	<p>including halting construction in situations where construction activities at F1 and 66 Franklin would endanger the Heinhold's historic resource.</p> <p>E.3f: The project sponsor shall prepare and thereafter implement a construction plan setting forth procedures and monitoring methods to be used by the contractor while working near the Heinold's building during construction of the F1 and 66 Franklin sites, along with any site work within a 50 foot radius of the building. At a minimum, the plan shall address operation of construction equipment near Heinold's, storage of construction materials away from the Heinold's building, and education/training of construction workers about the significance of Heinold's First and Last Chance Saloon.</p>			City of Oakland Community and Economic Development Agency (Building Services Division)	Construction plan shall be prepared prior to issuance of grading or building permit for F1 and 66 Franklin sites, whichever occurs first. Implementation to be monitored throughout construction activities on the F1 and 66 Franklin sites.
F. Geology, Soils, and Seismicity					
F.1: In the event of a major earthquake in the region, seismic ground shaking could potentially injure people and cause collapse or structural damage to proposed structures.	<p>F.1: A site-specific, design level geotechnical investigation for each building (which is typical for any large development project) shall be required as part of this project. Each investigation shall include an analysis of expected ground motions at the site. The analyses shall be in accordance with applicable City ordinances and policies and consistent with the 1997 UBC (or any more recent version of the UBC adopted by the City of Oakland), which requires structural design that incorporates ground accelerations expected from known active faults. In addition, the investigations will determine final design parameters for the walls, foundations and foundation slabs. The investigations shall be reviewed by a registered geotechnical engineer. All</p>		Less than Significant	City of Oakland Community and Economic Development Agency (Building Services Division)	The final geotechnical investigation for each building shall be submitted to and approved by the City of Oakland Building Services Division prior to issuance of a building permit for the building in question. The recommendations provided in the geotechnical investigation shall constitute conditions of building permit issuance for the

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<p>F.2: In the event of a major earthquake in the region, seismic ground shaking could potentially expose people and property to liquefaction and earthquake-induced settlement.</p>	<p>recommendations by the project engineer and geotechnical engineer will be included in the final design. Recommendations that are applicable to foundation design, earthwork, and site preparation that were prepared prior to or during the project design phase shall be incorporated in the project. The final seismic considerations for the site shall be submitted to and approved by the City of Oakland Building Services Division.</p> <p>F.2a: Prepare an updated site specific, design level geotechnical investigation for each building site to consider the proposed project designs and provide engineering recommendations for mitigation of liquefiable soils. These recommendations shall become part of the project. Prior to incorporation into the project, geotechnical engineering recommendations from previous investigations regarding the mitigation and reduction of liquefaction for each site shall be reviewed for compliance with <i>California Geological Survey's (CGS) Geology Guidelines for Evaluating and Mitigating Seismic Hazards (CGS Special Publication 117, 1997)</i>.</p>		Less than Significant	City of Oakland Community and Economic Development Agency (Building Services Division)	<p>relevant building.</p> <p>The updated geotechnical investigation for each building site shall be submitted to and approved by the City prior to issuance of a building permit for the site in question. The recommendations provided in the geotechnical investigation shall constitute conditions of building permit issuance for the relevant building.</p>
<p>F.3: Development at the project site could be subjected to differential settlement.</p>	<p>F.3: Geotechnical investigations and reports will be required in order to obtain permits from the City of Oakland. Such geotechnical investigations and reports prepared for the Jack London Square site shall include generally accepted and appropriate engineering techniques for determining the susceptibility of the project site to settlement and reducing its effects. Engineering recommendations shall become part of the project. In addition, the project applicant shall adhere to City grading and construction policies to reduce</p>		Less than Significant	City of Oakland Community and Economic Development Agency (Building Services Division); on-site inspectors and monitors	<p>Prior to issuance of each building permit, (i) construction plans shall be reviewed and approved for compliance with the 1997 UBC with California additions (Title 22) and applicable City construction and grading ordinances, and (ii) the updated</p>

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<p>F.4: Construction activities at the project area could loosen and expose surface soils. If this were to occur over the long term, exposed soils could erode by wind or rain increasing the sediment load to San Francisco Bay.</p>	<p>the potential for geologic hazards, including differential settlement and soil erosion. The project applicant shall employ Best Management Practices for reduction of soil erosion by water and wind. All construction activities and design criteria shall comply with applicable codes and requirements of the 1997 UBC with California additions (Title 22), and applicable City construction and grading ordinances.</p>		Less than Significant	City of Oakland Community and Economic Development Agency (Building Services Division)	<p>geotechnical investigations and reports for the site in question shall be submitted to and approved by the City. The recommendations provided in the geotechnical investigations and reports shall constitute conditions of building permit issuance for the relevant building.</p> <p>The SWPPP shall be submitted to and approved by the City prior to the issuance of grading permits. Compliance with the SWPPP shall be monitored during grading and construction of the project.</p>
<p>H. Hazardous Materials</p>	<p>F.4: During construction, the applicant shall comply with erosion and sediment control measures in accordance with City of Oakland’s stormwater management requirements and construction best management practices for the reduction of pollutants in runoff and the State Water Quality Control Board National Pollution Discharge Elimination System (NPDES) requirements, including the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP) incorporating Best Management Practices (BMPs). The SWPPP shall identify BMPs for implementation during construction activities, such as detention basins, straw bales, silt fences, check dams, geofabrics, drainage swales, and sandbag dikes.</p>		Less than Significant	City of Oakland Community and Economic Development Agency (Building Services Division)	<p>30 days prior to project groundbreaking, the project sponsor shall provide evidence to the City that (i) the</p>
<p>H.1: Disturbance and release of contaminated soil during demolition and construction phases of the project could expose construction workers, the public, or the environment to adverse conditions</p>	<p>H.1: Implement all directives required by the July 30, 2002 and August 28, 2002 letters from the RWQCB.</p>		Less than Significant	City of Oakland Community and Economic Development Agency (Building Services Division)	<p>30 days prior to project groundbreaking, the project sponsor shall provide evidence to the City that (i) the</p>

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related to hazardous substance handling.	<p>H.2: Disturbance and release of hazardous structural and building components (i.e. asbestos, lead, PCBs, USTs, and ASTs) during demolition and construction phases of the project could expose construction workers, the public, or the environment to adverse conditions related to hazardous substance handling.</p> <p>H.2a: A pre-demolition ACM survey shall be performed prior to demolition of the structures at 66 Franklin Street, Pavilion 2, Water I Expansion, and Site D. The survey shall include sampling and analysis of suspected ACMs identified in the 1996 hazardous material screening survey. Abatement of known or suspected ACMs shall occur prior to demolition or construction activities that would disturb those materials. Pursuant to an asbestos abatement plan developed by a state-</p>		Less than Significant	<p>Services Division and Planning and Zoning Division)</p> <p>City of Oakland Community and Economic Development Agency (Building Services Division)</p>	<p>Contingency Plan has been prepared and submitted to the RWQCB; and (ii) the certified industrial hygienist has prepared and submitted the Health and Safety Plan to the RWQCB. Compliance with Contingency Plan and Health and Safety Plan shall be monitored throughout project construction.</p> <p>Thirty days prior to any construction which would disturb a monitoring well, the project sponsor shall submit to City evidence that such existing monitoring well has been abandoned and that a Well Abandonment Report has submitted to RWQCB.</p> <p>Prior to issuance of a demolition permit for structures located at 66 Franklin Street, Pavilion 2, Water I Expansion, and Site D, a pre-demolition survey shall be performed and asbestos abatement plan shall be prepared for the applicable site shall be performed and</p>

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	<p>certified asbestos consultant and approved by the City, all ACMs shall be removed and appropriately disposed of by a state certified asbestos contractor.</p> <p>H.2b: The project applicant shall implement a lead-based paint abatement plan, which shall include the following components:</p> <ul style="list-style-type: none"> • Development of an abatement specification approved by an Interim-Certified Project Designer. • A site Health and Safety Plan, as needed. • Containment of all work areas to prohibit off-site migration of paint chip debris. • Removal of all peeling and stratified lead-based paint on building surfaces and on non-building surfaces to the degree necessary to safely and properly complete demolition activities per the recommendations of the survey. The demolition contractor shall be identified as responsible for properly containing and disposing of intact lead-based paint on all equipment to be cut and/or removed during the demolition. 			<p>City of Oakland Community and Economic Development Agency (Building Services Division)</p>	<p>submitted to the City for approval. Asbestos removal shall be monitored during all demolition and construction activities that could disturb ACMs on 66 Franklin Street, Pavilion 2, Water I Expansion and Site D.</p> <p>Prior to issuance of the first demolition for the project, the lead-based paint abatement plan shall be completed; compliance shall be monitored during all project demolition activities.</p>

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	<ul style="list-style-type: none"> • Appropriately remove paint chips by vacuum or other approved method. • Collection, segregation, and profiling waste for disposal determination. • Appropriate disposal of all hazardous and non-hazardous waste. <p>H.2c: In the event that additional electrical equipment or other PCB-containing materials are identified prior to demolition activities they shall be removed, and shall be disposed of by a licensed transportation and disposal facility in Class I hazardous waste landfill cells.</p> <p>H.2d: When USTs are encountered during construction, construction in the immediate area shall cease until the UST is removed and the Alameda County Local Oversight Program (Alameda LOP) is contacted to oversee removal and determine appropriate remediation measures. Removal of the UST shall require, as deemed necessary by the LOP, over-excavation and disposal of any impacted soil that may be associated with such tanks to a degree sufficient to the oversight agency.</p>			<p>City of Oakland Community and Economic Development Agency (Building Services Division)</p> <p>City of Oakland Community and Economic Development Agency (Building Services Division)</p>	<p>Compliance shall be monitored during all project demolition activities.</p> <p>Compliance shall be monitored during all project demolition, grading and construction activities. If any USTs are found, such discovery shall be reported to the City, and documentation of Alameda LOP notification and all other removal activities shall be submitted to the City.</p>
<p>H.3: Improper disposal of contaminated soil and hazardous structural and building components (i.e. asbestos, lead, PCBs, USTs, and ASTs) from the demolition and construction phases of the project could expose construction workers, the public, or the environment to adverse conditions.</p>	<p>H.3a: Prior to off-site disposal, the project applicant shall perform additional soluble lead analyses of in-place or excavated soils to confirm the classification of the soils as a California hazardous waste material. If the soils are classified as a California hazardous waste, the project applicant shall dispose of the soils at a Class I disposal facility in California or an out of state non-RCRA facility permitted to accept wastes at</p>		<p>Less than Significant</p>	<p>City of Oakland Community and Economic Development Agency (Building Services Division)</p>	<p>Compliance shall be monitored during all soil excavation activities.</p>

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	<p>concentrations of the excavated soils.</p> <p>H.3b: Soil generated by construction activities shall be stockpiled onsite and sampled prior to reuse or disposal at an appropriate facility. Soils that are not destined for reuse shall be characterized for disposal in accordance with the requirements of specific disposal facilities, consistent with the Directives received in the July 30, 2002 and August 28, 2002 from the Regional Water Quality Control Board to the Port of Oakland.</p> <p>H.3c: Groundwater generated during construction dewatering shall be contained and transported offsite for disposal at an appropriate facility, or treated, if necessary, prior to discharge into the sanitary sewer to levels acceptable to the East Bay Municipal Utilities District.</p>			<p>City of Oakland Community and Economic Development Agency (Building Services Division)</p> <p>City of Oakland Community and Economic Development Agency (Building Services Division)</p>	<p>During grading and construction activities.</p> <p>During all construction dewatering activities.</p>
<p>H.4: Hazardous materials used on-site during construction activities (i.e. solvents) could be released to the environment through improper handling or storage.</p>	<p>H.4: The use of construction best management practices shall be implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:</p> <ul style="list-style-type: none"> • Follow manufacturer's recommendations on use, storage and disposal of chemical products used in construction; • Avoid overtopping construction equipment fuel gas tanks; • During routine maintenance of construction equipment, properly contain and remove grease and oils. • Properly dispose of discarded containers of fuels and other chemicals. 		<p>Less than Significant</p>	<p>City of Oakland Community and Economic Development Agency (Building Services Division)</p>	<p>Prior to issuance of each building permit, the project applicant shall submit to the City a copy of the construction contract with its contractor for that building phase, evidencing compliance with this mitigation measure.</p>

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<u>K. Utilities and Service Systems</u>					
<p>K.3: Construction of the proposed project could impede the ability of the City of Oakland to meet the waste diversion requirements of the California Integrated Waste Management Act (AB 939) or the Alameda County Waste Reduction and Recycling Initiative (Measure D).</p>	<p>K.3: The project sponsor shall prepare, submit to the City for approval, and implement during construction a Construction and Demolition Debris Waste Reduction and Recycling Plan. The project sponsor shall divert a minimum of 50 percent of the construction and demolition debris from each stage of the project. This percentage is to be based on the City of Oakland's method for calculating diversion by total volume or weight as described in Oakland Municipal Code Section 15.34.050.</p>		Less than Significant	City of Oakland Community and Economic Development Agency (Building Services Division)	The plan shall be reviewed and approved prior to issuance of the first building or demolition permit, whichever occurs earlier; compliance shall be monitored during all demolition and construction activities.
<p>K.5: Operation of the proposed project would increase the amount of solid waste generated in the City of Oakland, and could impede the City's ability to meet the diversion rate requirements of AB 939 and Measure D.</p>	<p>K.5: Adequate storage space for recyclable and compostable materials shall be provided in each project building. The design, location and maintenance of recycling collection and storage areas shall substantially comply with the provision of the Oakland City Planning Commission's <i>Guidelines for the Development and Evaluation of Recycling Collection and Storage Areas</i>, Policy No. 100-28. A minimum of two cubic feet of storage and collection area shall be provided for each 1,000 square feet of commercial space. In addition, the project sponsor shall be required to contract with a recycling pickup service.</p>		Less than Significant	City of Oakland Community and Economic Development Agency (Building Services Division)	Prior to issuance of each building permit, construction plans shall be reviewed and approved for compliance with this measure.

EXHIBIT C
CONDITIONS OF APPROVAL FOR JACK LONDON SQUARE PROJECT
PRELIMINARY DEVELOPMENT PLAN APPROVAL, FINAL
DEVELOPMENT PLAN APPROVAL FOR SITES C, D, PAVILION 2, 66
FRANKLIN, F-1, F-2, F-3 and G, DESIGN REVIEW, CONDITIONAL USE
PERMIT and VARIANCE
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General Conditions and Compliance with Approved Plans

1. The project shall comply with the following plans and exhibits entitled "Jack London Square Redevelopment" ("the Project Plans"):

- I. **Site Plan and Landscape Plans**
- II. **Architecture: Plans and Elevations**
- III. **Design Guidelines for Jack London Square Redevelopment Project**
- IV. **Development Agreement**

2. The Project Applicant and its agents, heirs, successors and assigns (collectively, the "Project Applicant") shall be bound by these Conditions of Approval. The Project Applicant shall be responsible for assuring that the terms and conditions of this Approval are disclosed to any such successive owner or any of the Project Applicant's agents, heirs, successors and assigns.

3. This action by the Planning Commission ("this Approval") includes the approvals set forth in this Condition of Approval No. 3. Each of these individual approvals shall become effective upon the effective date of the City Council's final approval of a Zoning Boundary Line Adjustment for the site under the Oakland Municipal Code, Section 17.1444, consistent with the PUD (the "Effective Date"). This Approval includes:

- a. Approval of a Planned Unit Development ("PUD") including a preliminary development plan under Oakland Municipal Code Chapter 17.140 for phased construction of up to 960,700 square feet, as set forth in the Project Plans, as modified by these Conditions of Approval.
- b. Final development plans ("FDP") for Sites C, D, Pavilion 2, 66 Franklin (Option 1 and 2), F-1, F-2, F-3 and G under Oakland Municipal Code Chapter 17.140.
- c. Approval of a Major Variance for Fast Food Restaurant Commercial Activities under Oakland Municipal Code Chapter 17.148.
- d. Design Review Approval for Sites F1 and G.

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- e. Approval of a Conditional Use Permit for the hotel use on Site F-3, the two pedestrian bridges and a reduction in parking due to the proposed shared parking provision under Oakland Municipal Code Chapter 17.134, as modified by the MMRP and Condition of Approval 25.
4. The plans approved as part of the PUD and the FDPs for Sites C, D, Pavilion 2 building footprint, 66 Franklin (2 Options), F-1, F-2, F-3, G and the design of the plaza at the foot of Broadway shall be amended to be consistent with the Conditions of Approval, the Planning Commission action on March 17, 2004 and the City Council action on June 15, 2004. These revised plans shall be submitted to the City Planning Department in the form of a "PUD Design and Specification Document for the Jack London Square Redevelopment Project" within one hundred twenty (120) days of this Approval. This Design and Specification Document shall include but not be limited to:
 - a. All detailed plans and specifications pertaining to Condition of Approval No. 32.
 - b. The approved Design Guidelines for the Jack London Square Redevelopment Project.
 - c. A compendium of all current, vested City regulations, ordinances and policies in effect as of the effective date of the Development Agreement for the project.
 - d. Other information and details deemed necessary by the Development Director or the Development Director's designee.
 - e. Adjustments, as required, to conform to the final Bay Conservation and Development Commission (BCDC) approval for the project.
 5. Notice of Exactions:
 - a. This Approval includes certain dedication requirements, reservation requirements and non-monetary exactions as set forth in these Conditions of Approval. Pursuant to Government Code 66020(d)(1), this Approval constitutes written notice of a description of the dedications, reservations and other exactions. The Project Applicant is hereby further notified that the ninety (90) day period in which these dedications, reservations and other exactions may be protested, pursuant to Government Code 66020(a), shall commence on the Effective Date. If the Project Applicant fails to file a protest within this ninety (90) day period complying with all of the

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requirements of Section 66020, Project Applicant will be legally barred from challenging such exactions.

- b. This Approval includes certain fees, which shall be set forth in a Jack London Redevelopment Fee Schedule to be provided by the Development Director to the Project Applicant within ninety (90) days of this Approval. Delivery of the Jack London Redevelopment Fee Schedule by the Development Director to the Project Applicant shall constitute written notice, pursuant to Government Code 66020(d)(1), of a statement of the amount of such fees. The Project Applicant is hereby further notified that the ninety (90) day period in which these fees may be protested, pursuant to Government Code 66020(a), shall commence on delivery by the Development Director of the Jack London Redevelopment Fee Schedule to the Project Applicant. If the Project Applicant fails to file a protest within this ninety (90) day period complying with all of the requirements of Section 66020, the Project Applicant will be legally barred from challenging such fees.
6. Final inspection and a certificate of occupancy for any unit or other structure within a phase shall not be issued (a) until all landscaping and on and off-site improvements for that Development Parcel are completed in accordance with this Approval, or (b) until cash, an acceptably rated bond, a certificate of deposit, an irrevocable standby letter of credit or other form of security (collectively "security"), acceptable to the City Attorney, has been posted to cover all costs of any unfinished work related to landscaping and public improvements plus 25 percent within that phase, unless already secured by a deferred improvement agreement approved by the City. For purposes of these Conditions of Approval, a certificate of occupancy shall mean a final certificate of occupancy, not temporary or conditional, except as the City determines may be necessary to test utilities and services prior to issuance of the final certificate of occupancy.
7. Except as otherwise provided below in these Conditions of Approval with respect to City's issuance of a certificate of occupancy for each Development Parcel ("Development Parcels"), each of the Conditions of Approval shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including without limitation, Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Development Parcels that are subject to this Approval, as appropriate, runs with the Development Parcels and is binding upon the owner of all or a portion of the Development Parcels and each successive owner. Within ninety (90) days of the Effective Date, the Project Applicant shall cause these Conditions

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of Approval to be recorded in the Official Records of the County of Alameda, California against all of the Development Parcels. Notice of these Conditions of Approval also shall be attached to each grading permit and each building permit for infrastructure work issued for each phase of construction on all Development Parcels. Upon City's issuance of a certificate of occupancy for any Development Parcel, these Conditions of Approval shall be released from the exceptions to title of the Development Parcel upon which the improvements are located, except the obligations specified in Conditions of Approval No. 12, 13 and 14 (Indemnification Requirements), which obligations shall survive completion of the Project. Upon completion of the Project, as determined by the City, these Conditions of Approval shall be released from the all the Development Parcels, except Conditions of Approval No. 12, 13 and 14 (Indemnification Requirements), which obligations shall survive completion of the Project.

8. For the duration of the project, the City Planning Director shall have the authority to determine whether the Project Applicant and the project comply with terms and conditions of this approval, including, without limitation, these Conditions of Approval, shall have the authority to suspend further Project approvals, including without limitation final subdivision maps, grading permits, building permits or certificates of occupancy for the duration of such noncompliance. The City shall take reasonable steps to promptly notify, in writing, the Project Applicant of any request (including a request by City staff or by the public) that the City Planning Director make a determination of non-compliance, and shall provide the Project Applicant a copy of all documents associated with such requests and a reasonable amount of time to respond and to cure any such alleged non-compliance. The City shall further take reasonable steps to promptly notify, in writing, the Project Applicant of any noncompliance determination by the City Planning Director, and, as applicable, shall provide the project applicant a copy of all documents used or relied upon in making such determination. On or before June 30 of each year, the Project Applicant shall submit to the City Planning Director a report demonstrating the Project Applicant's and the Project's compliance with the terms and conditions of the Approval, including, without limitation, these Conditions of Approval. This report may be used by the City Planning Director to evaluate the Project Applicant's and the Project's compliance with the terms and conditions of this Approval. Project Applicant's obligation to submit this annual report shall terminate upon the City's written determination that the Project is complete. To the extent practicable, this review shall be conducted concurrently with the Annual Review conducted pursuant to the Development Agreement.
9. Any failure by the City to perform any action specified herein, or failure of any party timely to execute any agreement specified herein, shall not be construed to

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limit any right or obligation otherwise specified in these Conditions of Approval. Any failure by City to insist upon the strict or timely performance of any of the provisions of these Conditions of Approval, irrespective of the length of time for which such failure continues, shall not constitute a waiver of City's right to demand strict compliance with such provisions in the future. No waiver by City of any failure of performance of these Conditions of Approval shall be effective or binding upon City unless made in writing by City and no such waiver shall be implied from any omission by City to take any action with respect to such failure.

10. As used in these Conditions of Approval, references to "City" shall include the City of Oakland, its respective officials, officers, employees, agents, departments, subdivisions, agencies (including City's Redevelopment Agency), Boards and Commissions (and individual members of each of the foregoing) and all of respective heirs, legal representatives, successors and assigns of each of the foregoing.

Payment of Fees for Independent Technical Reviews and Project Coordination and Management

11. Within 90 days following the Effective Date, the Project Applicant shall enter into an agreement to specify how fees and deposits will be managed to implement the project. The City and the Project Applicant acknowledge that the MMRP requires the Project Applicant to directly contract with a number of independent experts monitoring construction activities, including but not limited to traffic, landscape, cultural resource experts, geotechnical engineers, air quality and noise monitors, etc. In addition, the Project Applicant shall fund the full costs of all independent technical and other consultants the City reasonably deems necessary to comply with the Conditions of Approval and the mitigation monitoring requirements as set forth in the MMRP, as the final design and building permit plans for each Development Parcel are submitted. All work performed pursuant to this Condition of Approval shall be under the direct supervision of the City. Accordingly, the applicant shall establish an "evergreen" deposit fund with the City in order to cover the full costs of independent technical and other types of review, monitoring and inspection, including, without limitation, third party plan check fees. The payment of standard plan check fees, building permit fees, special inspection deposits and other required fees shall, to an extent determined by the City, be credited as part of this evergreen fund. The City shall provide the Project Applicant with quarterly detailed statements, including staff names, time entries and description of work performed, as to the amount of funds used and the amount of deposit required to sustain the fund. City retains the right to halt work on the project if Project Applicant fails to make requested payments to the fund

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within the time period specified. The Project Applicant may conduct an annual audit of the funds used. Any failure of any party to timely execute such Agreement shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval.

Indemnification Requirements

12. To the maximum extent permitted by law, the Project Applicant shall defend, hold harmless, and indemnify the City, its respective officials, officers, employees, agents, departments, subdivisions, agencies (including City's Redevelopment Agency), Boards and Commissions (and individual members of each of the foregoing) and all of respective heirs, legal representatives, successors and assigns of each of the foregoing (the "Indemnified Parties) against any and all losses, damages, liabilities, claims, liens, obligations, interest, penalties, fines, lawsuits and other proceedings, judgments and awards, challenges, demands, judgments, actions, causes of action, court costs, and legal or other expenses (including, without limitation, attorneys fees, expert witness and consultant fees and other litigation expenses), reasonable City Attorney time and overhead costs, and other normal, reasonable day-to-day business expenses incurred by City, all of whatever kind or nature, known or unknown, contingent or otherwise arising out of or related to (i) any City action or approval associated with the Project (including, without limitation, any legal or administrative challenge seeking to overturn, set-aside, stay or otherwise rescind or vacate the EIR for the Project or any other action or approval); (ii) the process for City approval of and development of the Project; (iii) any approval of another governmental agency for the project or any aspect thereof (including any legal or administrative challenge seeking to overturn, set-aside, stay or otherwise rescind such approval); (iv) bodily injury, or death, or property damage on any Development Parcel or common area within the Project site; or (v) any act or omission of the Project Applicant or any contractor, subcontractor, architect, engineer or supplier with respect to the development or use of the project or the Project site ("Indemnified Claims"). This indemnity shall not apply to the Indemnified Parties to the extent the liability, damages, claims, demands, judgments or other losses are caused by the negligence or willful misconduct of any Indemnified Party.

13. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs as used herein shall include, without limitation, any attorneys' fees, expert witness and consultant fee, court costs and other litigation fees, City Attorney time and

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overhead costs, and other City Staff overhead costs and normal day-to-day business expenses incurred by the City ("Litigation Expenses"). The Indemnified Parties shall have the right to select counsel to represent the Indemnified Parties, at the Project Applicant's expense, in the defense of any action specified in this Condition of Approval No. 12, to the extent that the Indemnified Claims under this Condition of Approval are covered by insurance carried by the Project Applicant, then counsel designated by the insurance carrier shall defend the Indemnified Parties. Upon the advice of the City Attorney, the City shall retain the right to reject such insurance company designated counsel (on the basis of a conflict, incompetency or similar grounds) and to require the Project Applicant to retain counsel reasonably acceptable to the City for the Indemnified Parties' defense. The Indemnified Parties shall take all reasonable steps to promptly notify the Project Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these Conditions of Approval.

14. Notwithstanding any provision to the contrary in these Conditions of Approval, Project Applicant's obligations in Conditions No. 12, 13, and 14 shall survive completion of the Project. A Project Applicant may be released from this indemnity obligation, including the Indemnification Agreement referred to in Condition of Approval No. 15, only in the event (a) it is assigned to and assumed by and binding upon a subsequent owner of the Property, and (b) such Project Applicant gives 30 days' written notice of such proposed assignment to the City Manager, and the City Manager approves such assignment in writing, which approval may be withheld if the City determines, in its discretion, that the proposed assignee's net worth or other financial resources are not sufficient to fulfill the foregoing indemnity obligation. Provided, however, that with respect to public improvements, this indemnity shall apply only to Indemnified Claims that arise prior to the City's acceptance of the public improvement and the expiration of any maintenance obligations of the Project Applicant, unless the Indemnified Claim (i) arose as a result of a latent defect in the public improvement; or (ii) arose as a result of direct or indirect action or inaction by Project Applicant, including, without limitation, construction, maintenance or operational activities, prior to the City's acceptance of the public improvement. In the case of the foregoing (i) or (ii), this indemnification shall apply regardless of whether the public improvement has been accepted by the City. "Public improvements" include all infrastructure improvements and property customarily accepted and maintained by the City that are offered for dedication to the City and actually accepted by the City, such as streets, sanitary sewer lines and the like. This indemnity shall include, without limitation, payment of all Litigation Expenses associated with any action herein.

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15. Within 90 days following the Effective Date, the Project Applicant shall enter into an Indemnification Agreement in a form acceptable to the City Attorney to establish in more specific detail the terms and conditions of the Project Applicant's indemnification obligations set forth in this Condition of Approval. Any failure of any party to timely execute such Indemnification Agreement shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval or any other project approval, except that it shall not limit Planning Director authority as set forth in Condition of Approval No. 8.
16. Developer's Indemnity obligations in Conditions of Approval No. 12, 13 and 14 are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that Developer may have to City.

Development Agreement Authority

17. Except as otherwise specified in these Conditions of Approval, to the extent any of these Conditions of Approval conflict with the Development Agreement, as adopted by the Oakland City Council in Ordinance ____, the Development Agreement shall supersede these Conditions of Approval, provided the Development Agreement has not been terminated.

Implementation and Phasing of Project

18. In the event that a Development Agreement is not approved, the ability to file for a building permit for any of the Development Parcels shall be limited to five years from the effective date of the adoption of the Ordinance re-zoning portions of the project site to the C-45 District. This limitation may be extended for up to one year upon submittal of a written request by the Project Applicant and may be considered by the Planning Commission pursuant to the requirements set forth in Oakland Municipal Code Section 17.140.030.

Mitigation Measures Part of Conditions of Approval

19. All Mitigation Measures in the EIR as deemed to be required in the Environmental Findings shall be considered Conditions of Approval for the project, as may be further refined and/or clarified by this Approval, including the refinements and clarifications set forth in these Conditions of Approval. Implementation of the Mitigation Measures shall be adhered to in accordance with the MMRP. The MMRP identifies the time frame and responsible party for implementation and monitoring of each measure, as modified by this Approval. Overall monitoring compliance with the mitigation measures will be the responsibility of the Development Director or his or her designee. Each of the

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improvements identified in the MMRP shall be implemented at the Project Applicant's sole cost and expense (except where only a fair share contribution is required as set forth in the MMRP or these Conditions of Approval) or secured with an improvement agreement, or similar financial assurance, acceptable to the City.

Drainage and Stormwater Management

20. The Project Applicant shall incorporate the following measures into the Master Improvement Plan for the Project, pursuant to Condition of Approval No. 27:
 - a. The Project Applicant shall meet the revised Clean Water Act requirements as established by the Regional Water Quality Control Board ("RWQCB") in the most recent version of such requirements or, if approved as of the date the grading permit application is filed, any final version of such requirements. (MM H. 3.b., H.1. F.4)
 - b. The site drainage plan shall include detailed measures to filter storm water run-off to the maximum feasible degree, given geotechnical and other constraints through infiltration opportunities, permeable concrete or other paving materials, bio-swales or grassy swales, and creating vegetated swales in the East and West Green areas, if deemed feasible.
 - c. Provisions for an inspection, monitoring, certification and maintenance process throughout the course of grading, construction and post construction to assure that the approved drainage plan and other measures are functioning properly.
 - d. Provisions for dewatering utility trenches or other excavations, appropriate subsurface drainage or other waterproofing systems, as required, to control the effect of shallow groundwater during construction. (MM H.3.c.)

Prior to the issuance of a grading permit for the site or any Development Parcel, the plans, information and analysis required by the preceding Condition of Approval shall be reviewed and approved by the City Engineer.

Transportation and Circulation

21. The Project Applicant shall implement all of the mitigation measures described in "Section B. Transportation, Circulation and Parking" of the MMRP. The project Applicant shall have prepared, by a licensed traffic engineer, and shall submit to the City for its approval, a Schematic Master Traffic Improvement Plan for all

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traffic improvements that are to be funded by the Project Applicant pursuant to Mitigation Measures B.1.a., B.1.b., B.1.c., B.1.d., B.1.e., B.2.a., B.2.b., B.2.c., B.2.d., B.3.a., B.3.h, and B.8. as set forth in the MMRP. This plan shall be submitted prior to the issuance of the first building permit for a Development Parcel.

As set forth in the MMRP and refined below, the Schematic Master Traffic Improvement Plan shall include the following improvements, analysis and information:

- a. The schematic design of traffic signals at the unsignalized intersection of Embarcadero and Oak Street (**MM B.1.a.**, #4009), including installation of pedestrian signal heads and other pedestrian safety features (**MM B.8.**)
- b. The schematic design of traffic signals at Embarcadero and 5th Avenue (**MM B.1.b.**, # 4266), including installation of pedestrian signal heads and other pedestrian safety features (**MM B.8.**)
- c. The schematic design and general specifications for restriping the eastbound 3rd Street approach at the intersection of 3rd and Broadway (**MM B.1.c.** #4002) to provide a separate left turn lane onto Broadway.
- d. The schematic design of traffic signals at the unsignalized intersection of 3rd Street and Oak Street (**MM B.1.d.** #4011).
- e. The schematic design and general specifications for converting the northbound center lane to a shared right turn lane and through lane at the signalized intersection of 5th Street and Broadway (**MM B.1.e.** #4003), including overhead and other directional signs indicating lane use.
- f. The schematic design of traffic signals at the unsignalized intersection of Embarcadero and Webster Street (**MM B.2.b.** # 4014), including installation of pedestrian signal heads and other pedestrian safety features (**MM B.8.**)
- g. The schematic design of traffic signals at the unsignalized intersection of 3rd and Market Streets (**MM B.2.c.**, #2071).
- h. The schematic design of optimization components including interconnection hardware (modems, microwave antennas, etc.) at 5th and Market Streets (**MM B.2.d.**, #4010) for each intersection roadway

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approach and coordination with signal phasing and timing of adjacent intersections.

- i. The schematic design of traffic signals at the unsignalized intersection of Embarcadero and Broadway (**MM B.3.a**, #4001), including installation of pedestrian signal heads and other pedestrian safety features (**MM B.8**).
 - j. Identification of the optimization components including interconnection hardware (modems, microwave antennas, etc.) at 7th and Market Streets (**MM B.3.h**, #456) for each intersection roadway approach and coordination with signal phasing and timing of adjacent intersections.
 - k. The schematic design and general specifications for the traffic signals shall include installation of optimization components such as interconnection hardware (modems, microwave antennas, etc.) for each intersection roadway approach and coordination with signal phasing and timing of adjacent intersections. In addition, each intersection and roadway approach shall include striping improvements, determination of locations for signal arms and other signal components and any work required to install them such as curb and sidewalk modifications, utility line relocation, etc. (**MM B.2.b-d**, **B3.a-3.h**)
 - l. Each traffic improvement detailed in the plan shall include cost estimates and an estimated length of time for completion.
 - m. A calculation of the number of project generated trips that will trigger the need for each traffic improvement, along with the calculations and methodology used to determine such number. The methodology shall be based on the EIR methodology for the project, as specified in the MMRP.
 - n. At the City's discretion, an independent traffic engineer shall be hired at the Project Applicant's expense to assist the City in their review and approval process for both the Schematic Master Traffic Improvement Plan and subsequent final design plans for the improvements.
22. Prior to implementation of these improvements, the Project Applicant shall submit final design plans and other specifications to the City and any other responsible agency, for their review and approval, including a traffic management and detour plan to be implemented during construction of the improvements. The final design shall be based on the approved Schematic Master Traffic Improvement Plan. (**MM B.12**.)

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23. Prior to the issuance of a building permit for each Development Parcel, the City shall calculate the total number of net new trips that will be generated by the proposed improvements, based on the following weekday PM peak hour adjusted trip rates: **(MM B.1.)**

Land Use	Trip Rate
Office	2.08
Retail	2.22
Supermarket	7.11
Restaurant	6.05
Hotel	0.49
Hotel Restaurant	3.30
Conference/Banquet	8.58
Theater	0.12

24. The Project Applicant shall construct each improvement measure upon the determination by the City that the total number of net new trips, when added to the net new trips already generated by the project and previously reported to the City, meets the threshold number of trips that triggers the need for each improvement measure pursuant to Condition of Approval No. 21. At the discretion of the City, the determination of the timing of construction of any triggered improvement may be based on a threshold of ninety percent of the net new trips projected for the Development Parcel(s) for such improvement determined pursuant to Condition of Approval No. 21 1, in order to account for methodological margins of accuracy and to assure implementation commensurate with project-generated traffic impacts. The Project Applicant shall then construct the required improvement(s) and such improvement(s) shall be completed prior to the issuance of an occupancy permit for the Development Parcel improvement(s).

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Parking Requirements and Management Plan

25. The project applicant shall implement all of the mitigation measures pertaining to parking described in "Section B. Transportation, Circulation and Parking" of the MMRP. The project applicant shall have prepared, a parking management plan for each Development Parcel which shall also include the following information and other requirements:
- a. The calculation of parking supply shall also take into account the use of transportation management programs as set forth in MM # C.2 concerning rideshare programs, transit pass programs, the City Carshare Program and parking cash-out programs in an effort to reduce parking.
 - b. The parking structure for Site G shall incorporate preferential spaces for carpool and vanpool use and shall reserve two spaces at no cost for the City Carshare Program. (MM C.2.d.)

Shuttle Program

26. The Project Applicant shall prepare a shuttle operations plan serving the Project area and implement the plan, including a specific commitment of financial participation for peak hour service, routing, schedule and phased implementation according to Development Parcel and operator. This plan shall be reviewed and approved by the Development Director. The shuttle service shall become operative within six months of occupancy of the first building. Thereafter, the implementation of the shuttle shall become a requirement prior to each occupancy permit, according to the approved phased schedule. At the Project Applicant's discretion and with the approval of the City, the shuttle program may be implemented through a provider such as AC Transit. In that event, the Project Applicant shall execute an agreement with such provider with an equivalent level of financial participation. (MM C.2.g.)

Public Improvement Requirements

27. Prior to the issuance of a grading or building permit for the first Development Parcel, the Project Applicant shall submit a Schematic Master Improvement Plan for the site prepared by a licensed Civil Engineer. The plan shall contain a specific phasing schedule, including the required improvements of the Minimum Project under the Development Agreement, along with the public improvements that must accompany and correlate with each Development Parcel. This plan must reference and incorporate all applicable conditions and requirements as set

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forth in these Conditions of Approval for the private property and the public rights of way, including but not limited to:

- a. Curbs, gutters, curb cuts, driveways, pedestrian ways, sewer lines and laterals, storm drains, street trees, paving details, street lighting, locations of transformers and other above ground utility structures, on-street parking and accessibility improvements required to comply with all applicable City standards. **(MM C.2.i. and k.)**
- b. Bus shelters, benches, turnouts, benches to serve the project, in coordination with AC Transit **(MM C.2.c.)**
- c. The design, specifications and locations of bicycle racks. **(MM B.7.)**
- d. The design, specifications and locations of the water lines required by the East Bay Municipal Utility District (EBMUD) to serve the site and meet the minimum standards of the Oakland Fire Department for fire fighting purposes.
- e. The approved landscape plans for Water Street, the Bay Trail improvements, including the boardwalk element adjacent to the East Green and site F-3, and the design of street tree locations and planting specifications.
- f. The approved landscape and improvement plans for the public spaces and plazas at the termini of Washington Street, Broadway, Franklin, Webster Street and Alice Street, including the paving details and other improvements to the intersection of Embarcadero and Webster adjacent to Jack London Plaza.
- g. This information shall include a capacity analysis in designated areas of the sub-basin from the point of discharge to confirm the improvements required to the downstream sewer system to meet Public Works Agency requirements.

This plan shall be reviewed and approved by the City Engineer and used as the confirmation of compliance with subsequent phased final improvement plans submitted during the phased development provided for in this project.

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Project Sustainability Requirements

28. The applicant shall use all commercially reasonable efforts to comply with the following sustainability measures into construction of the buildings, except for future tenant improvements, on all Development Parcels and associated site plan, landscaping and public improvements. Thereafter, the applicant shall assure that measure 28.a. is continued for the duration of the project. In the event the following standards and requirements cannot be met, written documentation must be submitted prior to the issuance of a building permit with specific findings about why the requirements could not be met.

a. Limit or eliminate use of potable water for landscaping irrigation.

Requirement: use high efficiency irrigation technology or use captured rain or recycled site water for all new or replaced irrigation systems to reduce potable water consumption for irrigation by 50 percent over conventional means. (*Reference: U.S. Green Building Council LEED Reference Package, Water Efficiency Category, Credit 1 – Water Efficient Landscaping*). Implementation: Provide plans and specifications for high efficiency irrigation equipment in the final landscaping plans for each phase of construction. Include calculations demonstrating that potable water consumption for irrigation is reduced by 50 percent.

Requirement: Use plants native to Northern California with low water use needs for landscaping. Implementation: Provide list of plants to be used in final landscaping plans.

b. Use low-VOC (volatile organic compounds) emitting building materials.

Requirement: Adhesives must meet or exceed the VOC limits of the South Coast Air Quality Management District rule # 1168, and all sealants used as a filler must meet or exceed the Bay Area Air Quality Management District Regulation 8, Rule 51. Implementation: Provide Material and Safety Data Sheets (MSDS) for all adhesives and sealants used, and identify VOC limits for confirmation of compliance with above standards.

Requirement: Paints and coatings must meet or exceed the VOC and chemical compound limits of Green Seal requirements. Implementation: Provide MSDS information for each paint and coating used in the buildings and identify VOC limits and chemical component limits.

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Requirement: Carpet systems must meet or exceed the Carpet and Rug Institute Green Label Indoor Air Quality Testing Program.
Implementation: Provide cut sheets for each carpet product used in every building identifying VOC limits and confirming the above standard.

Requirement: Composite wood and agrifiber products must not contain added urea-formaldehyde resins. Implementation: Provide cut sheets for each composite wood or agrifiber product used confirming urea-formaldehyde resin limits.

Requirement: Use formaldehyde free fiberglass insulation in the walls and ceilings. Implementation: Provide specifications for wall and ceiling insulation as part of the building permit submittal confirming formaldehyde free fiberglass content for insulation.

(References: U.S. Green Building Council, LEED Reference Package, Indoor Environmental Quality Category, Credit 4 – Low Emitting Materials).

Divert 75 percent of construction waste from landfills and redirect recyclable material back to the manufacturing process.

Requirement and Implementation: Submit a Job Site Waste Reduction and Recycling Plan (JSWRRP) when applying for demolition and building permits. The JSWRRP will delineate estimated quantities of materials generated during construction of the approved improvements to each Development Parcel and how they will be handled (reused, recycled or land-filled.) Target a minimum of 75 percent of the materials generated for reuse or recycling.

(Reference: City of Oakland Ordinance 12553 entitled "Establishing Construction and Demolition Debris Waste Reduction and Recycling Requirements).

Use recycled content of materials for construction.

Requirement: Specify a minimum of 25 percent of building materials that contain in aggregate, a minimum weighted average of 20 percent post-consumer recycled content material, or a minimum weighted average 40 percent post-industrial recycled content material. Implementation: Provide specifications and contractor submittals confirming the above standard for each construction project on a Development Parcel, and a

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spreadsheet of all recycled materials used in construction confirming the standards. In the spreadsheet, include information about the percentage of all recycled content materials, the costs of all materials for the project, and calculations demonstrating that the above standards have been satisfied.

(Reference: U.S. Green Building Council, LEED Reference Package, Materials and Resources Category, Credit 4 – Recycled Content.)

Provide views and natural daylighting in 75 percent of occupied indoor spaces.

Requirement: Design improvements to achieve a minimum Daylight Factor of 2 percent (excluding all direct sunlight penetration) in 75 percent of all space occupied for primarily visual tasks, not including copy rooms, laundry rooms, kitchens, mechanical, storage and other low occupancy support areas. Implementation: Provide information and design details in the final building plans showing typical room sections identifying devices for direct sun control. Provide narrative as required to confirm compliance with the above standard. In addition, submit glazing cut sheets for each building identifying T_{vis} values and area calculations defining the daylight zone and daylight prediction calculations (or results of simulations) confirming the minimum 2 percent Daylight factor has been met.

(Reference: U.S. Green Building Council, LEED Reference Package, Indoor Environmental Quality, Credit 8 – Daylight and Views)

Public Safety, Fire and Life Safety and Requirements

29. Prior to the issuance of an occupancy permit for each Development Parcel, a Site Security and Management Plan shall be developed in conjunction with the Oakland Police Department, including parking garage security and lighting, building security features, security personnel staffing organization and management and emergency protocol procedures.

The following standards and requirements shall apply to the project and to each Development Parcel:

- a. Fire hydrants shall be incorporated, as required to attain a standard that achieves coverage so that a hydrant is accessible around a building

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perimeter with a hose reach of not less than 150 feet as per Oakland Fire Department or within 30 feet of any fire sprinkler or standpipe connection.

- b. All new fire hydrants shall meet East Bay Municipal Utility District (EBMUD) standards, 4.5 inch steamer by 2.5 inch outlet.
- c. A sprinkler system for each building including the capacity to annunciate by zone and tamper switches, as required by the Oakland Fire Department on a building-by-building basis, taking into account building square footage, occupancy limits, height and emergency access. Final building specific annunciation requirements shall be reviewed and approved by the Oakland Fire Department as part of the fire plan check.
- d. All entry gates with either key or push button Knox Box access shall include a minimum 8 inch by 10 inch Knox Box to store required maps, plans and up to five (5) sets of keys for building maintenance areas.
- e. Standpipes shall meet the following requirements:

They shall be combined with the building sprinkler system with 2.5 inch NST outlets.

Fire Department connections to sprinklers shall be shown as one 30 degree, 5 inch Stortz and two each 2.5 inch NST gated inlets.

Final locations of standpipes for each Development Parcel shall be reviewed and approved by the Oakland Fire Department prior to the issuance of a building permit.

- f. Smoke detectors and related initiating and signaling devices shall be shown to be installed to annunciate fire by zone, mechanical (by location), electrical (by location) and other areas as may be required by the Oakland Fire Chief.
- g. A comprehensive fire alarm system for all Development Parcels (except Site C, Water 1 and Pavilion 2), meeting the following minimum specifications:

(1) Activation by water flow or other signaling device to annunciate at the alarm panels.

(2) Initiation of an audible and visual alarm in the building.

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- (3) Identification for zone locations on alarm panels for smoke or water flow alarms, as approved by the Oakland Fire Department.
 - (4) Ability for a private alarm company to relay an activated zone to the Oakland Fire Department.
 - (5) Button board or digital alarm panels shall show all smoke detectors by zone, individual or miscellaneous rooms and water flow zones.
 - (6) The communications system for all building sites shall include electrical shut-off, and a general alarm switch to shut off and activate the fire alarm manually for each designated area within the building. For Sites F-1, F-2, F-3 and 66 Franklin, this requirement shall include a shut-off and reverse HVAC switch.
- h. For Sites D, F-1, F-2, F-3 and G, an Emergency Response Protocol Plan shall be submitted to the Oakland Fire Department prior to the issuance of a building permit. This plan shall include but not be limited to:
- (1) The provision of a Command Center for each building at a minimum size of 8 feet by 10 feet, including alarm panels and large Knox Boxes at entry points as required by the Oakland Fire Department.
 - (2) Delineation of emergency evacuation routes, posting locations of emergency information, and the identification of safe zones in the building to accommodate non-ambulatory occupants and to provide staging areas for Fire Department operations.
 - (3) As required by the Oakland Fire Department, the buildings shall be designed so that areas can be shut down using magnetic or other acceptable closures with indicator signals on the annunciator panels or at the Command Center that doors have closed.

Administrative Review Standards for Commercial and Office Uses

30. The following performance standards and review criteria shall be used to administratively review uses for the commercial and office portions of the project, prior to the issuance of the first building permit for construction of the building on each Development Parcel, if applicable:
 - a. Review and written verification shall be provided to confirm that loading storage and equipment areas have been designed and designated to

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account for the needs of the proposed use without interfering with parking, access or loading areas of adjacent commercial or office uses.

- b. For food related uses such as cafes, delicatessens, restaurants, fast food establishments and similar activities, the following standards and conditions shall apply:
- c. Adequate provisions have been made for trash disposal and recycling, including provision of standard City of Oakland containers within the public right of way, following the requirements and standards of the California Uniform Retail Food Facilities Law (Health and Safety Code Sections 37500 et. seq.), as reviewed and approved by the Planning Director or his/her designee.
- d. Adequate ventilation, filtration and odor control systems shall be installed for any commercial hoods, along with submittal of provisions for maintenance and inspection of such a system should odor complaints be received.
- e. For entertainment uses, live entertainment shall be subject to the cabaret permit review procedures under Oakland Municipal Code Section.
- f. For purposes of this project, the following uses permitted and conditionally permitted within the C-45 zoning designation shall be prohibited:
 - All Residential Activities
 - Consumer Laundry and Repair Service
 - Automotive Servicing
 - Automotive service and repair
 - Drive thru facilities

Construction Management and Phasing

31. As a requirement of each submittal of demolition, grading or building permit plans for a Development Parcel, the Project Applicant shall submit a Construction Phasing and Management Plan, incorporating all applicable mitigation measures in the MMRP including Air Quality (MM C.1a); Cultural

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Resources (MM E.1a and b. E.2, E.3a. through f.); Hazardous Materials Management (MM H.1, H2a. through d., H.3a through c. and H.4.); Solid Waste Reduction and Recycling (MM K.3); Noise (MM D.1a through d); Traffic, Circulation and Parking (MM B.12). The plan shall also include the following additional measures and standards:

- a. A site security and safety plan to assure that grading and construction activities are adequately secured during off-work hours.
- b. A fire safety management plan for all phases of work, including provisions for access, water, and other protection measures during grading and construction activities.

Design Requirements

32. The following design refinements, standards and requirements shall be incorporated into the Design Guidelines for the project and shall become a part of the "PUD Design and Specification Document for the Jack London Square Redevelopment Project:"

General Design Standards and Requirements Applicable to All Development Parcels:

- a. Exterior lighting for the project shall comply with the following standards and criteria:
 - (1) It shall provide adequate illumination for on-site security and display purposes for the building, parking lots and pedestrian accessways while limiting off-site spillover of light through shielding and directing light in a downward direction.
 - (2) It shall meet and maintain the minimum standards of the State Business and Professions Code Section 25612.
 - (3) It shall be designed as an integral part of the building facades to highlight building forms and architectural details.
- b. All mechanical equipment, including electrical and gas meters, heating/air conditioning or ventilation units, radio/tv antennas or satellite dishes shall

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be appropriately screened from off-site view, and electrical transformers shall be placed underground or appropriately screened.

- c. All trash enclosures shall be completely screened from off-site view by a solid fence or masonry wall at least six (6) feet high in harmony with the architecture of the building(s). Alternatively, trash facilities may be placed within the buildings.
- d. All visible vents, gutters, downspouts, flashings and the like shall be painted to match the color of adjacent surfaces or shall be incorporated into the overall exterior color and materials scheme for the building.

Exterior Materials and features – color and materials board minimum requirements:

- *Exterior Siding Finishes for Stucco:* Stucco finishes shall be specified for all buildings.
- *Window Types:* Window Recess and Trim Details shall be specified; recesses shall be specified and shall be commensurate with the size, scale and type of window.
- *Exterior Colors:* Exterior colors shall be specified with large scale samples, if required.
- *Other exterior details:* railings, trim, ground floor treatments, etc. shall be specified.
- *Master Sign Program:* A master sign program for the site shall be submitted, including all project identification and directional signs, temporary real estate sales signs and/or banners and street signs, and other signs for the site.

Design Standards Applicable to Development Parcels F1, F2, F3, G and D, and 66 Franklin:

To minimize wind effects, the Project Applicant shall incorporate one or more of the following into the final design:

- Incorporate specific elements such as façade articulation and horizontal projections, including wind screens, to break up and reduce the flow of winds along and/or down the face of the building.

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- Place or retain several street trees (that would provide sufficient canopy and weight) along main pedestrian corridors around the building.
- Incorporate into the project design structural protective measures, such as overhead awnings and/or vertical wind screens and fences where necessary, to protect pedestrian walkways and gathering points.

Landscaping Requirements

33. The Project Applicant shall prepare and implement a Landscape Plan substantially consistent with the Landscape Plan prepared by HOK, Inc., Sheets 2-21, dated January 16, 2004 and Sheet L-1.1a dated September 2, 2003. A schematic master landscape plan shall be prepared for the Development Parcels and for the Project Area outside of the Development Parcels, based on a detailed survey of existing site conditions and locations of major features including utility lines and other public improvements. This plan shall include a phasing plan showing how the landscaping for the project shall be implemented along with the public improvements as set forth in Condition of Approval No. 27 that must accompany and correlate with each Development Parcel. This plan must reference and incorporate all applicable conditions and requirements as set forth in these Conditions of Approval. This plan shall be submitted to the Development Director for review and approval prior to the issuance of the building permit for the first Development Parcel. This plan shall include:
- a. Complete soils information, including soil preparation and amendment specifications, soil particle size for existing site soils and imported soils, representative soils and water table tests confirming the suitability of the site for the plant materials selected.
 - b. Plans for Water Street, including paving materials, tree and plant materials, street furniture, lighting, etc.
 - c. Plans for the street sections of Washington, Broadway, Franklin, Webster, Harrison and Alice from Embarcadero through to Water Street and the Estuary. Typical paving and materials cross sections, trees and plant materials,
 - d. Plans for public plaza areas at the foot of Washington, Broadway, Franklin and Webster, including the proposed improvements to Embarcadero adjacent to Webster and Jack London Plaza adjacent to Site F-1.

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- e. Plans and general specifications for other landscaping features and public art installations.
- f. Plans and general specifications for the segments of the Bay Trail through the site pathways throughout the site, including the boardwalk areas adjacent to the Estuary.
- g. Plans for the East and West Greens, including sculptural features, furniture, play equipment and other major features.
- h. Plans for the historic, interpretive and plaza area around Heinold's, including the reinstallation of existing features honoring Jack London, and an overall physical theme and other unifying physical elements.
- i. All play surfaces and play structures throughout the development will comply with ADA standards.
- j. The Prior to the issuance of a building permit for each Development Parcel, a final landscape plan shall be submitted for that phase, based on the results, requirements, information and recommendations contained in the master schematic landscape plan, and including but not limited to the following:
 - Detailed irrigation plans, consistent with Sustainability Measure Condition No. 28. Planting details such as location, number and sizes of the plant materials and the specifications for planting.
 - Street trees shown on all on the site plan.
 - Specifications for driveways, paving, entry and other surface treatments.
 - Detailed landscape and improvement plan for the East and West Green areas.
 - A detailed landscape maintenance plan for each phase, including short and long term plant and tree care, irrigation system maintenance and other information to assure that the landscape plan will be successfully established.

Both the master schematic plan and each successive final landscape plan shall be independently reviewed and approved by a qualified landscape architect and other professional consultant, as deemed required by the Development Director, at the Project Applicant's expense.

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34. Prior to the issuance of an occupancy permit each Development Parcel, the Project Applicant shall enter into a two year landscape maintenance agreement with the City, subject to the review and approval of the City Attorney, running from the date the landscaping is deemed complete and in compliance with the approved landscape plan for each phase.

35. The Project Applicant shall prepare and implement a Tree Protection Plan consistent with the City's Tree Protection Ordinance that avoids construction-related impacts to protected trees outside of the construction area. The Project Applicant shall base the tree permit application on the Tree Removal Plan within the construction area as set forth in the Tree Removal Plan (Sheets 20 and 21.)

**EXHIBIT D
GENERAL FINDINGS
RELATED TO APPROVAL OF JACK LONDON SQUARE
BY THE OAKLAND CITY COUNCIL**

I. INTRODUCTION

1. These general findings are adopted by the City of Oakland (the “City”) for the Jack London Square project. These findings refer to the Environmental Impact Report prepared for that project, SCH #2003022086 (the “EIR”), and are based in part upon that EIR. These findings are also based upon the staff reports presented for the February 25, 2004 and March 17, 2004 Planning Commission hearings (collectively, the “Commission Staff Reports”), the subsequent staff report presented for the May 18, 2004 City Council hearing (the “Council Staff Report”) and all materials contained in the record of proceedings, as identified in the CEQA findings for the Jack London Square project (described below). Some findings are based especially upon specific reports, or upon specific pages of the EIR, as noted below. However, all findings are based upon the entire record. References to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the finding.

2. These general findings are attached as Exhibit D and incorporated by reference into the Council Staff Report, which was prepared for the appeal to the City Council of the Planning Commission approval of the Jack London Square project and the consideration by the City Council of two ordinances regarding that project. Attached to the Council Staff Report is an Exhibit A that contains CEQA findings. Also attached to the Council Staff Report is an Exhibit B that references impacts, mitigation measures, and resulting levels of significance, and sets forth the Mitigation Monitoring and Reporting Program (the “MMRP”). Also attached to the Council Staff Report is an Exhibit C that contains the conditions of approval as modified and amended by the City Council. This Exhibit D contains findings regarding General Plan Consistency, and approval of a Rezoning, a Development Agreement, a Planned Unit Development, a Preliminary Development Plan, Final Development Plans, a Major Conditional Use Permit, a Major Variance, Design Review and miscellaneous matters. All Exhibits are incorporated by reference into each other, and into the Council Staff Report.

3. These findings use capitalized terms (for example, “Revised Project”) as they are used in the EIR. References to title, chapter and code sections are references to the Oakland Municipal Code unless the context clearly indicates otherwise. References to Exhibits are references to the exhibits attached to the Council Staff Report to which this Exhibit D is attached. Reference to the General Plan are references to the Oakland Comprehensive Plan, including the Estuary Policy Plan.

II. GENERAL PLAN CONSISTENCY

4. The consistency between the Revised Project and the General Plan (including the Estuary Policy Plan) is discussed in the EIR, especially at Draft EIR pages IV.A-1 et seq., and Final EIR pages III-1 and III-2. Consistency with the General Plan is also discussed in the Commission Staff Reports, which are part of the record for the Revised Project. These

findings have been specifically reviewed by the City Council and the City Council hereby adopts the conclusions, analysis and explanations contained in the EIR, Commission Staff Reports and Council Staff Report, and finds the Revised Project consistent with the General Plan. The various land uses authorized for the Revised Project are compatible with the objectives, policies, general land uses, and programs specified in the General Plan. The Revised Project is compatible with and conforms to the objectives, policies, general land uses and programs specified in the General Plan. The Revised Project will further the objectives and policies of the General Plan and not obstruct their attainment. The Revised Project is compatible with, and does not frustrate, General Plan goals and policies. The Revised Project is in harmony with the policies of the General Plan. The Revised Project is in harmony with surrounding neighborhoods, and the site is physically suitable for the development proposed.

5. The General Plan comprises many objectives, policies, principles, programs, standards, proposals and action plans (collectively “policies”), as well as performance standards. The City Council upholds the Planning Commission findings and recognizes that the policies necessarily compete with each other. Examples of the tensions between General Plan policies are found between those policies that promote managed growth and encourage mixed use construction in the Jack London Square area, and those that provide for protection of resources that exist because land is undeveloped (such as open space and visual resources). The City Council has considered all applicable General Plan policies and the extent to which the Revised Project conforms to each of those policies.

6. The City Council, confirming the Planning Commission approval of the Revised Project, has fully evaluated the extent to which the Revised Project achieves each policy, including those pertaining to compatibility of land uses, public access to waterfront activities, pedestrian orientation, mixed use development, parking availability, housing needs, parking, transportation standards and goals, protection of visual resources, standards for public services and utilities, and protection of archeological, cultural and historical resources. The City Council, again confirming the action by the Planning Commission, has also fully considered the Revised Project’s compliance with all performance standards in the General Plan, and finds the Revised Project in compliance with those standards.

7. The City Council, upholding the Planning Commission approval of the Revised Project, finds the Revised Project compatible with neighboring development. From a land use perspective, the Revised Project represents an intensification of existing uses within Jack London Square, and fulfills several key goals of the General Plan (and the Estuary Policy Plan in particular). In addition, the retail and other commercial opportunities offered by the Revised Project will reflect and foster nearby existing retail and office opportunities, especially those downtown and in the produce market area. From an aesthetic perspective, the project layout promotes visual access to the estuary and adjacent open spaces. Some of the buildings within the Revised Project may be of greater height and mass than existing nearby buildings; however, this merely continues a preexisting trend in the Jack London District in which new buildings are being constructed at a larger scale than many of the existing structures.

8. For the reasons stated in the EIR, and in the Commission Staff Reports and Council Staff Report, in these findings, and in the CEQA findings for the Revised Project (Exhibit A to the Council Staff Report), the City Council finds that the balance achieved by the

Revised Project among competing General Plan policies is acceptable, and that the Revised Project complies with all performance standards in the General Plan. The Revised Project represents a reasonable accommodation of all applicable competing policies in the General Plan. The Revised Project provides an appropriate level of protection of resources while also promoting the General Plan goals referenced in the CEQA statement of overriding considerations (Exhibit A to the Council Staff Report). Specifically, the implementation of the Revised Project will result in the fulfillment of several important General Plan policies including promoting mixed uses downtown as well as cultural, art and entertainment resources, encouraging public access to the waterfront, enhancing the City's long-term economic development and improving pedestrian and vehicular transit in the Jack London Square area. The revitalization of the Jack London Square area and improvement in shoreline access and open spaces will result in substantial improvements to the overall quality of life in this portion of the City. These policies and objectives, along with others, have been set forth in detail in the public record for the Revised Project, including specifically in the Commission Staff Reports and the Council Staff Report.

III. REZONING

9. Pursuant to Chapter 17.144, the Planning Commission has recommended that the City Council grant the proposed rezoning that is described and presented on pages IV.A-23 through 26 (including figure IV.A-2) of the Draft EIR. The notice required by section 17.144.060 was duly given prior to the Planning Commission consideration of this action and the City Clerk also gave proper public notice pertaining to the City Council consideration of the rezoning.

10. This rezoning will change the zoning of the portions of the Revised Project currently zoned M-20 (Site G) and R-80 (Sites F2 and F3) to share the C-45 zoning designation that applies to the remainder of the project area, in order to standardize the entire project area zoning designation. Site G will remain within the currently applicable S-4 Design Review Combining Zone. The rezoning will promote local and regional welfare by allowing the uniform development of a cohesive, high-quality regional attraction. In order for the Revised Project to realize its potential as an economic generator for the City, it must be structured so that uniform zoning rules apply to the area.

11. Further, the C-45 zoning designation is much more compatible with the vision of the General Plan (and specifically of the Estuary Policy Plan) for the area than the existing M-20 and R-80 designations. The WCR-1 (Waterfront Commercial Recreation, Phase II) General Plan designation applicable to Sites F2 and F3 and the MUD (Mixed Use District) General Plan designation applicable to Site G both emphasize retail, restaurant, cultural, office hotel, commercial-recreational and open space uses, which are more consistent with a C-45 (community shopping commercial) zoning designation than with the M-20 (light industrial) or R-80 (high-rise apartment residential) zoning designations. In addition, while the existing M-20 designation for Site G may permit most of the uses proposed for that site, it also allows additional, light industrial uses that would not be appropriate in the context of the commercial and entertainment goals of the Revised Project, and therefore the C-45 designation more accurately guides the range of uses to be allowed.

12. The rezoning does not introduce a new zone into the area, and does not create an incompatibility with the surrounding districts. Instead, the rezoning merely moves the existing boundary line that separates the C-45 district from the M-20 and R-80 districts. The affected area includes Sites F2, F3 and G. The rezoning would allow retail, restaurants, hotels, personal services, and commercial group assembly as permitted or conditionally permitted uses on Sites F2 and F3, instead of emphasizing residential uses with limited conditionally permitted retail uses. Further, the current boundary line would not permit a hotel on Site F3 without a variance. The rezoning would also restrict Site G from incorporating light industrial and manufacturing uses that would not be consistent with the rest of the Revised Project. Retaining the existing boundary lines between the M-20, R-80 and C-45 districts on the site of the Revised Project would be contrary to the public interest, as it could result in the introduction of incongruent use elements into the Jack London Square area, which is envisioned in the General Plan as an entertainment and retail focal point. The current boundary line would not facilitate the comprehensive and integrated development plan represented by the Revised Project.

IV. DEVELOPMENT AGREEMENT

13. Pursuant to Chapter 17.138, the Planning Commission has recommended that the City Council approve the proposed development agreement in connection with the Revised Project (“Development Agreement”). The notice required by section 17.138.030 was duly given prior to the Planning Commission consideration of this action and the City Clerk also gave proper public notice pertaining to the City Council consideration of the Development Agreement.

14. The Development Agreement contains all information required by State Law and by the Oakland Municipal Code, including all information referenced in chapter 17.138.

15. As explained above, the Revised Project is consistent with the General Plan and all applicable planning and zoning enactments.

16. The Estuary Policy Plan was adopted as a component of the General Plan by the City Council in 1999 and provides specific, detailed recommendations regarding development along the Oakland Estuary, including within the Jack London Square area. As discussed above, the Revised Project is consistent with the General Plan (including the Estuary Policy Plan) in all significant respects. The Revised Project is extensive in scope and therefore must be built out over a significant period of time, with several different development phases proposed. The Development Agreement is necessary in order to regulate this large-scale development project and to provide both the City and the project sponsor with assurances that the project can be successfully and completely built out over time. In order to provide further certainty to the City that the Revised Project will be constructed, the Development Agreement requires that the project sponsor construct a “minimum project” to be built within a defined time period. An EIR has been prepared and certified for the Revised Project, which fully evaluates the traffic, parking, public service, visual and other impacts of Revised Project. The Revised Project would create approximately 70,000 square feet of new, permanent open space. In addition, the Meadow Green on the western end of the project area (adjacent to Site C) would be reconfigured for better access to the estuary shore, and the Bay Trail along the waterfront would be improved and widened in places. The open space depicted in the Preliminary Development

Plan is required by the terms of the Planned Unit Permit to be reserved for public use. The Revised Project will improve the open space within the project area as discussed in the “Public Uses” section of the Preliminary Development Plan for the project.

17. The Revised Project will have substantial economic benefits to the City. Because it will act as a regional commercial and entertainment destination, it will generate significant income from visitors, neighbors and tenants alike. For instance, the project sponsor has estimated that if the Revised Project is constructed in accordance with the Final Development Plans approved by the Planning Commission on March 17, 2004, the Revised Project will generate the following annual revenue:

<u>Source</u>	<u>Annual Revenue</u>
Property (Possessory Interest) Tax	\$525,783
Sales Tax	\$595,725
Parking Tax	\$370,318
Transient Occupancy Tax	\$1,141,766
Business Tax	\$209,895
Utility Consumption Tax	\$79,138
Total	\$2,922,624

If development were increased to the maximum use intensity permitted under the Preliminary Development Plan, still more financial benefits likely would be generated. These amounts will be supplemented by other secondary economic benefits as well, such as dollars spent in the neighborhood by employees working within the Revised Project area. The Revised Project will likely create thousands of permanent and construction jobs. For instance, the project sponsor estimates that if the Revised Project is constructed in accordance with the Final Development Plans approved by the Planning Commission on March 17, 2004, the Revised Project will create approximately 2,000 permanent jobs and 650 construction jobs. If development were increased to the maximum use intensity permitted under the Preliminary Development Plan, still more jobs likely would be created. The project will stimulate an appreciation in property values and establishment of attractive uses throughout the Jack London Square District, and will accelerate renovation of the Broadway corridor. Furthermore, Site G is located within the Central District Urban Renewal Plan area and therefore will generate tax increment revenue to assist with redevelopment projects in the area. The project sponsor will comply with the small business utilization guidelines of the Port of Oakland, which are meant to help promote small businesses within the Revised Project.

18. Construction of the Revised Project will create an attractive, clean, and safe world-class waterfront destination that will enhance the image of Oakland. The California Harvest Hall that is authorized to be located on Site F1 would be a permanent celebration of the food, wine and agricultural industries of California and thus attract customers and visitors from the entire region and beyond. The project sponsor plans to conduct historical walking tours featuring Heinold’s First and Last Chance Saloon and Jack London’s cabin to highlight Jack London and his association with the waterfront, as well as other historical features of Jack

London Square and the waterfront, such as the Potomac. The Revised Project will include state-of-the-art energy efficiency features, will use renewable resources and products with low VOC content, and will have an extensive reuse/recycling program. In addition, as an urban infill mixed-use project, the project encourages the use of public/alternative transportation and does not contribute to the negative impact of sprawl. By creating a convincing example of large-scale retail success in the City, the Revised Project will act as a catalyst for retail in Downtown and beyond.

V. PLANNED UNIT DEVELOPMENT

19. The Revised Project includes a Planned Unit Development (PUD) permit pursuant to Chapters 17.122 and 17.140. The Revised Project complies with all PUD regulations set forth in Chapters 17.122 and 17.140, except those requirements for which exceptions, conditional use permits or variances are granted, as noted below in Sections VI and VII. The Revised Project embodies a large, integrated development project that adheres to a comprehensive plan, and which is located on adjacent tracts of land that comprise one, continuous project site. The Revised Project is the subject of an application submitted by the project sponsor as the representative of the Port of Oakland, which currently owns all of the property included within the Revised Project boundaries. The Revised Project has undergone design review, in which the professional services of an architect licensed by the State of California, a landscape architect licensed by the State of California, and an urban planner holding or capable of holding membership in the American Institute of Certified Planners were employed.

20. Pursuant to section 17.122.060, suitable areas have been set aside for public facilities and open space, as set forth in the record for the Revised Project, including the Meadow Green (adjacent to Site C), the plaza area at the terminus of Broadway near Water Street, the Marina Green (adjacent to Site F3) and the Jack London Plaza area to the west of Site F1. The site is not suitable for location of a school and there are no residences proposed as part of the Revised Project, so no dedication of land for school purposes or school impact mitigation fees have been required.

21. The City Council finds that the Development Agreement constitutes sufficient evidence to assure completion of the entire development in accordance with the Preliminary Development Plan and staged development schedule set forth in the Development Agreement.

22. Except as expressly noted in these findings, the Revised Project meets all development standards, including those set forth in section 17.122.110.

23. All of the requirements for action set forth in Chapter 17.140 have been complied with. The Planning Commission held two public hearings on the application, for which notice was properly given. The Planning Commission approved the following: a preliminary development plan for the entire Revised Project; a final development plan for each of Site C, Site D, Pavilion 2, Site F1, Site F2, Site F3 and Site G; and two alternative final development plans for 66 Franklin. Accordingly, the City Council confirms these actions and approves (i) the preliminary development plan for the entire Revised Project, (ii) a final

development plan for each of Site C, Site D, Pavilion 2, Site F1, Site F2, Site F3 and Site G and (iii) two alternative final development plans for 66 Franklin. The City Council acknowledges that the final development plan for Water I Expansion will be submitted for review and approval at a later date, pursuant to the terms of the Development Agreement discussed above. Both the preliminary and final development plans contain all information required by Chapters 17.122 and 17.140, including specifically sections 17.140.020 and 17.140.040. The submitted final development plans conform in all major respects with the preliminary development plan. Their level of detail is sufficient to indicate fully the ultimate operation and appearance of the Revised Project. The submitted final development plans were processed in accordance with code requirements, and the City Council has reviewed the plans and upholds the Planning Commission's finding that they conform to acceptable City standards as set forth and further specified in the conditions of approval.

24. The Revised Project meets the requirements of section 17.140.80 and the planned unit development regulations in Chapter 17.122. Specifically, the Revised Project has been designed in compliance with the requirements of section 17.122.110 relating to floor area ratios, height limitations, provision of yards and courts, provision of usable open space, standards for usable open space, undergrounding of electronic and telephone facilities, fire alarm conduits, and electrical wiring (including that required for street lights), standards for electric and telephone facilities, and standards for street lighting and fire alarm facilities.

25. Pursuant to the terms of section 17.122.100.B, the following uses within the Revised Project area will be considered permitted uses, not conditional uses:

- Convenience Market
- Fast-Food Restaurant
- Alcoholic Beverage Sales
- Mechanical or Electronic Games
- Group Assembly
- Automotive Fee Parking

The City Council upholds the Planning Commission's finding that these exceptions are appropriate. The Revised Project is intended to function as a regional attraction that will increase the number of visitors to the City and provide commercial and recreational activities for residents and tourists alike. The lengthy development period of the Revised Project, combined with potentially changing demographics and public demands over time, requires the greatest flexibility possible in future decisions on project uses.

26. The off-street parking and loading facilities required by the Revised Project may be located within the project area without reference to lot lines or blocks, pursuant to section 17.122.100.F. This flexibility in the distribution of parking areas will add to the project's overall flexibility in meeting future commercial, demographic and other demands.

27. As explained above, the Revised Project is consistent with the General Plan and all applicable planning and zoning enactments. The location, design and size of the Revised Project are such that the development can be well integrated with its surroundings. The Revised Project has been designed to incorporate mitigation of impacts to the surrounding existing development and to include buffers between the project and the development, all of which adequately reduces the impacts of development of the Revised Project, as set forth in the MMRP, Exhibit B.

28. As explained in detail in the EIR, traffic generated by the Revised Project can be accommodated safely and without undue congestion on major streets, and will not unduly burden local streets with the implementation of the traffic improvements as set forth in the MMRP Exhibit B. All feasible mitigation measures to avoid significant impacts on traffic have been required. To the extent that significant traffic impacts are unavoidable, the City has adopted in its CEQA Findings a Statement of Overriding Considerations that deems such impacts acceptable in light of the benefits of the Revised Project. The future occupants of the Revised Project will be adequately served by existing facilities and services, in combination with the facilities and services proposed in connection with the Revised Project. The Revised Project will offer an attractive, healthful, efficient and stable environment for recreation, shopping, and work. The comprehensive, integrated development plan for the Revised Project, which results in the benefits described in the overriding considerations identified in the CEQA Findings (Exhibit A to the Council Staff Report), could not otherwise be achieved under the zoning regulations. The Revised Project is well integrated into its setting. It will not require excessive earth moving or destroy desirable natural features, will not be visually obtrusive and will harmonize with surrounding areas and facilities. With the implementation of the mitigation measures with the set forth in the MMRP (Exhibit B to the Council Staff Report), the Revised Project will not substantially harm major views for surrounding residents, and will provide sufficient buffering in the form of spatial separation and other means as explained in detail in the EIR, the Commission Staff Reports, the Council Staff Report and the record for the project.

VI. MAJOR CONDITIONAL USE PERMIT

29. The Revised Project includes a hotel, two pedestrian bridges, and a reduction in parking due to shared parking, all considered to be conditional uses within the C-45 zoning designation. The City Council upholds the Planning Commission's approval of these conditional uses, pursuant to Chapter 17.134 and especially section 17.134.050. The notice required by section 17.134.040 was duly given prior to the Planning Commission consideration of this action, and the City Clerk also gave proper public notice pertaining to the City Council consideration of this action. The location, size, design, and operating characteristics of the Revised Project will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration given to harmony in scale, bulk, coverage and density; to the availability of civic facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the Revised Project.

30. The location, design, and site planning of the Revised Project will provide a convenient and functional working, shopping and civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

31. The Revised Project will enhance the successful operation of the surrounding area in its basic community functions, and will provide an essential service to the community or region.

32. The Revised Project conforms to all applicable design review set forth in the design review procedure at section 17.136.070.

33. As explained above, the Revised Project is consistent in all significant respects with the General Plan and all applicable planning and zoning enactments.

34. *Hotel.* Pursuant to section 17.56.060, hotels are permitted within areas zoned C-45 only upon the granting of a conditional use permit. The Revised Project is located along the waterfront in an area with a concentration of amenities for hotel patrons, including restaurant, retail, recreation, open space and exercise facilities, and is well-served by public transit. The proposal considers the impact of the employees of the hotel on the demand in the City for housing, public transit, and social services. The proposal is consistent with the goal of attracting first-class, luxury hotels along the waterfront which provide: (a) a minimum of one hundred (100) sleeping rooms; (b) a full service restaurant providing three meals per day; and (c) on-site recreational amenities, which may include an exercise room, swimming pool, and/or tennis courts. The Revised Project will be of an architectural and visual quality and character that harmonizes and enhances the surrounding area, and such design includes: (i) site planning that ensures appropriate access and circulation, locates building entries which face the area from which visitors are most likely to arrive, provides a consistent development pattern along the area from which visitors are most likely to arrive, and ensures a design that promotes safety for its users; (ii) landscaping that creates a pleasant visual corridor along the primary streets with a variety of local species and high quality landscape materials; (iii) signage that is integrated and consistent with the building design and promotes the building entry, is consistent with the desired character of the area, and does not detract from the overall streetscape; (iv) the majority of the parking within structured parking facilities, which, while not located to the rear of the building, are convenient to hotel guests and are consistent, compatible and integrated into the overall development; (v) appropriate design treatment for ventilation of room units as well as associated structured parking areas, and prominent entry features that may include attractive porte-cocheres; (vi) building design that enhances the building's quality with strong architectural statements, high quality materials particularly at the pedestrian level and appropriate attention to detail; (vii) lighting standards for hotel buildings and grounds that will not be overly bright and will direct the downward placement of light. The Revised Project provides adequately buffered loading areas that, to the extent possible, are located on secondary streets. While an operator for the hotel has not yet been identified, the terms of the Development Agreement assure that there will be no transfer of hotel development rights to a third party operator without appropriate City review and approval.

35. *Pedestrian Bridges.* Pursuant to section 17.102.200, pedestrian bridges are permitted over city streets only upon the granting of a conditional use permit. In the Revised Project, one pedestrian bridge will provide a convenient and safe method for crossing the Embarcadero between Sites F2 and G, and another pedestrian bridge will provide a convenient method for crossing Harrison Street between Sites F2 and F1. This will allow visitors to park their cars at Site G and access the rest of the project area without having to wait for traffic along

the Embarcadero; in addition, it will allow easy access from Site F2 to the second level of Site F1.

36. *Shared Parking.* Pursuant to section 17.116.200, the City may in its discretion reduce the total parking requirements for a project by up to 50% upon the granting of a conditional use permit. The Revised Project contains off-street parking areas on Site G and on Site F2. These areas jointly serve the multiple commercial activities throughout the Revised Project. The typical utilization of the parking area would be staggered to such an extent that the reduced number of spaces would be adequate to serve all such activities. Mitigation Measure B.4 in the EIR and MMRP (Exhibit B to the Council Staff Report) regulates the amount of parking required within the Revised Project at the time each building is constructed based on the calculation of parking demand during peak periods, thus ensuring that the project parking supply will continue to be sufficient to meet demand as the Revised Project is built out over time. Therefore, the City Council upholds the Planning Commission's approval of a major conditional use permit allowing the total parking requirement for the Revised Project to be reduced by an amount not to exceed fifty percent (50%), as determined by the calculation set forth in Mitigation Measure No. B.4 in the MMRP.

VII. MAJOR VARIANCE

37. *The Revised Project includes the ability to establish "Fast Food Restaurant Commercial Activities"* (as defined in section 17.10.190) within the project area to the east of Harrison Street without regard to a minimum radius from other fast food restaurants in the area. The City Council upholds the Planning Commission's approval of this major variance, pursuant to Chapter 17.148 and especially section 17.148.070. The notice required by section 17.148.040 was duly given prior to the Planning Commission consideration of this action, and the City Clerk also gave proper public notice pertaining to the City Council consideration of this action.

38. Section 17.102.210.D, which applies to (among other areas) that portion of the project area to the east of Harrison Street, provides that no Fast Food Restaurant Commercial Activity shall be located within a 1,000 foot radius of an existing or approved fast food restaurant. This major variance is required to ensure flexibility in the distribution of fast food restaurants, including "short-order" specialty and ethnic cuisines, throughout the Revised Project, ensuring that although the project's unique physical layout results in a straddling of Harrison Street, the distribution of uses throughout the Revised Project will be unrestricted. Without the variance, restaurants that fall within the definition of "Fast Food Restaurant Commercial" in section 17.10.190 would essentially be prohibited anywhere on Sites F2, F3 and G, since most or all of each of these sites is within 1,000 feet of Site F1, which is expected to contain multiple "short order" specialty cafes. A major variance is therefore granted to permit fast-food restaurant commercial activities the within project area to be located within a one thousand (1,000) foot radius of existing or approved fast-foot restaurants, as measured from the center of the front property line of the proposed site.

39. In order to enjoy the privileges enjoyed by owners of other property zoned C-45 and subject to a PUD permit, the owner(s) of the project site must be permitted to develop a flexible, consistent, integrated development plan that is fitted to the unique retail and tourist needs for the site. The Revised Project could not achieve the desired flexibility and diverse

quality of development in strict compliance with the development standards. The integrated, comprehensive nature of the Revised Project satisfies the purposes of the development standards, and strict compliance with those standards would present practical difficulties, unnecessary hardships and inefficient development patterns. The variance thus does not grant special privileges inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.

40. The variance will not adversely affect the character, livability or appropriate development of abutting properties or the surrounding area, since those areas are already developed. On the contrary, the requested variance helps to achieve a superior design for the site by creating a unified and consistent set of use requirements that have been developed in order to enable the Revised Project to become a regional attraction due to its many varied retail and recreational offerings. As stated elsewhere in these general findings (Exhibit D), the Revised Project is compatible with the surrounding area. As also stated elsewhere in these general findings (Exhibit D), the Revised Project promotes public welfare, and is consistent with, *and not detrimental to, adopted plans and development policies.*

VIII. DESIGN REVIEW

41. Pursuant to Chapter 17.136, the City Council upholds the Planning Commission's *granting of design review approval for the Revised Project.* All procedures for regular design review have been followed, and the design review has been processed and considered as part of the PUD permit, pursuant to section 17.136.120. Proper public notice was duly given prior to the Planning Commission consideration of design review, and the City Clerk also gave proper public notice pertaining to the City Council consideration of this action.

42. Design review is required in connection with the approval of the major conditional use permit discussed above (section 17.134.050), approval of project construction that may affect the Heinold's First and Last Chance Saloon (section 17.102.030.B), and approval of construction on Site G, which is subject to an S-4 Design Review Combining Zone (section 17.80.030).

43. The Revised Project will help achieve an integrated commercial and public use area comprised of open space, retail, entertainment, office, restaurant and other commercial facilities that are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other buildings and facilities in the vicinity; and the relation of the Revised Project to the Jack London Square / Oakland Estuary setting, as seen from key points in the surrounding area. The City Council has carefully considered the design of the Preliminary Development Plan for the Revised Project, as well the Final Development Plans for eight of the nine project sites. To the extent that any of the approved Final Development Plans change, the ultimate appearance of those sites will be regulated by the design review guidelines implemented as a part of the Preliminary Development Plan and the Development Agreement.

44. The Revised Project design will be of a quality and character that harmonizes with, and serves to protect the value of, private and public investments in the area.

The area of the City in which the Revised Project is situated is a densely developed area of mostly low- and mid-rise buildings in a variety of building types, including industrial and warehouse buildings, new residential buildings, and live-work developments.

45. The proposed design conforms in all significant respects with the General Plan and all applicable planning and zoning enactments.

46. The Revised Project will not adversely affect the exterior features of Heinold's First and Last Chance Saloon. The Revised Project will not adversely affect the special character, interest, or value of the Heinold's building and its site, as viewed both in themselves and in their setting. While the Revised Project will change the area around the Heinold's building, it will create a visually compelling new streetscape that will complement the building as well as other historic elements of the area. Further, the building on Site F1, next to the Heinold's building, will be set back at least 20 feet from all sides of the Heinold's building. This design will serve to include the Heinold's building in the overall appeal of the neighborhood, without damaging the individual value and historical significance of the building itself.

EXHIBIT E

List of Changes to Land Use Entitlements

MMRP

Mitigation Measure B.4

The paragraph of Mitigation Measure B.4 that begins with “Method 1” has been changed as follows (added text is in bold and underlined):

Method 1: Aggregating the number of parking spaces required for the net new amount of each use, based on the weekday peak parking demand rates set forth below, and then modifying that number to take into account shared parking (**made possible by the different peaking characteristics of parking demand for each of the uses**), and transit shuttle services.

The last three paragraphs of Mitigation Measure B.4 have been changed as follows (added text is in bold and underlined; deleted text is shown with a strikethrough):

The peak parking demand calculated above under Method 1 and Method 2 shall then be adjusted to include existing demand for the following numbers of existing parking spaces (but modified downward to account for any captive market factor) to the extent that such sites have been, or will be in connection with the new building, developed within the project:

- **Method 1: Site D, 54 spaces; Site F1, 140 spaces; and Site G, 46 spaces.**
- **Method 2: Site D, 54 spaces; Site F1, 200 spaces; Site F2, 90 spaces; and Site G, 46 spaces.**

If deemed acceptable by the City of Oakland, shared parking rates may conform to shared parking standards promulgated at the time in question by the Institute of Transportation Engineers (ITE), Urban Land Institute (ULI) or comparable reference source.

Prior to the issuance of the building permit for each new building within the project, or each structural addition to an existing building that creates new gross square footage, the project applicant shall prepare and submit to the City drawings of all existing and any proposed off-street parking facilities providing the required off-street parking spaces. If attendant parking services provide some of the required parking, the location of such stalls shall be clearly shown.

Upon occupancy of the new building, the project applicant shall provide an adequate number of parking spaces within the project area, or within a reasonable walking distance from the subject site (**where duration of use for such purpose is assured**) as determined by the City to meet the higher parking demand calculated above. The calculation of the number of parking spaces to be supplied shall take into account: (i) as applicable, confirmed increase of up to 30 percent in parking capacity due to attendant parking services; (ii) the use of employee shuttles to use off-site parking spaces (**where duration of use for such purpose is assured**); (iii) existing excess parking supply at the Jack London Square Washington Street garage of 350 parking

spaces during the weekday peak period and 250 parking spaces during the weekend peak period; and (iv) ~~any existing excess parking supply on Sites F1, F2 or G1~~ **(60 parking spaces during the weekday peak period and 0 parking spaces during the weekend peak period), F2/F3 (390 parking spaces during the weekday peak period and 300 parking spaces during the weekend peak period) or G (69 parking spaces during either the weekday or the weekend peak period)**, to the extent that any such sites have not already been developed.

Mitigation Measure C.2

Mitigation Measure C.2 has been modified to add the following text to the end of the Transit Measures section:

C.2f1: The project sponsor shall post the schedules, fares and routes of local public transit services provided within the project vicinity, including the Water Taxi, the Ferry and AC Transit, at several publicly visible locations throughout the project site.

C.2f2: The project sponsor shall participate in current and future public transportation studies for the Jack London District sponsored by local or regional government agencies, and intended to address long term public transportation solutions/alternatives for the area.

Mitigation Measure C.2 has been modified to add the following text to the end of the Bicycle and Pedestrian Measures section:

C.2ii: The project sponsor shall post information indicating the identified City of Oakland Bicycle Routes serving the project and vicinity, as well as the location of the Bay Trail, at several publicly visible locations throughout the project site.

PDP

Office Cap

The second paragraph under “Land Uses and Intensity” has been modified as follows (added text is in bold and underlined, deleted text is shown with a strikethrough, and footnote remains unchanged):

For each site, the uses permitted within that site may be blended and substituted for one another in any manner, provided that: (i) the total amount of square footage of each permitted use is less than the maximum square footage allowed for that use in any of the variants for the site in question;¹ (ii) the **total amount of square footage of office uses for the entire project does not exceed 355,300;** (iii) **the** building constructed on the site has no more than the applicable maximum number of stories set forth below; and ~~(iiiiv)~~ the building constructed on the site is no higher (at the top of its parapet) than the applicable maximum height set forth below.

Removal of Certain Services and Administrative / Addition of Nonassembly Cultural Uses

The list of permitted retail uses on page 2 of the PDP has been modified as follows (added text is in bold and underlined, deleted text is shown with a strikethrough):

Retail – Any of the following commercial uses, as defined in Chapter 17.10 of the Oakland Zoning Code: General Food Sales (including restaurant/banquet facilities); Convenience Sales and Service; General Retail Sales; General Personal Service; ~~Consultative and Financial Service; Consumer Laundry and Repair Service; Administrative; Business and Communication Service;~~ Retail Business Supply; Convenience Market; Fast-Food Restaurant; Alcoholic Beverage Sales; Mechanical or Electronic Games; General Wholesale Sales; Animal Care; Group Assembly; and Automotive Fee Parking. **Retail uses may also include Nonassembly Cultural uses, as defined in Section 17.10.190 of the Oakland Zoning Code.**

Notwithstanding anything to the contrary in this PUD Document, a Major Conditional Use Permit (as defined in Section 17.134.010 of the Oakland Zoning Code) shall be required for any Fast-Food Restaurants proposed to be located on Site G.

Setback at Hotel Corner

The following paragraph has been added under the “Landscaping and Open Space” section:

The walls of the building on Site F3 shall be set back at least forty feet (40’) from the railing along the estuary waterfront.

Exhibits A and D to the PDP have been revised to conform with the plan shown as Attachment 1 to this exhibit.

Design Review

The second paragraph of the “Design Review” section on page 3 of the PDP has been revised as follows:

Further design review of each of the approved FDPs, as well as ~~C~~changes to any FDP approved for any building within the Project Area, shall be subject to the terms of that certain Development Agreement between the City of Oakland and Jack London Square Partners, LLC, and CEP-JLS I LLC, entered into as of _____, 2004.

Site G

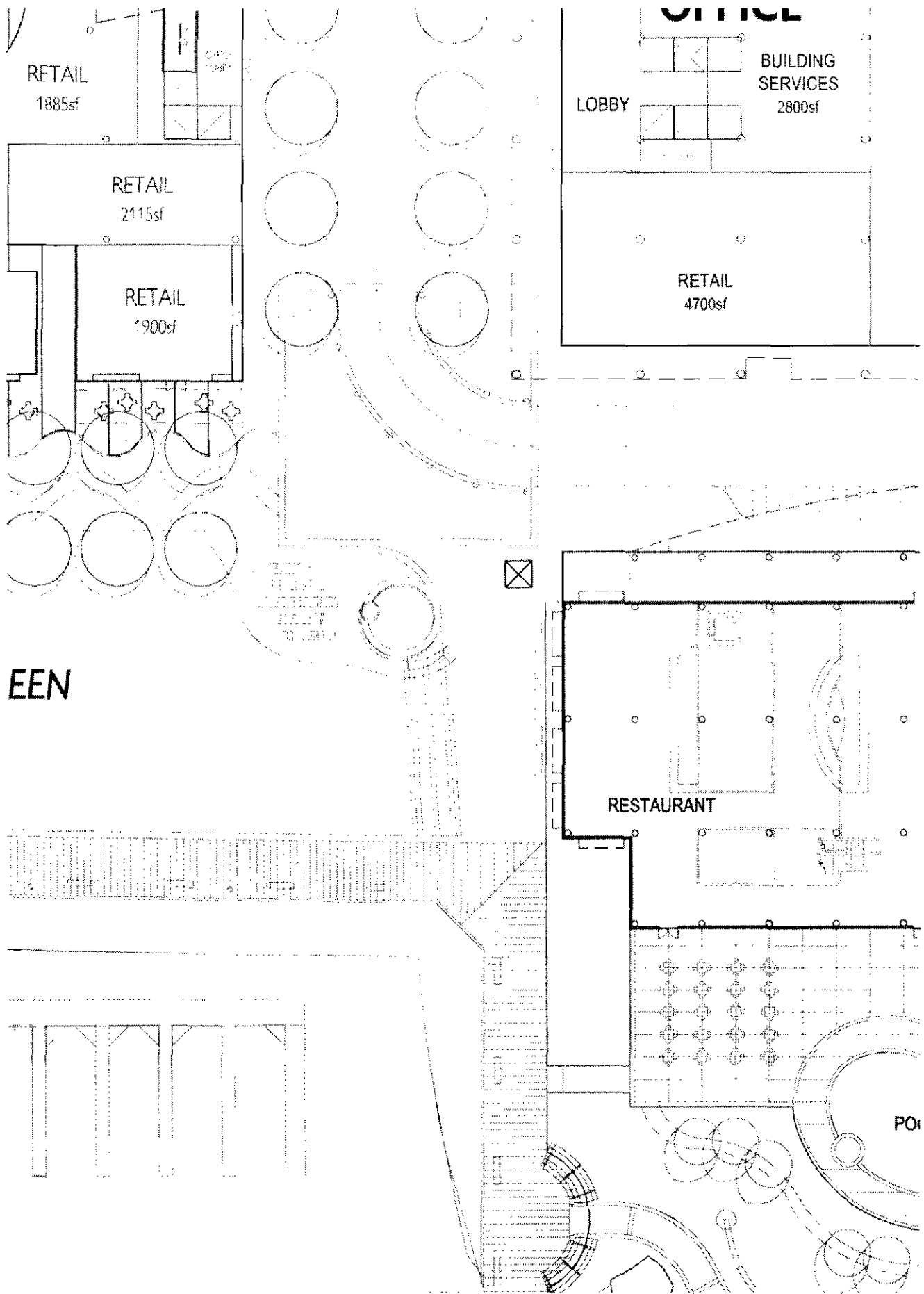
Exhibit B of the PDP is changed to delete Site G Variant 2 and to amend Site G Variant 1 to require a minimum of 15,000 square feet of neighborhood-serving retail.

Pavilion 2 and Foot of Broadway

Exhibits A, C, and D to the PDP have been revised to conform with the plan shown as Attachment 2 to this exhibit.

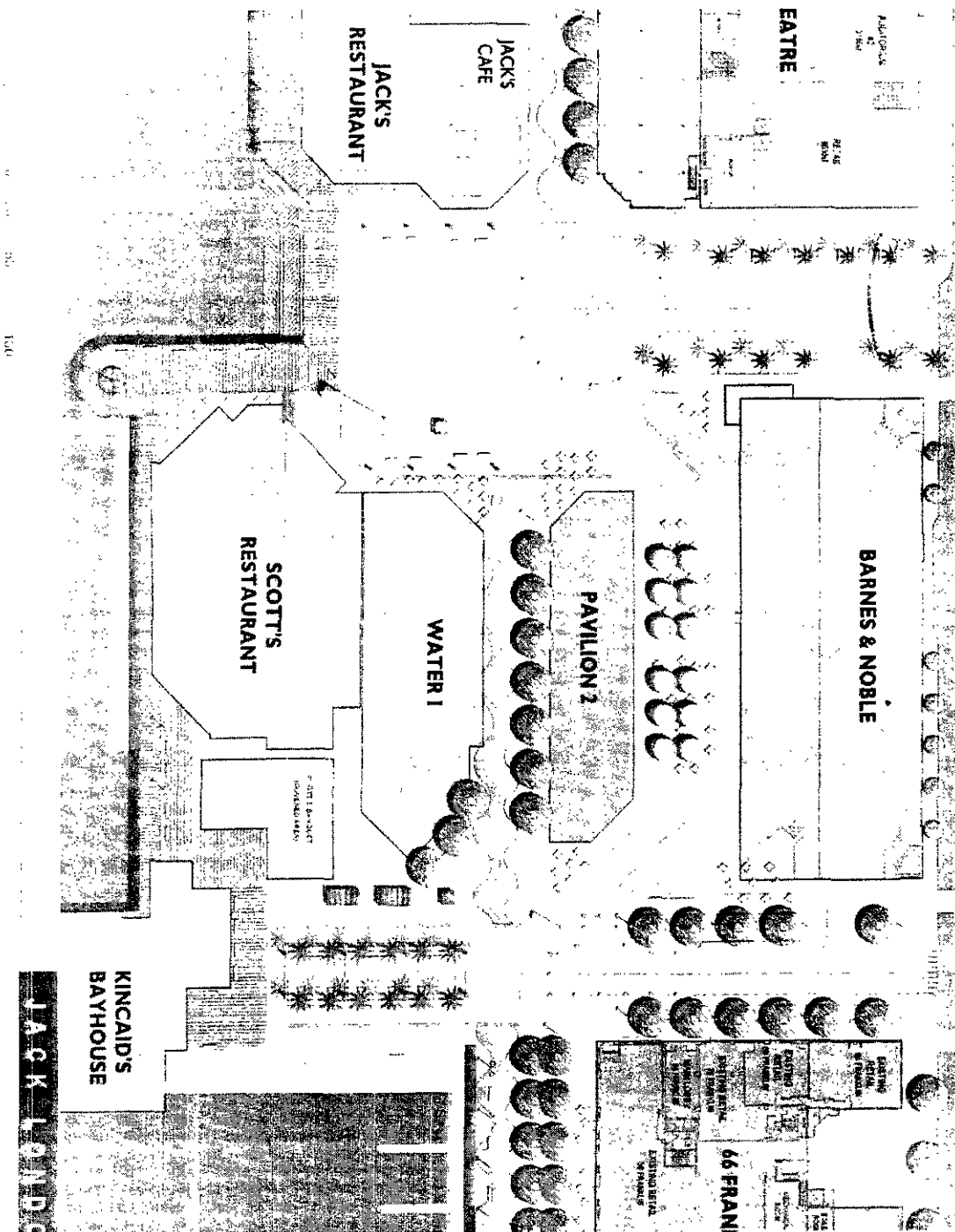
Final Development Plan for Pavilion 2

The Final Development Plan for Pavilion 2 has been revised to conform with the plan shown as Attachment 3 to this exhibit.



EEN

EXHIBIT E
ATTACHMENT 1



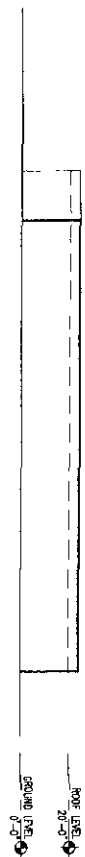
Site Plan

**"FOOT OF BROADWAY"
&
PAVILION 2**

JACK LONDON SQUARE

Hellmuth, Obata + Kassabaum, Inc.

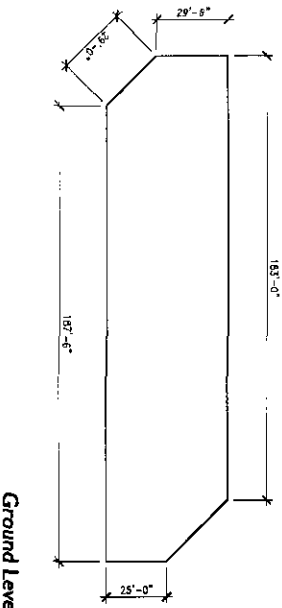
PAVILION 2



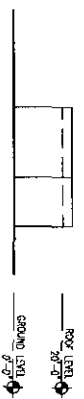
South Elevation



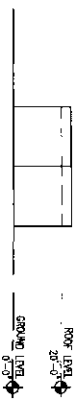
North Elevation



Ground Level Plan



West Elevation



East Elevation

EXHIBIT E
ATTACHMENT 2
Page 2 of 3



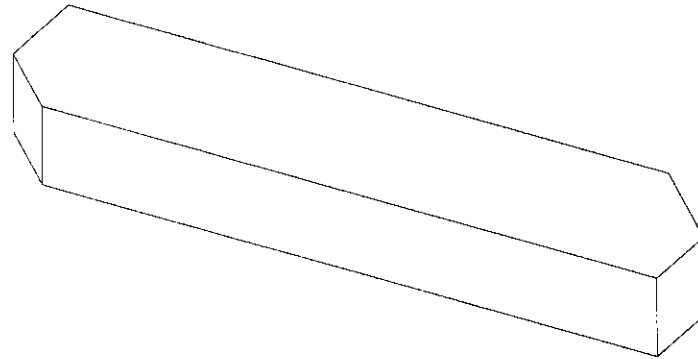
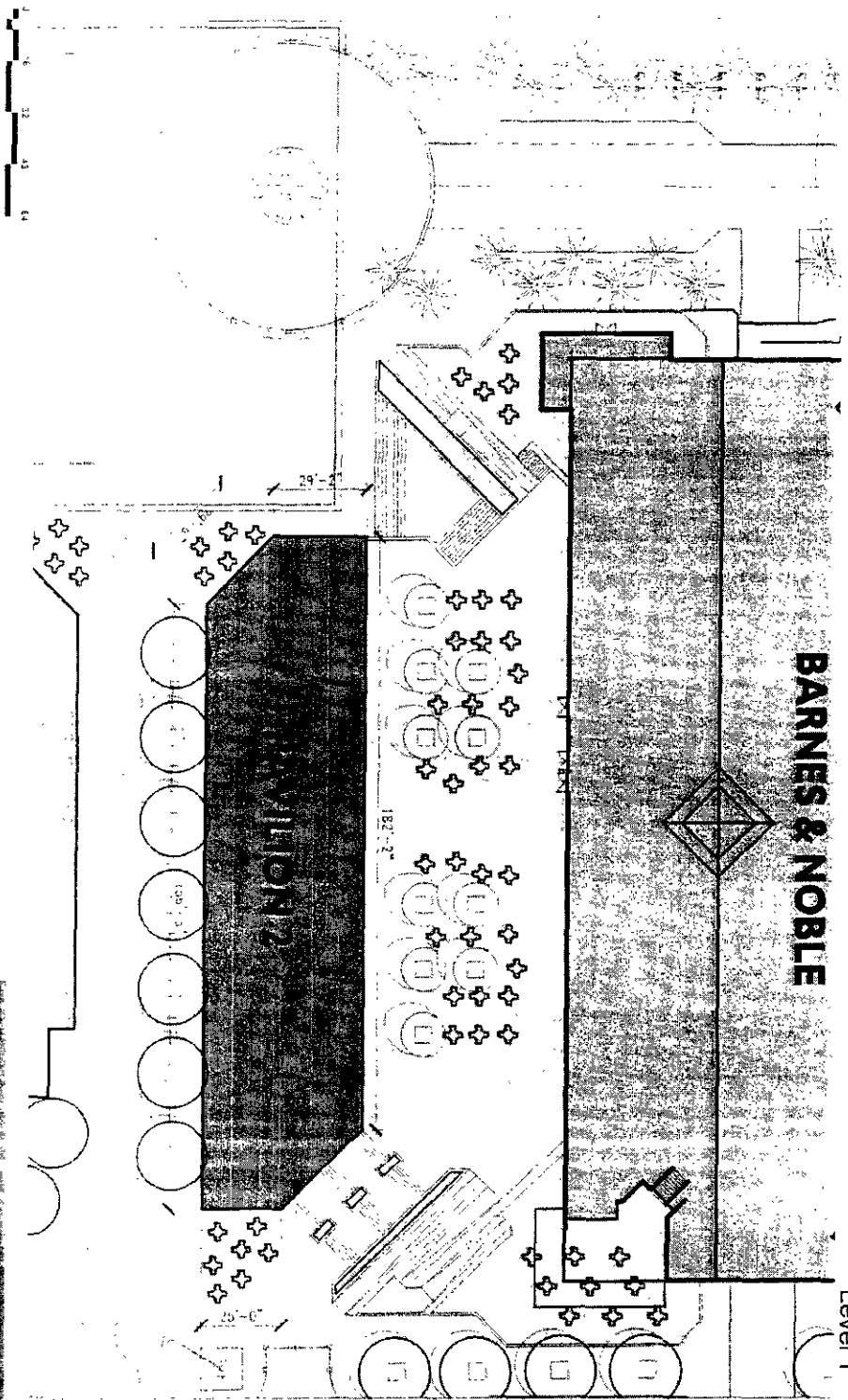


EXHIBIT E
ATTACHMENT 2
Page 3 of 3

Axonometric View Looking North

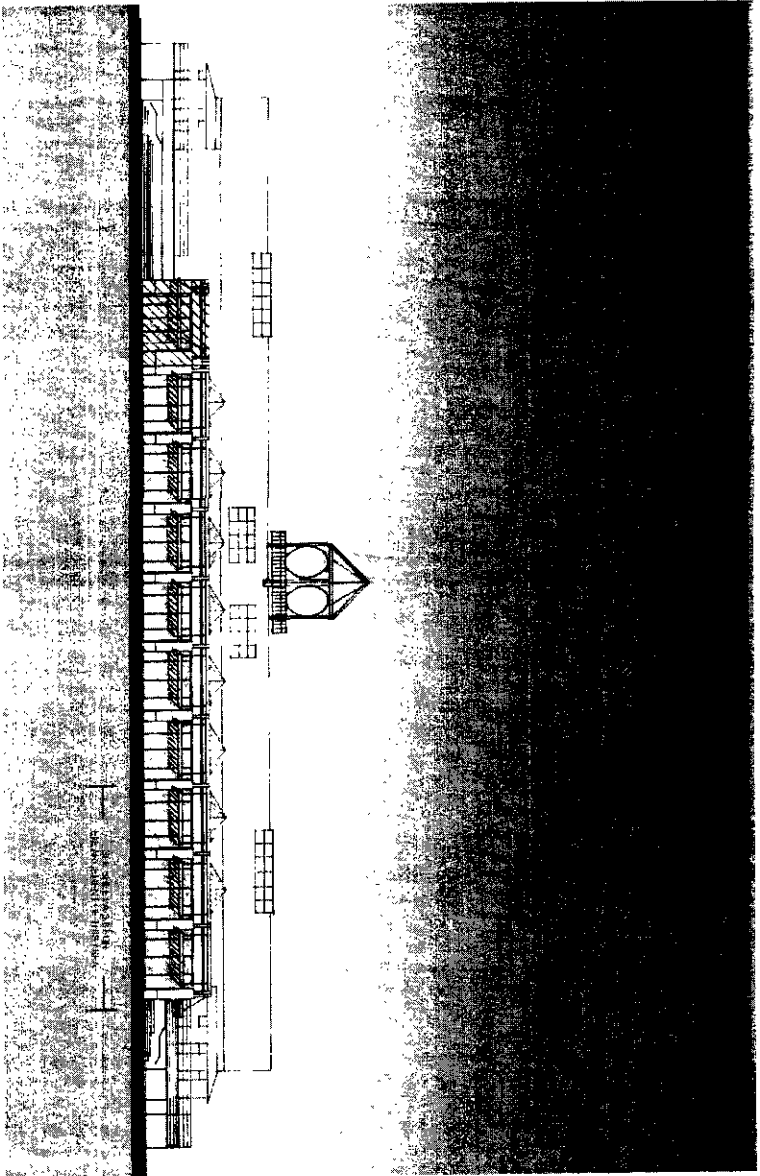


Pavilion 2
Level 1

JACK LONDON SQUARE

1800 North Central Ave. - Chicago, IL

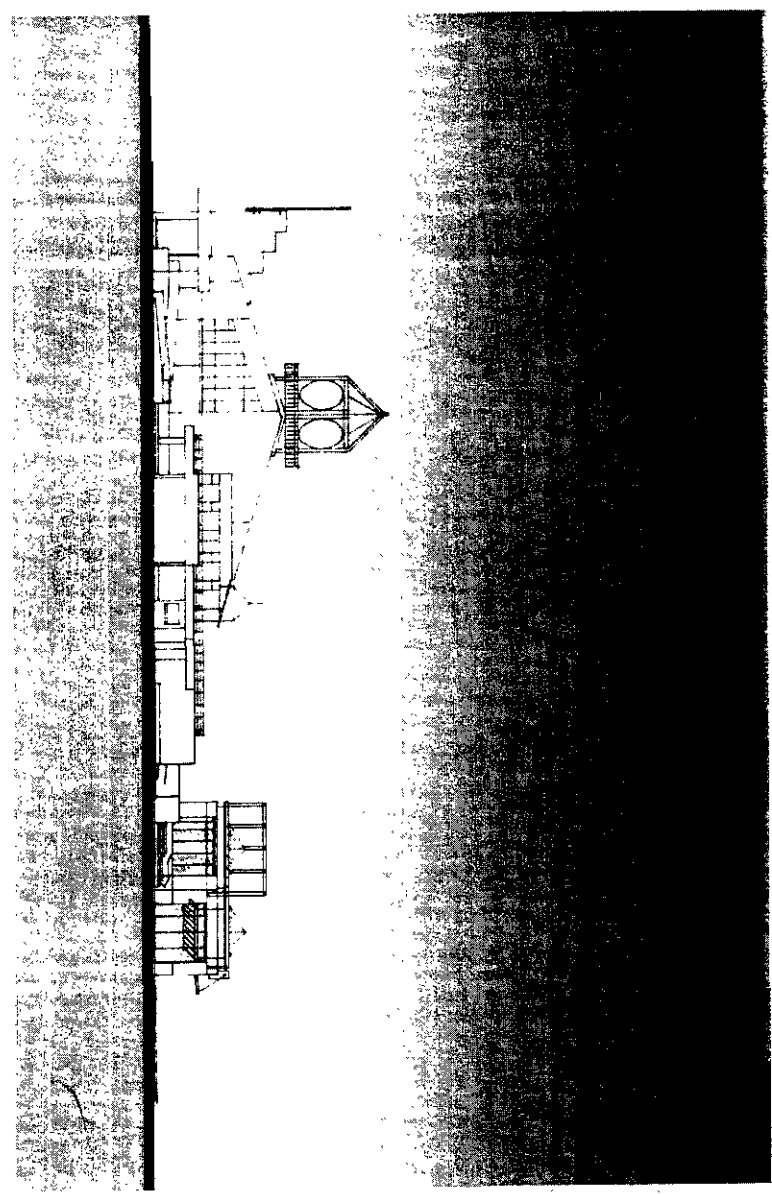
Pavilion 2
South Elevation



JACK LONDON SQUARE

Architectural drawing of Pavilion 2 South Elevation

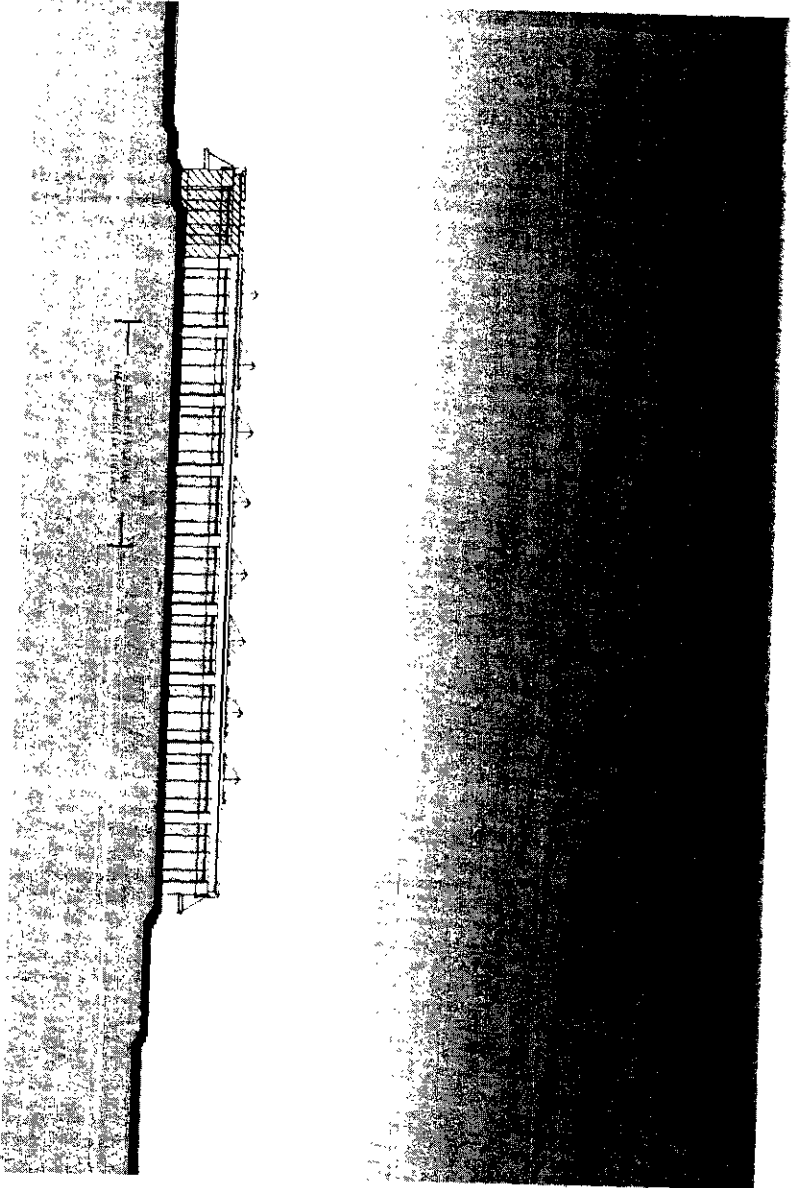
Pavilion 2
West Elevation



JACOBS LONDON SQUARE

100 North 1st Street, Suite 1000, San Francisco, CA 94104

Pavilion 2
North Elevation

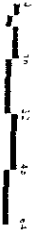
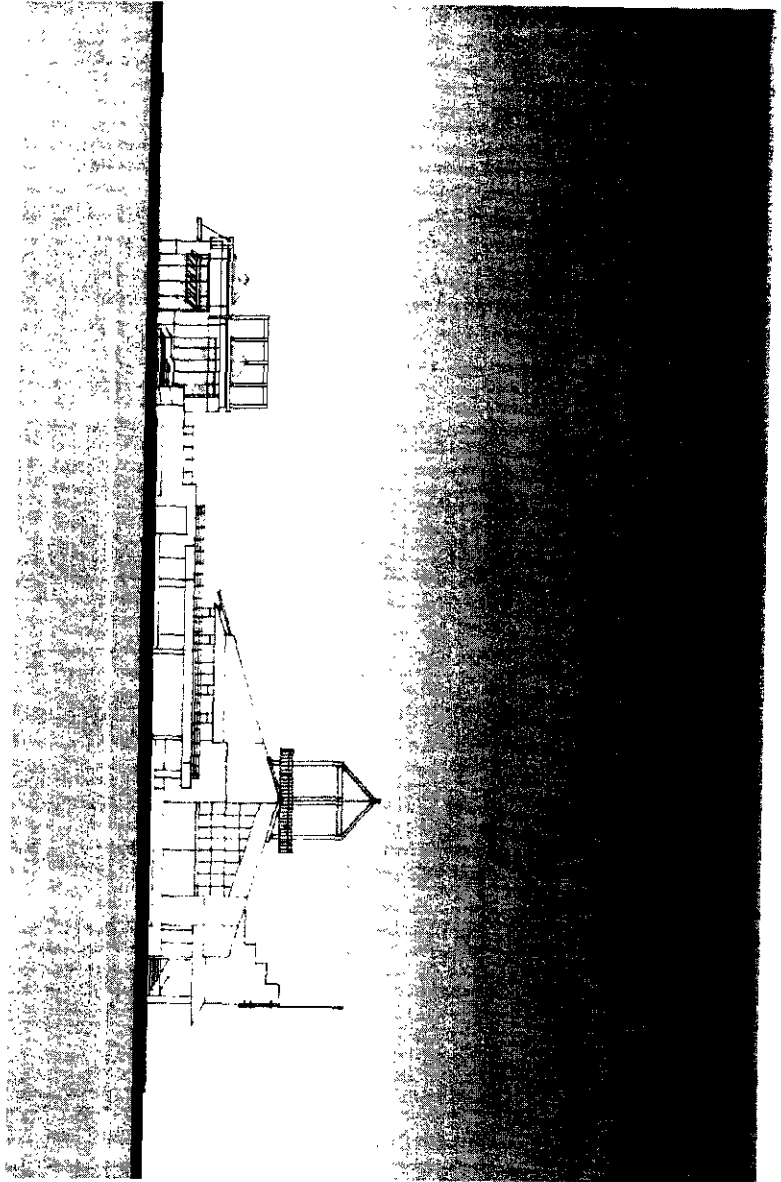


Architectural Drawing

JACK LONDON SQUARE

A-35

Pavilion 2
East Elevation



JACK LONDON SQUARE

Historic Architectural Services, Inc.