CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator / Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: January 22, 2008

RE: **Report on the Status of Negotiations for the Development of a Freeway Auto Mall in the North Gateway Area of the Former Oakland Army Base and a Recommendation to Adopt:**

1) An Agency Resolution Authorizing the Execution of a Disposition and Development Agreement with Argonaut Holdings, Inc. for the Sale of Approximately 6.3 Acres within the Former Oakland Army Base for the Appraised Fair Market Value ($7,180,000) for the Development of a General Motors Dealership;

2) An Agency Resolution Authorizing an up to $1.5 million forgivable loan to Argonaut Holdings, Inc. for the Development of a General Motors Dealership, to *be funded from land sales proceeds from the sale of 6.3 Acres within the Former* Oakland Army Base; and

3) A Council Resolution Approving the Sale of Approximately 6.3 Acres of Real Property Located Within the Former Oakland Army Base for the Appraised Fair Market Value ($7,180,000) to Argonaut Holdings, Inc. for its Development of a General Motors Dealership

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SUMMARY

Staff has finalized a Disposition and Development Agreement (DDA) with Argonaut Holdings, Inc. (General Motors or Developer) and is recommending the adoption of three resolutions:

1) An Agency Resolution Authorizing the Execution of a Disposition and Development Agreement with Argonaut Holdings, Inc. for the Sale of Approximately 6.3 Acres Within the Former Oakland Army Base for the Appraised Fair Market Value ($7,180,000) for the Development of a General Motors Dealership;

2) An Agency Resolution Authorizing an up to $1.5 million forgivable loan to Argonaut Holdings, Inc. for the Development of a General Motors Dealership, to be funded from land sales proceeds from the sale of 6.3 Acres within the Former Oakland Army Base; and

3) A Council Resolution Approving the Sale of Approximately 6.3 Acres of Real Property Located Within the Former Oakland Army Base for the Appraised Fair Market Value ($7,180,000) to Argonaut Holdings, Inc. for its Development of a General Motors Dealership

This report also provides an update on the Redevelopment Agency's efforts to develop the Freeway Auto Mall within the North Gateway Area of the former Oakland Army Base, which includes updates on negotiations with Nissan & Chrysler-Jeep-Dodge, Mercedes-Benz and BMW.

FISCAL IMPACT

As noted in previous reports, the Freeway Auto Mall should yield significant land sale proceeds,[1] tax increment, sales tax, and other revenues. All land sale proceeds will be net of site preparation costs, with total net land sale proceeds estimated to be $2,700,000.

The terms of the General Motors Dealership DDA will include a sales price based on the Fair Market Value of the 6.3 acre parcel ($7,180,000), minus site preparation costs. These proceeds will be deposited into the Oakland Army Base Redevelopment Area Fund (9570). The City's General Purpose Fund will also receive approximately $107,700 in transfer tax from sale of the land.

Providing land for the General Motors Dealership will ensure that the City's General Purpose Fund retains approximately $300,000 per year in sales tax and $36,000 per year in business tax revenue. Growth at the new auto mall could increase sales by up to 50%, adding up to $168,000 per year in additional sales and business taxes.

Sale of the land and construction of the project will also result in approximately $60,000 per year for affordable housing and $130,000 per year in net tax increment for the Redevelopment Agency.

BACKGROUND

The City and Agency initially approved three resolutions authorizing DDAs with Argonaut Holdings, Inc. (General Motors), Simi Management Corporation (Chrysler-Jeep-Dodge) and Sojitz Motors, Inc. (BMW) on December 5, 2006 (Resolutions No. 2006-0085, 2006-0086 and 2006-0087 C.M.S.). There were several complications, changes in ownership, negotiations with automakers and reconfiguration of the dealership locations. None of the DDAs were executed within the 60 days required by the authorizing resolutions. Since then, Agency staff has been in extensive negotiations with a number of auto dealerships, including General Motors, Nissan-Chrysler-Jeep-Dodge, BMW, Mercedes-Benz, and Volvo. On December 18, 2007, the Agency Board adopted an Amendment to the former Oakland Army Base Reuse Plan. The revisions to the plan include: 1) adding parcels to accommodate additional dealerships, which was accomplished by reducing the size of various parcels; 2) changing the access points to the individual parcels; and 3) refinements to the road layouts, which include additional detail that reflect the current infrastructure designs. This action will help facilitate the planning of the auto mall and should result in firm commitments from other dealerships to complete the Agency's goal for developing the North Gateway Area.

[1] The six parcels in the North Gateway have a combined appraised fair market value of approximately $27.9 million. Deducting the costs for land acquisition ($10.2 million) and site preparation ($15 million), the net land sales proceeds are expected to be approximately $2.7 million.

KEY ISSUES AND IMPACTS

Pursuant to the Agency Board's direction of December 5, 2006, staff has been negotiating with several auto dealerships, summarized as follows:

General Motors: Staff has completed negotiations with General Motors for a proposed dealership that would occupy approximately 6.3 acres in the auto mall. See Lot 6 of Attachment A, Site Map. Negotiations were delayed for several months, primarily because of a change of ownership within the dealership, as well as several legal issues that have since been resolved. Staff is pleased to bring forward the Argonaut Holdings, Inc. DDA to the Agency Board for its review and approval. See Attachment B, General Motors Automobile Dealership Development Project Disposition and Development Agreement.

Nissan & Chrysler-Jeep-Dodge: Previously, staff was negotiating with local auto dealer Steve Simi for the relocation of two of his dealerships—Nissan and Chrysler-Jeep-Dodge. In early 2007, Mr. Simi decided to retire from the auto retail business and proceeded to sell his dealerships. The sale of the dealerships (which required approval by the factory) took several months and was completed in July 2007. Both dealerships have been successfully purchased by a venture owned by two auto retail businessmen, Bobby Ali and Alam Khan, Legend Auto Group, LLC. Staff immediately resumed negotiations with the new owners, and at this point they are reviewing a draft DDA. Under the proposed DDA, Nissan & Chrysler-Jeep-Dodge would occupy two parcels with a combined acreage of approximately 8.63 acres in the North Gateway Area in Phase I of the DDA. See Lot 3 and 4 of Attachment A, Site Map. Legend Auto Group is also trying to buy additional dealerships and has requested two adjacent sites. Under the DDA, Legend Auto Group would also have the right to develop the two adjacent parcels of approximately 3.71 acres if the projects are ready to proceed within one year of execution of the DDA. See Lot 2 and 5 of Attachment A, Site Map. A draft DDA for the combined project was sent to the Legend Auto Group in late December 2007 and negotiations began immediately after the New Year holiday, but the DDA had not been executed by the time this report was submitted

In addition to these negotiations, staff has performed a financial analysis of Legend Auto Group to verify their assets, liabilities, and overall financial capacity to complete the project. Based on the initial information submitted, it appears that Legend is well-capitalized and able to obtain financing for the project. The DDA includes specific provisions that require all the dealers to submit comprehensive financial information prior to the transfer of the property.

Weatherford BMW: The negotiations with Weatherford BMW have been stalled for several months, due to a number of concerns that were raised by their franchisor, BMW of North America. The most significant concern is that the auto mall is located directly adjacent to East Bay Municipal Utility District's (EBMUD) wastewater treatment plant.

As a result, BMW of North America will not approve the site, and consequently Weatherford BMW is not able to sign a DDA at this time.

To address the proximity to the wastewater treatment plant, staff has explored several options, including: (1) moving BMW's parcel to the easternmost parcel (away from the plant); (2) installing additional landscaping to visually obscure the treatment plant from shoppers in the auto mall; and (3) exploring other sites for BMW outside of the North Gateway.

At this point, staff and Weatherford BMW have identified a site on the Army Base property that they feel has a very strong chance of being approved by BMW of North America. The site is located between Burma Road and West Grand Avenue, on a strip of land that connects the Central Gateway to the North Gateway. Staff and Weatherford BMW have agreed to explore the feasibility of this site and present it to the national factory as soon as possible. Unfortunately this site includes the 6.5 acres that the State of California retained to accommodate a maintenance and training facility for the Bay Bridge as well as regional activities for Caltrans. Staff has tried to negotiate with CalTrans to trade or buy all or a portion of the site, but Caltrans has yet to consent to any trade or purchase.

Staff is attempting to expedite a resolution on the Caltrans property as quickly as possible. Although Weatherford BMW has indicated in writing that the Army Base is their preferred location, they are now in a situation where they are actively investigating backup site options in other cities. Meanwhile, the City of Berkeley has recently passed changes to the zoning in West Berkeley, to make it easier to retain existing auto retail. While Berkeley's actions do not constitute a planned auto mall development, they nevertheless pose a competitive threat to Oakland's auto retail plans in the auto mall.

Mercedes-Benz: Staff has been negotiating with European Motors to develop approximately 5.50 acres, but as with BMW there were concerns with the sites adjacent to EBMUD. Mercedes has also requested a site outside of the North Gateway. Mercedes has suggested that the approximately 4.0 acre site southwest of the West Grand Overpass, near the Bay Bridge Toll Gate and adjacent to the Caltrans maintenance site, along with a long-term lease to land controlled by the Agency under the West Grand Overpass, would be acceptable, although they have stated that they would prefer the parcel to be expanded to include some freeway visibility. The basic site is all within the Agency's control, Parcel C-1/U-1, but the preferred site would require 1.75 acres of the Caltrans site. Staff drafted a DDA and submitted it to European Motors just prior to submitting this report and will update the Council to the status of these negotiations at the CED Committee meeting.

Other Pre-Development Activities
Staff is undertaking several other activities to prepare for the development of the auto mall, including:

- Planning for an electronic freeway sign to market the auto mall. As soon as the planning for this is completed, staff will bring a proposed franchise agreement for this freeway sign to the Agency Board for its review and consideration.

- Creating a Community Facilities District that will allow the auto dealers to pay for the maintenance of the new roads and landscaping through a self-imposed assessment.

- Working with Caltrans, EBMUD, the Port of Oakland, and other government agencies to resolve a variety of real estate or infrastructure issues.

PROJECT DESCRIPTION

The revised Reuse Plan for the Auto Mall now includes six sites for automobile dealerships in the North Gateway. See Lots 1 through 6 on Attachment A, Site Plan. The adoption of the Reuse Plan included Conditions of Approval and the Mitigation Monitoring and Reporting Program, which will apply to the DDA. See Attachments C and D. This plan does not include room for all of the dealerships with whom staff is negotiating. Once the General Motors and Nissan & Chrysler-Jeep-Dodge DDAs are executed, most of the North Gateway will be committed. There will only be one site still available, Lot 1, and two dealers, Mercedes and BMW, are currently negotiating with staff. Both dealers are requesting sites outside of the North Gateway. Staff will bring additional DDAs to the Council as soon as there are negotiated with the dealers.

The major terms of the General Motors Disposition and Development Agreement (DDA) with Argonaut Holdings, Inc., being presented to the Agency Board and Council for approval include:

Requirements of the Developer

Use Restriction: Auto retail use only allowed (Section 7.02(a)).

Environmental Sustainability: Developer will operate the Project to be environmentally sustainable (Section 7.03)

Option to Repurchase: Agency shall have the right to repurchase the site for the original sales price if the project does not go forward (Section 7.05)

Dealership Association: The dealer will remain a member of the Dealership Association, which will be responsible for improvements and restrictions on the common areas of the Auto Mall Project, including, without limitation, the site plan and the manufacturer mandated signage for the Project (Section 7.06).

Covenants, Conditions & Restrictions: Will be recorded against the Property and will govern the activities that are allowed on the Property (Section 7.06).

Design Guidelines: Developer must comply with the Bay Bridge Auto Mall Design Guidelines (Section 7.06).

Hire Oakland Residents: Reasonable efforts required (Section 7.07).

Schedule: (See Exhibit E of the DDA for further details) The major dates are:

Close of Escrow	360 days after Execution Date, but no later than October 31, 2008
Commence construction	30 days after Close of Escrow
Completion of Construction	March 1, 2010

Permitted Transfers: Only upon Agency approval (Section 8.04).

Requirements of the Agency

Clear Title: The Agency will need to subdivide the North Gateway and be able to provide clear title so that the Title Company is able to provide the Title Policy (Sections 3.01(a)(i), 3.01(a)(ii) and 3.01(a)(x)).

Billboard: The Agency must receive approvals from the City of Oakland for a freeway billboard that will advertise for the Auto Mall (Sections 3.01(a)(viii)).

Seller's Representations and Warranties: The Agency has to make a number of warranties regarding its authority to sell the site, the condition of the site and the information available (Sections 4).

Hazardous Materials and Environmental Remediation: The Agency will reimburse the developer for environmental remediation costs incurred prior to completion of construction (Sections 5).

Given that this DDA is being approved in advance of the other Auto Mall DDAs, staff would recommend that one term be added to the DDA. This term would be that the Agency could terminate the DDA if the Agency has been unable to negotiate and execute Disposition and Development Agreements for two additional dealerships in the North Gateway portion of the Auto Mall Project. A similar right already exists for the Developer (Section 3.01(a)(iv).

Staff has also discussed incentives to speed development with the auto dealers. The result is a proposal to include an up to $1.5 million forgivable Agency loan with the first DDA executed and to start construction. The loan is being structure to encourage rapid development, maximum employment opportunities for Oakland residents and maximum tax generation for the City of Oakland. The terms of the $1.5 million loan are still being negotiated, but will include some of the following, although the dates and numbers are still in discussion:

- All City Programs apply;
- First Source Hiring included;
- Hire at least 30 new employees within the first five years of operations;
- Project must start within 30 days of site readiness;

- Construction must be completed within 16 months;
- Loan would be forgiven to the extent the dealership meets increased sales tax projections within the first 10 years; that is to say the Agency will forgive an amount equal to the sales taxes received by the City over 120% of the current level. Without additional dealerships being added to this site, which is a possibility, it is now estimated that the developer would only earn $900,000 to $1.0 million of the rebate, and the remaining $500,000 to $600,000 would be due at the end of 10 years.
- Loan to be funded out of the land sales proceeds from the site;
- Dealer will commit to stay in Oakland 1.5 times the length of the sales tax rebate or 15 years; and
- The Loan is to be fully repaid if dealership does not meet schedule for project completion and/or partially repaid if developer does not meet sales tax projections.

SUSTAINABLE OPPORTUNITIES

Economic: The auto mall project described in this report would generate significant high-quality jobs and tax revenue and would increase land values in a vacant, blighted, abandoned military facility.

Environmental: The proposed auto mall development would co-locate auto dealerships on an urban in-fill site with approximately 28 acres. The development would result in the environmental remediation of contaminated soils. Furthermore, the auto mall would reduce the pressure to develop suburban-style auto retail (which typically could involve as much as 50 to 100 acres of land) in outlying, undeveloped areas of the Bay Area.

Social Equity: The dealerships offer a range of jobs that are accessible to Oakland residents with limited educational background, and that pay an average annual salary of approximately $48,000.

DISABILITY AND SENIOR CITIZEN ACCESS

This report does not involve the approval of any specific projects or programs. Disability and senior access issues would be addressed when specific development plans are submitted to the City by a developer for review and approval.

RECOMMENDATIONS AND RATIONALE

Staff recommends that the Agency/Council adopt: 1) An Agency Resolution Authorizing the Execution of a Disposition and Development Agreement (DDA) with Argonaut Holdings, Inc. for the Sale of Approximately 6.3 Acres Within the Former Oakland Army Base for the Appraised Fair Market Value ($7,180,000) for the Development of a General Motors Dealership; 2) An Agency Resolution Authorizing an up to $1.5 million forgivable loan to Argonaut Holdings, Inc. for the Development of a General Motors Dealership, to be funded from land sales proceeds from the sale of 6.3 Acres within the Former Oakland Army Base; and 3) A Council Resolution Approving the Sale of Approximately 6.3 Acres of Real Property Located Within the Former Oakland Army Base for the Appraised Fair Market Value ($7,180,000) to Argonaut Holdings, Inc. for its Development of a General Motors Dealership. This DDA represents the first commitment by an auto dealer to

occupy the North Gateway Area. It is staff's expectation that other dealerships will line up to secure sites at the Freeway Auto Mall now that the first major dealership has stepped forward.

ACTION REQUESTED OF THE CITY/REDEVELOPMENT AGENCY

Staff recommends that the Agency/Council approve the attached resolutions: 1) Authorizing the Execution of a Disposition and Development Agreement with Argonaut Holdings, Inc. for the Sale of Approximately 6.3 Acres Within the Former Oakland Army Base for the Appraised Fair Market Value ($7,180,000) for the Development of a General Motors Dealership; and 2) Authorizing an up to $1.5 million forgivable loan to Argonaut Holdings, Inc. for the Development of a General Motors Dealership, to be funded from land sales proceeds from the sale of 6.3 Acres within the Former Oakland Army Base; and 3) Approving the Sale of Approximately 6.3 Acres of Real Property Located Within the Former Oakland Army Base for the Appraised Fair Market Value ($7,180,000) to Argonaut Holdings, Inc. for its Development of a General Motors Dealership

Respectfully Submitted,

Dan Lindheim
Interim Director
Community and Economic Development Agency

Reviewed by: Gregory Hunter, Deputy Director
Economic Development and Redevelopment

Prepared by: Patrick Lane
Redevelopment Manager

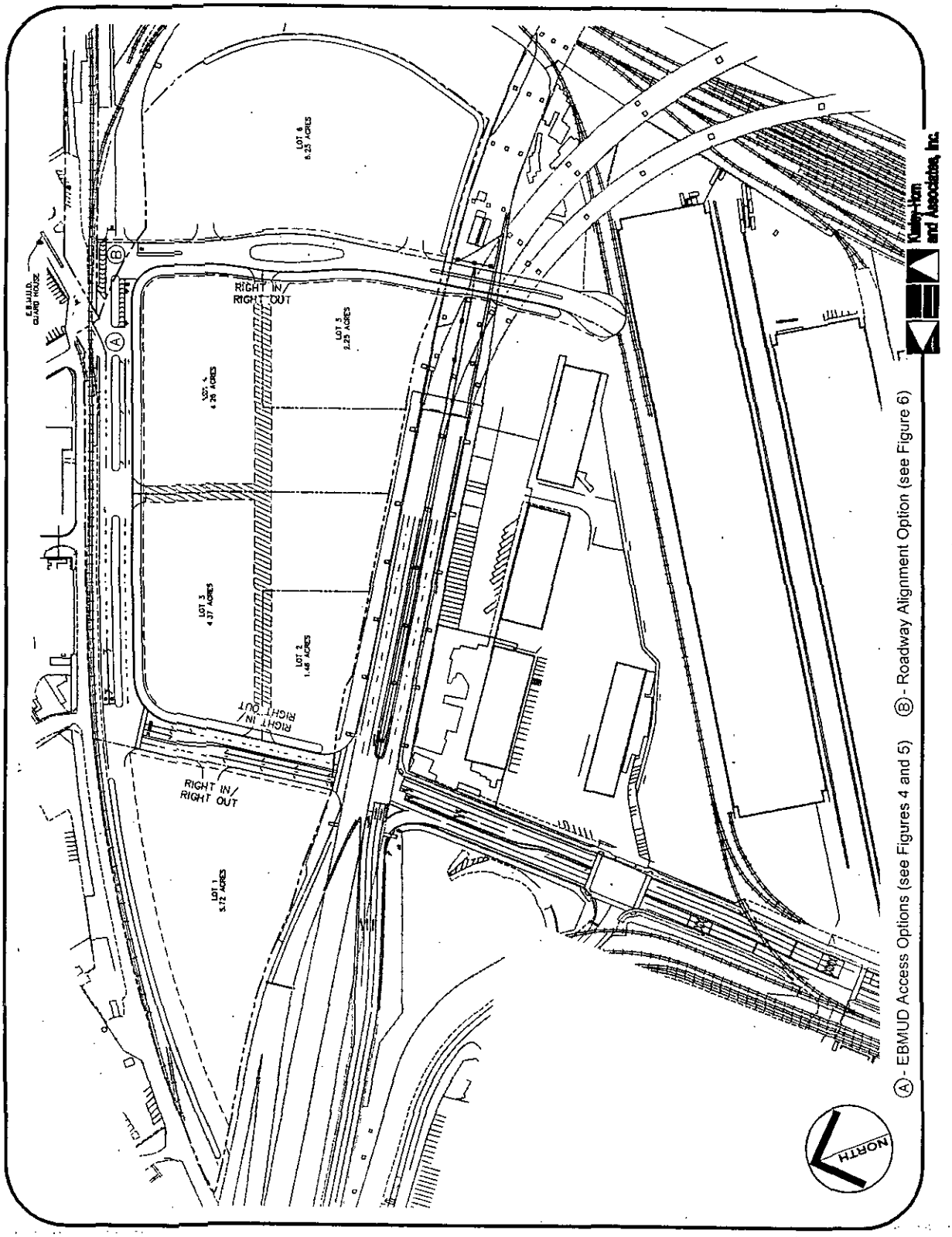
APPROVED AND FORWARDED TO
THE REDEVELOPMENT AGENCY:

Office of the City/Agency Administrator

Attachment A: Auto Mall Site Plan
Attachment B: General Motors Automobile Dealership Development Project Disposition and Development Agreement
Attachment C: Conditions of Approval
Attachment D: Mitigation Monitoring and Reporting Program

Item #: _____
CED Committee
January 22, 2008

ATTACHMENT A
Auto Mall Site Plan



ATTACHMENT B
General Motors Automobile Dealership Development Project
Disposition and Development Agreement

ATTACHMENT B

NO FEE DOCUMENT

RECORDING REQUESTED BY:

The Redevelopment Agency
of the City of Oakland

WHEN RECORDED, MAIL TO:

The Redevelopment Agency
of the City of Oakland
Community and Economic
Development Agency
250 Frank Ogawa Plaza, 5th Floor
Oakland, California 94612

Attn.: Alex Greenwood, Project Manager

GENERAL MOTORS AUTOMOBILE DEALERSHIP DEVELOPMENT PROJECT

DISPOSITION AND DEVELOPMENT AGREEMENT

THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

and

OAKLAND AUTO REAL-ESTATE INVESTMENT, LLC

GENERAL MOTORS DEALERSHIP DEVELOPMENT PROJECT
DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement ("DDA" or "Agreement") is entered into effective as of the Execution Date (as hereinafter defined), by and between the REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law ("Agency"), and OAKLAND AUTO REAL-ESTATE INVESTMENT, LLC, a California limited liability company ("Developer") (together, the "Parties").

RECITALS

A. Capitalized terms used in these Recitals that are not otherwise defined are defined in Section 1 hereof.

B. In 2003, the U.S. Department of the Army transferred certain real property (the "EDC Property") located in the City of Oakland, County of Alameda, State of California to OBRA by that certain Quitclaim Deed for No-Cost Economic Development Conveyance Parcel ("EDC Deed"), recorded August 8, 2003 as Doc. 2003466370 in the Office of the Recorder of Alameda County, California (the "Official Records").

C. In 2004, the United States of America, acting through the Deputy Assistant Secretary of the Army (Installations & Housing) transferred certain real property (the "Subaru Lot") located in the City of Oakland, County of Alameda, State of California to OBRA by that certain Quitclaim Deed for Oakland Army Base, Alameda County, California, Subaru Lot ("Army Subaru Lot Deed") recorded November 18, 2004, Serial No. 513849 in the Official Records. The Subaru Lot is more particularly described in the Army Subaru Lot Deed.

D. In 2006, pursuant to the Oakland Army Base Title Settlement and Exchange Agreement between the State of California, acting by and through the State Lands Commission ("State"), the City of Oakland ("City"), the Port of Oakland ("Port"), OBRA and Agency, dated June 30, 2006, OBRA conveyed portions of the EDC Property and the Subaru Lot that were subject to the public trust to the State, the State terminated the trust and reconveyed the lands to Agency by that State of California Patent and Trust Termination ("State Patent") recorded August 7, 2006 as Doc. 2006-301853 in the Official Records.

E. Also in 2006, the portions of the Subaru Lot owned by OBRA that were not subject to the Public Trust were conveyed by OBRA to Agency by that certain Quitclaim Deed of the Oakland Base Reuse Authority for the Subaru Lot ("OBRA Subaru Lot Deed") recorded September 19, 2006 as Doc. 2006-354007 in the Official Records.

F. The portion of the Subaru Lot owned by Agency is also subject to that certain Deed of Trust, recorded on November 18, 2004 as Serial No. 513850 in the Official Records, and the Promissory Note Secured by Deed of Trust between OBRA and DTC Engineers and Contractors, LLC ("DTC"), dated September 1, 2004, as modified March 30, 2005, and as assigned to Arch Insurance Company on November 8, 2004. The Deed of Trust may be reconveyed upon full repayment of the Promissory Note. The Promissory Note requires Agency, as OBRA's successor-in-interest, to pay Eight Million Two Hundred Thousand Dollars ($8,200,000) in a series of payments, with the final payment due November 17, 2008. After Agency's payment of Two Million Dollars ($2,000,000) to DTC on November 17, 2006, and Agency's payment of Three Million Dollars ($3,000,000) to DTC on May 17, 2007, OBRA owes Three Million Two Hundred Thousand Dollars ($3,200,000) under the Promissory Note.

G. Pursuant to the authority granted under California law and the Oakland Army Base Redevelopment Plan, Agency has the responsibility to implement the Oakland Army Base Redevelopment Plan, which plan affects and controls the development of the Property.

H. California Health and Safety Code Section 33430 authorizes a redevelopment agency to sell real property within a survey (project) area or for purposes of redevelopment. Health and Safety Code Section 33432 requires that any sale of real property by a redevelopment agency in a project area must be conditioned on redevelopment and use of the property in conformity with the redevelopment plan. Health and Safety Code Section 33439 provides that a redevelopment agency must retain controls and establish restrictions or covenants running with the land for property sold for private use as provided in the redevelopment plan.

I. Agency desires to transfer to Developer an approximately 6.25 acre parcel of land located northeasterly of the intersection of West Grand Avenue and Wake Avenue (which parcel is defined as the "Property" in Section 1.32). A portion of the Auto Mall Project is located on the EDC Property and a portion is on the Subaru Lot, but the Property is located entirely on the Subaru Lot. The notices, use restrictions and restrictive covenants set forth in both the EDC Deed and the Army Subaru Lot Deed run with the respective properties burdened thereby, but only those contained in the Army Subaru Lot Deed affect the Property. The Property is not a separate legal parcel and cannot be transferred from Agency to Developer unless and until a subdivision map or parcel map has been finally approved by the City and recorded in the Official Records of Alameda County (the "Subdivision");

J. Developer desires to purchase the Property for development of the Project (defined in Section 1.30). The Project will implement the goals and objectives of Agency's Oakland Army Base Redevelopment Plan.

K. All required hearings on the Project and have fully analyzed all potentially significant environmental effects in compliance with the California Environmental Quality Act ("CEQA") and the CEQA Guidelines as more fully described in the Supplemental Environmental Impact Report for the Oakland Army Base Auto Mall Project ("SEIR") certified on December 5, 2006, and the _____ ("Addendum") certified on _____[The parties agree that the Agency will insert information after the Agency approves the Addendum]. A Notice of Determination with respect to the SEIR was posted by the City and Agency on December 7, 2006. On or about May 17, 2007, a lawsuit against, *inter alia*, City and Agency challenging the SEIR was filed by East Bay Municipal Utilities District (Alameda Superior Court Case No. RG07-326552; the "CEQA Lawsuit"). As of the Execution Date, this CEQA Lawsuit has not been finally resolved.

L. Agency has entered into the Consent Agreement with the California Department of Toxic Substance Control ("DTSC") dated May 19, 2003 for the EDC Property, and a May 2, 2005 Consent Agreement Amendment for the Subaru Lot. The May 19, 2003 Consent Agreement and the May 2, 2005 Consent Agreement Amendment are attached hereto as Exhibit J, and are the controlling environmental agreements regarding the scope and schedule of work to be completed to remediate environmental hazards on the Property. As required by the Consent Agreement Amendment, a Covenant to Restrict Use of Property ("CRUP" or "Covenant") prohibits certain sensitive land uses on the Subaru Lot and requires the owner of the Subaru Lot to submit an annual certification to DTSC attesting to compliance with the CRUP. The CRUP has been recorded against the Subaru Lot (including the Property), and its restrictions and obligations run with the land. A Remedial Action Plan dated September 27, 2002 and prepared for OBRA and DTSC(the "RAP"), identifies the priority remediation sites on the EDC Property at the former Oakland Army Base, and establishes the cleanup goals for the entire Army Base property. An August 2, 2004 RAP Amendment pertains to the Subaru Lot. The CRUP, the RAP and the RAP Amendment also are attached as Exhibit J hereto. Pursuant to the Consent Agreement, the Consent Agreement Amendment, the RAP and the RAP Amendment, there are no priority remediation sites identified or located on the Subaru Lot (including the Property). Additionally, the Risk Management Plans ("RMP") requirements applicable to the RAP and the Consent Agreement do not pertain to the August 2, 2004 RAP Amendment or the May 25, 2005 Consent Agreement Amendment and, therefore, do not apply to the Subaru Lot (including the Property). Developer will be responsible for implementing the provision of the RAP and RAP Amendment applicable to the Property, though Agency will retain certain responsibilities under the Consent Agreement.

M. Agency desires to sell to Developer, and Developer desires to purchase from Agency, the Property as set forth in this Agreement. In addition, Developer desires to grant repurchase options to Agency to the Property as set forth in this Agreement in the event that Developer does not timely commence construction as provided for herein.

N. The sale of the Property is authorized by Agency Resolution No. _____ C.M.S., dated _____, 200_.

O. The State has removed the Property from the public trust as set forth in Recital D above, making way for the development contemplated by this Agreement.

P. The San Francisco Bay Conservation and Development Commission has removed the port ancillary maritime designation from the Property, thus allowing it to be developed for the Project, pursuant to BCDC Resolution 07-07 adopted by that Commission on January 18, 2007.

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

SECTION 1. DEFINITIONS

The following terms and their derivatives have the meanings set forth below wherever used in this Agreement, attached exhibits, or documents incorporated into this Agreement by reference:

1.1 Access and Utility Infrastructure has the meaning set forth in Section 6.06.

1.2 Agency Administrator. Deborah A. Edgerly or any successor designated by Agency.

1.3 Agreement. This Disposition and Development Agreement, together with all exhibits, supplements, amendments and modifications thereto, and all extensions and renewals hereof. All exhibits to this Agreement are incorporated into this Agreement by reference.

1.4 Army. The U.S. Department of the Army.

1.5 Army Subaru Lot Deed. That certain quitclaim deed defined in Recital C and attached hereto as Exhibit M.

1.6 Auto Mall Project. The development of a freeway auto mall on approximately 28 acres of property located in the North Gateway Development Area of the former Oakland Army Base adjacent to West Grand Avenue and Interstate 880. The Project, as defined in Section 1.30, is part of the Auto Mall Project.

1.7 City. The City of Oakland, California, a chartered municipal corporation. Any reference hereafter to "City" will also be deemed to include any successors or assigns of the City of Oakland.

1.8 Closing Date will have the meaning set forth in Section 3.01.

1.9 Commencement of Construction will have the meaning set forth in Section 6.01.

1.10 Completion of Construction. Issuance of the final Certificate of Completion by the Agency.

1.11 Consent Agreement. The Agreement between Agency and the California Department of Toxic Substance Control defined in Recital L and attached hereto as Exhibit J, which is the controlling environmental agreement regarding the scope and schedule of work to be completed to remediate environmental hazards on the Property.

1.12 Construction Contract Form. The form of contract to be used as a model for each construction contract used for the Project, and which will require all work to be completed for a fixed and specified guaranteed maximum amount as set forth in Section 2.10.

1.13 CRUP. The Covenant to Restrict Use of Property, as further described in Recital L, that prohibits certain sensitive land uses and requires the owner to submit an annual certification to DTSC attesting to compliance with the CRUP. The CRUP has been recorded against the Property, and its restrictions and obligations run with the land.

1.14 Dealer Operator. The entity operating the General Motors auto dealership on the Property.

1.15 Dealership Association. The association consisting of all auto dealerships included in the Auto Mall Project, which will be primarily responsible for common area maintenance, common marketing, common security, common development plans and signage for the auto mall, as described in Section 7.06 herein.

1.16 Deed of Trust. That Deed of Trust as defined in Recital F, which burdens the Property and another portion of the Subaru Lot.

1.17 DTSC. The California Department of Toxic Substance Control.

1.18 Execution Date. The date that the Agreement is fully executed by the Parties and the last party executing has given notice of its execution.

1.19 Final Construction Contract. The final, executed agreement(s) between Developer and a licensed and reputable general contractor(s) for the construction of the Project, to be submitted to Agency for review and approval as set forth in Section 2.10. The Construction Contract will include plans and specifications required under applicable building codes to be submitted with an application for a building permit and upon which Developer and its general contractor will rely to construct the Project, and which shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans, final specifications, plans for any off-site improvements, a detailed breakdown of the costs of construction, and a schedule for construction of the Project.

1.20 Final Construction Plans. The Final Construction Plans for the Project as set forth in Section 6.02 hereof, including all design documentation upon which Developer and Agency will rely in the approval of the Project design and the issuance of required permits for the scope of work proposed.

1.21 Financial Plan. The plan that is required in Section 2.11 herein.

1.22 Governmental Agency. Any federal, state, municipal or other governmental or quasi-governmental court, agency, authority or district.

1.23 Grading and Foundation Plans. Together, the grading, earthwork, excavation, and foundation plans for the project as set forth in Section 2.08 hereof, including all design documentation upon which Developer and Agency will rely in the approval of the Project design and the issuance of required permits for the scope of work proposed.

1.24 Hazardous Materials. As defined in Section 5.01 herein.

1.25 Inspection Period. As defined in Section 2.06.

1.26 Laws. All federal, state, county, municipal and other governmental and quasi-governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting either the Project or the occupancy, operation, ownership or use thereof, whether now or hereafter enacted and in force including, without limitation, the Americans With Disabilities Act, 42 U.S.C. §§12101-12213 (1991) and all environmental laws, any zoning or other land use entitlements, and any requirements which may require repairs, modifications or alterations in or to the Project.

1.27 Oakland Army Base Redevelopment Plan (or "Redevelopment Plan"). The "Redevelopment Plan for the Oakland Army Base Redevelopment Project" adopted on July 11, 2000, and amended on December 21, 2004, June 7, 2005, and March 7, 2006, and any amendments thereto, and the Oakland Army Base Redevelopment Project Five-Year Implementation Plan (2005-2010). The Agency will not amend the Redevelopment Plan as it relates to the Project or the Auto Mall Project in a manner that would make construction of the Project impossible.

1.28 OBRA. The Oakland Base Reuse Authority, a California joint powers authority that owned the Property until the several conveyances described in Recitals D and E. Any reference hereafter to "OBRA" will also be deemed to include any successors or assigns of OBRA.

1.29 INTENTIONALLY OMITTED

1.30 Project. The acquisition of the Property from Agency and development on the Property of a full service new motor vehicle dealership for General Motors brand vehicles, with a building constructed in accordance with General Motors standard facility guidelines to serve as a showroom, offices, and a motor vehicle service and repair center, along with a sufficient number of spaces for surface parking, space for storage, and

showing primarily new, and secondarily used vehicle inventory and related purposes, and project signage space for a general advertising pylon sign.

1.31 Promissory Note. That Promissory Note as defined in Recital F.

1.32 Property. That real property located in Oakland, California, on Wake Avenue near West Grand Avenue, more fully described in the legal description attached as Exhibit A, and the property map ("Property Map") attached as Exhibit B, which are incorporated into this Agreement by this reference.

1.33 RAP. The Remedial Action Plan dated September 27, 2002 that was prepared for OBRA and DTSC, as amended on August 2, 2004 to include the Subaru Lot, and which is included as an attachment to the Consent Agreement attached hereto as Exhibit J. It identifies the priority remediation sites at the former Oakland Army Base, and establishes the cleanup goals for the entire Army Base property.

1.34 RMP. The Risk Management Plan dated September 27, 2002, which sets forth the risk management protocols and the procedures for addressing environmental conditions on the EDC Property. The RMP does not apply to the Subaru Lot, on which the Property is located.

1.35 SEIR. *The Supplemental Environmental Impact Report for the Oakland* Army Base Auto Mall Project, as further described in Recital K.

1.36 Schedule. That Development Schedule attached to this Agreement as Exhibit C. The Schedule outlines development tasks that Developer must perform by the referenced completion date. The Schedule may be modified or amended by mutual agreement of the Parties in writing executed by Agency Administrator or his/her designee and Developer. In the event of any inconsistency between the Schedule and the provisions of the body of this Agreement, the provisions of the body of the Agreement shall prevail.

SECTION 2. PRECONVEYANCE REQUIREMENTS

As conditions precedent to the conveyance of the Property to Developer, the following preconveyance requirements must first be met to the reasonable satisfaction of: (1) Developer, as to Sections 2.02, 2.03, 2.04, 2.05, 2.06 and 2.07 ; (2) Agency as to Sections 2.01, 2.08-2.11, and 2.13; and (3) as to both Developer and Agency, Section 2.12 (each a "Preconveyance Requirement" and collectively the "Preconveyance Requirements"), by the dates indicated for each condition in this Section 2, unless that time limit is extended in writing by mutual agreement of Developer and Agency Administrator or his/her designee.

2.01 Deposit. Within ten (10) business days of the Execution Date, Developer will deposit into escrow and into an interest bearing account as agreed to by the Parties a deposit of Two Hundred Fifty Thousand Dollars ($250,000) (which earnest money

deposit, together with all interest earned thereon, is herein called the "Deposit"). If the Parties close escrow, the Deposit will be credited toward the Purchase Price.

2.02 Initial Deliveries.

Within five (5) days after the Execution Date, Developer shall order and, following their preparation, shall deliver or cause to be delivered to Agency, the following:

(i) Title Insurance Commitment. A current title insurance commitment or preliminary title report issued by First American Title Company ("Title Company"), including copies of all recorded matters affecting title referred to therein (collectively, the "Title Commitment"), showing marketable and insurable title to the Property to be vested in Agency and contemplating the issuance by Title Company of an ALTA owner's policy of title insurance (the "Title Policy") insuring such title to the Property in Developer, in the amount of the Purchase Price, subject to the satisfaction of the requirements of the instruments to be delivered at the Closing as contemplated hereby. Developer shall have the right to require additional endorsements to the Title Policy if Developer deems such endorsements reasonably necessary for its protection.

(ii) Survey. Three (3) copies of a current ALTA/ACSM Land Title Survey of the Property (the "Survey"), prepared by a surveyor licensed by the state of California. The Survey shall be prepared in form satisfactory to Title Company for the issuance to Developer of the Title Policy, and (1) pursuant to the Accuracy Standards for ALTA-ACSM Land Title Surveys (as adopted by the American Land Title Association [ALTA], the National Society of Professional Surveyors [NSPS], and the American Congress on Surveying and Mapping [ACSM], and in effect on the date of the certification of the Survey), the Survey measurements shall be made in accordance with the "Minimum Angle, Distance, and Closure Requirements for Survey Measurements Which Control Land Boundaries for ALTA/ACSM Land Title Surveys;" and (2) the Survey shall meet the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys (as adopted by ALTA, NSPS, and ACSM and in effect on the date of the certification of the Survey).

2.03 Inspection of Property. At any time prior to Closing, Developer and its employees, agents, architects, engineers, appraisers and contractors, shall have the right, upon at least 24 hours notice to Agency, to enter the Property to investigate and inspect the Property in connection with any and all matters relevant to its acquisition, development, usage, operation or marketability. Such right of investigation shall include, without limitation, the right to have made, at Developer's expense, any studies or inspections of the Property as Developer may deem necessary or appropriate, including, without limitation, soils and environmental tests and inspections. The notification of entry shall identify the person who will enter the Property, the scope and purpose of the entry, and the estimated duration of the entry. Agency shall cooperate reasonably with any such investigations, inspections, or studies made by or at Developer's direction. Developer shall indemnify, defend and hold Agency and each Affiliate (as hereinafter defined) of

Agency harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, reasonable attorneys' fees) resulting from Developer's investigations (provided that such indemnity shall not apply to any claims, judgments, damages, penalties, fines, costs, liabilities, or losses resulting from the discovery by Developer of pre-existing conditions of or at the Property not caused by Developer). "Affiliate" means, with respect to any Person (as hereinafter defined), any Person that controls, is controlled by or is under common control with such Person, together with its and their respective members, partners, venturers, directors, officers, stockholders, agents, employees, spouses, legal representatives, successors and assigns. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise. "Person" means an individual, partnership, limited liability company, association, corporation, or other entity. Agency reserves the right to require all Persons entering the Property to sign a reasonable waiver of liability, and to require Developer to provide insurance in type, amount and form as reasonably determined by Agency from an insurance carrier reasonably acceptable to Agency naming Agency as an additional insured prior to entering upon the Property.

2.04 Environmental Inspection. Without limiting the inspection and investigation rights set forth in Section 2.03, Developer shall have the right during the Inspection Period (as defined in Section 2.06), at Developer's sole expense, to enter the Property to conduct environmental assessments of the Property, including but not limited to, the collection and analysis of soils, surface water and groundwater samples ("Developer's Assessment"). Developer shall provide a copy of Developer's Assessment to Agency, without representation or warranty, promptly after it is received by Developer.

(a) Confidentiality. To the extent permitted by law, any and all information, whether written or oral, regarding the environmental status of the Property provided to Agency by Developer, the Dealer Operator, or any affiliated entities, or their respective employees or agents in connection with the acquisition and development of the Property shall be considered the sole and exclusive property of Developer or the party providing such information on behalf of Developer, and shall not be provided to any unrelated third party without a prior request for disclosure of such information or records. Developer makes no representations or warranties regarding any such information. Notwithstanding the foregoing, Developer acknowledges that any document provided to Agency or generated by Agency may be subject to disclosure under the provisions of the California Public Records Act. Agency shall not be held responsible for any damages caused by disclosure of information in response to a public records request.

(b) Notification. In the event Agency is specifically required to disclose any such information pursuant to applicable law or pursuant to a public records request, or directive or order issued by a court or governmental entity, prior to disclosing such information, Agency shall use its best efforts to notify Developer in writing and provide Developer with a copy of the public records request, or the order or directive

issued by such court or governmental entity and with copies of all information that Agency intends to disclose. Whenever possible, such notice and information shall be provided to Developer by Agency in writing at least five (5) business days prior to disclosure of such information. Agency shall not be held responsible for any damages caused by such notification, or a failure to notify Developer of such request.

(c) Survival. Agency's obligations under this Section 2.04 shall survive the termination of this Agreement.

2.05 Books and Records. Agency agrees that, during the Inspection Period, Developer shall have access at all reasonable times, upon reasonable advance notice, to Agency's books and records concerning the Property, and shall be permitted to make copies of such books and records at Developer's expense.

2.06 Termination of Agreement. At any time during the Inspection Period (as defined below), Developer may elect, in the exercise of its sole discretion, to give Agency written notice terminating this Agreement if Developer is dissatisfied with the Property, for any reason whatsoever, including, without limitation, any matter relating to its acquisition, development, usage, operation or marketability, or the inadequacy of or lack of access to Agency's files or records including, without limitation, contracts or other agreements related to the Property. Developer shall have no obligation to give a reason for exercising its election to terminate. If Developer delivers such a notice, then this Agreement shall terminate, the Deposit shall be promptly returned to Developer, and both Parties shall be relieved from any further liability hereunder, except for those matters which, by their terms, survive the termination of this Agreement (the "Surviving Obligations"). The period from the Execution Date through 5:00 p.m. on the 90th day thereafter is hereinafter referred to as the "Inspection Period." Developer may, at its option, waive its right to terminate this Agreement pursuant to this Section 2.06 by written notice delivered to Agency.

2.07 Title.

(a) Review. Developer shall be entitled to object to any exceptions to title disclosed in the Title Commitment or matters affecting title reflected on the Survey ("Exceptions"), in its sole discretion, by a written notice of objections delivered to Agency on or before the date of expiration of the Inspection Period (the "Objection Date"). If Developer fails to deliver to Agency a notice of objections on or before the Objection Date, Developer shall be deemed to have waived any objection to all Exceptions and thereafter all Exceptions shall be deemed to be Permitted Exceptions (as hereinafter defined). Agency shall have thirty (30) days from the receipt of Developer's notice of objections either to obtain, as applicable, the issuance of a revised Title Commitment or a revision to the Survey removing such Exceptions, ("Agency Removed Exceptions"). If Agency fails to provide for the removal of all such Exceptions satisfactory to Developer in Developer's sole discretion within such thirty-day period, then this Agreement, at Developer's option, shall be terminated upon written notice to Agency at any time prior to the Closing. Developer's sole remedy for any failure by

Agency to remove any such Exceptions is termination of this Agreement; Agency is not responsible for any damages resulting from such failure. Upon delivery of such termination notice by Developer, this Agreement shall automatically terminate, the Deposit shall be immediately returned to Developer, and the Parties shall be released from all further obligations under this Agreement other than the Surviving Obligations. If Developer fails to terminate this Agreement in the manner set forth above, all Exceptions referred to in Developer's notice of objections, which are not Agency Removed Exceptions, shall be deemed to be Permitted Exceptions, and this Agreement shall remain in full force and effect. If Developer waives in writing its objection to any matters described in the notice of objections, such matters shall be deemed to be Permitted Exceptions.

(b) Title Updates. If any endorsement or update issued to the Title Commitment or Survey contains Exceptions other than those in the Title Commitment or Survey, Developer shall be entitled to object to any such Exceptions by a written notice of objections to Agency on or before the date thirty (30) days following Developer's receipt of such endorsement or update. If Developer fails to deliver to Agency a notice of objections on or before such date, Developer shall be deemed to have waived any objection to matters appearing on such endorsement or update, and thereafter all such Exceptions shall be deemed to be Permitted Exceptions. Agency shall have thirty (30) days from the receipt of Developer's notice either to obtain, as applicable, the issuance of a revised Title Commitment or a revision to the Survey removing such Exceptions ("Agency Removed Update Exceptions"). If Agency fails to provide for the removal of all such Exceptions within such thirty-day period, then this Agreement, at Developer's option, shall be terminated upon written notice to Agency at any time prior to the Closing. Developer's sole remedy for any failure by Agency to remove any such Exceptions is termination of this Agreement; Agency is not responsible for any damages resulting from such failure. Upon delivery of such termination notice, this Agreement shall automatically terminate, the Deposit shall be immediately returned to Developer, and the Parties shall be released from all further obligations under this Agreement other than the Surviving Obligations. If Developer fails to terminate this Agreement in the manner set forth above, all matters set forth in Developer's notice of objections relating to such endorsement or update, which are not Agency Removed Update Exceptions, shall be deemed to be Permitted Exceptions, and this Agreement shall remain in full force and effect. If Developer waives in writing its objection to any matters described in the notice of objections relating to such endorsement or update, such matters shall be deemed to be Permitted Exceptions.

(c) Permitted Exceptions. The term "Permitted Exceptions" shall mean all Exceptions contained in the Title Commitment or Survey (a) to which Developer does not object as herein provided, (b) to which Developer does object and which are not Agency Removed Exceptions or Agency Removed Update Exceptions, or (c) as to which Developer has waived or is deemed to have waived its objection, provided, however, that the term Permitted Exceptions shall not include (i) any taxes or assessments other than general ad valorem real estate taxes for the year of Closing; (ii) any monetary judgments, liens or encumbrances (including, without limitation, the Deed

of Trust referred to in Recital F); (iii) any matters that Developer causes the Title Company to delete from the Title Commitment or the Surveyor to delete from the Survey; or (iv) any matters that, prior to Closing, Agency agrees in writing to remove or cure at or before the Closing. The Dealership Association's Covenants, Conditions & Restrictions that have been or will be recorded against the Property will be deemed a Permitted Exception.

(d) Extension of Closing Date. The Closing Date shall be postponed, if necessary, by the number of days required to accommodate the procedures set forth in Section 2.07(b).

2.08 Submission of Grading and Foundation Plans. Within sixty (60) days after the expiration of the Inspection Period, Developer will submit to Agency the Grading and Foundation Plans for the Project, including, without limitation, the site plan and the manufacturer mandated signage for the Project. Agency must approve the Grading and Foundation Plans before conveyance, such approval not to be unreasonably withheld, conditioned, or delayed. Unless each submission is rejected by Agency within thirty (30) days, it will be deemed approved.

2.09 Submission of Construction Drawings. Developer will submit (a) 50% Construction Plans to Agency within ninety (90) days after the expiration of the Inspection Period; (b) 90% Construction Plans within one hundred eighty (180) days after the expiration of the Inspection Period; and (c) 100% Construction Plans within two hundred ten (210) days after the expiration of the Inspection Period. Unless each submission is rejected by Agency within thirty (30) days, it will be deemed approved.

Notwithstanding the preamble to this Section 2, pursuant to Section 6.02(c)(i), the submission and approval of Construction Plans is not a Preconveyance Requirement and the Closing may occur prior to such submission and approval if all other Preconveyance Requirements and conditions to Closing have occurred.

2.10 Construction Contracts. Within sixty (60) days after the expiration of the Inspection Period, Developer will submit to Agency the Developer's form of construction contract (the "Construction Contract Form"). Each construction contract used for the Project will adhere to the Construction Contract Form, which will require all work to be completed for a fixed and specified guaranteed maximum amount. Developer will enter into a construction contract for the grading and foundation work pursuant to the approved Grading and Foundation Plans, and into a separate contract for the improvements pursuant to the approved Final Construction Plans ("Final Construction Contract"). Subject to Section 6 below, all construction contracts for the Project will be submitted to Agency for its review and approval thirty (30) days prior to Close of Escrow, and approved by Agency before the Closing Date, such approval not to be unreasonably withheld, conditioned or delayed. Unless each submission is rejected by Agency within thirty (30) days, it will be deemed approved. The Final Construction Contract will include plans and specifications required under applicable building codes to be submitted with an application for a building permit and upon which Developer and its general

contractor will rely to construct the Project, and which will include, but will not be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans, final specifications, plans for any off-site improvements, a detailed breakdown of the costs of construction, and a schedule for construction of the Project.

2.11 Financial Plan. Developer represents that its estimated cost for the design and construction of the Project (hard and soft costs, including all site improvements, but excluding site acquisition) is Nine Million Dollars ($9,000,000). No later than ninety (90) days following the expiration of the Inspection Period, Developer will submit to Agency for approval a detailed Financial Plan that includes the following information:

(a) A detailed total development budget with a construction cost breakout by trade prepared in accordance with industry standards. The development budget will include, but not be limited to, line item costs for: pre-development; financing; marketing; construction; permits and fees; design and engineering; furniture, fixture and equipment; and tenant improvements;

(b) A pro forma budget showing sources and uses of funds;

(c) Evidence that Developer has secured firm funding commitments from a reputable institutional lender, as reasonably approved by Agency, in an amount sufficient in Agency's reasonable judgment to complete the Project through initial occupancy;

(d) A certified financial statement or other financial statement in such form reasonably satisfactory to Agency evidencing other sources of capital, sufficient to demonstrate that Developer has, or will have, adequate funds available and is committing such funds to cover the difference, if any, between Developer's costs of development and construction, as set forth in cost estimates for the Project approved by Agency (as set forth above), and the amount available to Developer from external financing sources; such statement will specifically include evidence that Developer has on hand, or will have, funds available and committed to satisfy any matching requirements imposed by any funding sources; and

(e) Such other evidence, if any, Agency reasonably requests to demonstrate the economic and financial feasibility of the Project.

If Agency does not respond in writing to the Financial Plan within thirty (30) days, the Financial Plan will be deemed approved. If Agency rejects the Financial Plan within that time, Developer will respond to Agency's concerns in writing. Agency's approval of the Financial Plan shall not unreasonably be withheld, conditioned or delayed.

Any subsequent material change to the approved Financial Plan must be first submitted to and approved by Agency. Agency's approval of any change to the Financial

Plan shall not be unreasonably withheld, conditioned or delayed. Agency will approve the change by notifying Developer in writing within thirty (30) days. Unless the proposed change is rejected by Agency within thirty (30) days, it will be deemed approved. If rejected within that time, the latest approved Financial Plan will continue to control construction of the Project. For purposes of this Section 2.11, a material change is a change in lenders, grantors, or investors, amounts to be invested by investors, a refinancing of a loan, an increase in estimated costs of design or construction of 5% or more, or any material change in a lender's or grantor's commitment letter or loan plan.

2.12 Governmental Approvals.

(a) Except as provided in Section 2.12(b), Developer is responsible for applying for and diligently pursuing the issuance of all permits and other required governmental regulatory approvals allowing construction, development and operation of the Project as each such permit or approval is required during the course of the construction until completion of the Project (the "Governmental Approvals"), incorporation of any mitigation measures identified in the environmental review process into the plans for development and operations. Without limiting the foregoing, Developer is responsible for its fair share of costs required by the mitigation measures derived from the EIR, SEIR, Addendum and any further environmental review required under this Agreement, as determined by the City or Agency.

Developer will bear the sole cost for obtaining the Governmental Approvals. In pursuit of these approvals, Developer will have the right to apply on behalf of Agency prior to the conveyance of the Property to Developer. Agency shall assist Developer in connection with any such approvals, provided that Agency will have no obligation to incur any out-of-pocket expenses.

Subject to Section 6.02, Developer will obtain all Government Approvals prior to the Close of Escrow. Developer will submit copies of all Governmental Approvals to Agency no later than ten (10) days of receipt thereof. Agency acknowledges that Developer intends to secure the Governmental Approvals so that the Property may be used for a General Motors Corporation approved sales and service facility. In the event that Developer is unable, after diligent pursuit, to secure all Governmental Approvals, Developer may terminate this Agreement by delivering written notice to Agency. If Developer delivers such a notice, then this Agreement shall terminate, the Deposit shall be promptly returned to Developer, and both Parties shall be relieved from any further liability hereunder, except for those matters which, by their terms, survive the termination of this Agreement (the "Surviving Obligations").

(b) Promptly after the Execution Date, Agency shall apply for, and thereafter shall diligently pursue the subdivision of the Property. Agency shall give Developer notice of its intended submittal of the subdivision application to the City and shall include therewith a copy of the complete subdivision application package for Developer's review. As a condition of Closing, as provided in Section 3.01(a)(ix),

Developer shall have the right to approve the final subdivision map as it applies to the Property, which approval shall not be unreasonably withheld, conditioned or delayed.

2.13 General Motors Dealer Agreement. A Dealer Operator has executed and delivered a Dealer Sales and Service Agreement with General Motors Corporation granting such Dealer Operator the right to operate a General Motors dealership in Oakland, California ("Dealer Agreement"), and will make available for inspection by Agency a copy of the Dealer Agreement within ninety (90) days after the Execution Date. Agency shall not retain a copy of the Dealer Sales and Service Agreement and shall not make or retain any written notes concerning the contractual relationship between the Dealer Operator and General Motors Corporation, which arrangements Agency acknowledges constitute the confidential business information of the Dealer Operator.

2.14 Performance and Payment Bonds. Not less than thirty (30) days prior to Commencement of Construction, Developer will submit to the Agency for its review and approval:

(a) A performance bond in an amount not less than one hundred twenty percent (120%) of the cost of construction of the Project as security for the faithful performance of such construction; and

(b) A labor and material payment bond in an amount not less than one hundred twenty percent (120%) of the cost of construction of the Project as security for payment to persons performing labor and furnishing materials in connection with such construction.

The surety may require separate payment and performance bonds for the grading/foundation work and the building of the improvements. The performance bond and labor and materials payment bonds (together referred to herein as the "Construction Bonds") will be issued by a licensed surety approved by Agency, will name Agency as co-obligee or assignee, and will be in a form reasonably satisfactory to Agency. A dual bond covering both performance and payment obligations will be acceptable if otherwise reasonably satisfactory in form.

2.15 Termination Date. If any Preconveyance Requirement in this Section 2 has not been met by the dated indicated for each such Preconveyance Requirement (or by such later date established, in the event of an extension as provided herein), then the party in whose favor the Preconveyance Requirement is made, as provided in the preamble to this Section 2, shall have the right to terminate this Agreement pursuant to Section 9.

SECTION 3. CONDITION OF PROPERTY; DISPOSITION OF THE PROPERTY

3.01 Time of Disposition; Escrow. Provided that Developer has not terminated this Agreement in accordance with Section 2.06 or 2.07, within thirty (30) days of the time Developer has received Agency's approval of the Grading and Foundation Plans, the

Governmental Approvals required for that scope of work, proof of insurance, and any other items necessary to commence development, and if Developer has delivered to Agency a Notice to Proceed for construction of the Project, and Developer is not in default under this Agreement beyond any applicable notice and cure period, and if all the other conditions precedent in Sections 3.01(a) and 3.01(b) of this Agreement are satisfied or waived, Agency and Developer will consummate the purchase and sale of the Property ("Closing"). The "Closing Date" will be the date, subject to the terms of this Agreement, on which the Grant Deed is recorded, which will be no later than October 31, 2008. At least ten (10) days prior to the Closing Date, Developer will open an escrow for the conveyance of the Property ("Escrow") at LandAmerica Commercial Services, at its office at 1990 N. California Blvd., Suite 710, Walnut Creek, California, or such other title company and office as may be mutually agreed upon by the Parties. The Parties will prepare joint escrow instructions consistent with this Agreement, and at least ten (10) days prior to the Close of Escrow, the Parties will deliver such escrow instructions to First American Title Company.

(a) Developer's Conditions Precedent. Developer's obligation to purchase the Property is expressly conditioned on the fulfillment (or waiver in writing by Developer) of the following conditions precedent:

(i) Agency is able to transfer title to the Property to Developer in accordance with and subject to the provisions of this Agreement;

(ii) The Title Company is prepared to issue the Title Policy, as contemplated by Section 2.07, and such title policies as may be required by its lender as a condition to its acquisition and construction loan to Developer in connection with the Project;

(iii) Agency's Governing Board has approved any amendments to the Redevelopment Plan that are necessary to allow the Project;

(iv) Agency has executed and delivered Disposition and Development Agreements for two additional dealerships in the North Gateway portion of the Auto Mall Project;

(v) Agency's representations and warranties contained herein as of the Closing are true and correct, except as otherwise disclosed in writing by Agency and thereafter waived by Developer;

(vi) Agency has performed or Developer has waived, in writing, all covenants of Agency set forth in this Agreement to be performed by Agency prior to the Closing Date, which performance or waiver will be conclusively established by Developer's consummation of the purchase contemplated hereby;

(vii) Each of the Preconveyance Requirements in favor of Developer described in Section 2 has been completed within the required time periods

and on terms and conditions reasonably satisfactory to Developer or waived in writing by Developer;

(viii) Agency has received approvals from the City of Oakland for a freeway billboard that will advertise for the Auto Mall.

(ix) Developer has approved the final subdivision map as it applies to the Property, and the final subdivision map has been approved and recorded by the City.

(x) Developer has confirmed in writing: (1) that Agency has resolved the CEQA Lawsuit to Developer's satisfaction, or that Developer is satisfied that the CEQA Lawsuit will not impact the physical condition of the Property, the financial viability of the Project, or the Developer's ability to commence construction in accordance with the Schedule, and (2) that any other pending litigation or administrative challenges brought by a third party, who is not related to Developer, concerning the following matters must be resolved to Developer's satisfaction: (A) this Agreement; (B) the Agency's approval of this Agreement, (C) any Governmental Approvals required for development, construction, use or occupancy of the Project (including environmental review for such Governmental Approvals); or (D) the development of the Project pursuant to approved construction drawings.

(b) Agency's Conditions Precedent and Covenants. Agency's obligation to sell the Property is expressly conditioned upon the fulfillment (or waiver in writing by Agency) of each of the following conditions precedent:

(i) Developer has performed or Agency has waived, in writing, all covenants and obligations of Developer set forth in this Agreement to be performed by Developer prior to the Closing Date, which performance or waiver will be conclusively established by Agency's consummation of the sale contemplated hereby;

(ii) Agency is able to transfer title to the Property to Developer in accordance with and subject to the provisions of this Agreement, including, without limitation, Section 2.07 hereof;

(iii) Agency has completed and recorded the Subdivision of the Property;

(iv) Developer has paid the Purchase Price all in cash;

(v) Through Escrow, Agency has paid off the Promissory Note using the Purchase Price, and the Deed of Trust is terminated;

(vi) Agency's governing board has approved any amendments to the Redevelopment Plan that are necessary to allow the Project;

(vii) Developer's representations and warranties contained herein as of the Closing are true and correct, except as otherwise disclosed by Developer in writing and thereafter waived by Agency;

(viii) Developer has paid (or caused to be paid) the first six (6) months of dues for membership in the Dealership Association, which amount will be set at $50,000 or such other amount as set by the Dealership Association;

(ix) Developer has secured all financing necessary to complete the Project as provided in Section 2.11(c); and

(x) Each of the Preconveyance Requirements described in Section 2 in favor of Agency has been completed within the required time periods and on terms and conditions reasonably satisfactory to Agency.

(xi) Developer has paid its contribution to the West Oakland Community Trust Fund as provided in the Amended and Restated Memorandum of Agreement for Oakland Army Base Among the Redevelopment Agency of the City of Oakland, the City of Oakland Acting by and Through Its City Council, the City of Oakland Acting By and Through Its Board of Port Commissioners, dated August ____, 2007.

(xii) Developer has deposited in escrow a Guaranty executed by Inder Dosanjh, in the form attached as Exhibit O to this Agreement.

(xiii) Developer has represented and warranted that the same form of Dealer Agreement made available to Agency pursuant to Section 2.13 herein is in effect as of the Closing.

(xiv) The CEQA Lawsuit has been resolved to Agency's satisfaction, or Agency is satisfied that the CEQA Lawsuit will not materially impact the physical condition of the Property, the financial viability of the Project, or Developer's ability to commence construction in accordance with the Schedule. At the time of Closing, Agency must be satisfied that any other pending litigation or administrative challenges concerning the following matters must be resolved to Agency's satisfaction: (A) this Agreement; (B) the Agency's approval of this Agreement, (C) any Governmental Approvals required for development, construction, use or occupancy of the Project (including environmental review for such Governmental Approvals); or (D) the development of the Project pursuant to approved construction drawings.

3.02 Conveyance. At the close of escrow, the Property will be conveyed to Developer by a Grant Deed in substantially the form set forth in Exhibit F attached hereto (the "Deed"). Possession of the Property will be delivered to Developer on the Closing Date. Prior to the Closing Date: (1) Agency will deliver or cause to be delivered to the escrow holder for the benefit of Developer the executed Deed to the Property; and (2) Developer will deliver or cause to be delivered to escrow holder for the benefit of

Agency the Purchase Price in cash. On conveyance of the Property to Developer, it will be conclusively deemed that the conditions specified in Sections 3.01(a) and 3.01(b) have been satisfied or waived, except for the Parties' respective representations and warranties, which shall survive the Closing.

3.03 Purchase Price. (a) The Purchase Price for the Property will be Seven million one hundred eighty thousand dollars ($7,180,000) which the Agency has determined to be the fair market value for the Property. The Purchase Price will be payable in cash at Closing.

(b) If, prior to Closing, Agency enters into a disposition and development agreement for development of a new retail automobile dealership on any parcel located within the Auto Mall Project (the "Comparison Property") in which the land is to be sold at a price less than the Agency-determined fair market value, then Agency will offer Developer the opportunity to execute an amendment to this Agreement ("Amendment") substituting the Purchase Price with the same calculation used to determine the price of the Comparison Property (on a per-square-foot basis); provided, however, that if the Agency imposes conditions on the developer of the Comparison Property in order to obtain the reduced price, then Developer herein must comply with the same conditions, as applicable to the Property ("Applicable Conditions"). Agency shall provide the Amendment to Developer at least 20 days prior to Closing, and Developer will have a maximum of 15 days to execute the Amendment and deposit it into Escrow or else the Amendment shall be of no effect.

If, under the Amendment (if executed), the purchase and sale of the Property must be considered a "subsidized" transaction as determined by the City's City Attorney, then the Amendment shall include provisions requiring Developer to comply with all Agency or City programs that are applicable to such a "subsidized" transaction as determined by the City's City Attorney, including, without limitation, prevailing wages, living wages, Equal Benefits, and Small, Local and Small Local Business requirements. The Amendment will be prepared by Agency and will not amend any other provision of this Agreement other than the reduction in the purchase price, the addition of the Applicable Conditions, and the addition provisions requiring compliance with the foregoing City/Agency programs.

Developer shall have no rights under this Section 3.03(b) for any Agency execution of a disposition and development agreement for, or sale of, Comparison Property that occurs after the Closing.

3.04 Closing Costs. At the close of escrow, Developer will pay all escrow fees, recording and notary fees, all title insurance costs, the cost of its lender policy, and any required endorsements, the expenses associated with its financing, and the City of Oakland and the County of Alameda transfer taxes attributable to this transaction.

3.05 Rights of Access After Closing.

(a) Agency. Without limiting any other access rights specified in this Agreement, after the Closing but before Commencement of Construction, Agency, and its employees, agents and contractors, upon at least 24 hours notice to Developer, will have the reasonable right of entry and access to the Property for inspection, monitoring, and other activities reasonably necessary to comply with this Agreement, the Consent Agreement and the CRUP. Agency will indemnify, defend and hold Developer, each of Developer's Affiliates, and their respective members, partners, venturers, stockholders, directors, officers, employees, agents, spouses, legal representatives, successors and assigns (collectively, "Developer Parties") harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, reasonable attorneys' fees) caused by any such entry and activities on the Property resulting from the negligence, wrongful acts or omissions of Agency or its employees, agents and contractors.

The provisions of this Section 3.05(a) apply to Agency's access rights after Closing and before Commencement of Construction; Agency's access rights after Commencement of Construction and prior to Completion of Construction are provided in Section 6.09 of this Agreement.

(b) Other. The Army retained access rights for itself, the U.S. Environmental Protection Agency and DTSC pursuant to the Army Subaru Lot Deed over all or a portion of the Property, and DTSC retains access rights over all the Property pursuant to the Consent Agreement.

SECTION 4. SELLER'S REPRESENTATIONS AND WARRANTIES; DEVELOPER TAKES PROPERTY "AS IS"

4.01 As of the Closing Date, Agency represents and warrants, to the best of Agency's knowledge, to Developer as follows.

(a) No Third-Party Interests. Agency has not granted to any party any option, contract or other agreement with respect to the purchase or sale of the Property

(b) No Actions. There are no actions, suits, proceedings or claims pending or threatened with respect to or in any manner affecting any of the Property or the ability of Agency to consummate the transaction contemplated by this Agreement, except for the CEQA Lawsuit.

(c) Authority. Agency is duly organized and existing and in good standing under the laws of the State of California. Agency has the full right and authority to enter into this Agreement and consummate the transactions contemplated by this Agreement. All requisite action has been taken by Agency in connection with the execution of this Agreement and the documents referenced herein and the consummation of the

transactions contemplated hereby. Each of the Persons signing this Agreement on behalf of Agency is authorized to do so. Agency shall furnish to Developer any and all documents to evidence such authority as Developer shall reasonably request.

4.02 Developer's Due Diligence; "AS IS" Conveyance; Physical Condition of the Property; Governmental Regulations. Developer will perform its own review of the condition of the Property and the feasibility of the Project, including, but not limited to preparing preliminary site plans and elevations, performing preliminary soils testing, engineering studies and environmental site assessments, assuring adequate parking, and developing Project cost estimates. Developer will be responsible for acquiring necessary knowledge of operative or proposed governmental laws and zoning regulations, all as applicable to or affecting the Property, including, but not limited to, existing and proposed restrictions, zoning, environmental and land use laws and regulations to which the Property may be subject, and will acquire the Property subject to the foregoing, as well as to such other laws and regulations that pertain to the Property.

Developer acknowledges that it has been afforded a full opportunity to inspect all of the public records of the Agency relating to the Developer's proposed use of the Property. The Agency makes no representations or warranties as to the accuracy or completeness of any matters in such records. The Developer shall perform a diligent and thorough inspection and investigation of the Property, either independently or through its experts, including, but not limited to the quality and nature, adequacy and physical condition of the Property, structural elements and foundations, all other physical and functional aspects of the Property, geotechnical and environmental condition of the Property including, without limitation, presence of lead, asbestos, other Hazardous Materials, any groundwater contamination, soils, the suitability of the Property for the Project, zoning, land use regulations, historic preservation laws, and other Laws governing the use of or construction on the Property, and all other matters of material significance affecting the Property and its development, use, operation, and enjoyment under this Agreement.

Agency makes no representation or warranty whatsoever, express or implied, as to the physical condition of the Property or in connection with any matter relating to its value, use, or other land use, fitness for a particular purpose, the presence or absence of Hazardous Materials or the ability of Developer to obtain Government Approvals; Developer is relying solely upon its own inspections, investigations and review of available information to determine the same; (iii) Developer is accepting the Property in its "AS IS" condition and "WITH ALL FAULTS, IF ANY," and except only as provided in Section 4.01, Developer is not relying on any warranties, promises, understandings or representations, express or implied, of Agency or any agent or representative of Agency relating to the Property.

Agency does not represent or warrant the accuracy, completeness, or adequacy of any matters disclosed by Agency or its agents. No inference may be drawn that all matters affecting the Property have been disclosed by this Agreement or in the materials delivered by Agency or its agents to Developer. The disclosure of any matter by Agency

or its agents will not be deemed that all issues regarding the Property have been discovered, included or properly quantified at all or to any degree. Developer acknowledges that the matters disclosed in or pursuant to this Agreement are not a comprehensive disclosure, that Developer is a sophisticated and experienced owner and developer of properties similar to the Property, and that Developer, in determining whether to develop the Property pursuant to this Agreement, will, except as otherwise set forth herein, undertake and rely solely upon its own inspections, analyses and evaluations of the Property and its suitability for Developer's intended use.

Except as set forth in Section 5.03(a), 5.05 and 6.06, and in the Consent Agreement, Agency is not in any way responsible for the condition of the Property, or for removing or relocating any debris, rubble, demolition material, or subsurface construction on the Property, including, without limitation, any underground utility, facilities or improvements. Except as provided in Section 5.03, 5.05 and 6.06, after Agency's conveyance, it will be Developer's sole responsibility and obligation to: (1) take such action as may be necessary to place the Property in all respects in a physical condition entirely suitable for the development described in this Agreement; and (2) take such action to remove, relocate or otherwise accommodate any utility facilities or improvements (both above ground and underground) including, without limitation, any telephone cables, as required by the appropriate governmental or public utility entity as a condition for vacating. Nothing contained herein will require Developer to bury overhead utility lines that currently exist on the Property; Developer acknowledges that new service lines will be buried at Developer's sole cost and expense.

Agency has provided Developer with the Environmental Assessments (as defined in Section 5.02), and other various reports, documents and other materials pertaining to Hazardous Materials, contamination, environmental conditions, valuations, costs estimates, or other conditions or assessments of the Property and the structures or other improvements thereon. Such reports were provided to assist Developer in its own evaluation of the conditions at the Property and Agency does not warrant the accuracy or completeness of such reports, documents, and other materials. . Developer may not bring any claim against Agency or the City, or its Agents and employees based on the accuracy or completeness of the information contained in or omitted from such reports, documents, or other materials.

SECTION 5. HAZARDOUS MATERIALS AND ENVIRONMENTAL REMEDIATION

5.01 Hazardous Materials. The term "Hazardous Materials" will mean any substances that are toxic, corrosive, inflammable, or ignitable, petroleum and petroleum byproducts, lead, any hazardous wastes, and any other substances that are defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other terms intended to convey such meaning, including those so defined in any of the following federal statutes, beginning at 15 U.S.C. section 2601, *et seq.*, 22 U.S.C. section 1251, *et seq.*, 42 U.S.C. section 6901, *et seq.* (RCRA), 42 U.S.C. section 7401, *et seq.*, 42

U.S.C. section 9601, *et seq.* (CERCLA), 49 U.S.C. section 1801, *et seq.* (HMTA); or California statutes beginning at California Health and Safety Code section 25100, *et seq.*, section 25249.5, *et seq.*, and 25300, *et seq.*, and California Water Code section 13000, *et seq.*, the regulations, as well as the enforceable orders, permits and judgments that apply to the Property adopted and promulgated pursuant to such statutes and any similar statutes.

5.02 Notice. Agency hereby gives notice to Developer that, to the best of its knowledge and relying on analysis performed by its environmental consultants, there are no Hazardous Materials present on or beneath the Property, other than those set forth in those Environmental Assessments and reports referenced in Exhibit H and Exhibit J, analyzing hazardous materials contamination on the Property (together, the "Environmental Assessments"), copies of which have been delivered to Developer. Developer acknowledges that it is aware of the conditions described in the Environmental Assessments, and acknowledges that it has reviewed the contents of the Environmental Assessments. This notice constitutes the notice required under California Health and Safety Code Section 25359.7. Developer agrees to accept the Property "as is" in its current condition without warranty express or implied by Agency with respect to the presence of Hazardous Materials known or unknown on or near the Property.

5.03 Environmental Remediation.

(a) Existing Environmental Hazards. Developer will be responsible for any investigation or remediation activity involved in implementing the RAP. In accordance with the terms of this section, Agency will promptly reimburse Developer for all costs directly attributable to such implementation, so long as Developer follows the Consent Agreement and the RAP protocols, requirements and procedures. Agency will only reimburse Developer for those investigation, remediation, monitoring, and reporting activities that take place prior to Completion of Construction. For the purposes of this Section 5.03, Agency will reimburse Developer for the following activities:

(i) Any subsurface, soil, groundwater or vapor testing/monitoring that is legally required by DTSC directly related to approvals for structures;

(ii) The testing, handling and disposal of contaminated soil, provided that Developer has used its best reasonable efforts to minimize such costs to the greatest extent possible;

(iii) Installation of building or structural requirements specifically mandated by DTSC to address the monitoring or extraction of hazardous materials, provided that Developer has used its best reasonable efforts to locate and design its building to minimize such costs to the greatest extent possible.

Developer will consult with Agency prior to incurring any of the expenses listed above, in order to minimize remediation and investigation costs, and to ensure compliance with the RAP and the Consent Agreement. Agency will not reimburse Developer for additional costs incurred as a result of any construction delays caused by implementation of the RAP or compliance with DTSC requirements, including, but not limited to delays resulting from: testing and monitoring requirements; testing, handling and disposal of contaminated soil; or building and structural requirements of DTSC. Agency will not reimburse Developer for precautionary construction-related activities due to subsurface environmental conditions, including installation and operation of vapor extraction equipment, special clothing or equipment for construction workers to handle subsurface environmental hazards.

Agency will not reimburse Developer for any costs associated with violations, enforcement actions, or other claims related to remedial activities on the Property performed by Developer. All reimbursable scopes of work, which must be in writing and include bid price for the work to be conducted, must be approved by Agency's Environmental Project Manager in advance of the commencement of such work, including but not limited to both investigation and remediation, such approval not to be unreasonably withheld, conditioned or delayed. Unless such submission is rejected by Agency within ten (10) days, it will be deemed approved. Agency will make any reimbursement pursuant to this Section 5.03(a) within sixty (60) days after Developer submits its invoice to Agency for work performed pursuant to the approved scope of work. Any inspection or testing conducted by Developer pursuant to Sections 2.03 and 2.04 of this Agreement is specifically excluded from amounts that are reimbursable by Agency. Developer is directly responsible for, and shall not be reimbursed for all requirements of Developer under the CRUP, including Developer's annual certification.

(b) Hazards Arising Subsequent to Transfer of Property. Developer is responsible for all costs of investigating, monitoring and remediating any contamination by Hazardous Materials on or released from the Property as required in connection with the Project, which occurs following conveyance of the Property to Developer or occurs due to Developer's operations on the Property. Developer will be solely responsible for developing, submitting, and implementing any risk assessments or remediation work plans for the Property, as required by the appropriate regulatory agencies, including all costs attributable thereto, and Developer will be responsible for any other permits associated with construction or operations on the Property.

(c) Waiver and Release. Except as otherwise set forth herein, Developer and Agency agree to waive and release each other from any claims, causes of action, liabilities or costs arising from the presence of or associated with the investigation, monitoring or remediation of any Hazardous Materials contamination on or released from the Property as of the date of Closing, except as otherwise specifically provided for in this Agreement, whether or not such contamination was known as of the date of this Agreement.

5.04 Use and Operation of Project. Except for the existing Hazardous Materials on the Property, neither Developer, nor any agent, employee, or contractor of Developer, nor any authorized user, occupant, or lessee of the Property or Project will use the Property or Project or allow the Property or Project to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials following conveyance of title to the Property to Developer. The preceding sentence does not, and will not be construed to, prohibit the generation, storage, treatment or use on the Property or the Project of Hazardous Materials that are commonly used in the construction of similar projects or the operation of the type of business intended to be conducted on the completed Project, so long as such activities are at all times in full compliance with all environmental laws. In no event will Agency be responsible for remediation with respect to any amounts of Hazardous Materials that are introduced on to the Property after conveyance of the Property to Developer, unless caused by the acts or omissions of Agency, its agents, employees or contractors.

5.05 Coordination with Agency Regarding DTSC and Army Requirements. Though Developer is responsible for any investigation or remediation activity involved in implementing the RAP as to the Property pursuant to Section 5.03(a) herein (subject to Agency's reimbursement obligations as set forth in that section), Agency will retain some remediation and reporting obligations under the Consent Agreement and the Army Subaru Lot Deed. Developer will provide certain data to Agency including (1) providing Agency with a copy of Developer's annual certification to DTSC, and (2) the results of any environmental investigation conducted on the Property. Developer will grant Agency reasonable access to the Property as set forth in Section 3.05 for the purposes of confirming compliance with the land use restrictions in the CRUP, and confirming any other environmental data required for reporting to DTSC or the Army.

SECTION 6. CONSTRUCTION OF THE PROJECT

The provisions of this Section 6 apply until Agency has issued a Certificate of Completion for the Project as provided in Section 6.05.

6.01 Commencement of Construction. Developer will commence construction work on the Project no later than thirty (30) days after the Closing Date. "Commencement of Construction" will mean the commencement of grading and foundation work.

6.02 Construction Obligations; Site Permit.

(a) Construction. Construction of the Project will be substantially in accordance with the Final Construction Plans approved by Agency, as the same may be modified as required for issuance of a building permit, and at the times specified in the Schedule. If the Final Construction Plans are modified as required for issuance of a building permit, Developer must notify Agency of the required change and afford Agency reasonable opportunity to discuss such change with the governmental authority requiring the change and with the Developer's architect. Agency will designate a

representative to attend all monthly on-site meetings during Project construction. Developer has no responsibility to reschedule such meetings if Agency representative is unable to attend, unless the inability to attend is due to *force majeure* events as defined in Section 11.07 of this Agreement.

(b) Permits. Developer has the sole responsibility for obtaining all necessary permits for the Project and will make application for such permits directly to the applicable regulatory agency at its sole cost and expense. Upon any such submission Developer will prosecute the application diligently to issuance. Agency will assist Developer as reasonably necessary in connection with Developer's obligation to obtain such permits, except that Agency will have no obligation to incur any out-of-pocket expenses.

(c) Site Permit. The Site Permit process allows construction to begin with an approved Site Permit and Addenda for the Grading and Foundation Plans instead of a full Building Permit. Under the Site Permit process, only the Site Permit and Grading and Foundation addenda required for Commencement of Construction are required to satisfy the Governmental Approvals Condition to close of escrow and conveyance of the Property. Construction may continue to completion through the issuance of addenda covering the remaining aspects and phases of construction not provided for under the initial approved portion of the Building Permit. Agency is willing to allow the Site Permit for construction of the Project, provided that Developer proceeds diligently and strictly in accordance with this Section, so long as the use of the Site Permit process does not substantially delay the dates in the Schedule unless modified as the Parties may agree. Subject to the foregoing, the following provisions will apply:

(i) Developer will not be required to have Agency's approval of a full set of Final Construction Plans prior to the Close of Escrow. In lieu of such requirement, the Final Construction Plans (and all Construction Plans and addenda) will be submitted sequentially in accordance with modifications, if any, to the Schedule as the Parties may agree, provided that the sequential submittals will not substantially delay the dates in the Schedule for the Commencement of Construction and Completion of Construction; and

(ii) Developer acknowledges that Agency's approval of submissions (as set forth in this Agreement) is a condition precedent to issuance of any permit addenda.

(d) Developer Control of Construction. Developer will be solely responsible for all aspects of Developer's conduct in connection with the construction of the Project, including, but not limited to, the quality and suitability of the Final Construction Plans, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Agency is under no duty to inspect construction of the Project. Any review of Final Construction Plans or any other plans, or any inspection undertaken by Agency for the Project is solely for the purpose of determining whether Developer is properly discharging its obligations to Agency, and should not be relied upon by Developer or by any third parties as a warranty or

representation by Agency as to the quality of the design or construction of the Project. Approval of the Final Construction Plans by Agency will not constitute a representation or warranty as to compliance with State or local building codes and/or other applicable laws.

(e) Prevailing Wages. If and to the extent required by applicable state law, Developer shall pay prevailing wages in connection with construction of the Project.

6.03 Changes in Final Construction Plans of Project. Following Commencement of Construction, if Developer wishes to make (1) any change to the exterior of the Project or public lobby that exceeds $50,000; or (2) any set of changes the exterior of the Project or public lobby that exceeds $100,000; or (3) any substantial change in building materials or equipment, specifications that lessen the quality of construction or the exterior appearance of the Project, or the architectural or structural design of the Project as called for in the Plans then in effect (unless such structural change is required by applicable building or zoning laws), Developer will first submit the proposed change to Agency for its written approval, such approval not to be unreasonably withheld, conditioned or delayed. Agency will approve the change by notifying Developer in writing within ten (10) days. Unless the proposed change is rejected by Agency within ten (10) days, it will be deemed approved. If rejected within that time, the previously approved Plans will remain in effect or they will be amended in accordance with the Parties' agreement.

6.04 Completion of Grading and Foundation Work. Subject to reasonable delays caused by the City's wet weather grading moratorium, investigation and remediation activities mandated by DTSC as provided in Section 5.03, *force majeure* events (as defined in Section 11.07 of this Agreement) or as a result of the acts or omissions of Agency, its agents, employees, or contractors, Developer will complete grading and foundation work one hundred twenty (120) days after Close of Escrow.

6.05 Completion of Development. Developer will diligently, actively and continuously prosecute construction of the Project according to the Project Schedule set forth in Exhibit C. In no event will construction be completed later than March 1, 2010 (subject to reasonable delays caused by the City's wet weather grading moratorium, investigation and remediation activities mandated by DTSC as provided in Section 5.03, *force majeure* events (as defined in Section 11.07 of this Agreement) or as a result of the acts or omissions of Agency, its agents, employees, or contractors), as evidenced by the issuance of a Certificate of Completion from the Agency. In partial fulfillment of this obligation, Developer will:

(a) Administer construction contract(s) and supervise and coordinate the work of the general contractor;

(b) Provide on-Property project oversight, as necessary;

(c) Prepare and execute change orders, subject to approval by Agency, as applicable, as set forth above;

(d) Prepare and administer a punch list inspection; and

(e) File a Notice of Completion with the City.

Failure to comply with this Section 6.05 will constitute an Event of Default.

Promptly after Completion of Construction of the Project in full accordance with the terms of this Agreement, Agency will issue to Developer a Certificate of Completion so certifying, which may not be unreasonably delayed, conditioned or withheld. The Certificate of Completion will be a conclusive determination that the covenants in this Agreement with respect to Developer's construction obligations have been met for the Project. The Certificate of Completion shall be fully executed by Agency in recordable form. Developer may record the Certificate of Completion at any time after issuance.

6.06 Access and Utility Infrastructure. Agency, at its sole cost and expense, will diligently, actively and continuously prosecute construction of the following access and utility infrastructure ("Access and Utility Infrastructure"): (a) Automall Parkway, the road providing access to the Property, and stubbed to the property line of the Property; (b) such infrastructure as is necessary for gas, electrical power,, potable water, sanitary sewer and storm water services to the Property, stubbed to the property line of the Property. If the location or design chosen by the Agency requires the Agency to vacate or abandon an existing street, the Agency shall comply with all applicable laws regarding street vacation or abandonment. The Parties will work together in good faith to ensure that the construction of such Access and Utility Infrastructure will be expedited so as to allow Developer to adhere to the Project Schedule in Exhibit C. All Access and Utility Infrastructure described in this Section 6.06 shall be completed by Agency no later than March 1, 2009 (subject to reasonable delays caused by the City's wet weather grading moratorium, investigation and remediation activities mandated by DTSC as provided in Section 5.03, *force majeure* events as defined in Section 11.07 of this Agreement, or as a result of the acts or omissions of Developer, its agents, employees, or contractors). In the event Developer is delayed in adhering to the schedule set forth on Exhibit C as the result of the delay in completion of the infrastructure by the Agency, the Agency will have no liability for any costs or liabilities incurred by Developer for any such delay, but such delay shall extend all time limits provided for in this Agreement on a day by day basis for the delay caused by the inability of the Agency to complete the infrastructure provided for herein. Agency is entitled without charge to install temporary improvements on the Property if necessary to accommodate the phased construction of roads and utilities for the Auto Mall Project, provided that Agency removes the temporary improvements when they are no longer necessary. Agency is not responsible for any on-site improvements or any road or utility improvements as may be required by the City of Oakland as part of its approval for the Project, except for the Access and Utility Infrastructure.

6.07 Employment Nondiscrimination. Developer, its successors, assigns, contractors and subcontractors will not discriminate against any employee or applicant

for employment in connection with construction of the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, AIDS or AIDS-related complex, or physical or mental disability. Each of the following activities will be conducted in a nondiscriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rates of pay and other forms of compensation; and selection for training, including apprenticeship.

6.08 Disabled Access. Developer will construct the Project in compliance with all applicable federal, state, and local requirements for access for disabled persons.

6.09 Right of Access. Prior to Completion of Construction, Agency and its employees, agents, and contractors, upon at least 24 hours notice to Developer, will have the right to enter upon the Property following close of escrow to inspect the Property and the Project at reasonable times to ensure Developer's compliance with this Agreement. In exercising this right, Agency shall use reasonable efforts to minimize the interference with Developer's construction activities. Agency will be liable for and will hold the Developer Parties harmless from and will indemnify and defend Developer and the Developer Parties from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, reasonable attorneys' fees) caused by any such entry and activities on the Property resulting from the negligence, wrongful acts or omissions of Agency or Agency's employees, agents, and contractors.

6.10 Environmentally Sustainable Project. Developer shall use commercially reasonable efforts to design, develop, construct the Project to be environmentally sustainable in conformance with the LEED Green Building Rating System (Version 2.2) published by the U.S. Green Building Council in November 2005, which is on file with Agency. Developer and its design consultants shall work with Agency's economic development staff to develop appropriate and economically feasible sustainable building goals and strategies using Agency's Sustainable Building Guide and Project Management Tool. Developer will incorporate principles of environmental sustainability, including substantial use of such green building techniques as energy-conserving design and appliances, water-conserving fixtures and landscape, recycled-content building materials and low waste construction techniques, into the Final Construction Plans.

6.11 Site Inspections. During construction of the Project, Developer will permit and facilitate observation and inspection of work at the Project site by Agency's authorized representatives as reasonably required in accordance with the provisions of 6.09 above.

6.12 Status Reports. During periods of construction, Developer will submit written progress reports to Agency in such form and detail, and at such intervals (but in no event more than once per quarter), as may be reasonably required by Agency.

6.13 Quality of Work. Developer will construct the Project in conformance with general industry standards and will employ building materials of a quality suitable for the requirements of the Project. Developer will develop the Project in full

conformance with applicable local, state, and federal statutes, regulations, and building codes.

6.14 Equal Benefits Ordinance. In constructing the Project, Developer will comply with the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations.

SECTION 7. POST-CONSTRUCTION REQUIREMENTS AND COVENANTS; OPTION TO REPURCHASE

7.01 Compliance with Redevelopment Plan, Army Subaru Lot Deed and Consent Agreement.

(a) Redevelopment Plan. The Deed for the Property will provide that Developer covenants for itself, its lessees, successors, assigns and every successor in interest to the Property that Developer, such lessees, successors and assigns will develop and use the Property for 30 years after the Closing Date in conformance with the Redevelopment Plan. Agency and its employees, agents, architects, engineers and contractors, upon at least 24 hours notice to Developer, will have the right to enter upon the Property following close of escrow to inspect the Property and the Project at reasonable times to ensure operation and management in conformance with this Section 7. Agency will be liable for and will hold Developer harmless from and will defend Developer against any damages to persons or property caused by any such entry and activities on the Property resulting from the negligence, wrongful acts or omissions of Agency or Agency's employees, agents, and contractors.

(b) Army Subaru Lot Deed and Consent Agreement. In addition to the obligations set forth in Section 5 of this Agreement, Developer will operate the Project consistent with all the restrictions and requirements of the Army Subaru Lot Deed and the Consent Agreement.

7.02 Auto Retail Use.

(a) Use Restriction. Except as provided in Section 7.02(b), for a period of thirty (30) years after the Closing Date, the use of the Property will be strictly restricted to a motor vehicle service and repair center and automobile dealership (including sales, service and related activities) as defined in Section 1.30. Any other use must be approved in advance by Agency, which approval shall be within the Agency's sole and absolute discretion.

(b) Failure of Auto Mall Project. If at any time during the 30 years after the Closing Date, the Auto Mall Project fails, Developer may serve written notice to Agency requesting to be released from the use restriction in Section 7.02(a). Agency will respond to such request within 60 days indicating that either (1) it intends to repurchase the Property in accordance with Section 7.02(c) herein; or (2) it does not intend to

repurchase the property, and Developer is released from the use restrictions in Section 7.02(a). If Agency fails to respond within 60 days, Developer's request will be deemed approved. "Failure" of the Auto Mall Project for the purposes of this Section 7.02 will be deemed to occur when, for a period of 90 days (which time period may be extended due to delays caused by an event of *force majeure* as defined in Section 11.07 of this Agreement), three or more of the six parcels in the Auto Mall Project cease to be occupied by automobile dealerships in continuous operation.

(c) Option to Repurchase Upon Failure of Auto Mall Project. If Agency delivers a notice to Developer of its intent to purchase the Property pursuant to Section 7.02(b) ("Notice of Intent to Purchase"), the purchase price will be based on the appraised Fair Market Value of the Property, to be determined in accordance with the following appraisal process. Within ten (10) days after delivery of the Notice of Intent to Purchase, Developer and Agency shall each appoint a real estate appraiser with at least ten (10) years of experience in appraising commercial real property in Alameda County, and give notice of such appointment to the other. If either Developer or Agency shall fail to appoint an appraiser within ten (10) days after receiving notice of the identity of the other party's appointed appraiser, then the single appraiser appointed shall be the sole appraiser and determine the Fair Market Value of the Property. In the event each party timely appoints an appraiser, such appraisers shall, within thirty (30) days after the appointment of the last of them to be appointed, complete their determinations of Fair Market Value and simultaneously furnish the same to Developer and Agency.

If the Fair Market Value under the low appraisal does not vary from the higher appraisal by more than five percent (5%) of the lower appraisal, the Fair Market Value shall be the average of the two valuations. If the low appraisal varies from the high appraisal by more than five percent (5%), the two appraisers shall, within ten (10) days after submission of the last appraisal report, appoint a third appraiser who shall be similarly qualified. If the two appraisers shall be unable to agree on the selection of a third appraiser in a timely manner then either Developer or Agency may request such appointment by the presiding judge of the Superior Court of Alameda County, acting in his or her private capacity. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for or against either party. Such third appraiser shall, within thirty (30) days after appointment, after reviewing the first two appraisals and meeting with the appraisers, select which of the determinations of the first two appraisals most nearly reflects the third appraiser's determination of fair market rental value and the amount so selected shall be the Fair Market Value for the purposes for the option to repurchase in accordance with this Section 7.02. All fees and costs incurred in connection with the determination of Fair Market Value by the third appraiser, if any, shall be paid one-half by Agency and one-half by Developer.

Escrow for the sale of the Property to Agency pursuant to this Section 7.02(c) will close no later than ninety (90) days after the date that the Fair Market Value is determined, at which time Developer will execute and deliver a grant deed to the Property to Agency, and Agency will pay Developer the purchase price in full. The purchase price will be made in cash first to pay any outstanding secured loans or other

monetary liens on the Property, in order of priority, and then to Developer. Developer will have the right to approve the form of the deed to convey the Property pursuant to this Section, which approval shall not be unreasonably withheld.

(d) Quitclaim of Use Restriction. Upon expiration of the tern of the use restriction, pursuant to Section 7.02(a), or upon earlier release of the use restriction, pursuant to Section 7.02(b), at Developer's request, Agency will execute and deliver to Developer and record a quitclaim deed in order to remove the use restriction as an encumbrance upon the Property under this Agreement. Developer will pay the costs, if any, of recording the quitclaim deed.

7.03 Environmental Sustainability. For so long as the Redevelopment Plan remains in effect, and to the extent reasonably and economically practicable, Developer will operate the Project to be environmentally sustainable, and will include language in any lease, and will require language in any sublease or assignment, requiring that the tenant or subtenant comply with the provisions of this Section 7.03.

7.04 Nondiscrimination. Developer covenants for itself, its heirs, executors, administrators and assigns and all persons claiming under or through them, that there will be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference, marital status, ancestry, national origin, AIDS or AIDS-related complex, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor will Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenants will run with the land. Developer will ensure that language substantially similar to the above is incorporated into all leases, rental agreements and grant deeds for the Project.

7.05 Option to Repurchase.

In further consideration for the sale of the Property to Developer, Developer hereby grants to Agency the option ("Option") to buy the entire Property, including the fee interest in the Property, as well as all of Developer's interest in all rights, privileges and easements appurtenant to the Property, starting on that date which is six (6) months from the Closing Date (which date shall be extended due to reasonable delays caused by the City's wet weather grading moratorium, investigation and remediation activities mandated by DTSC as provided in Section 5.03, *force majeure* events as defined in Section 11.07 of this Agreement, or due to delays caused by Agency, its agents, employees or contractors), if Commencement of Construction by Developer has not occurred by that date. The purchase price under the Option will be the same as the purchase price paid by Developer under Section 3.03 herein, and will be made in cash first to pay any outstanding secured loans or other monetary liens on the Property, in order of priority, and then to Developer. For purposes of this Section 7.05, construction

of the Project will be deemed to be commenced on the date that the building foundation for the Project has been completed (the "Commencement of Construction").

The Option will be senior in priority to any private liens, leases, mortgages or encumbrances on the Property entered into after the date of this Agreement. Upon exercise of the Option, Developer will deliver title to the Property to Agency free and clear of any such junior liens, leases, mortgages, or encumbrances.

The period for exercising the Option will begin on the starting date as set forth above for the Option, and will terminate upon the earlier of (i) one hundred twenty (120) days thereafter, or (ii) Commencement of Construction by Developer (such period is referred to herein as the "Exercise Period"). Agency shall exercise the Option by delivering written notice of the exercise to Developer during the Exercise Period. If Agency does not provide such written notice prior to the expiration of the Exercise Period, then the Option will lapse and be of no further force or effect. If the Option lapses without Agency exercising the Option, then Agency will execute and deliver to Developer and record a quitclaim deed in order to remove the Option from title to the Property. Developer will pay the costs, if any, of recording the quitclaim deed. If Agency timely exercises the Option, escrow for the sale of the Property to Agency will close and Developer will execute and deliver a grant deed to the Property no later than one hundred twenty (120) days after Developer's receipt of Agency's notice of exercise of the Option, at which time Agency will pay Developer the purchase price in full in cash, subject to payment of loans and monetary liens as provided herein. Prior to the close of escrow, Developer will take all necessary steps to ensure that a title company will be able to issue to Agency, upon close of escrow, an ALTA owner's policy of title insurance, in an amount equal to the purchase price of the Property, showing title to the Property vested in Agency, with the same exceptions as when Developer took title to Property, plus any recorded utility service easement necessary for the operation of the Project and any non-monetary liens or encumbrances approved by Agency.

At any time during the Exercise Period, Agency, upon at least 24 hours notice to Developer, may enter the Property for purposes of inspection, survey, tests, or other actions reasonably related to possible acquisition of the Property by Agency, subject to the requirements of Section 6.09.

7.06 Dealership Association and CC&Rs. Developer will remain (or, at its sole election, require that the Dealer Operator remain) at all times a member of the Dealership Association, which will be responsible for improvements and restrictions on the common areas of the Auto Mall Project, including, without limitation, the site plan and the manufacturer mandated signage for the Project. As owner of the Property, Developer is subject to the Covenants, Conditions & Restrictions ("CC&Rs") attached as Exhibit D hereto that have been or will be recorded against the Property and that will govern the activities that are allowed on the Property, including participation in the Dealership Association,. Prior to the Close of Escrow, Developer will pay (or cause to be paid) the first six (6) months of dues for membership in the Dealership Association, which amount will be set at $50,000 or such other amount as set by the Dealership Association.

Developer must comply with the Bay Bridge Auto Mall Design Guidelines attached as Exhibit E hereto.

7.07 Reasonable Efforts to Hire Oakland Residents. Developer will use its best reasonable efforts to hire Oakland residents for a minimum of at least 50% of all new jobs generated by the Project. Developer's efforts shall include (but not be limited to) a commitment to:

(a) Give priority consideration for hiring to qualified applicants from the City's First Source Employment Referral Services.

(b) Provide the job specifications and all other relevant employment information to the City.

(c) Provide data on the number of job openings, the number of City applicant referrals, and the number of City-referred /non-City-referred hires to the City's First Source Employment Referral Services, upon the City's request.

(d) Provide the City with employment data (hire, terminate, etc. dates) on candidates it hires through its First Source Employment Referral system on a semi-annual basis.

SECTION 8. TRANSFERS AND CHANGES IN DEVELOPER

8.01 Definition of Transfer. As used in this Agreement, the term "Transfer" means:

(a) Any total or partial sale, assignment or conveyance, or creation of any trust or power by deed of trust or otherwise, or any transfer in any other mode or form of or with respect to the Property or the Project or any interest therein, or any contract or agreement to do any of the same, other than to the lender approved in the Financial Plan;

(b) Any transfer of more than a 50% share of any of the stock, partnership interest, or other form of ownership interest of Developer, other than to a Developer Related Entity;

(c) Any assignment by Developer of all or any part of this Agreement, other than to a Developer Related Entity; or

(d) Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer.

For purposes of this Section 8.01, "Developer Related Entity" means any of the following: (1) a general partnership, a majority of the general partnership interests of which are owned directly or indirectly by Developer or its parent corporation; (2) any

entity which is controlled, directly or indirectly, by Developer or its parent corporation; (3) the Dealer Operator that has entered into the Dealer Sales and Service Agreement identified in Section 2.13, provided that the Dealer Operator is an entity described in sub-sections (1) or (2) of this paragraph; or (4) any entity controlled by, or which owns a majority ownership interests in, any person or entity described in sub-sections (1), (2) or (3) above. Notwithstanding the foregoing, Transfer shall not include any lease or sublease of the Property to General Motors Corporation or any of its affiliates.

8.02 Purpose of Transfer Restrictions. Developer represents that its purchase of the Property, and its other undertakings pursuant to this Agreement, will be used for the purposes of timely development of the Property and not for speculation in landholding. Developer further recognizes that, in view of the following factors, the qualifications of Developer are of particular concern to the community and Agency:

(a) The importance of development of the Property to Agency's interest in the adjacent property, and to the general welfare of the community, with particular reference to the community's objectives of the elimination of structural and environmental blight;

(b) The reliance by Agency upon the unique qualifications and ability of Developer to serve as the catalyst for development of the Project and upon the continuing interest which Developer will have in the Project to assure the quality of the use, operation and maintenance deemed critical by Agency in the development of the Property;

(c) The fact that a substantial change in ownership or control of Developer or any other act or transaction resulting in a significant change in ownership or the identity of the parties in control of Developer is for practical purposes a transfer or disposition of the Property; and

(d) The fact that the Property is not to be acquired or used for speculation, but only for development and lease by Developer to an entity controlled by General Motors Corporation or Developer, each in accordance with this Agreement.

Developer further recognizes that it is because of such qualifications and identity that Agency is entering into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer will acquire any rights or powers under this Agreement except as expressly set forth herein.

8.03 Prohibited Transfers. Except as expressly permitted herein, Developer represents and agrees that it has not made, and will not make or permit, without Agency's prior written approval in its sole and absolute discretion, any Transfer prior to completion of the Project, either voluntary or by operation of law, to any Person, except for Transfers to a Developer Related Entity (which shall not require the consent of Agency but shall be subject to Section 8.04). Any Transfer in contravention of this Section will be void and will be deemed to be a default under this Agreement.

8.04 Permitted Transfers. If Agency approves a Transfer or in the event of an assignment permitted hereunder without Agency approval, the Transfer or other assignment, as the case may be, will not be effective unless, at the time thereof, the entity to which such Transfer or assignment is made, by an instrument in writing approved as to form by Agency (which approval shall not be unreasonably withheld, delayed or conditioned) and in recordable form, will for itself and its successors and assigns, and especially for the benefit of Agency, expressly assume all of the obligations of Developer under this Agreement and agrees to be subject to all conditions and restrictions to which Developer is subject. In the absence of an express written agreement by the Agency, no Transfer or other assignment undertaken without compliance with this Section 8 will be deemed to relieve any owner of the Property from any obligation under this Agreement.

8.05 Prohibition Period. The limitations on Transfer set forth in this Section 8 will terminate on the date Agency issues the Certificate of Completion.

8.06 Request for Substitution of Guarantor. In connection with a Transfer or other assignment undertaken in conformity with this Section 8, Developer may request that the Agency substitute a new Guaranty of Completion, in the same from as Exhibit O hereto, executed by a Guarantor affiliated with the assignee of this DDA. Agency retains sole and absolute discretion to decide whether it will allow a substitute guarantor.

SECTION 9. TERMINATION, DEFAULT, AND REMEDIES

9.01 No Fault Termination Before Closing. Either party to this Agreement may terminate this Agreement before the Closing Date without liability by written notice to the other party and recordation of such notice, if:

(a) The terminating party submits evidence to the other party that, despite the terminating party's diligent efforts, any preconveyance requirement in Section 2, or any condition precedent in Section 3.01(a) or 3.01(b), for the respective party's benefit, has not been timely met to the satisfaction of the terminating party, subject to the terminating party giving written notice of the requirement(s) or condition(s) not met and the other party having thirty (30) days from receipt of such notice to cure or begin to cure in good faith the requirement(s) or condition(s) not met; or

(b) Developer submits evidence to Agency that Developer, despite diligent efforts, has not obtained adequate construction and/or permanent financing commitments to complete the Project within thirty (30) days after the expiration of the Inspection Period; or

(c) Developer submits notice of termination to Agency prior to the expiration of the Inspection Period.

After termination under this Section 9.01 or Section 9.02A , neither party will have any rights or obligations under this Agreement.

9.02 Fault of Developer. The occurrence of any of the following events will be an "Event of Default" by Developer if Developer:

(a) Fails to make any of Developer Submissions in the manner and within the times set forth in Section 2 (except the obligations to obtain Governmental Approvals and secure the necessary financing commitments, for which the remedy is a no-fault termination as specified above); or

(b) Refuses to purchase the Property within the time period and in the manner set forth in this Agreement (except as otherwise entitled under this Agreement); or

(c) Fails to diligently, actively and continuously prosecute construction of the Project according to the Project Schedule set forth in Exhibit C, unless the delay is caused by the City's wet weather grading moratorium, investigation and remediation activities mandated by DTSC as provided in Section 5.03, *force majeure* event as defined in Section 11.07 of this Agreement, or by the act or omission of Agency, its agents, employees or contractors, including, without limitation, Agency's failure to complete the infrastructure as set forth in Section 6.06; or

(d) Voluntarily or involuntarily undertakes or attempts to undertake a Transfer in violation of this Agreement; or

(e) Fails to deliver into escrow, within the specified time period, the Purchase Price for the Property; or

(f) Has made any representations or warranties in this Agreement, any written statements made to Agency or any certificates, documents, or schedules supplied to Agency that were untrue in any material respect when made, or that Developer concealed or failed to disclose a material fact to Agency; or

(g) Developer files for bankruptcy, dissolution, or reorganization, fails to obtain a full dismissal of any involuntary filing brought by another party under bankruptcy or similar laws before the earlier of final relief or sixty (60) days after filing, makes a general assignment for the benefit of creditors, applies for the appointment of a receiver, trustee, custodian, or liquidator, or fails to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing, becomes insolvent, or fails to pay its debts as they become due; or

(h) Is in default of any other material provisions of this Agreement.

If an Event of Default of Developer occurs, Agency will notify Developer and any of its lenders for the Project in writing of its purported default, giving Developer or its lender at least thirty (30) days from receipt of such notice to cure or begin to cure in good faith such default ("Cure Period"). If Developer or lender does not cure or, if the default is such that it cannot be cured within the Cure Period, and Developer or lender does not begin to cure the default within the Cure Period (and thereafter diligently prosecute action required to cure until cure is accomplished), then Developer or lender will be in breach of this Agreement. For any such breach, Agency may pursue any remedy available to it at law or in equity.

If, after Commencement of Construction and before Completion of Construction, Developer is in breach of this Agreement as provided in this Section 9.02, then Agency will have the option, in its sole discretion, to claim the proceeds of the Construction Bonds and use such proceeds to complete construction of the Project, provided that the amount of such proceeds is sufficient to complete construction, and provided further that Agency shall be under no obligation to provide any of its own funds toward Completion of Construction. If the proceeds of such bonds are insufficient to complete construction of the Project or if completion would require the expenditure of Agency funds, Agency may elect by written notice to Developer to require Developer to, and Developer shall demolish, at Developer's sole cost, improvements on the Project site.

9.02A Developer's Event of Default before Closing. Except: (1) for an Event of Default under Section 9.02(d); or (2) for any Surviving Obligations of Developer, notwithstanding anything to the contrary in this Agreement, the Agency's sole remedy for the Developer's Event of Default before the Close of Escrow shall be to retain the Deposit as liquidated damages.

9.03. LIQUIDATED DAMAGES. IF DEVELOPER OR ITS LENDER DOES NOT CURE THE EVENT OF DEFAULT AFTER CONVEYANCE IN SECTIONS 9.02(c) AND 6.05 ABOVE WITHIN THE CURE PERIOD, DEVELOPER AND AGENCY AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SUFFERED BY AGENCY AS A RESULT OF DEVELOPER'S FAILURE TO MEET THE DEADLINES IN EXHIBIT C, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH AGENCY WILL INCUR AS A RESULT OF SUCH FAILURE. DEVELOPER AND AGENCY HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT AGENCY WOULD SUFFER IN THE EVENT THAT DEVELOPER DEFAULTS BY FAILING TO MEET THE DEADLINES IN EXHIBIT C IS ONE THOUSAND DOLLARS ($1000) PER DAY AFTER THE 30-DAY CURE PERIOD CLOSES. THIS

AMOUNT WILL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF SECTION 6.05 BY DEVELOPER. THIS PROVISION WILL NOT LIMIT AGENCY'S ENFORCEMENT RIGHTS UNDER SECTION 9, NOR ITS RIGHT TO COLLECT ATTORNEYS' FEES NOR WAIVE OR AFFECT DEVELOPER'S INDEMNITY OBLIGATIONS AND AGENCY'S RIGHTS TO THOSE INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT. THIS PROVISION SHALL TERMINATE ON THE COMPLETION OF CONSTRUCTION AND ISSUANCE OF A CERTIFICATE OF COMPLETION.

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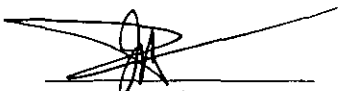
AGENCY'S INTIALS



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DEVELOPER'S INITIALS

9.04. Fault by Agency. The occurrence of any of the following events will be an "Event of Default" by Agency if:

(a) Agency fails to convey the Property within the time, manner and form herein called for; or

(b) Agency breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, Developer shall first notify Agency in writing of its purported breach or failure, giving Agency thirty (30) days after the receipt of such notice to cure such breach or failure. In the event Agency does not then cure the default within such thirty-day period (or, if the default is not susceptible of cure within such thirty-day period, Agency fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the breach shall constitute an "Event of Default" and Developer shall be entitled to any rights afforded it in law or in equity.

9.05 Confirmation of No Default. Either party, within ten (10) days of written request, shall furnish the other party, or such third party as may be designated by the requesting party, with a written statement that the requesting party is not then in default under any provision of this Agreement, unless the responding party reasonably believes that the requesting party is then in default, in which case, the responding party shall specify the nature of the default in writing.

9.06 Outside Termination Date. Notwithstanding any other provision of this Agreement, this Agreement shall terminate 30 years after the Closing Date.

SECTION 10. RIGHTS OF MORTGAGE HOLDERS

10.01 Approval Rights. Agency and Developer hereby agree and acknowledge that any rights granted in this Section 10 will be subordinated to the rights and subject to the approval of Agency, such approval not to be unreasonably withheld, conditioned or delayed. Agency will approve any such request by notifying Developer in writing within ten (10) days. Unless the proposed request is rejected by Agency within ten (10) days, it will be deemed approved.

10.02 Encumbrance for Development Purposes. Developer may place (with the prior approval of Agency pursuant to Section 2) mortgages, or any other reasonable method of security upon the Property before the Project has been completed (with Agency's approval which shall not be unreasonably withheld), for the sole purpose of securing loans of funds to be used for financing the acquisition of the Property and development of the Project. Prior to commencement of the construction of the Project, Developer will promptly notify Agency of any mortgage, or other financing, conveyance, encumbrance or lien that will be created or attached to the Property, if such financing, conveyance, encumbrance or lien has not been previously identified in the Financial Plan. The word "mortgage" as used herein includes all other appropriate modes of financing real estate acquisition, construction, and land development. Notwithstanding the foregoing, Developer will have the right to hypothecate, transfer, assign and encumber and grant a security interest in and to its own personal property located on the Property to any lender, equipment lessor or other financier, or any accounts receivable to any factor or other lender, without obtaining Agency's consent. The limitations on financing set forth in this Agreement will terminate on the date Agency issues the Certificate of Completion.

10.03 Holder Not Obligated to Construct. The mortgagee of any mortgage, or holder of any other recorded security interest authorized by this Agreement in any part of the Property (a "Holder") is not obligated to construct or complete any improvements or to guarantee such construction or completion. However, nothing in this Agreement will be deemed to permit any Holder to devote the Property to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

10.04 Notice of Default and Right to Cure. Whenever Agency, pursuant to its rights set forth in Section 9.02 of this Agreement, delivers any notice or demand to Developer with respect to the commencement, completion, or cessation of the construction of the Project, Agency will at the same time deliver to each Holder a copy of such notice or demand. Each Holder will have the right at its option, within sixty (60) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default or breach and to add the cost thereof to the security interest debt and the

lien on its security interest. Nothing in this Agreement is intended to permit a Holder to construct improvements on the Property (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed Developer's obligations to Agency herein by written agreement reasonably satisfactory to Agency. The Holder in that event must agree to complete, in the manner provided in this Agreement, the Project, and submit evidence reasonably satisfactory to Agency that it has the qualifications and financial responsibility necessary to perform such obligations.

10.05 Failure of Holder to Complete Improvements. In any case where, three (3) months after an Event of Default by Developer in Completion of Construction of the Project under this Agreement, the Holder who has exercised its option to construct, has not proceeded diligently with construction of the Project, Agency will be afforded these rights against the Holder: (i) terminating in writing this entire Agreement as it then relates to the Holder; (ii) pursuit of any rights or causes of action Agency may have under law or equity and the provisions of this Agreement arising from and after the date the Holder has assumed Developer's obligations to Agency as provided in Section 10.04; or (iii) exercising the option to re-acquire the Property under the terms set forth in Section 7.05 of this Agreement.

10.06 Right of Agency to Cure. By appropriate agreement with a Holder, Developer will cause a Holder to provide Agency with written notice by certified or registered mail, with return receipt requested, of the occurrence of any event of default under the mortgage, deed of trust of other security instrument.

In the event of a default or breach by Developer of a mortgage, or other security instrument prior to the completion of the Project, and if the Holder has not exercised its option to complete the Project, Agency may cure the default, prior to the completion of any foreclosure. In such event Agency will be entitled to reimbursement from Developer for all costs and expenses incurred by Agency in curing the default. Agency will also be entitled to a lien upon the Property to the extent of such costs and disbursements. Any such lien will be subject to mortgages or other security instruments executed for the sole purpose of obtaining funds to purchase and develop the Property as authorized herein.

10.07 Right of Agency to Satisfy Other Liens. Agency will have the right to satisfy any lien or encumbrances not satisfied or bonded over by Developer; provided, however, that nothing in this Agreement will require Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as Developer in good faith will contest the validity or amount thereof and so long as Developer will provide such reasonable security as may be required by Agency to insure the payment of such tax, assessment, lien or charge to prevent any sale, foreclosure or forfeiture of the Property by reason of such nonpayment. Such security will be not less than the amount of the contested tax, assessment, lien or charge, including all penalties, fines and interest which can be assessed thereon.

10.08 Collateral Assignment of Developer's Rights Under This Agreement. Developer will have the right, upon the request of Holder, to collaterally assign its interest in this Agreement to a Holder previously approved by Agency under Section 2.11 herein. .

SECTION 11. GENERAL PROVISIONS

11.01 Notices, Demands and Communications. Formal notices, demands and communications under this Agreement will be given by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, or by nationally recognized overnight courier (next business day service), to the principal offices of a party as follows:

DEVELOPER:

OAKLAND AUTO REAL-ESTATE INVESTMENT
3093 Broadway
Oakland, CA 94610
Attention: Inder Dosanjh

With copies to:

Fitzgerald Abbott & Beardsley LLP
1221 Broadway, 21st Floor
Oakland, CA 94612
Attention: Michael M.K. Sebree

and

Argonaut Holdings, Inc.
c/o General Motors Corporation
Western Region, Worldwide Real Estate
Economic Development & Enterprise Services
515 Marin Street, Suite 211
Thousand Oaks, CA 91360
Attention: David W. Frederickson

and

General Motors Corporation
Worldwide Real Estate
300 Renaissance Center
MC 482-C23-D24
Detroit, MI 48265-3000
Attention: M. Gordon Ing, Esq.

and

Lowe, Fell & Skogg, LLC
370 Seventeenth Street, Suite 4900
Denver, CO 80202
Attention: David W. Fell, Esq.

AGENCY:

Redevelopment Agency of the City of Oakland
Community and Economic Development Agency,
Office of the Director
250 Frank Ogawa Plaza, 3rd Floor
Oakland, California 94612
Attention: Gregory Hunter

With a copy to:

Redevelopment Agency Counsel
c/o Office of the City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612
Attention: Supervising Attorney, Redevelopment Unit

If mailed, the written notice will be deemed received and will be effective three (3) business days after deposit in the United States mail or upon actual receipt by the addressee if earlier. Any notice personally delivered or given by overnight courier will be deemed received on the date of personal delivery or courier delivery. Written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate.

11.02 Conflicts of Interest. Developer will use its best efforts to ensure that no member, officer, employee, or consultant of Agency who participates in any way in this Project or in the making of this Agreement, or a member of such person's immediate family, will have any personal financial interest in the Project or this Agreement or receive any personal financial benefit from the Project. Except for any real estate commissions or brokerage or finders fee which are the sole responsibility of Developer, Developer warrants that it has not paid or given, and will not pay or give, to any third

person any money or other consideration in exchange for obtaining this Agreement. Developer agrees to defend, indemnify and hold harmless Agency from any claims for real estate commissions or brokerage fees, finders or any other fees in connection with this Agreement. Agency agrees to defend, indemnify and hold harmless Developer from any claims to real estate commissions, brokerage fees, finders or other fees in connection with this Agreement.

11.03 Nonliability. No member, official, employee, or agent of Agency will be personally liable to Developer, or any successor in interest, in the event of any default or breach by Agency or for any amount that may become due to Developer or successor under the terms of this Agreement.

11.04 Developer's Warranties. Developer represents and warrants: (1) that it has access to professional advice and support to the extent necessary to enable Developer to fully comply with the terms of this Agreement and otherwise carry out the Project; (2) that it is qualified to do business under the laws of the State of California; (3) that it has the full power and authority to undertake the Project; (4) that the persons executing and delivering this Agreement are authorized to execute and deliver such document on behalf of Developer; and (5) that it is not acquiring the Property for speculative purposes, and further warrants that it intends, subject to reasonable delays caused by the City's wet weather grading moratorium, investigation and remediation activities mandated by DTSC as provided in Section 5.03, *force majeure* events as defined in Section 11.07 of this Agreement, or by Agency, its agents, employees or contractors, to commence and complete construction of the Project according to the timeline set forth herein.

11.05 Publicity. Prior to Agency's issuance of a Certificate of Completion, any publicity generated by Developer for the Project will make reference to the contribution of Agency in making the Project possible. The words "Redevelopment Agency of the City of Oakland" and "Community and Economic Development Agency" will be prominently displayed in all pieces of publicity generated by Developer, including flyers, press releases, posters, signs, brochures, and public service announcements. Agency staff will be available whenever possible at the request of Developer to reasonably assist Developer in generating publicity for the Project. Developer agrees to reasonably cooperate with Agency in any Agency-generated publicity or promotional activities with respect to the Project. Assistance by either party to the other will not include the obligation to incur any out of pocket costs.

11.06 Waiver. Any waiver by a Party of an obligation of the other Party in this Agreement must be in writing and executed by an authorized agent of the waiving Party. No waiver will be implied from any delay or failure by the Party to take action on any breach or event of default of the other Party or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to a Party to perform any obligation under this Agreement will not operate as a waiver or release from any of the Party's obligations under this Agreement. Consent by a Party to any act or omission by the other Party will not be construed to be consent to any other act or omission or to waive the requirement for the waiving Party's written consent to future waivers.

11.07 Enforced Delay. Performance by either Party under this Agreement will not be deemed to be in default where delays or default are due to war; insurrection; terrorism; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; epidemics; quarantine restrictions; freight embargoes; or unusually severe weather. An extension of time for any such cause will be for the period of the enforced delay and will commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within fifteen (15) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by Agency and Developer and shall be extended as otherwise provided in this Agreement. . Notwithstanding the above, in no event will construction of the Project be completed later than 180 days from that completion date stated in the Schedule.

"Litigation Force Majeure" means any action or proceeding before any court, tribunal, arbitration or other judicial, adjudicative or legislation-making body, including any administrative appeal, brought by a third party, who is not related to Developer, which either (i) seeks to challenge the validity of any action taken by the City or the Agency in connection with the Project, including the City's or Agency's approval, execution and delivery of this Agreement and its performance thereunder, including, without limitation, the CEQA Lawsuit or any other challenge under the California Environmental Quality Act, the performance of any action required or permitted to be performed by the Agency or City hereunder, or any findings upon which any of the foregoing are predicated, or (ii) seeks to challenge the validity of any other regulatory approval; and in either case results in a delay in the performance by any party of its obligations or the satisfaction of conditions under this Agreement. Any Litigation Force Majeure shall remain in effect until a judgment, order or other decision resolving such matter in favor of the party whose performance is delayed has become final and non-appealable. The parties shall each proceed with due diligence and shall cooperate with one another to defend the action or proceeding or take other measures to resolve the dispute that is the subject of such action or proceeding, provided that the Developer shall pay for the costs of such litigation including attorney fees and costs.

The circumstances described in this paragraph 11.07 including, without limitation, Litigation Force Majeure, are referred to elsewhere in this Agreement as "*force majeure.*"

11.08 Inspection of Records. Agency has the right at all reasonable times to inspect the books, records and all other documentation of Developer pertaining to its obligations under this Agreement at Agency's cost and expense.

11.09 Plans and Reports. If Developer defaults as defined in Section 9 and the default is not properly cured, Developer will deliver to Agency all plans and reports concerning the Project, which will thereafter become the property of Agency, unless Agency and the creator of the plans or reports have previously agreed in writing to limit the extent to which they are transferable.

11.10 [INTENTIONALLY OMITTED]

11.11 Indemnification and Hold Harmless. If through acts or neglect on the part of Developer or its construction contractor(s) or other agents, any other contractor or any subcontractor suffers loss or damage on the work, and such other contractor or subcontractor asserts any claim against Agency on account of any damage alleged to have been sustained, Agency will notify Developer who will defend at its own expense any suit based upon that claim, and Developer will pay all reasonable costs and expenses incurred by Agency in connection with any judgment or claim.

Developer will indemnify and hold Agency, its members, officials, directors, employees, and agents (collectively, "Indemnitees") harmless from any losses, damages, liabilities, claims, demands, judgments, actions, causes of action, court costs, and legal or other expenses (including attorneys' fees) which Indemnitees may incur as a result of: (1) Developer's failure to perform any of its obligations as and when required by this Agreement; (2) a failure of any of Developer's representations or warranties to be true and complete; or (3) any act or omission by Developer or any contractor, subcontractor, architect, engineer or other agent with respect to development or use of the Project or the Property, except to the extent the loss is caused by the negligence, breach of this Agreement or willful misconduct of Agency, its agents, employees or contractors. When a loss is caused by the joint negligence or willful misconduct of Developer and Agency, Developer's duty to indemnify and hold Indemnitees harmless will be in proportion to Developer's allocable share of the joint negligence or willful misconduct. Developer will pay immediately upon Agency's demand any amounts owing under this indemnity. The duty of Developer to indemnify includes the duty to defend Indemnitees in any court action, administrative action, or other proceeding brought by any third party arising from the matter set forth in this Section 11.11 with counsel reasonably acceptable to Agency.

Developer shall indemnify and hold Agency, the City, and their Indemnitees harmless from any losses, damages, liabilities, claims, demands, judgments, actions, causes of action, court costs, and legal or other expenses (including reasonable attorneys' fees) which Indemnitees may incur as a result of any claims that prevailing wages should have been paid in connection with this Agreement or the Project.

These indemnity and hold harmless provisions are severable from this Agreement, in that they will survive expiration, termination or invalidation of this Agreement.

11.12 Insurance. Prior to the Close of Escrow, Developer will cause to have in full force and effect such policies of insurance as are required by Agency pursuant to Exhibit I which is attached hereto and incorporated herein by this reference.

11.13 Real Estate Commissions. Neither Party will be responsible to the other for any real estate commissions, brokerage or finders fees which may arise from this Agreement or otherwise be incurred by the other Party.

11.14 Applicable Law. This Agreement will be governed by the laws of the State of California, except for those provisions preempted by federal law.

11.15 Severability. If any term, provisions, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

11.16 Attorneys' Fees. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement, or to collect damages as a result of any breach of this Agreement, the Party prevailing in any such action will be entitled to recover against the Party not prevailing all reasonable attorneys fees and costs incurred in the action.

11.17 Binding Upon Successors. This Agreement will be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interests and assigns of each of the Parties hereto, except that there will be no transfer of any interest of any of the Parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party will be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

11.18 Relationship of Parties. The relationship of Developer and Agency for the Project is and will remain solely that of a buyer and seller of real property, and will not be construed as a joint venture, equity venture, partnership, or any other relationship. Agency neither undertakes nor assumes any responsibility or duty to Developer (except as provided for herein) or any third party with respect to the Project or the Property. Except as set forth in this Agreement or as Agency may specify in writing, Developer will have no authority to act as an agent of Agency or to bind Agency to any obligation.

Developer will be solely responsible for all aspects of its conduct in connection with the Project, including, but not limited to, the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Except for review for its own purposes under Section 2, Agency is under no duty to review the plans and specifications of the Project, or to inspect construction of the Project. Any review or inspection undertaken by Agency for the Project is solely for the purpose of determining whether Developer is properly discharging its obligations to Agency, and should not be relied upon by Developer or by any third parties as a warranty or representation by Agency as to the quality of the design or construction of the Project.

11.19 Reasonable Approvals. Unless expressly indicated otherwise, the consent or approval of a Party of any documentation or submissions herein called for will not be unreasonably withheld, conditioned or delayed.

11.20 Execution of Other Documentation. Agency and Developer agree to execute any further documentation that may be reasonably necessary to carry out the intent and obligations under this Agreement, provided said documentation does not conflict with this Agreement or materially add to or materially change the obligations of either Party under this Agreement.

11.21 Amendments. Any amendment to this Agreement must be in writing and must be executed by both Agency and Developer.

11.22 Estoppel Certificates. Either Party to this Agreement will provide an estoppel certificate to the other as requested from time to time stating that this Agreement has not been modified, or, if modified, stating the nature of such modification, and certifying that this Agreement, as modified, is in full force and effect.

11.23 Complete Understanding. This Agreement is executed in three duplicate originals each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the Parties.

11.24 Captions. The captions inserted herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe either the scope of this Agreement nor the intent of any of the provisions hereof.

11.25 Time of the Essence. Time is of the essence in this Agreement and failure to comply with this provision will be a material breach of this Agreement

11.26 No Merger. None of the provisions of this Agreement are intended to or will be merged with the Grant Deed, and the Grant Deed will not affect or impair this Agreement.

11.27 Defense of Challenge. In the event a legal action is filed challenging this Agreement or the actions undertaken pursuant to this Agreement, each Party will bear its own defense at no cost to the other Party. The Parties agree to cooperate to the greatest extent possible in the defense of any legal challenge. In the event any legal challenge is successful, the Parties agree to consult in good faith for thirty (30) days following a final court judgment about other actions that may be agreed to that may substitute for the action held unlawful or void.

11.28 INTENTIONALLY OMITTED

11.29 Counterparts. This Agreement may be signed in multiple counterparts, which, when signed by all Parties, will constitute a binding agreement.

11.30 City of Oakland Campaign Contribution Limits. Developer has dated and executed and delivered to Agency an Acknowledgement of Campaign Contributions Limits Form as required by Chapter 3.12 of the Oakland Municipal Code.

11.31 Reporting of Sales Tax. As a material inducement for Agency to enter into this DDA, and to the greatest extent feasible allowable by law, Developer, on behalf of itself and its Dealer Operator, agrees that for reporting of sales tax purposes, any motor vehicle sales, leases, or other financing agreements related to any disposition of a motor vehicle at the Project will be treated as being generated from the Project. In any case where the point of sale (for the purposes of reporting of sales tax) is discretionary, Developer and/or its Dealer Operator will name the City of Oakland as the point of sale.

11.32 Dispute Resolution. The Parties agree to use their best efforts to resolve construction disputes expeditiously in a way that is mutually satisfactory to Developer and Agency. Any construction dispute arising out of or relating to this Agreement is expressly subject to arbitration in accordance with this Section 11.32, and shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") then pertaining, unless the Parties mutually agree to the contrary. The provisions of California Code of Civil Procedure 1283.05, with the exception of sub-section (e) thereof, shall be applicable in any arbitration conducted under this Section 11.32. Notice of the demand for arbitration shall be filed in writing with the other parties to this Agreement and with the Arbitrator. Developer and Agency shall jointly appoint a mutually acceptable arbitrator ("Arbitrator") to be the sole arbitrator under this Section 11.32. If Developer and Agency are unable to agree upon an arbitrator within thirty (30) days after a request for arbitration by any Party, then such arbitrator shall be appointed by the Superior Court of the State of California for the County of Alameda. The award rendered by the Arbitrator is final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. Any decision made by the Arbitrator, with respect to any matter subject to arbitration or decision by the Arbitrator under this Agreement, shall be binding on the Parties hereto and shall not be subject to further arbitration or appeal by Developer or Agency. The Arbitrator shall have the power to award damages or grant remedies that would otherwise be available under law in a California state court having jurisdiction of the matter (including, without limitation, specific performance), but only as allowed by the terms of this Agreement, and the Arbitrator shall not have the power to award any other damages or grant any other relief, and shall not have the power to award punitive damages against any Party (except to the extent this limitation is prohibited by law) or to vary the provisions of this Agreement. The Arbitrator shall determine which is the prevailing Party and shall include in the award that Party's reasonable attorneys' fees and expenses and the costs and fees of arbitration, including the Arbitrator's fees. If for any reason the selected Arbitrator is unable or unwilling to perform the duties of the office, Developer and Agency shall first meet and confer in order to select a replacement Arbitrator by mutual agreement. If a replacement Arbitrator is not selected within thirty (30) days, an Arbitrator will be selected according to the Arbitration Rules contained in the AAA Construction Industry Dispute Resolution Procedures. In the event that the AAA is no longer in existence at the time that arbitration is requested, the dispute shall be submitted to arbitration in accordance with the rules and procedures of the successor to the AAA or, if there is no such successor, the matter shall be submitted to an organization that consists of members similar to the AAA.

11.33 Agency's Representations and Warranties. For purposes of this Agreement, all references to Agency's knowledge including, without limitation, the phrase "to the best of Agency's knowledge", shall be limited to the actual knowledge of Alex Greenwood, the Agency's Project Manager for the Auto Mall Project, without investigation or obligation to make investigation or inquiry, of any person or entity other than the Agency's legal department and the Agency's property manager of the Property, and in no event shall the same include any knowledge imputed to Agency by any other person or entity. Further, any Agency representations or warranties provided for in this Agreement may not be relied upon by any person or entity other than Developer for acquisition of the Property. All of the Agency's representations and warranties set forth in this Agreement shall survive for a period of six (6) months after the Closing Date.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement effective as of the Execution Date.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

AGENCY:

THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND,

a community redevelopment agency organized and existing under the California Community Redevelopment Law

By: _____ Dated: _____
Deborah A. Edgerly
Agency Administrator

Approved as to form and legality: Dated: _____

By: _____
Agency Counsel

DEVELOPER:

OAKLAND AUTO REAL-ESTATE INVESTMENT, INC.,
a California limited liability company

By: _____ Dated: 12/11/2007
Name: JNDER DOSANJH
Its: PRESIDENT

By: _____ Dated: _____
Name: _____
Its: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 200__ before me, _____
the undersigned, personally appeared

( ) personally known to me
( ) proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) (is/are) subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity(ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Signature

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 200__ before me, _____
the undersigned, personally appeared

( ) personally known to me
( ) proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) (is/are) subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity(ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Signature

LIST OF EXHIBITS

Exhibit A	Legal Description of Property
Exhibit B	Property Map
Exhibit C	Development Schedule
Exhibit D	Covenants Conditions & Restrictions
Exhibit E	Bay Bridge Auto Mall Design Guidelines
Exhibit F	Form of Grant Deed
Exhibit G	[Intentionally Deleted]
Exhibit H	List of Environmental Assessments and Reports
Exhibit I	Insurance Requirements
Exhibit J	Consent Agreement between the Oakland Redevelopment Agency and the California Department of Toxic Substance Control
Exhibit K-1	[Intentionally omitted]
Exhibit K-2	[Intentionally omitted]
Exhibit L	[INTENTIONALLY OMITTED]
Exhibit M	Army Subaru Lot Deed
Exhibit N	[INTENTIONALLY OMITTED]
Exhibit O	Form of Guaranty

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[TO BE ATTACHED AFTER SURVEY COMPLETED]

EXHIBIT C

DEVELOPMENT SCHEDULE

Task	Due Date
• Submit Final Grading and Foundation to Agency	60 days after expiration of Inspection Period
• Submit Construction Contract Form to Agency	60 days after expiration of Inspection Period
• Submit 50% Construction Plans to Agency; Agency approval within ten business days	90 days after expiration of Inspection Period
• Submit Financial Plan to Agency	90 days after expiration of Inspection Period
• Submit for inspection by Agency the Dealer Agreement	90 days after the Execution Date
• Submit 90% Construction Plans to Agency	180 days after expiration of Inspection Period
• Submit Final Construction Plans to Agency	210 days after expiration of Inspection Period
• Submit copy of all final construction contracts to Agency	30 days prior to the Close of Escrow
• Submit approval or disapproval of Property	On or before the expiration of Inspection Period
• Submit Governmental Approvals to Agency	Within 10 days after receipt by Developer, but not later than Close of Escrow
• Close of Escrow	Within 360 days after Execution Date, but no later than October 31, 2008
• Submit performance and payment bonds	Within 30 days before construction commences
• Commence construction work	Within 30 days after Close of Escrow
• Complete grading and foundation work	120 days after Close of Escrow
• Completion of Construction, as demonstrated by issuance of Certificate of Completion	March 1, 2010

EXHIBIT D

COVENANTS CONDITIONS & RESTRICTIONS RECORDED AGAINST THE PROPERTY

[TO BE ATTACHED AFTER AGENCY COMPLETES]

EXHIBIT E

BAY BRIDGE AUTO MALL DESIGN GUIDELINES

[TO BE ATTACHED AFTER AGENCY COMPLETES]

EXHIBIT F

FORM OF GRANT DEED

NO FEE DOCUMENT

RECORDING REQUESTED BY:

The Redevelopment Agency of the City of Oakland

WHEN RECORDED, MAIL TO:

The City of Oakland
Community and Economic Development Agency
250 Frank Ogawa Plaza, 5th Floor
Oakland, California 94612
Att'n.: Army Base Auto Mall Project Manager

The undersigned grantor(s) declare(s):
CITY TRANSFER TAX: Consideration less than $100
DOCUMENTARY TRANSFER TAX: Consideration less than $100
SURVEY MONUMENT FEE: _____

Computed on the consideration or value of property conveyed: OR
Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

MAIL TAX STATEMENTS TO:

[INCLUDE NAME AND ADDRESS OF DEVELOPER]

APN: _____

GRANT DEED

The Redevelopment Agency of the City of Oakland, a community redevelopment agency organized and existing under the California Community Redevelopment Law, herein called "Grantor," hereby grants to _____, a _____, herein called "Grantee," that real property situated in the City of Oakland, County of Alameda, State of California more particularly described in Exhibit A (attached hereto and incorporated by this reference), hereinafter referred to as the "Property."

1. This Grant Deed is subject to easements of record, and to the covenants, conditions and restrictions set forth in that certain Disposition and Development Agreement between Grantor and Grantee, dated _____, 200_, and recorded as document no. _____with the Alameda County Recorder, hereinafter called the "DDA." The DDA, though not intended by the parties to

be merged with this Grant Deed, is incorporated into this Grant Deed by this reference.

2. This Grant Deed is further subject to that option to repurchase the Property held by Grantor as set forth in the DDA.

3. Grantee covenants and agrees for itself, and its successors and assigns to all or any part of the Property that Grantee, and such successors and assigns, shall:

   (i) Devote the Property to, and only to and in accordance with, the uses specified in the DDA, and this Grant Deed; and

   (ii) Not discriminate upon the basis of race, color, ancestry, national origin, marital status, religion, creed, sex, sexual preference, AIDS or AIDS-related complex, or disability in the sale, lease, or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof. Grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, ancestry, national origin, marital status, religion, creed, sex, sexual preference, AIDS or AIDS-related complex, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall Grantee or any person claiming under or through it, establish or permit any such practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land. The restrictive covenants contained herein shall remain in full force and effect without limitations as to time.

4. If there is any conflict between the provisions of this Grant Deed and the DDA, it is the intent of the parties that the DDA shall control.

5. The parties intend that the covenants of Grantee contained in this Grant Deed shall constitute covenants running with the land and shall bind the Property and every person having an interest in the Property, and that they shall be, to the fullest extent permitted by law and equity, binding for the benefit of and enforceable by the Redevelopment Agency of the City of Oakland. Grantee agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property.

IN WITNESS WHEREOF, the parties hereto have executed this Grant Deed this ___ day of _____, 200_.

"GRANTOR"

Redevelopment Agency of the City of Oakland,
a community redevelopment agency organized and existing under the California Community Redevelopment Law

By: _____
Agency Administrator

Approved as to form and legality:

By: _____
Agency Counsel

"GRANTEE"

[INSERT GRANTEE SIGNATURE BLOCKS]

EXHIBIT H

LIST OF ENVIRONMENTAL ASSESSMENTS AND REPORTS

EKI. 27 September 2002. Final Remedial Action Plan and appended Final Risk Management Plan, Oakland Army Base, Oakland, California.

Erler & Kalinowski, Inc. ("EKI"). 12 June 2002. *OBRA Phase II Investigation Data Report, Oakland Army Base, Oakland, California.*

Kleinfelder, Inc. December 1998. *Basewide Hydrogeologic Study, Oakland Army Base, Oakland, California.*

MWH Americas, Inc. December 2002. *Final Environmental Baseline Survey for Transfer.*

EXHIBIT I

INSURANCE REQUIREMENTS

I. GENERAL LIABILITY, AUTOMOBILE, WORKER'S COMPENSATION AND PROFESSIONAL LIABILITY

Contractor will procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to The City. If requested, Contractor will provide the City with copies of all insurance policies. The insurance will at a minimum include:

A. **Commercial General Liability Insurance** shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, Bodily Injury, Broad Form Property Damage, and liability assumed under an insured contract **[(including the tort liability of another assumed in a business contract)]**. If such CGL insurance contains a general aggregate limit, it shall apply separately to this agreement.

1. Coverage afforded on behalf of the City shall be primary insurance and any other insurance available to the City under any other policies shall be excess insurance (over the insurance required by this Agreement).

2. Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than $2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location.

3. If the policy is a "claim made" type policy, the following should be included as endorsements:

   a. The retroactive date shall be the Execution Date or a prior date.

   b. The extended reporting or discovery period shall not be less than thirty-six (36) months.

B. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance with a limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form

providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. In the event the Contractor does not own vehicles, but utilized non-owned and hired vehicles, evidence of such coverage is acceptable with a signed statement from Contractor stating that only non-owned and hired vehicles are used in the course of the contract.

C. Worker's Compensation insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than $1,000,000. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor will comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

D. Professional Liability: Developer shall ensure that any architect, design professional, engineer, consultant, and any other professional services provider that Developer contracts with to perform work on the Project carries professional liability insurance for errors and omissions with a limit of no less than $2,000,000. Agency may in its discretion waive this requirement on a case-by-case basis. Before any such professional begins work on the Project, Developer shall obtain certificate(s) of insurance, or a binder followed within thirty (30) days by a certificate of insurance, evidencing the required coverage. Upon request of Agency, copies of such certificates shall be made available to Agency.

E. BROAD FORM PROPERTY DAMAGE (BUILDERS RISK INSURANCE)

1. Minimum coverage: 100% of replacement cost.
2. Deductible: $25,000 maximum deductible per occurrence.
3. Property covered: Structure and all insurable items within the Property (including landscaping and common areas).
4. Perils covered: All risk, or fire and hazardous installation, vandalism and malicious mischief.
5. Builders' risk installation floater for coverage of the contractor's labor, materials and equipment to be used for completion of work performed on the Project. This coverage may be provided by the subcontractors rather than by the general contractor.

II. TERMS CONDITIONS AND ENDORSEMENTS

The aforementioned insurance will be endorsed and have all the following conditions:

A. Additional Insured: Contractor will name the City of Oakland, its Council members, directors, officers, agents, employees and volunteers as additional insureds in its Comprehensive Commercial General Liability and Automobile Liability policies. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 11 85 form and/or CA 20 48 - Designated Insured Form (for business auto insurance). A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT; and

B. Cancellation Notice: 30-day prior written notice of termination or material change in coverage and 10-day prior written notice of cancellation for non-payment;

C. Cross-liability coverage as provided under standard ISO forms' separation of insureds clause; and

D. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and

E. Insurer shall carry insurance from an admitted company with a Best Rating of A VII or better.

III. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer will reduce or eliminate such deductible or self-insured retentions as respects the City, its Council Members, directors, officers, agents, employees and volunteers; or the Contractor will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

IV. REPLACEMENT OF COVERAGE

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

V. INSURANCE INTERPRETATION

All endorsements, certificates, forms, coverage and limits of liability referred to herein will have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

VI. PROOF OF INSURANCE

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner will constitute ground for rescission of the contract award.

VII. SUBCONTRACTORS

Contractor will include all subcontractors as insureds under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors will be subject to all the requirements stated herein.

VIII. DEFINITION OF CITY

Developer's obligations hereunder to "City" will also include Agency and its Board members, directors, officers, agents, employees and volunteers.

IX. WAIVER OF SUBROGATION

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors and employees for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

X. EVALUATION OF ADEQUACY OF COVERAGE

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

EXHIBIT J

CONSENT AGREEMENT BETWEEN THE OAKLAND REDEVELOPMENT AGENCY AND THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCE CONTROL

EXHIBIT O

FORM OF GUARANTY OF COMPLETION

GUARANTY OF COMPLETION

THIS GUARANTY OF COMPLETION ("Guaranty"), dated as of _____, 200_, is made by _____ ("Guarantor"), in favor of the Redevelopment Agency of the City of Oakland, a community redevelopment agency organized and existing under the California Community Redevelopment Law ("Beneficiary").

RECITALS

A. OAKLAND AUTO REAL-ESTATE INVESTMENT, LLC, a California limited liability company ("Developer") and Beneficiary have entered into a Disposition and Development Agreement dated _____, 200_ ("DDA") pursuant to which Beneficiary has agreed to sell to Developer and Developer has agreed to purchase from the Beneficiary certain real property ("Property") located at Wake Avenue near West Grand Avenue in Oakland, California, and Developer has agreed to construct on the Property improvements suitable for use as a full service new motor vehicle dealership for General Motors brand vehicles, with a building constructed in accordance with General Motors standard facility guidelines to serve as a showroom, offices, and a motor vehicle service and repair center, along with a sufficient number of spaces for surface parking, space for storage, and showing primarily new, and secondarily, used vehicle inventory and related purposes, and project signage space for a general advertising pylon sign ("Project," as more particularly described in the DDA).

B. Guarantor's execution and delivery to Beneficiary of this Guaranty of Completion is a condition precedent to Beneficiary's obligation to convey the Property to Developer under the DDA.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Defined Terms. Capitalized terms used in this Guaranty shall have the meanings assigned to them in the DDA.

2. Guaranty.

2.1 Guarantor hereby guarantees to Beneficiary the performance of each and every obligation of Developer under the DDA with respect to construction of

the Project, as such obligations may be modified by agreement between Developer and Beneficiary without prior notice to or consent of Guarantor (the "Guaranteed Obligations"). Without limiting the generality of the foregoing, Guarantor guarantees that (i) the Project shall be constructed and completed in accordance with the Final Construction Plans approved by Beneficiary and any change orders approved by Beneficiary, and (ii) construction of the Project shall be commenced and completed within the time limits set forth in the DDA.

2.2 This Guaranty shall continue unchanged by any bankruptcy, reorganization, or insolvency of Developer or any successor or assignee thereof.

2.3 Beneficiary may, at Beneficiary's option, proceed against Guarantor without having commenced any action, or having attained any judgment against Developer, or without having had to proceed first against any personal or real property or collateral.

3. Notices.

All notices, requests and demands to or upon the Beneficiary or the Guarantor under or related to this Guaranty shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made (i) when personally delivered to or (ii) if given by mail, four business days after being deposited in the mail by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Beneficiary: Redevelopment Agency of the City of Oakland
Community and Economic Development Agency
Office of the Director
250 Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Attn: Gregory Hunter

With a copy to:
Agency Counsel
c/o Office of the City Attorney
One Frank H. Ogawa Plaza, 6th Floor
City Hall
Oakland, CA 94612
Attn: Supervising Deputy City Attorney for Redevelopment

If to the Guarantor:
[GUARANTOR TO PROVIDE]

The Beneficiary and the Guarantor may from time to time change their address and transmission numbers for notices by notice to the other in the manner provided in this Section.

4. Miscellaneous.

4.1 Counterparts. This Guaranty may be executed in counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

4.2 Severability. Any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

4.3 Integration. This Guaranty represents the entire agreement of the Guarantor with respect to the subject matter hereof and there are no promises or representations by the Guarantor or the Beneficiary relative to the subject matter hereof not reflected or referred to herein.

4.4 Amendments in Writing; No Waiver; Cumulative Remedies. None of the terms or provisions of this Guaranty may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Guarantor and the Beneficiary. Guarantor's obligations hereunder shall remain fully binding although Beneficiary may have extended the time of performance by Developer. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

4.5 Section Headings. The section headings used in this Guaranty are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

4.6 Submission to Jurisdiction; Waivers. For the purpose of any legal action or proceeding relating to this Guaranty to which Guarantor is a party, Guarantor hereby submits to the non-exclusive jurisdiction of the Courts of the State of California in the county of Alameda, the courts of the United States of America for the Northern District of California located in Alameda or San Francisco counties, and appellate courts from any thereof. Guarantor consents that any such action of proceeding may be brought in any of such courts that have subject matter jurisdiction and waives any objection that the Guarantor may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same. Guarantor agrees that nothing herein shall limit Beneficiary's right to sue in any other jurisdiction. The Guarantor and the Beneficiary each hereby unconditionally and irrevocably waive, to the maximum extent not prohibited by law, any right they may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

4.7 Successors and Assigns. This Guaranty shall be binding upon the successors and assigns of the Guarantor and shall inure to the benefit of the Beneficiary and its successors and assigns.

4.8 Termination of Guaranty. Guarantor's obligations under this Guaranty shall automatically and completely terminate when Beneficiary issues to Developer Beneficiary's Certificate of Completion for the Project as provided in the DDA.

4.9 Governing Law. This Guaranty shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered as of the day and year first above written.

_____
[SIGNATURE OF GUARANTOR]

ACCEPTED AND AGREED:
The Redevelopment Agency of the City of Oakland, A community redevelopment agency organized and Existing under the California Community Redevelopment Law

By:_____
Agency Administrator

Approved as to form and legality:

By:_____

ATTACHMENT C
Conditions of Approval

A. The following are conditions of approval specific to the Auto Mall project:

Wastewater 1: **New Sewer System Design and Construction.** The City of Oakland shall continue to conduct detailed engineering studies for a new sewer system to serve the Auto Mall site, and shall construct new improvements as necessary and needed. Consistent with the assumptions of the OARB Redevelopment EIR and the Auto Mall SEIR, this new sewer system may include new sewer laterals connecting to auto dealership sites, new collection and conveyance lines, and other new system facilities such as a pump station. To the extent that portions of the existing sewer system formerly installed and improved by the US Army are found to be in good operating condition and are located appropriate to serve the Auto Mall, these portions of the existing system may continue to be used.

Wastewater 2: **Implementation of BMPs for Auto Mall Uses.** Future auto dealerships within the OARB Auto Mall shall implement, to the maximum feasible extent and consistent with Oakland's standard practices and policies, applicable Best Management Practices (BMPs) to reduce water demand and wastewater generation. Such BMPs should include, without limitation:

- Installation of low-, ultra-low, waterless and/or dual flush flow toilets; water efficient irrigation systems that include drip irrigation and efficient sprinkler heads; evapotranspiration (ET) irrigation controllers; drought-resistant and native plants for landscaping; and minimization of turf areas.
- Reductions in car rinse frequency for cars on the lot, with a maximum of two (2) rinses per week. Any hose fittings used for car rinsing shall be high water efficiency fittings.
- Installation of on-site water recycling systems for all car wash operations, and not connecting the car wash systems to the wastewater system when recycled car wash water is used on-site.

B. The following conditions of approval are applicable to other future redevelopment activities throughout the remainder of the OARB Redevelopment Area:

Wastewater 3: **Monitoring of Sewer Sub-basin Allocations.** Consistent with City of Oakland standard procedures and practices, wastewater flows projected to

result from redevelopment activities within the former OARB shall be regularly monitored and compared against applicable sewer sub-basin allocations to ensure that the capacity of the wastewater transport and treatment system is adequate to serve redevelopment as planned and proposed. Should a sub-basin require more flow than its allocation, allocation shall be redirected between adjacent sub-basins, or allocations assigned to the unnumbered sub-basin shall be redirected to a numbered sub-basin. In total, however, flows for the larger sewer basin shall not exceed that basin's allocation.

Wastewater 4: **Field Monitoring of Sewage Flows Tributary to the 15-Inch Sewer Line.** The City of Oakland shall continue to monitor wastewater flows emanating from the OARB Gateway area. Specifically,

1. Wet weather flow monitoring shall occur at manhole #23A, and shall occur over a 45 to 60 day period during the 2007/2008 wet weather period. Monitoring results shall be used to develop and refine wet weather to dry weather flow ratios. Specifically, results of the monitoring and I/I reduction efforts shall be used to refine and improve the estimates of wastewater flows projected to emanate from redevelopment activities that are tributary to the 15-inch sewer line. These refined and improved flow rates shall be used to more accurately estimate the demand for wastewater conveyance as compared to available capacity within the 15-inch line to serve new redevelopment.

2. The City of Oakland shall continue to monitor and shall implement inflow and infiltration reduction measures throughout the former OARB. The objective of these I/I reduction efforts shall be to even further minimize the I/I flow in the piping system to further lessen the effluent volume reaching the conveyance system and the EBMUD treatment plant.

Wastewater 5: **Increased Conveyance Capacity.** The City of Oakland shall construct a larger-capacity connection to the EBMUD WWTF, or shall connect the OARB sewer system to the EBMUD Interceptor system, when such improvements are necessary to adequately serve new redevelopment activity within the OARB Redevelopment Area, and prior to exceeding the capacity of the existing 15-inch line.

Wastewater 6: **New Sewer System Design and Construction.** The City of Oakland shall continue to conduct detailed engineering studies for a new sewer system within the former OARB, and shall construct new improvements as necessary and needed to serve redevelopment activity. Consistent with the assumptions of the OARB Redevelopment EIR and the Auto Mall SEIR, this new sewer

system may include new sewer laterals connecting to development sites, new collection and conveyance lines, and other new system facilities such a pump stations. To the extent that portions of the existing sewer system formerly installed and improved by the US Army are found to be in good operating condition and are located appropriate to serve new redevelopment activity, these portions of the existing system may continue to be used.

Wastewater 7: **Implementation of BMPs.** Future redevelopment projects within the OARB Redevelopment Area shall implement, to the maximum feasible extent and consistent with Oakland's standard practices and policies, Best Management Practices (BMPs) to reduce water demand and wastewater generation.

ATTACHMENT D
Mitigation Monitoring and Reporting Program

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

FOR THE

OAKLAND ARMY BASE AUTO MALL PROJECT

SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (SEIR)

Adopted by the
Oakland Redevelopment Agency

December 5, 2006

Readopted on December 18, 2007

INTRODUCTION

This Mitigation Monitoring and Reporting Program (MMRP) for the Oakland Army Base (OARB) Auto Mall Project has been prepared pursuant to Public Resources Code Section 21081.6. The mitigation measures presented in this MMRP are as contained in the Oakland Army Base Area Redevelopment Plan Environmental Impact Report (EIR) (SCH No. 2001082058) as revised and certified on July 31, 2002 by the City of Oakland Planning Commission and the Oakland Base Reuse Authority (OBRA), referred to in this document as "Redevelopment EIR". Revised and additional mitigation measures are as derived from the Oakland Army Base Auto Mall Project Draft Supplemental EIR dated April 17, 2006 and Final Supplemental EIR dated October 6, 2006 (SCH No. 2006012092), referred to in this document as "Auto Mall EIR".

Throughout this document, "City" includes the Redevelopment Agency of the City of Oakland and the City of Oakland; "Port" refers to the Port of Oakland. Implementation of mitigation measures will be carried out in accordance with the standard policies and practices and documented in the files of the City.

This MMRP applies only to the Oakland Army Base Auto Mall Project, the sponsors/developers of that project and the City of Oakland and its Redevelopment Agency.

The OARB Auto Mall Project proposed development in the North Gateway area of the former Oakland Army Base. The EIR also evaluates a larger option, termed Option B, that includes the North Gateway development as well as development on the East Gateway portion of the former Oakland Army Base. Where unspecified in this MMRP, mitigation measures apply to development in the North Gateway and/or East Gateway. In some cases, as specifically noted in the attached table, implementation of a mitigation measure is linked to development in one but not the other of these Gateway areas. Note that while discussed as the OARB *Auto Mall* Project, under Option B the project would include a parcel not used for Auto Dealerships, but used for big box retail and/or AMS uses.

Summary tables of the mitigation measures are followed by detailed mitigation descriptions.

SUMMARY TABLE 1:

MITIGATION MEASURES WITH IMPLEMENTATION RESPONSIBILITY BY OARB AUTO MALL DEVELOPERS/SPONSORS

Note: See also accompanying Detailed Mitigation Measures following the Summary Tables.

The following mitigation measures apply to development in the North Gateway (Project site) and/or East Gateway (additional Option B area) of the City's Gateway Development Area on the former Oakland Army Base. Developers/sponsors of the OARB Auto Mall Project are responsible for implementation of these measures. The City, acting through the Community and Economic Development Agency is responsible for enforcing these measures and providing the mechanism for fair-share contributions where applicable.

Impact	Mitigation Measures [a]	Schedule to Begin Implementation [b]
Impact 4.2-1: Under proposed redevelopment, dissimilar land uses may be located proximate to one another.	**Redevelopment EIR 4.2-1:** Land Use Compatibility/Gateway	Pre-construction
Impact Traf-3: At the N. Access Road / EBMUD Driveway intersection, both the Project and Option B would substantially increase traffic hazards to motor vehicles and perhaps bicyclists and pedestrians due to the configuration of the intersection.	**Auto Mall EIR Traf-3:** Design Hazards/EBMUD Access	Pre-construction
Impact Traf-4: Construction of the access road from the northern extension of Maritime Street would end in a cul-de-sac for the Project and could result in less than two emergency access routes for streets exceeding 600 feet in length.	**Auto Mall EIR Traf-4:** Emergency Vehicle Access	Pre-operations, if/when North Gateway is developed before roadway connections are constructed in the East Gateway.

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b:
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- "Operations" means occupation and ongoing use of structures or facilities.

Impact	*Mitigation Measures* [a]	**Schedule to Begin *Implementation*** [b]
Cumulative **Impact Traf-6:** At the West Grand Avenue / Maritime Street intersection, Option B would increase traffic in 2025 and would cause the average vehicle delay to increase by more than two (2) seconds where the future baseline level of service would be LOS F during the p.m. peak and Saturday peak hours.	**Cumulative** **Auto Mall EIR Traf-6:** West Grand Avenue / Maritime Street	Pre-construction Note that as per the 2002 OARB Redevelopment EIR, fair-share allocations will be assessed for all OARB developers, whether or not their individual contribution to the impact would be significant under CEQA. The improvements identified in this mitigation measure replace those improvements recommended in mitigation measure 4.3-1 from the 2002 OARB Redevelopment EIR.
Cumulative **Impact Traf-10:** At the 7th Street / *Maritime Street intersection, both the* Project and Option B would increase traffic in 2025 and would cause the average vehicle delay to increase by more than two (2) seconds where the future baseline level of service would be LOS F during both the a.m. and p.m. peak hours.	**Cumulative** **Auto Mall EIR Traf-10:** 7th Street / Maritime *Street*	Pre-construction Note that as per the 2002 OARB Redevelopment EIR, fair-share allocations will be assessed for all OARB developers, whether or not their individual contribution to the impact would be significant under CEQA. The improvements identified in this mitigation measure replace those improvements recommended in mitigation measure 4.3-3 and 5.3-1 from the 2002 OARB Redevelopment EIR.

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Impact	Mitigation Measures [a]	Schedule to Begin Implementation [b]
Cumulative **Impact Traf-11:** At the 7th Street / I-880 Northbound Ramp intersection, both the Project and Option B would increase traffic in 2025 and would cause the average vehicle delay to increase by more than four (4) seconds where the future baseline level of service would be LOS E during the p.m. peak hour.	**Cumulative** **Auto Mall EIR Traf-11:** West Grand Avenue / I-880 Northbound Ramp	Pre-construction Note that as per the 2002 OARB Redevelopment EIR, fair-share allocations will be assessed for all OARB developers, whether or not their individual contribution to the impact would be significant under CEQA. The improvements identified in this mitigation measure replace those improvements recommended in mitigation measure 5.3-2 from the 2002 OARB Redevelopment EIR.
Cumulative **Impact Traf-15:** At the S. Access Road / Maritime Street intersection, Option B would increase traffic in 2025 and would cause the future baseline LOS to operate at below LOS D at this new intersection.	**Cumulative** **Auto Mall EIR Traf-15:** S. Access Road / Maritime Street	Pre-construction Note that as per the 2002 OARB Redevelopment EIR, fair-share allocations will be assessed for all OARB developers, whether or not their individual contribution to the impact would be significant under CEQA.
Cumulative **Impact Traf-16:** At the Parcel I / Maritime Street intersection, Option B would increase traffic in 2025 and would cause the future baseline LOS to operate at below LOS D at this new intersection.	**Cumulative** **Auto Mall EIR Traf-16:** Parcel I / Maritime Street	Pre-construction Note that as per the 2002 OARB Redevelopment EIR, fair-share allocations will be assessed for all OARB developers, whether or not their individual contribution to the impact would be significant under CEQA.

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Impact	Mitigation Measures [a]	Schedule to Begin Implementation [b]
Cumulative **Impact Traf-17:** Both the Project and Option B would increase traffic on study area freeways in 2025 and would cause freeway segments to operate at LOS F.	**Cumulative** **Auto Mall EIR Traf-17:** Transportation Demand Management Program	Pre-operations Note that the OARB Auto Mall project-specific TDM plan satisfies the fair-share obligation of this mitigation measure. This mitigation measure replaces mitigation measure 4.3-4 from the 2002 OARB Redevelopment EIR for the OARB Auto Mall project.
Impact 4.3-3: Redevelopment could result in traffic hazards to motor vehicles, bicycles, or pedestrians due to inadequate design features or incompatible uses. **Impact 5.3-3:** Increase in traffic hazards.	**Redevelopment EIR 4.3-5:** Standard Design Practices	Pre-construction
Impact 4.3-5: Redevelopment could fundamentally conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks).	**Redevelopment EIR 4.3-9:** Alternative Transportation Facilities	Pre-construction
Impact 4.3-6: Redevelopment could result in an inadequate parking supply at the Gateway development area, the 16th/Wood sub-district, or for trucks serving the Port of Oakland.	**Redevelopment EIR 4.3-10:** Parking	Pre-construction
Impact 4.3-11: Remediation, demolition/deconstruction, and *construction activities within the* redevelopment project area would utilize a significant number of trucks and could cause significant circulation impacts on the street system.	**Redevelopment EIR 4.3-13:** Construction Period Traffic	Pre-construction

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Impact	Mitigation Measures [a]	Schedule to Begin Implementation [b]
Impact 5.3-1: Increased congestion at intersections exceeding the cumulatively significant threshold.	**Redevelopment EIR 5.3-3:** 3rd / Adeline Street. **Redevelopment EIR 5.3-4:** 3rd / Market Street. **Redevelopment EIR 5.3-5:** 12th / Brush Street. **Redevelopment EIR 5.3-6:** Powell Street/I-80 Northbound Ramps.	Mitigation measures 5.3-3 through 5.3-6 are derived from the 2002 OARB Redevelopment EIR. Based on information that is now known, it is recommended these measures be rejected as infeasible for the OARB Auto Mall project as there is no mechanism for accepting fair-share contributions for these intersections.
Impact 4.4-1: PM as fugitive dust would be emitted during construction and remediation activities. **Impact 5.4-1:** Redevelopment would result in significant cumulative air quality impacts associated with emissions of *nitrogen oxides* (NOx), *reactive organics* gases (ROG), carbon monoxide (CO), particulate matter less than 10 microns in diameter (PM10), and diesel exhaust (almost entirely particulate matter less than 2.5 microns in diameter (PM2.5]), the latter defined as a toxic air contaminant by the California Resources Board (CARB).	**Redevelopment EIR 4.4-1:** Dust Control	Construction
Impact 4.4-2: Construction equipment exhaust could increase levels of NO_x, ROG, CO, and PM_{10} (the latter primarily as diesel PM) that could exceed 15 tons per year, or result in substantial increase in diesel emissions. **Impact 5.4-1:** See above.	**Redevelopment EIR 4.4-2:** Construction-period Exhaust Controls **Redevelopment EIR 4.4-4:** Diesel Emission Reduction Program	Construction Pre-operations; at time of Port and Gateway Development Area redevelopment

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Impact	Mitigation Measures [a]	Schedule to Begin Implementation [b]
Impact Air-1: Permanent Regional Impacts. Additional trips to and from the project would result in new air pollutant emissions within the air basin. **Cumulative** **Impact Air-5:** As part of the cumulative growth of the OARB Area Redevelopment Plan, the Project or Option B, together with anticipated future development in the area, could result in long-term traffic increases and could cumulatively increase regional air pollutant emissions.	**Auto Mall EIR Air-1:** Transportation Control Measures	Pre-operations; Operations This mitigation measure replaces mitigation measure 4.4-5 from the 2002 OARB Redevelopment EIR for the OARB Auto Mall project.
Impact 4.4-5: Space and water heating as well as routine maintenance of office buildings, warehouses, retail stores, and live-work space, could emit NO_x, ROG, CO and PM_{10} in quantities that could exceed thresholds.	**Redevelopment EIR 4.4-6:** Sustainable Development Design and Construction	Pre-construction
Impact 4.5-1: Construction, including remediation, could result in short-term noise levels in excess of established standards, or that violate the City of *Oakland Noise Ordinance at and near* the redevelopment project area, and along construction haul routes.	**Redevelopment EIR 4.5-1:** Noise Reduction Plan	Construction
Impact 4.6-1: Redevelopment has the potential to encounter previously unknown subsurface cultural resources during ground-disturbing activities.	**Redevelopment EIR 4.6-1:** Discovery of Cultural Resources	Construction

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Impact	Mitigation Measures [a]	Schedule to Begin Implementation [b]
Impact 4.6-2: Redevelopment would remove all resources contributing to the OARB Historic District. **Impact 4.6-3:** Redevelopment would render the OARB Historic District no longer eligible to the National and/or California Registers of Historic Places or Local Register. **Impact 4.11-2:** Redevelopment would remove buildings contributing to a historic district, including visually striking warehouse structures visible from I-80, a locally designated scenic route, and a portion of the state scenic highway system. **Impact 5.6-1:** Loss of historic resources.	**Redevelopment EIR 4.6-2:** Historic Commemoration Site	Pre-construction
	Redevelopment EIR 4.6-3: Public Trail Access	Pre-construction
	Redevelopment EIR 4.6-4: Oral Histories	Pre-construction
	Redevelopment EIR 4.6-5: Historic Military Website	Operations; to be available after completion of book; see Measure 4.6-16
	Redevelopment EIR 4.6-6: HABS/HAER Distribution	Pre-construction
	Redevelopment EIR 4.6-7: Video Distribution	Pre-construction
	Redevelopment EIR 4.6-8: Mural Preservation	Pre-construction
	Redevelopment EIR 4.6-9: Historic Warehouse Salvage Program	Pre-construction, East Gateway under Option B only

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Impact	Mitigation Measures [a]	Schedule to Begin Implementation [b]
	Redevelopment EIR 4.6-10: Historic Brochure	Operations; to be available at time Bay Trail opens in the vicinity
	Redevelopment EIR 4.6-11: Historic Archive	Pre-construction
	Redevelopment EIR 4.6-14: Historic Building Demolition, Timing	Pre-construction, East Gateway under Option B only
	Redevelopment EIR 4.6-15. Historic Building, Deconstruction and Salvaging	Pre-construction, East Gateway under Option B only.
	Redevelopment EIR 4.6-16: Historic Resource Documentation Program	Pre-construction
Impact 4.7-2: Hazardous or acutely hazardous materials (AHMs) may be handled or emitted within ¼ mile of an existing or proposed school.	**Redevelopment EIR 4.7-1:** Haz. Mat. Business Plan	Pre-operations; Operations
	Redevelopment EIR 4.7-2: Risk Management and Prevention Plan	Pre-operations; Operations
Impact 4.7-4: Site preparation, remediation and development of areas that contain contaminated soil and groundwater could expose remediation and construction workers, and future utility workers, tenants, and visitors to soil and groundwater contamination conditions. **Impact 4.7-5:** Potential exposure to contaminants in soil and groundwater remaining in place after remediation could be a hazard to future residents, employees and visitors. **Impact 5.7-1:** Increased exposure to hazardous wastes during construction.	**Redevelopment EIR 4.7-3:** RAP/RMP Implementation	Pre-construction

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Impact	Mitigation Measures [a]	Schedule to Begin Implementation [b]
	~~**Redevelopment EIR 4.7-4:** For the project area not covered by the DTSC-approved RAP/RMP, investigate potentially contaminated sites; if contamination is found, assess potential risks to human health and the environment, prepare and implement a clean-up plan for DTSC or RWQCB approval, prepare and implement a Risk Management Plan, and prepare and implement a Site Health and Safety Plan prior to commencing work.~~	Completed (As documented in the Army Reserve FOST report, June 2004)
Impact 4.7-5: Potential exposure to contaminants in soil and groundwater remaining in place after remediation could be a hazard to future residents, employees and visitors.	~~**Redevelopment EIR 4.7-5:** For the project areas not covered by the DTSC-approved RAP/RMP, remediate soil and groundwater contamination consistent with the City of Oakland ULR Program and/or other applicable laws and regulations.~~	Completed (As documented in the Army Reserve FOST report, June 2004)
Impact 4.7-6: Workers and others could be exposed to LBP in buildings, ACM or PCBs during demolition, remediation, renovation and site work activities. **Impact 5.7-1:** Increased exposure to hazardous wastes during construction.	**Redevelopment EIR 4.7-6:** Building Survey, Lead-Based Paint	Pre-construction
	Redevelopment EIR 4.7-7: Asbestos Safety Requirements	Pre-construction
	Redevelopment EIR 4.7-8: Building Survey, PCBs	Pre-construction
Impact 4.7-7: Workers or others could be exposed to hazardous materials and contamination in and around ASTs and USTs during remediation and redevelopment activities. **Impact 5.7-1:** Increased exposure to hazardous wastes during construction.	**Redevelopment EIR 4.7-9:** RAP/RMP for Underground Storage Tanks	Pre-construction; Construction
	Redevelopment EIR 4.7-10: Underground Storage Tank Closure/Removal	Construction

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Impact	*Mitigation Measures* [a]	Schedule to Begin Implementation [b]
Impact 4.7-8: Workers or others could experience direct contact exposure to LBP-contaminated soil, concrete, and pavement surrounding buildings that have LBP. **Impact 5.7-1:** Increased exposure to hazardous wastes during construction.	**Redevelopment EIR 4.7-11:** Lead-Based Paint Safety Requirements	Pre-construction
Impact 4.7-10: During interim or future use of existing buildings, people could be exposed to ACM or other environmental hazards.	**Redevelopment EIR 4.7-13:** RAP/RMP Update	Pre-operations
Impact 4.7-11: Workers could be exposed to polychlorinated biphenyls (PCBs) and PCB-contaminated equipment during remediation, construction and future operations. **Impact 5.7-1:** Increased exposure to hazardous wastes during construction.	**Redevelopment EIR 4.7-15:** Removal of PCB Transformers	Pre-construction; Construction; Operations
	***Redevelopment* EIR 4.7-16:** PCB *Investigation*	Pre-construction; Construction; Operations
	Redevelopment EIR 4.7-17: PCB Safety Requirements	Pre-construction; Construction; Operations
Impact 4.9-1: Construction activities and increases in employees and residents as well as increased building density would increase demand for fire, hazmat, and first responder medical emergency services. **Impact 4.3-4**, see above. **Impact 5.9-1:** Increased demand for fire-related services.	**Redevelopment EIR 4.9-1:** Fire and Emergency Response	Pre-operations; at time Port and Gateway development area employees exceed 2,044 (1995 baseline)
	Redevelopment EIR 4.9-3: OES Notification	Pre-construction

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Impact	Mitigation Measures [a]	Schedule to Begin Implementation [b]
Impact 4.9-8: Redevelopment would increase potable water demand. **Impact 5.9-5:** Increased demand for water.	**Redevelopment EIR 4.9-4:** Reclaimed Water Pipelines	Pre-construction. EBMUD NOP comment letter dated 2/7/2006 directs developers coordinate directly with EBMUD to determine project-specific feasibility.
	~~**Redevelopment EIR 4.9-5:** Individual buildings with gross floor area exceeding 10,000 square feet shall install dual plumbing for both potable and recycled water, unless determined to be infeasible by the approving agency (City or Port).~~	As per EBMUD NOP comment letter dated 2/7/2006, this requirement is deferred because EBMUD has not yet tested the feasibility of dual plumbing.
	Redevelopment EIR 4.9-6: Compliance with Title 22 Requirements	Pre-construction
	***Redevelopment EIR* 4.9-8:** *Concrete and* Asphalt Recycling	*Construction*
	Redevelopment EIR 4.9-9: Solid Waste Diversion	Pre-operations; Operations
Impact 4.11-3: New security lighting and/or lighting for night time operations would alter current patterns of light or glare, and could alter nighttime views in the area.	**Redevelopment EIR 4.11-1:** Lighting Standards	Pre-construction
Impact 4.11-4: New construction could introduce building or landscaping elements that would now or in the future cast shadow on existing collectors or photovoltaic cells, or a building using passive solar heat collection.	**Redevelopment EIR 4.11-3:** Solar Energy Setbacks	Pre-construction
	Redevelopment EIR 4.11-4: Solar Energy Access	Pre-construction

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b:
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- "Operations" means occupation and ongoing use of structures or facilities.

Impact	Mitigation Measures [a]	Schedule to Begin Implementation [b]
Impact 4.12-9: Loss of up to approximately 0.5 acre of isolated, urban wetlands. **Impact 5.12-2:** Loss of protected wetlands and waters of the U.S.	~~**Redevelopment EIR 4.12-13:** Contractors and developers shall comply with all conditions imposed by the RWQCB for fill of wetlands.~~	Completed as documented and implemented by the *Wetlands Offset Plan*, approved by RWQCB on May 3, 2004 and implemented in August 2004.
Impact 4.13-1: Redevelopment could expose increased numbers of people and structures to strong seismic ground shaking. **Impact 4.13-2:** Redevelopment could expose increased numbers of people or structures to seismic related ground failure, including liquefaction, lateral spreading, subsidence, or collapse. **Impact 4.13-3:** Localized landsliding may occur in sloped shoreline areas. **Impact 4.13-5:** Redevelopment could occur on expansive soils. **Impact 4.13-6:** Redevelopment elements may be located above a well, pit, sump, mound, tank vault, unmarked sewer line, landfill, or unknown fill soils. **Impact 5.13-1:** Exposure of persons or property to seismic risk.	**Redevelopment EIR 4.13-1:** Construction Standards	Pre-construction
	Redevelopment EIR 4.13-2: Geotechnical Report	Pre-construction
Impact 4.13-4: Under certain conditions, disturbance of soils during construction or remediation could result in erosion.	**Redevelopment EIR 4.13-3:** Stormwater Pollution Prevention / Erosion Control	Pre-construction
Impact 4.13-6: Redevelopment elements may be located above a well, pit, sump, mound, tank vault, unmarked sewer line, landfill, or unknown fill soils.	**Redevelopment EIR 4.13-4:** Environmental Records Review	Pre-construction
	Redevelopment EIR 4-13.5: Due Diligence	Pre-construction

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Impact	Mitigation Measures [a]	Schedule to Begin Implementation [b]
Impact 4.14-1: Operation of wells could cause saltwater to intrude into shallow groundwater. **Impact 5.14-1:** Concurrent operation of multiple remediation wells or construction dewat4ering activities could further impair groundwater quality.	**Redevelopment EIR 4.14-1:** Groundwater Extraction	Construction; Operations
Impact 4.14-2: Operation of wells could cause contaminants to migrate to uncontaminated groundwater.	**Redevelopment EIR 4.14-2:** Groundwater De-watering	Construction; Operations
Impact 4.15-2: Under certain circumstances, disturbance of soils during construction and remediation could result in erosion, which in turn could increase sediment loads to receiving waters. **Impact 5.15-1:** Construction-related increases in erosion and sedimentation/turbidity.	**Redevelopment EIR 4.15-2:** Subsequent Permit Conditions	Pre-construction
	Redevelopment EIR 4.15-3: Stormwater Pollution Prevention / Erosion Control	Pre-construction
Impact 4.15-3: During construction or remediation, shallow groundwater may be encountered that could be contaminated with sediment or chemicals, and could enter nearby receiving waters as could contaminated stormwater. **Impact 5.15-2:** Increases in 303(d) pollutants and toxics.	**Redevelopment EIR 4.15-4:** Stormwater Pollution Prevention Plan	Pre-construction
Impact 4.15-4: Net changes in impervious surface could result in higher pollutant loads to receiving waters.	**Redevelopment EIR 4.15-5:** Post-Construction Stormwater Controls	*Pre-construction*
Impact 4.15-5: Use of recycled water for non-potable purposes could lead to degradation of surface water quality.	**Redevelopment EIR 4.15-6:** Recycled Water Runoff	Pre-construction
Impact 4.15-6: New construction could result in changes in localized flooding.	**Redevelopment EIR 4.15-7:** Flood Protection	Pre-construction

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- "Pre-operations" means prior to issuance of certification of occupancy or its equivalent.
- "Operations" means occupation and ongoing use of structures or facilities.

SUMMARY TABLE 2:

MITIGATION MEASURES WITH IMPLEMENTATION RESPONSIBILITY BY THE CITY (RELATED TO THE OARB AUTO MALL PROJECT)

Note: See also accompanying Detailed Mitigation Measures following the Summary Table.

The following additional mitigation measures are related to development in the North Gateway (Project site) and/or East Gateway (additional Option B area). Implementation of these measures is the responsibility of the City of Oakland, acting through the Community and Economic Development Agency or other city Departments/Agencies. Implementation of these mitigation measures may include a requirement for fair-share contributions from project developers.

Impact	Mitigation Measures	Schedule to Begin Implementation
Impact 4.2-1: Under proposed *redevelopment, dissimilar land uses* may be located proximate to one another.	**Redevelopment EIR 4.2-3:** Land Use Coordination	Pre-construction; Operations
Impact 4.3-3: Redevelopment could *result in traffic hazards to motor* vehicles, bicycles, or pedestrians due to inadequate design features or incompatible uses. **Impact 5.3-3:** Increase in traffic hazards.	**Redevelopment EIR 4.3-7:** Truck Management Plan	Pre-construction
Impact 4.3-4: Due to site constraints, it may not be possible to provide two emergency access routes to the western portion of the Gateway development area, which would be in excess of 1,000 feet from the nearest major arterial. **Impact 5.3-4:** Inadequate emergency access.	**Redevelopment EIR 4.3-8:** Emergency Evacuation Plan	Pre-operations; at time Port and Gateway development area employees exceed 2,044 (1995 baseline)

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- "Pre-operations" means prior to issuance of certification of occupancy or its equivalent.
- "Operations" means occupation and ongoing use of structures or facilities.

Impact	Mitigation Measures	Schedule to Begin Implementation
Impact 4.3-9: Redevelopment would increase the peak hour average ridership at the West Oakland BART station by 3 percent where average waiting time at fare gates could exceed 1 minute. **Impact 5.3-8:** Increased waiting time during peak weekday hours at BART fare gates.	**Redevelopment EIR 4.3-12:** BART Capacity Assessment	Operations
Impact 5.3-5: Inadequate truck-related parking.	**Redevelopment EIR 5.3-7:** Truck Impact Reduction Program	Operations
Impact 5.3-7: Increased ridership on BART trains.	**Redevelopment EIR 5.3-8:** BART Capacity Improvements	Operations
Impact 5.4-1: Redevelopment would result in significant cumulative air quality impacts associated with emissions of nitrogen oxides (NOx), reactive organics gases (ROG), carbon monoxide (CO), particulate matter less than 10 microns in diameter (PM10), and diesel exhaust (almost entirely particulate matter less than 2.5 microns in diameter [PM2.5]), the latter defined as a toxic air contaminant by the California Air Resources Board (CARB).	**Redevelopment EIR 5.4-1:** Emission Reduction Projects	Pre-operations; Operations
Impact 4.6-2: Redevelopment would remove all resources contributing to the OARB Historic District. **Impact 4.6-3**: Redevelopment would render the OARB Historic District no longer eligible to the National and/or California Registers of Historic Places or Local Register. **Impact 5.6-1**: Loss of historic resources.	**Redevelopment EIR 4.6-3:** Public Trail Access	Pre-construction

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- "Operations" means occupation and ongoing use of structures or facilities.

Impact	Mitigation Measures	Schedule to Begin Implementation
Impact 4.9-6: Redevelopment construction could interfere with operation of the Maritime Street emergency response staging area, or with the West Grand Avenue and 7th Street evacuation routes.	**Redevelopment EIR 4.9-2:** OES Coordination	Pre-construction
Impact 4.15-6: New construction could result in changes in localized flooding.	**Redevelopment EIR 4.15-8:** Flood Hazard Mapping	Pre-construction

a:

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b:

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- "Pre-operations" means prior to issuance of certification of occupancy or its equivalent.
- "Operations" means occupation and ongoing use of structures or facilities.

DETAILED MITIGATION DESCRIPTIONS

This section provides details of each mitigation measure, and is a companion to the MMRP tables included in this document.

The following text is presented by environmental factor. Each section presents the mitigation for impacts affecting that particular environmental factor. For each mitigation measure, the following information is provided:

- The full mitigation measure;
- a more detailed description of each mitigation measure, where necessary.

In the detailed discussion of mitigation measures, the work "should" or "may" indicates a preference or option for action, but not a requirement. The word "shall" indicates a required element of the mitigation measure.

Mitigation Measures with Implementation Responsibility by the OARB Auto Mall Sponsors/Developers:

The following mitigation measures apply to development in the North Gateway (Project site) and/or East Gateway (additional Option B area) of the City's Gateway Development Area on the former Oakland Army Base. Developers/sponsors of the OARB Auto Mall Project are responsible for implementation of these measures. The City, acting through the Community and Economic Development Agency is responsible for enforcing these measures and providing the mechanism for fair-share contributions where applicable.

LAND USE

> **Redevelopment EIR 4.2-1**: The City shall ensure that Gateway development area redevelopment activities adjacent to Port of Oakland industrial maritime facilities are designed to minimize any land use incompatibilities to the extent feasible.

Design of Gateway development area activities adjacent to Port activities shall be designed to avoid or minimize land use incompatibilities through such measures as, the placement of least sensitive elements

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(such as parking, waste collection, storage, etc.) toward Port facilities. The City shall take compatibility of uses into consideration during planning and design review.

TRANSPORTATION AND TRAFFIC

Auto Mall EIR Traf-3: The Project Sponsors shall work with the property owners to develop an access design that provides adequate levels of safety. One option would be to relocate the EBMUD driveway to connect as the north leg of the N. Access Road / E. Access Road intersection. If the driveway were relocated, the N. Access Road / E. Access Road intersection would operate in compliance with the City's level of service standards with all-way stop traffic control. Design plans for the project and all public facilities shall be consistent with City standards and are subject to the approval of the City of Oakland Public Works Agency.

Phasing of the demolition of Wake Avenue and construction of the Maritime Street extension and North Access Road must occur such that reasonable access to the EBMUD facilities is maintained at all times.

The angle of the intersection at the EBMUD driveway appears to be between 30 and 35 degrees – a very acute angle. Good design practice requires intersection angles to be as close to 90 degrees as practicable. Otherwise, safety may be compromised. Acute angles at intersections and driveways are typically associated with higher than normal collision rates. The acute angle could obstruct the line of sight of motorists exiting the driveway who would essentially have to look over their shoulder to see oncoming traffic. This could result in conflicts with oncoming traffic or might cause exiting traffic to stop suddenly, resulting in rear-end collisions. The acute angle also would create a wide driveway that would not provide adequate access control. The driveway angle would make right turning movements into the driveway difficult.

Auto Mall EIR Traf-4: Construct an emergency vehicle access to the east end of the Project. Design plans shall be consistent with City standards and are subject to the approval of the City of Oakland Public Works Agency.

The Project proposes a cul-de sac either as a permanent measure or prior to development in the East Gateway (under Option B) that would continue and connect the roadway. Full development of Option B in both the North Gateway and the East Gateway would not include a cul-de-sac, but instead continuation and connection of the North Gateway access road, so would have adequate emergency access with no need to implement mitigation measure Traf-4.

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Auto Mall EIR Traf-6: As part of the cumulative growth of the OARB Area Redevelopment Plan, the Project Sponsors shall fund a fair share of the following modifications at the West Grand Avenue / Maritime Street intersection:

- Revise the northbound Maritime Street lanes to provide one left turn lane, one combination left-through lane, and two right turn lanes with overlap signal phasing (green arrow)
- Revise the southbound Maritime Street lanes to provide one left turn lane, one combination through-right lane, and one right turn lane
- Revise eastbound West Grand Avenue exit ramp to provide one left turn lane, two through lanes, and one right turn lane with a receiving third southbound lane south of the intersection (free right)
- Revise westbound West Grand Avenue to provide one left turn lane, one combination left-through lane, and one combination through-right lane
- Provide split signal phasing for east and westbound traffic movements on West Grand Avenue

Design plans for all public facilities shall be consistent with City standards and are subject to the approval of the City of Oakland Public Works Agency.

The intersection improvements that are feasible are limited by the bridge piers supporting the I-880/I-80 connector roadway that passes above West Grand Avenue. To fully mitigate cumulative impacts at the intersection would require modification of the overhead structure, development of new roadways, or other measures that would require significant right-of-way and/or the development of major roadway structural elements. No feasible mitigation measures have been identified that would reduce cumulative impacts to a level that is less than significant; therefore, residual cumulative impacts at the West Grand Avenue / Maritime Street intersection would be significant and unavoidable.

Note that as per the 2002 OARB Redevelopment EIR, fair-share allocations will be assessed for all OARB developers, whether or not their individual contribution to the impact would be significant under CEQA.

The improvements identified in this mitigation measure replace those improvements recommended in mitigation measure 4.3-1 from the 2002 OARB Redevelopment EIR.

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Auto Mall EIR Traf-10: As part of the cumulative growth of the OARB Area Redevelopment Plan, the Project Sponsors shall fund a fair share of the following modifications at the 7th Street / Maritime Street intersection:

- Revise the northbound Maritime Street lanes to provide one left turn lane, one combination left-through lane, one through lane, and one right turn lane with overlap signal phasing (green arrow)
- Revise the southbound Maritime Street lanes to provide one left turn lane, one combination left-through lane, and one combination through-right turn lane
- Revise the eastbound 7th Street lanes to provide one left turn lane, two through lanes, and one right turn lane with overlap signal phasing (green arrow)
- Revise the westbound 7th Street lanes to provide two left turn lanes, two through lanes and one right turn lane with overlap signal phasing (green arrow)
- *Provide split phasing for the north and southbound traffic movements.*

Design plans for all public facilities shall be consistent with City standards and are subject to the approval of the City of Oakland Public Works Agency.

The intersection improvements that are feasible are limited by the structural supports for the elevated BART tracks that pass over Maritime Street just south of the intersection. To fully mitigate cumulative impacts at that intersection would require modification of the overhead structure, development of new roadways, or other measures that would require significant right-of-way. No feasible mitigation measures have been identified that would reduce cumulative impacts to a level that is less than significant; therefore, residual cumulative impacts at the 7th Street / Maritime Street intersection would be significant and unavoidable.

Note that as per the 2002 OARB Redevelopment EIR, fair-share allocations will be assessed for all OARB developers, whether or not their individual contribution to the impact would be significant under CEQA.

The improvements identified in this mitigation measure replace those improvements recommended in mitigation measure 4.3-3 and 5.3-1 from the 2002 OARB Redevelopment EIR.

Note:

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Auto Mall EIR Traf-11: If Option B is developed, the Project Sponsors shall fund a fair share of the following modifications at the West Grand Avenue / I-880 Northbound Ramp intersection:

- Revise the eastbound 7th Street lanes to provide one left turn lane, one combination left-through lane, and one through lane.
- Provide split signal phasing for east and westbound traffic movements on 7th Street.

Design plans for all public facilities shall be consistent with City standards and are subject to the approval of the City of Oakland Public Works Agency.

Note that as per the 2002 OARB Redevelopment EIR, fair-share allocations will be assessed for all OARB developers, whether or not their individual contribution to the impact would be significant under CEQA.

The improvements identified in this mitigation measure replace those improvements recommended in mitigation measure 5.3-2 from the 2002 OARB Redevelopment EIR.

Auto Mall EIR Traf-15: If Option B is developed, the Project Sponsors shall fund a fair share of the modifications at the S. Access Road / Maritime Street intersection to add a southbound right turn lane with southbound right turn overlap phasing (green arrow). Design plans for all public facilities shall be consistent with City standards and are subject to the approval of the City of Oakland Public Works Agency.

Note that as per the 2002 OARB Redevelopment EIR, fair-share allocations will be assessed for all OARB developers, whether or not their individual contribution to the impact would be significant under CEQA.

Auto Mall EIR Traf-16: If Option B is developed, the Project Sponsors shall fund a fair share of the modifications at the Parcel I / Maritime Street intersection to add a southbound right turn lane with southbound right turn overlap phasing (green arrow). Design plans for all public facilities shall be consistent with City standards and are subject to the approval of the City of Oakland Public Works Agency.

Note that as per the 2002 OARB Redevelopment EIR, fair-share allocations will be assessed for all OARB developers, whether or not their individual contribution to the impact would be significant under CEQA.

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> **Auto Mall EIR Traf-17**: As part of the cumulative growth of the OARB Area Redevelopment Plan, the Project Sponsors shall fund a fair share of a transportation demand management program established by the City for the Redevelopment Area to reduce the demand for single-occupant, peak hour trips, and to increase access to transit opportunities.

This project will likely progress before other projects are finalized in the OARB Area and therefore before an area-wide Transportation Demand Management (TDM) Plan can be instituted to which the developers of this project would otherwise pay a fair share. A project-specific TDM Plan satisfies the fair-share obligations of this measure for the OARB Auto Mall project.

The City shall, in cooperation with the area businesses, cause to be prepared a Transportation Demand Management Plan to be implemented for the OARB Auto Mall project. The OARB Auto Mall TDM Plan shall include, at a minimum, the following measures:

1. Provide a shuttle to and from one or two local BART stations (West Oakland and/or 12th and Broadway).
2. The future big box retail shall be conditioned to provide secure, weather-protected bicycle parking for employees.
3. Provide signalized pedestrian crossings at all signalized intersections adjacent to the project site.
4. Provide employees with a guaranteed ride home in emergencies if they take transit, bicycle, walk or carpool to work.
5. Utilize only electric or natural gas forklifts and landscaping equipment in project operations.

Additionally, the following TDM measure should be considered for reduction of internal trips:

6. Consider shared customer parking in a centralized location.

These measures shall be coordinated with BAAQMD and CAP Transportation Control Measures implemented under Auto Mall EIR mitigation measure Air-1.

Until such time as redevelopment further progresses in the area, the proposed project would not generate enough demand for a bus line. AC Transit Line 13 runs near the project area (as close as Maritime and 14th Street) and less than a half mile from the closest portion of the expanded Option B area.

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Construction of the OARB Auto Mall Project would not preclude construction of Class II bicycle lanes on W. Grand Avenue. Construction of bicycle lanes on W. Grand Avenue would provide limited relief of traffic congestion by providing an alternative commute option but would only have a slight effect on traffic congestion. The limited benefit of the bike lanes would not justify the cost of implementation.

The Bay Trail planned along Maritime Street will be constructed on the west side of Maritime Street as redevelopment on that side progresses.

Bulb-outs would not have a significant mitigating effect on any of the traffic impacts identified in the Draft SEIR; however, bulb-outs will be considered by the City in its review of design plans for modifications to project area roadways and may be provided at locations where they would not obstruct turning paths of large vehicles.

This mitigation measure replaces mitigation measure 4.3-4 from the 2002 OARB Redevelopment EIR for the OARB Auto Mall project.

> **Redevelopment EIR 4.3-5**: Redevelopment elements shall be designed in accordance with standard design practice and shall be subject to review and approval of the City or Port design engineer.

Through design review, the City shall ensure the design of roadways, bicycle and pedestrian facilities, parking lots, and other transportation features comply with design standards and disallow design proposals that likely to result in traffic hazards. Any mitigation or redevelopment features that may directly affect Caltrans facilities shall be submitted for review by that agency.

> **Redevelopment EIR 4.3-9**: Redevelopment plans shall conform to City of Oakland or Port development standards with facilities that support transportation alternatives to the single-occupant automobile.

Facilities that support transportation alternatives to the single-occupant automobile may include, and are not limited to, bus turnouts, bicycle racks, on-site showers, on-site lockers, and pedestrian and bicycle ways.

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

Through project review, the City shall ensure an adequate supply of parking spaces will be provided.

Redevelopment EIR 4.3-13: Prior to commencing hazardous materials or hazardous waste remediation, demolition, or construction activities, a Traffic Control Plan (TCP) shall be implemented to control peak hours trips to the extent feasible, assure the safety on the street system and assure that transportation activities are protective of human health, safety, and the environment.

Construction and remediation TCPs shall be designed and implemented to reduce to the maximum feasible extent traffic and safety impacts to regional and local roadways.

The TCP shall address items including but not limited to: truck routes, street closures, parking for workers and staff, access to the project area and land closures or parking restrictions that may require coordination with and/or approval by the City and/or Caltrans. The TCP shall be submitted to the City Traffic Engineering and Planning divisions for review and approval prior to the issuance of any building, demolition or grading permits. The City and the Port shall coordinate their respective approvals to maximize the effectiveness of the TCP measures. DTSC would have ongoing authority under its Remedial Action Plan/Remedial Monitoring Plan oversight and the Hazardous Substances Account Act to regulate remediation transportation activities, which must be protective of human health, safety and the environment.

Remediation and demolition/construction traffic shall be restricted to designated truck routes within the City, and the TCP shall include a signage program for all truck routes serving the site during remediation or demolition/construction. A signage program details the location and type of truck route signs that would be installed during remediation and demolition/construction to direct trucks to and from the project area. Truck access points for entry and exit should be included in the TCP. In addition, as determined by the City, the developer shall be responsible for repairing any damage to the pavement that is caused by remediation or demolition/construction vehicles for restoring pavement to pre-construction conditions.

Remediation and demolition/construction-related trips will be restricted to daytime hours, unless expressly permitted by the City, and to the extent feasible, trips will be minimized during the a.m. and p.m. peak hours.

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The TCP shall identify locations for construction/remediation staging. Remediation staging areas are anticipated to be located near construction areas, since remediation will be largely coordinated with redevelopment. In addition, the TCP shall identify and provide off-street parking for remediation and demolition/construction staff to the extent possible throughout all phases of redevelopment. If there is insufficient parking available within walking distance of the site for workers, the developer shall provide a shuttle bus or other appropriate system to transfer workers between the satellite parking areas and remediation or demolition/construction site.

The TCP shall also include measures to control dust, requirements to cover all loads to control odors, and provisions for emergency response procedures, health and safety driver education, and accident notification.

Redevelopment EIR 5.3-3: 3rd/Adeline Street. Project area developers shall fund a fair share of the modifications at the 3rd/Adeline Street intersection.

Improvements for cumulative effects shall include the following:

1. Convert the traffic signal that is currently functioning as a flashing beacon to a fully operational traffic signal.
2. Provide permitted phasing for the northbound Adeline Street left-turning movement.
3. Revise the southbound Adeline Street lanes to provide:
    a. 1 left-turn lane
    b. 1 combination through right-lane lane
4. Revise the eastbound 3rd Street lanes to provide:
    a. 1 left-turn lane
    b. 1 combination through-right lane
5. Revise the westbound 3rd Street lanes to provide:
    a. 1 left-turn lane
    b. 1 combination left-through-right lane

It is recommended this measure be **rejected as infeasible** for the OARB Auto Mall project as there is no mechanism for accepting fair-share contributions for this intersection.

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Redevelopment EIR 5.3-4: 3rd/Market Street. Project area developers shall fund a fair share of modifications at the 3rd/Market Street intersection.

Improvements for cumulative effects shall include the following:

1. Install 4-way stop sign control.
2. Revise the westbound 3rd Street lanes to provide:
    a. 1 combination left-through lane
    b. 1 right-turn lane

It is recommended this measure be **rejected as infeasible** for the OARB Auto Mall project as there is no mechanism for accepting fair-share contributions for this intersection.

Redevelopment EIR 5.3-5: 12th /Brush Street. Project area developers shall fund a fair share of modifications to the 12th/Brush Street intersection to increase the signal cycle length to 102 seconds.

It is recommended this measure be **rejected as infeasible** for the OARB Auto Mall project as there is no mechanism for accepting fair-share contributions for this intersection.

Redevelopment EIR 5.3-6: Powell Street/I-80 Northbound Ramps. Project area developers shall fund a fair share of modifications at the Powell Street/I-80 northbound ramps intersection.

Improvements for cumulative effects shall include the following:

1. Revise the northbound I-80 ramp lanes to provide:
    a. 1 left-turn lane
    b. 1 combination through-right lane
    c. 1 right-turn lane

It is recommended this measure be **rejected as infeasible** for the OARB Auto Mall project as there is no mechanism for accepting fair-share contributions for this intersection.

Note:
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AIR QUALITY

Redevelopment EIR 4.4-1: Contractors shall implement all BAAQMD "Basic" and "Optional" PM10 (fugitive dust) control measures at all sites, and all "Enhanced" control measures at sites greater than four acres.

The following BAAQMD fugitive dust control measures shall be implemented as indicated at construction sites, and shall be enforced through contract specifications. A list of the feasible dust control mitigation measures with cost-benefits is included in the 2002 OARB Redevelopment EIR (p.4.4-25) based on an extensive evaluation of potential air quality mitigation measures conducted as part of the Berths 55-58 EIR (Port of Oakland 1998) as follows:

BAAQMD Fugitive Dust Control Measures

Control Measure	BAAQMD Category	Emission Source Controlled	Measure
1	Basic	Land	Water all active construction areas at least twice daily
2	Basic	Trucks	Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.
3	Basic	Land	Pave, apply water 3 times daily, or apply (nontoxic) soil stabilizers on all unpaved access roads, parking areas and staging areas, at construction sites.
4	Basic	Land	Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
5	Basic	Streets	Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
6	Enhanced	Land	Hydroseed or apply (nontoxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more).
7	Enhanced	Stockpiles	Enclose, cover, water twice daily or apply (nontoxic) soil binders to exposed stockpiles (dirt, sand, etc.)
8	Enhanced	Streets	Limit traffic speeds on unpaved roads to 15 mph.
9	Enhanced	Land	Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
10	Enhanced	Land	Replant vegetation in disturbed areas as quickly as possible.
11	Optional	Land	Limit the area subject to excavation, grading, and other construction activity at any one time.
12	Optional	Land	Suspend excavation and grading activity when sustained[a] wind speeds exceed 25 mph.
13	Optional	Trucks	Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.

Source: BAAQMD, 1996 as revised through 1999. Table 2.
Note: [a] Modified as per the Berths 55-58 EIR.

Note:

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Redevelopment EIR 4.4-2: Contractors shall implement exhaust control measures at all construction sites.

Exhaust control measures shall be implemented where feasible at each construction site, and may include, but not be limited to the following:

Exhaust Control Measures	
Control Measure	**Measure**
1	Prohibit truck idling in excess of 2 minutes
2	Use electricity from power poles rather than generators
3	Limit the size of construction equipment engines to the minimum practical size
4	Configure construction equipment with two to four degree engine timing retard or pre-combustion chamber engines
5	Install high pressure injectors on diesel construction equipment
6	Install soot traps
7	Install catalytic oxidizers
8	Minimize concurrent operation of vehicles
9	If they are available in the air basin, purchase emission offsets if ROG or NO_x emissions from construction where emissions exceed 6 tons/quarter

Redevelopment EIR 4.4-4: The City and the Port shall jointly create, maintain and fund on a fair share basis, a truck diesel emission reduction program. The program shall be sufficiently funded to strive to reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels, consistent with applicable federal, state and local air quality standards, and shall continually reexamine potential reductions toward achieving less than significant impacts as new technologies emerge. The adopted program shall define measurable reduction within specific time periods.

In the absence of such a plan, the City (as project sponsor) has agreed to implement, or cause to be implemented, the following diesel emission reduction measures as project conditions of approval:

- Provide 110 and 220 volt electrification at all loading docks and areas.
- Require all delivery trucks capable of utilizing electrification to power their vehicles' equipment to immediately turn off their engines when making deliveries in the project area.
- Prohibit all on-site diesel truck idling longer than three minutes by providing notification, installing signage and requiring enforcement by security personnel.

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> **Auto Mall EIR Air-1**: Transportation Control Measures. Major developers shall fund on a fair share basis BAAQMD-recommended feasible Transportation Control Measures (TCMs) for reducing vehicle emissions from commercial, institutional, and industrial operations, as well as all CAP TCMs the BAAQMD has identified as appropriate for local implementation.

This project will likely progress before other projects are finalized in the OARB Area and therefore before area-wide Transportation Control Measures (TCM) or an area-wide Transportation Demand Management (TDM) Plan can be instituted to which the developers of this project would otherwise pay a fair share. A project-specific TDM/TCM Plan satisfies the fair-share obligations of this measure for the OARB Auto Mall project.

The City shall, in cooperation with the area businesses, cause to be prepared a TDM/TCM Plan to be implemented for the OARB Auto Mall project. The OARB Auto Mall TDM/TCM Plan shall include, at a minimum, the following measures:

7. Provide a shuttle to and from one or two local BART stations (West Oakland and/or 12th and Broadway).
8. The future big box retail shall be conditioned to provide secure, weather-protected bicycle parking for employees.
9. Provide signalized pedestrian crossings at all signalized intersections adjacent to the project site.
10. Provide employees with a guaranteed ride home in emergencies if they take transit, bicycle, walk or carpool to work.
11. Utilize only electric or natural gas forklifts and landscaping equipment in project operations.

Additionally, the following TDM measure should be considered for reduction of internal trips:

12. Consider shared customer parking in a centralized location.

These measures shall be coordinated with Transportation Demand Management measures implemented under Auto Mall EIR mitigation measure Traf-17.

Until such time as redevelopment further progresses in the area, the proposed project would not generate enough demand for a bus line. AC Transit Line 13 runs near the project area (as close as Maritime and 14th Street) and less than a half mile from the closest portion of the expanded Option B area.

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Construction of the OARB Auto Mall Project would not preclude construction of Class II bicycle lanes on W. Grand Avenue. Construction of bicycle lanes on W. Grand Avenue would provide limited relief of traffic congestion by providing an alternative commute option but would only have a slight effect on traffic congestion. The limited benefit of the bike lanes would not justify the cost of implementation.

The Bay Trail planned along Maritime Street will be constructed on the west side of Maritime Street as redevelopment on that side progresses.

Bulb-outs would not have a significant mitigating effect on any of the traffic impacts identified in the Draft SEIR; however, bulb-outs will be considered by the City in its review of design plans for modifications to project area roadways and may be provided at locations where they would not obstruct turning paths of large vehicles.

This mitigation measure replaces mitigation measure 4.4-5 from the 2002 OARB Redevelopment EIR for the OARB Auto Mall project.

> **Redevelopment EIR 4.4-6**: Title 24 of the Uniform Building Code (UBC) requires that new construction include energy-conserving fixtures and designs. Additionally, the City and Port shall implement sustainable development policies and strategies related to new development design and construction.

Implementation of UBC requirements would reduce the need for space and water heating that would emit pollutants.

City policies and strategies shall be conditioned for all new development within the redevelopment project area. Specific examples may include, and are not limited to the following:

- Wood fire heating shall be prohibited in new live/work development.
- Where siting allows and where feasible, buildings shall be oriented to take advantage of passive and active climate control designs.
- To the maximum extent feasible, central water heating systems shall be installed.

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Redevelopment EIR 4.5-1: Developers and/or contractors shall develop and implement redevelopment-specific noise reduction plans.

This measure shall be enforced via contract specifications. The measure as written is intended to effectively limit construction noise, while allowing the sponsors of redevelopment activities and their contractors flexibility in controlling site-specific noise.

Each developer and/or contractor should be contractually required to demonstrate knowledge of the Oakland Noise Ordinance, and to construct in a manner whereby noise levels do not exceed significance criteria. Contractors may elect any combination of legal, non-polluting methods to maintain or reduce noise to thresholds levels or lower, as long as those methods do not result in other significant environmental impacts or create a substantial public nuisance. The developer and/or contractor shall perform a site-specific acoustical analysis, and, if necessary, shall develop and implement a noise reduction plan subject to review and approval by the City. The plan for attenuating these noises shall include some or all of the following measures, as appropriate and feasible, and shall be implemented prior to any required activities.

Schedule

- Schedule operation of one piece of equipment that generates extreme levels of noise at a time.
- Schedule activities that generate low and moderate levels of noise during weekend or evening hours.
- Standard construction activities shall be limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday. No construction activities shall be allowed on weekends until after the building is enclosed without prior authorization of the Building Services and Planning Divisions of the Community and Economic Development Agency, or unless expressly permitted or modified by the provisions of a building and/or grading permit.

Pile Driving and/or Other Activities that Generate Extreme Levels of Noise for Noise Levels Greater than 90 dBA

- Pile-driving and/or other activities that generate noise above 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m., Monday through Friday, with no activity generating extreme levels of noise permitted between 12:30 and 1:30 p.m. No construction activities that generate extreme levels of noise shall be allowed on Saturdays, Sundays, or holidays unless expressly permitted or modified by the provisions of a building and/or grading permit.
- Install engine and pneumatic exhaust controls as necessary to ensure exhaust noise from pile driver engines are minimized. Such controls can reduce noise levels by 6 dBA Leq.

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- Employ sonic or vibratory pile drivers (sonic pile drivers are only effective in some soils). Such drivers may reduce maximum noise levels by as much as 12 dBA (Lmax). In some cases however (e.g., sheet pile driving) vibratory pile drivers may generate more noise than impact pile drivers/methods. The specific circumstances should be evaluated.
- Tie rubber aprons lined with absorptive material around sheetpile.
- Hydraulically drive piles.
- Pre-drill pile holes.
- Erect temporary plywood noise barriers around the entire construction site.
- Use noise control blankets on the building structure as it 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.
- Monitor the effectiveness of noise attenuation measures by taking noise measurements.

Other Equipment, Methods

- A pre-construction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices are completed prior to the issuance of a building permit (including construction hours, neighborhood notification, posted signs, etc.).
- All construction equipment, fixed and mobile, and motor-vehicles shall be properly maintained to minimize noise generation. This would include maintaining equipment silencers, shields, and mufflers in proper operating order. "Quiet package" or "hush" equipment, which is readily available for such equipment as trailer-mounted compressors, welders, etc. shall be used. All equipment shall be operated in the quietest manner practicable.
- Equipment and trucks used for construction shall use 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).
- Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for 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 should be used; this muffler can lower noise levels from

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the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, which could achieve a reduction of 5 dBA. Quieter procedures should be used, such as drills rather than impact equipment, where practicable.

- Stationary noise sources should be located as far from sensitive receptors as possible, and they should be muffled and enclosed within temporary sheds, or insulation barriers, or other measures should be incorporated to the extent feasible.
- Material stockpiles and/or vehicle staging areas should be located as far as practicable from dwellings.
- Public address systems would be designed and to minimize "spill over" of sound onto adjacent properties.
- Physical barriers/screens (e.g., along fence lines) may be used to attenuate noise.
- Project workers exposed to noise levels above 80 dBA would be provided personal protective equipment for hearing protection (i.e., ear plugs and/or muffs).
- Areas where noise levels are routinely expected to exceed 80 dBA would be clearly posted "Hearing Protection Required in this Area."
- A process with the following components shall be established for responding to and tracking complaints pertaining to construction noise:
    - A procedure for notifying City Building Division staff and Oakland Police Department;
    - A list of telephone numbers (during regular construction hours and off-hours);
    - A plan for posting signs on-site pertaining to complaint procedures, permitted construction days and hours, day and evening contact telephone numbers for the job site and day and evening contact telephone numbers for the City in the event of a problem;
    - Designation of a construction complaint manager for the project who will respond to and track complaints; and
    - Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of construction activities.

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CULTURAL AND HISTORIC RESOURCES

Redevelopment EIR 4.6-1: Should previously unidentified cultural resources be encountered during redevelopment, work in that vicinity shall stop immediately, until an assessment of the finds can be made by an archaeologist. If the resource is found to be significant under CEQA, an appropriate mitigation plan must be developed.

The City or its developer will retain an archaeologist, upon any unanticipated discovery. The archaeologist will prepare a preliminary evaluation to assess the archaeological sensitivity of the specific site(s) under consideration and will recommend actions to protect archaeological resources. If the archaeologist's evaluation indicates a more detailed site assessment is warranted, an archaeologist shall initiate a testing program. The archaeologist will prepare a report determining the potential significance of the find and recommend measures to minimize potential effects on archaeological resources; measures might include a site security program, additional on-site investigations, or documentation, preservation, and recovery of cultural material.

If, after testing, the archaeologist determines that the discovery is not significant as defined in CEQA, no further investigations or precautions are necessary to safeguard the find. The archaeologist will prepare a final report to be sent to the responsible agency, the Oakland Landmarks Advisory Board, and the California Historical Resources Information System Northwest Information Center.

If, after testing, the archaeologist determines that the discovery is significant as defined in CEQA, ground-disturbing activities in the immediate vicinity of the discovery will remain suspended until an appropriate plan can be agreed upon and implemented. If further investigations or precautions are necessary or appropriate, the City and the archaeologist will jointly determine what additional procedures are necessary to protect the resource and/or mitigate any significant impacts. Additional measures might include a redesign of the project, data recovery excavations, or a program to monitor all site excavation, during which the archaeologist will record observations in a permanent log. The archaeologist will prepare a final report to be sent to the responsible agency, the Oakland Landmarks Advisory Board, and the California Historical Resources Information System Northwest Information Center.

Should any human remains be encountered, work in the vicinity shall halt and the County Coroner notified immediately. If the remains are determined to be Native American, the coroner will contact the California Native American Heritage Commission (NAHC) pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code. The NAHC in Sacramento will identify a Most Likely Descendant (MLD) pursuant to subdivision (a) of Section 5097.98 of the Public Resources Code. The City and the contracted archaeologist will consult with the MLD. The MLD may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American remains and may

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recommend to the owner or the person responsible for the excavation work means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The descendents shall complete their inspection and make their recommendation within 24 hours of their notification by the Native American Heritage Commission. The recommendation may include the scientific removal and nondestructive analysis of human remains and items associated with Native American burials. Work may not commence until the coroner's approval has been received.

> **Redevelopment EIR 4.6-2**: The City, Port and OARB sub-district developers shall fund on a fair-share basis development of a commemoration site, including preparation of a Master Plan for such a site, at a public place located within the Gateway development area.. The City shall ensure that the scale and scope of the commemoration site reflects the actual loss of historic resources.

The City has determined appropriate implementation of this measure toward which the OARB Auto Mall developers shall be assessed a fair-share payment.

> **Redevelopment EIR 4.6-3**: The City shall ensure the commemoration site is linked to the Gateway Park and the Bay Trail via a public access trail.

Within the Gateway development area, this trail may be located along the shoreline. Beyond the Gateway, the trail would follow the new alignment of Maritime Street, connecting to 7th Street, which connects to the Port's Middle Harbor Shoreline Park and other existing and planned trail segments.

Construction of the OARB Auto Mall Project would not preclude construction of the Bay Trail along the west side of Maritime Street south of Burma Road, nor the connection of the Bay Trail from Maritime Street to the Bay Bridge and Emeryville. An appropriate alignment of the Bay Trail would be along the west side of Maritime Street to avoid an unnecessary crossing of Maritime Street. This portion of the Bay Trail will be constructed as a subsequent element of implementation of the Oakland Army Base Area Redevelopment Plan on the west side of Maritime Street, but not as a part of the OARB Auto Mall project.

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Redevelopment EIR 4.6-4: The City, Port and OARB sub-district developers shall fund on a fair-share basis collection and preservation of oral histories from OARB military and civilian staff.

The City has determined appropriate implementation of this measure toward which the OARB Auto Mall developers shall be assessed a fair-share payment.

Redevelopment EIR 4.6-5: The City, Port, and OARB sub-district developers shall fund on a fair share basis collaboration with "military.com" or a similar military history web site.

The City has determined appropriate implementation of this measure toward which the OARB Auto Mall developers shall be assessed a fair-share payment.

Redevelopment EIR 4.6-6: The City, Port, and OARB sub-district developers shall fund on a fair share basis distribution of copies of the complete OARB HABS/HAER documentation prepared by the Army to: Oakland History Room, Oakland Public Library; Bancroft Library, University of California; and Port of Oakland Archives for the purpose of added public access to these records.

The City has determined appropriate implementation of this measure toward which the OARB Auto Mall developers shall be assessed a fair-share payment.

Redevelopment EIR 4.6-7: If determined of significant historical educational value by the Oakland Landmarks Preservation Advisory Board and the Oakland Heritage Alliance, the City, Port, and OARB sub-district developers shall fund on a fair share basis distribution of copies of "A Job Well Done" documentary video published by the Army.

The City has determined appropriate implementation of this measure toward which the OARB Auto Mall developers shall be assessed a fair-share payment.

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> **Redevelopment EIR 4.6-8**: The City, Port, and OARB sub-district developers shall fund on a fair share basis preservation and long-term curation of murals from OARB Building No. 1, and OBRA shall either donate the murals to the Oakland Museum of California, or provide a permanent location elsewhere.

The City has determined appropriate implementation of this measure toward which the OARB Auto Mall developers shall be assessed a fair-share payment.

> **Redevelopment EIR 4.6-9:** The City, Port, and OARB sub-district developers shall fund on a fair share basis a program to salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed. These materials shall be used on site if deconstruction is the only option. Reuse of a warehouse building or part of a warehouse building at its current location, or relocated to another Gateway location is preferable.

To the extent feasible, these materials shall be used in whole, on site, in the construction of new buildings within the Gateway development area. Special consideration shall be given to the use of these materials at the commemoration site through the site's Master Planning effort

If on-site reuse is found infeasible, opportunities shall be sought for reuse of these materials in other East Bay Area construction, or be sold into the recycled construction materials market. Landfill disposal of salvageable construction material from contributing historic structures shall be prohibited by contract specification. Salvage and reuse requirements shall be enforced via contract specification.

Salvage operations shall employ members of local job-training bridge programs (Youth Employment Program, Joint Apprenticeship Training Committee, Homeless Collaborative) or other similar organizations, if feasible, to provide construction-training opportunities to Oakland residents.

Salvage and reuse of the timber from these structures will help to reduce the impacts on the environment and save this ecologically and historically valuable material for reuse in the local community.

> **Redevelopment EIR 4.6-10**: The City, Port, and OARB sub-district developers shall fund on a fair share basis production of a brochure describing history and architectural history of the OARB.

The City has determined appropriate implementation of this measure toward which the OARB Auto Mall developers shall be assessed a fair-share payment.

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Redevelopment EIR 4.6-11: The City, Port, and OARB sub-district developers shall fund on a fair share basis acquisition of copies of construction documentation and photographs of historic buildings currently in the OARB files and transfer the copies to the Oakland History Room files and Port historic archives, including funding to cover costs of archiving and cataloging these materials, as well as curator costs at the Oakland History Room. While select photos and information may be exhibited at the commemoration site, the Oakland History Room is the most appropriate location for this archive.

The City has determined appropriate implementation of this measure toward which the OARB Auto Mall developers shall be assessed a fair-share payment.

Redevelopment EIR 4.6-14: No demolition or deconstruction of contributing structures to the OARB Historic District shall occur until necessary. ~~All efforts shall be made to retain as much of Building 1 as possible while still achieving remediation goals.~~

Building 1 has previously been demolished.

Development in the East Gateway, under Option B, could include demolition of structures in the OARB Historic District (there are no structures in the North Gateway, Project area).

Demolition or deconstruction of contributing structures to the OARB Historic District necessary for the protection of public health and safety, particularly as related to the remediation of hazardous materials and hazardous wastes within the OARB, may be initiated at any such time as determined necessary by the lead agency undertaking such remediation activity. The potential for partial removal of structures where remediation activity will not require the total demolition of the historic district contributor building shall be considered. The totality of costs involved in partial building salvage shall be included in this consideration.

Demolition or deconstruction of contributing structures to the OARB Historic District necessary for redevelopment activity within the Gateway development area (except as necessary for the protection of public health and safety, including hazardous material or waste remediation) shall not occur until such time as actual development projects are proposed and permits for their construction have been approved. No such permits shall be approved until such development projects can demonstrate that they have considered adaptive reuse of historic structures, but that adaptive reuse is found to be infeasible. OBRA and/or any developer shall make a pro-active, good faith effort to incorporate preservation of some of the following buildings - 4,60,85, the westerly portion of 808, 812, 821,822, and 823 - in a location proximate to the final alignment of the Bay Trail. The consideration of adaptive reuse, including reuse as a commemoration site, shall be a required component of subsequent land use approvals, such as PUD, design review or conditional

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use permits. To be considered as a commemoration site, the adaptive reuse opportunity would need to include an interpretive center, museum or other similar, publicly accessible use, and would need to serve as a repository for historically valuable artifacts, documents and accounts. No additional CEQA review shall be required for these subsequent applications unless the statutory requirements for subsequent environmental review are triggered.

> **Redevelopment EIR 4.6-15**: As part of the deconstruction and salvaging requirements for demolition of any contributing structure within the OARB Historic District (see Mitigation Measure 4.6-9), specific architectural elements, building components or fixtures should be salvaged. A professional architectural preservationist shall determine which, if any of such elements, components or fixtures should be retained.

Development in the East Gateway, under Option B, could include demolition of structures in the OARB Historic District (there are no structures in the North Gateway, Project area). Prior to demolition of any structure in the historic district, this mitigation measure shall be implemented by the sponsor/developer.

> **Redevelopment EIR 4.6-16**: The City, Port, and OARB sub-district developers shall fund on a fair share basis preparation of an Historical Resource Documentation Program. This program shall consist of a coordinated effort of primary research and documentation, with a substantial scholarly input and publicly available products. The first product of this program shall include a coordinated effort to conduct the research, writing, photo documentation, assembly and publication efforts needed to prepare a comprehensive book on the history of the Oakland Army Base. The book shall document the important contribution the Base has had to the U.S. military, to Oakland and to the nation at large.

The City has determined appropriate implementation of this measure toward which the OARB Auto Mall developers shall be assessed a fair-share payment.

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HAZARDS AND HAZARDOUS MATERIALS

Redevelopment EIR 4.7-1: For use of hazardous materials within ¼ mile of an existing or proposed school, business operators shall prepare Business Plan, update annually, and keep on file with the Oakland Fire Department.

A business plan details the types and quantities of chemicals stored at a given location, the storage location and types of storage containers, and the emergency response equipment available at the property (e.g., location of fire extinguishers and fire hydrants). It also provides a map showing the location of all of these items as well as major utilities (e.g., water, electricity).

Redevelopment EIR 4.7-2: For use of AHMs within ¼ mile of an existing or proposed school, in addition to a Business Plan, business operators shall prepare, implement, and update a Risk Management and Prevention Plan (RMPP) on at least an annual basis.

An RMPP is a plan to address the risks of accidental release of acutely hazardous chemicals present at a site. The plan inventories the chemicals that exceed aggregate amounts above a regulatory threshold and develops measures to ensure that that there is an adequate safety program to prevent their release. The RMPP is submitted to the local oversight agency and then goes through a public review process prior to approval by the agency. It is kept on file with Oakland Fire Department.

Redevelopment EIR 4.7-3: Implement RAP/RMP as approved by DTSC, and if future use proposals include uses not identified in the Reuse Plan and incorporated into the RAP/RMP or if future amendments to the remediation requirements are proposed, obtain DTSC and, as required, City approval.

This mitigation measure would apply only if it is determined through implementation of Redevelopment EIR mitigation measure 4.6-9 that existing buildings in the East Gateway are reused under Option B. Remediation activities detailed in the Remedial Action Plan/Risk Management Plan (RAP/RMP) shall be implemented/conducted as required during redevelopment activities.

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Redevelopment EIR 4.7-6: Buildings and structures constructed prior to 1978 slated for demolition or renovation that have not previously been evaluated for the presence of LBP shall be sampled to determine whether LBP is present in painted surfaces, and the safety precautions and work practices as specified in government regulations shall be followed during demolition.

Redevelopment EIR 4.7-7: Buildings, structures and utilities that have not been surveyed for ACM, shall be surveyed to determine whether ACM is present prior to demolition or renovation, and the safety precautions and work practices as specified in government regulations shall be followed during demolition.

Redevelopment EIR 4.7-8: Buildings and structures proposed for demolition or renovation shall be surveyed for PBC-impacted building materials, and the safety precautions and work practices as specified in government regulations shall be followed during demolition.

Redevelopment EIR 4.7-9: For ASTs/USTs on the OARB, implement the RAP/RMP, which incorporates the steps enumerated in Measure 4.7-10 below.

Redevelopment EIR 4.7-10: For the remainder of the redevelopment project area (non-OARB areas), if an AST or UST is encountered, it would be closed in place or removed and the soil would be tested and remediated, if necessary, pursuant to regulatory approvals and oversight.

Both ASTs and USTs are known to have been present on the OARB and in the redevelopment project area generally. Many have been removed from the OARB and the redevelopment project area, but others may remain. For the OARB, implementation of the RAP/RMP would address the risk of exposure to a tank that is unexpectedly encountered, disturbed or damaged during construction. For the remainder of the redevelopment project area, if an AST or UST is discovered during construction activities, it would be closed in place or removed according to the guidelines of the DTSC, RWQCB and CUPA. Like the RAP/RMP for the OARB, such requirements include removing and properly disposing of any remaining hazardous materials in the tank, having the tank removal supervised by regulatory agencies, testing the soil

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under the tank for contamination, recycling or disposing of the discarded tank and filing a tank removal closure report.

Redevelopment EIR 4.7-11: For LBP-impacted ground on the OARB, implementation of a RAP/RMP to be approved by DTSC as part of the project will result in avoidance of this potentially significant impact. For the remainder of the redevelopment project area, sampling shall be performed on soil or paved areas around buildings that are known or suspected to have LBP, and the safety precautions and work practices specified in government regulations shall be followed.

Redevelopment EIR 4.7-13: No future tenancies shall be authorized at the OARB for use categories that are inconsistent with the Reuse Plan without an updated environmental analysis and DTSC approval as provided for in the RAP/RMP.

For the OARB, baseline environmental analyses have been completed to support current interim uses of existing structures, including numerous commercial, trucking, warehouse and other tenants, the Oakland Military Institute, and transitional housing used for formerly-incarcerated women and their families and for various homeless service providers including an overnight shelter. Other environmental hazards may also be encountered by future interim occupants of existing OARB structures, and completion of a baseline environmental evaluation to identify and abate such hazards prior to occupancy by tenants will mitigate such hazards. Interim occupancy by future tenants who may propose land uses which are inconsistent with the Reuse Plan, and thus may not have been considered in the DTSC-approved RAP/RMP, shall occur only after DTSC approval as provided for in the RAP/RMP in order to assure that such future non-conforming tenants are protected from other environmental hazards. As stated above, for the remainder of the redevelopment project area, any building that has not been surveyed for ACM but potentially contains ACM shall be surveyed to determine whether ACM is present prior to demolition, renovation or reuse.

Redevelopment EIR 4.7-15: Known PCB transformers or PCB-contaminated transformers at the OARB shall be removed, monitored and/or maintained in accordance with applicable laws and regulations.

In addition, surface and subsurface contamination from any PCB equipment that remains in use should be investigated and remediated in compliance with all applicable laws and regulations.

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Redevelopment EIR 4.7-16: Oil-filled electrical equipment in the redevelopment project area that has not been surveyed shall be investigated prior to the equipment being taken out of service to determine whether PCBs are present.

Equipment found to contain PCBs should be part of an ongoing monitoring program. Surface and subsurface contamination from any PCB equipment shall be investigated and remediated in compliance with applicable laws and regulations.

Redevelopment EIR 4.7-17: PCB-containing or PCB-contaminated equipment taken out of service shall be handled and disposed in compliance with applicable laws and regulations.

Equipment filled with dialectic fluid (oil) including transformers, ballast, etc. containing more than 5 ppm PCBs is considered a hazardous waste in California.

PUBLIC SERVICES AND UTILITIES

Redevelopment EIR 4.9-1: The City and Port shall cooperatively investigate the need for, and if required shall fund on a fair-share basis, development and operation of increased firefighting and medical emergency response services via fireboat to serve the OARB sub-district.

If determined to be required by the City, OARB Auto Mall developers shall be assessed a fair-share payment toward the implementation of this measure.

Redevelopment EIR 4.9-3: The Port and City shall require developers within their respective jurisdictions to notify OES of their plans in advance of construction or remediation activities.

Each developer proposing construction in the redevelopment project area would be required to notify OES prior to initiation of construction, so that OES may plan emergency access and egress taking into consideration possible conflicts or interference during the construction phase. The developer would also be required to notify OES once construction is complete.

Note:
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- "Auto Mall EIR" denotes mitigation measures from the 2006 Auto Mall Supplemental EIR

Redevelopment EIR 4.9-4: Individual actions with landscaping requirements of one or more acres shall plumb landscape areas for irrigation with recycled water.

EBMUD submitted a letter in response to the NOP for the OARB Auto Mall project (dated 2/7/2007) requesting developers coordinate directly with EBMUD to determine project-specific feasibility.

Redevelopment EIR 4.9-6: Site design shall facilitate use of recycled water, and shall comply with requirements of CCR Title 22 regarding prohibitions of site run-off to surface waters.

When subsequent redevelopment activities are required to include reclaimed water in their design, the City would ensure that requirements of Title 22 intended to protect the environment are reflected in that design, including prohibitions against run-off to surface waters. The City and OARB Auto Mall sponsors/developers should coordinate these efforts with the reclaimed water supplier, EBMUD.

Redevelopment EIR 4.9-8: Concrete and asphalt removed during demolition/construction shall be crushed on site or at a near site location, and reused in redevelopment or recycled to the construction market.

Foundation and paving removal would generate substantial debris, and the City and OARB Auto Mall sponsors/developers would ensure these materials are crushed and recycled. As a first preference, these materials should be re-used on-site; as a second preference, they would be sold to the construction market. The City and OARB Auto Mall sponsors/developers would make every effort practicable to avoid disposal to landfill of this material.

Redevelopment EIR 4.9-9: The City and Port shall require developers to submit a plan that demonstrates a good faith effort to divert at least 50 percent of the operations phase solid waste from landfill disposal.

Each OARB Auto Mall sponsor/developer would be required to submit to the City a source reduction/waste diversion plan specifying how the activity will reduce solid waste disposal by 50 percent. The sponsor would be responsible for development and implementation of its plan, and for reporting its progress and success rate to the City. Should the source reduction/diversion plan program not meet its stated goal, the sponsor would modify the plan until the desired level of reduction/diversion is achieved. While each plan would be specific, the following general topics should be addressed:

Note:
- "Redevelopment EIR" denotes mitigation measures from the 2002 Redevelopment Plan EIR
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- Goals
- Key personnel
- Quantification of waste
- Identification of waste materials
- Program elements
- Monitoring requirements and performance standards
- Reporting

AESTHETICS

Redevelopment EIR 4.11-1: New lighting shall be designed to minimize off-site light spillage; "stadium" style lighting shall be prohibited.

Modern security lighting is available that directs light toward a specific site, and substantially reduces spillage of light onto adjacent properties. The City shall require the use of such directional lighting as a condition of approval for redevelopment projects throughout the project area. In no case shall the City allow the use of stadium-style lighting, which directs light outward across a broad area.

Redevelopment EIR 4.11-3: New active or passive solar systems within or adjacent to the project area shall be set back from the property line a minimum of 25 feet.

Through design review, the City shall ensure that proposed solar systems are not located in a manner that would unduly restrict design of future development. Such conflicts are to be resolved in design review. If the proposed solar system cannot be designed to accommodate adjacent actions, it shall be disallowed.

Redevelopment EIR 4.11-4: New construction within the Gateway development area adjacent to a parcel containing permitted or existing active or passive solar systems shall demonstrate through design review that the proposed structures shall not substantially impair operation of existing solar systems.

Through design review, the City shall ensure that the effectiveness an operation of existing or permitted active or passive solar systems shall not be substantially impaired. The design of the subsequent proposed structures shall be modified so as not to have such an adverse effect.

Note:
- "Redevelopment EIR" denotes mitigation measures from the 2002 Redevelopment Plan EIR
- "Auto Mall EIR" denotes mitigation measures from the 2006 Auto Mall Supplemental EIR

GEOLOGY AND SOILS

Redevelopment EIR 4.13-1: Redevelopment elements shall be designed in accordance with criteria established by the UBC, soil investigation and construction requirements established in the Oakland General Plan, the Bay Conservation and Development Commission Safety of Fill Policy, and wharf design criteria established by the Port or City of Oakland (depending the location of the wharf).

The UBC requires structures in the San Francisco Bay Area to be designed to withstand a ground acceleration of 0.4 g. A licensed engineer should monitor construction activities to ensure that the design and construction criteria are followed.

The Health and Safety element of the Oakland General Plan requires a soils and geologic report be submitted to the Department of Public Works (DPW) prior to the issuance of any building permit. The Oakland General Plan also requires all structures of three or more stories to be supported on pile foundations that penetrate Bay Mud deposits, and to be anchored in firm, non-compressible materials unless geotechnical findings indicate a more appropriate design. The General Plan also provides for the identification and evaluation of existing structural hazards and abatement of those hazards to acceptable levels of risk.

Redevelopment EIR 4.13-2: Redevelopment elements shall be designed and constructed in accordance with requirements of a site-specific geotechnical evaluation.

Site-specific geotechnical, soils, and foundation investigation reports shall be prepared by a licensed geotechnical or soil engineer experienced in construction methods on fill materials in an active seismic area. The reports shall provide site-specific construction methods and recommendations regarding grading activities, fill placement, compaction, foundation construction, drainage control (both surface and subsurface), and seismic safety. Designers and contractors shall comply with recommendations in the reports. A licensed geotechnical or soil engineer shall monitor earthwork and construction activities to ensure that recommended site-specific construction methods are followed.

The Oakland General Plan requires all structures of three or more stories to be supported on pile foundations that penetrate Bay Mud deposits and to be anchored in firm, non-compressible materials unless geotechnical findings indicate a more appropriate design. The General Plan also provides for the identification and evaluation of existing structural hazards and abatement of those hazards to acceptable levels of risk.

Note:

- "Redevelopment EIR" denotes mitigation measures from the 2002 Redevelopment Plan EIR
- "Auto Mall EIR" denotes mitigation measures from the 2006 Auto Mall Supplemental EIR

Redevelopment EIR 4.13-3: Prior to ground-disturbing activities, the contractor shall develop and implement a Regional Water Quality Control Board-acceptable Stormwater Pollution Prevention Plan (SWPPP) that includes erosion control measures.

The contractor shall prepare and implement a site-specific SWPPP that is acceptable to the RWQCB, Region 2. The contractor shall submit the SWPPP to the City for review, and shall keep a copy of the SWPPP at the construction site. While erosion control measures included in the plan will be site-specific, they must be effective at prevention of accelerated erosion by the following: minimizing the length of time soils are exposed; reducing total area of exposed soil during the rainy season; protecting critical areas (the Bay); and monitoring before and after each rain storm to assess control measure effectiveness. SWPPP erosion control measures may include, and are not limited to, the following:

- Schedule construction to occur during dry season
- Avoid run-on (divert run-off from up-slope sites so it does not enter construction zone)
- Preserve existing vegetation
- Seed and mulch, or hydromulch
- Control dust
- Use blankets, geotextiles, and fiber rolls
- Install tire washers at exits

Redevelopment EIR 4.13-4: The project applicant shall thoroughly review available building and environmental records.

The City shall keep a record of, and the designer shall review, available plans, and facility, building, and environmental records in order to identify underground utilities and facilities, so that these may be either avoided or incorporated into design as relevant.

Redevelopment EIR 4.13-5: The developer shall perform due diligence, including without limitation, retaining the services of subsurface utility locators and other technical experts prior to any ground-disturbing activities.

The contractor shall utilize Underground Service Alert or other subsurface utility locators to identify and avoid underground utilities and facilities during construction of redevelopment elements. The contractor shall keep a record of its contacts regarding underground features, and shall make these records available to the City upon request. This condition shall be enforced through contract specification.

Note:
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Redevelopment EIR 4.14-1: Installation of groundwater extraction wells into the shallow water-bearing zone or Merritt Sand aquifer for any purpose other than construction de-watering and remediation, including monitoring, shall be prohibited.

Implementation of this measure would prevent saltwater from being drawn into the aquifer and potentially causing fresh water to become brackish or saline. Limiting extraction of shallow groundwater and groundwater from the Merritt Sand unit will prevent potential impacts to existing study area groundwater resources.

Redevelopment EIR 4.14-2: Extraction of groundwater for construction de-watering or remediation, including monitoring, shall be minimized where practicable; if extraction will penetrate into the deeper aquifers, than a study shall be conducted to determine whether contaminants of concern could migrate into the aquifer; if so, extraction shall be prohibited in that location.

Implementation of this measure would prevent unnecessary extraction of groundwater and prohibit its extraction where contaminants of concern could migrate into deeper aquifers; therefore it will help avoid or reduce the potential migration of contaminants. The City shall ensure that groundwater extraction, other than for remediation or construction dewatering, is minimized where practicable in the redevelopment project area.

Redevelopment EIR 4.15-2: Contractors and developers shall comply with all permit conditions from the Corps, RWQCB and BCDC.

This measure shall be enforced on contractors by contract specifications.

Redevelopment EIR 4.15-3: Prior to ground-disturbing activities, the contractor shall develop and implement a Stormwater Pollution Prevention Plan to be reviewed by the City or the Port, including erosion and sediment control measures.

All construction activities shall be undertaken in accordance with requirements of the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction Activity (General Permit). The General Permit requires that all dischargers develop and

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implement a SWPPP that specifies BMPs that would prevent construction pollutants from contacting stormwater with the intent of keeping products of erosion from moving off site into receiving waters.

The contractor shall prepare and implement a site-specific SWPPP. The SWPPP shall be reviewed by the City, and shall be available for review by the RWQCB. While erosion/sediment/pollution control measures included in the plan would be site-specific, they must be effective at prevention of accelerated erosion by the following: minimizing the length of time soils are exposed; reducing total area of exposed soil during the rainy season; protecting critical areas (the Bay); and monitoring before and after each rain storm to assess control measure effectiveness. BASMAA's Start at the Source—Design Guidance for Stormwater Quality Protection, 1999 edition, is a helpful reference for developing appropriate BMPs. SWPPP erosion and sediment control measures may include, and are not limited to, the following:

- Schedule construction to occur during dry season;
- Avoid run-on (divert run-off from up-slope sites so it does not enter construction zone);
- Preserve existing vegetation;
- Seed and mulch, or hydromulch;
- Dust control;
- Blankets, geotextiles, fiber rolls; and
- Tire washers at exits.

Additional SWPPP sediment control measures may include, and are not limited to, the following:

- Stabilize the construction entrance;
- Silt fencing;
- Temporary straw bale dike;
- Sand/gravel bag;
- Brush/rock filter;
- Inlet protection;
- Catch basin inlet filter; and
- Sediment basin or trap.

SWPPP pollution control measures generally are "good housekeeping" BMPs, and may include, and are not limited to, establishing practices and protocols for the following:

- Solid and demolition waste management;

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- Hazardous materials and waste management;
- Spill prevention and control;
- Vehicle and equipment maintenance;
- Covered materials storage;
- Handling and disposal of concrete/cement;
- Pavement construction management;
- Contaminated soil and water management; and
- Sanitary/septic waste management.

> **Redevelopment EIR 4.15-4**: Prior to construction or remediation, the contractor shall develop and implement a Stormwater Pollution Prevention Plan, including protocols for determining the quality and disposition of construction water which includes shallow groundwater encountered during construction/remediation; depending on the results of the testing, contaminated water shall be disposed of via standards of the applicable regulatory agency (RWQCB, DTSC, or EBMUD), as appropriate. In addition, the contractor shall comply with the requirements of NPDES Permit Nos. CAG912002 and CAG912003 if appropriate.

The contractor's SWPPP shall include a RWQCB-acceptable protocol and BMPs for handling construction water. The SWPPP shall include methods for visual inspection, triggers for laboratory testing, and appropriate use/disposal of the water. The contractor must also determine if NPDES Permit Nos. CAG912002 and CAG912003 are relevant to the site. If they are, an NOI must be filed, and the related Self-Monitoring Plan must be complied with.

> **Redevelopment EIR 4.15-5**: Post-construction controls of stormwater shall be incorporated into the design of new redevelopment elements to reduce pollutant loads.

NPDES permitting requires that BMPs to control post-construction stormwater be implemented to the maximum extent practicable. Analysis of anticipated runoff volumes and potential effects to receiving water quality from stormwater shall be made for specific redevelopment elements, and site-specific BMPs shall be incorporated into design. BMPs shall be incorporated such that runoff volume from 85 percent of average annual rainfall at a development site is pre-treated prior to its discharge from that site, or a pre-treated volume in compliance with RWQCB policy in effect at the time of design.

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Non-structural BMPs may include and are not limited to good housekeeping and other source control measures, such as the following:

- Stencil catch basins and inlets to inform the public they are connected to the Bay;
- Sweep streets on a regular schedule;
- Use and dispose of paints, solvents, pesticides, and other chemicals properly;
- Keep debris bins covered; and
- Clean storm drain catch basins and properly dispose of sediment.

Structural BMPs may include and are not limited to the following:

- Minimize impervious areas directly connected to storm sewers;
- Include drainage system elements in design as appropriate such as:
- infiltration basins
- detention/retention basins
- vegetated swales (biofilters)
- curb/drop inlet protection.

Redevelopment EIR 4.15-6: Site-specific design and best management practices shall be implemented to prevent runoff of recycled water to receiving waters.

Design of subsequent redevelopment activities shall ensure recycled water does not leave the site and enter receiving waters. Best management practices shall be implemented to prevent runoff of recycled water. These BMPs may be either structural or non-structural in nature and may include but are not limited to the following:

- Preventing recycled water from escaping designated use areas through the use of:
- berms
- detention/retention basins
- vegetated swales (biofilters)
- Not allowing recycled water to be applied to irrigation areas when soils are saturated.
- Plumbing portions of irrigation systems adjacent to receiving waters with potable water.

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Redevelopment EIR 4.15-7: New development shall conform with policies of the City of Oakland's Comprehensive Plan Environmental Health Hazards Element regarding flood protection.

The Hazards Element includes development controls that place the burden of demonstrating flood safety upon the individual developer. In addition, the Hazards Element includes policies regarding support of flood control and management programs of other agencies, maintenance of the natural character of creeks to the maximum extent possible, and City participation in the federal Flood Insurance Program.

Note:

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Mitigation Measures with Implementation Responsibility by the City (Related to the OARB Auto Mall Project):

The following additional mitigation measures are related to development in the North Gateway (Project site) and/or East Gateway (additional Option B area). Implementation of these measures is the responsibility of the City of Oakland, acting through the Community and Economic Development Agency. Implementation of these mitigation measures may include a requirement for fair-share contributions from project developers.

> **Redevelopment EIR 4.2-3**: The City and Port shall coordinate to implement Mitigation Measures 4.2-1 and 4.2-2. The City and Port shall cooperatively coordinate regarding the types of land uses to be developed at the coterminous boundary of their respective jurisdictions.

Mitigation Measure 4.2.2 is a Port-only measure requiring the Port of Oakland to design its New Berth 21 facility to avoid or minimize land use incompatibilities by locating to the extent feasible the most noisy, most polluting, and least attractive of its elements away from the Gateway/Port development area boundary. The City shall cooperatively coordinate regarding the types of land uses to be developed at the coterminous boundary of their respective jurisdictions.

> **Redevelopment EIR 4.3-7**: The City and the Port shall continue and shall work together to create a truck management plan designed to reduce the effects of transport trucks on local streets. The City and Port shall fund on a fair share basis, implementation of this plan.

The truck management plan may include, and is not limited to, the following elements:

- Analyze truck traffic in West Oakland;
- Traffic calming strategies on streets not designated as truck routes designed to discourage truck through travel;
- Truck driver education programs;
- Expanded signage, including truck prohibitions on streets not designated as truck routes;
- Traffic signal timing improvements;
- Explore the feasibility of truck access to Frontage Road;
- Roadway and terminal gate design elements to prevent truck queues from impeding the flow of traffic on public streets; and

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- Continue Port funding of two police officers to enforce truck traffic prohibitions on local streets.

Redevelopment EIR 4.3-8: Provide an emergency service program and emergency evacuation plan using waterborne vessels.

The City shall provide emergency access to the OARB sub-district by vessel. The area is currently served by fire boat out of the Jack London Square Fire Station. The City may elect to equip that fire boat with first response medical emergency personnel as well as limited hazardous materials response personnel and equipment (see also Redevelopment EIR mitigation measure 4.9-1).

Redevelopment EIR 4.3-12: The City and Port shall provide detailed information regarding redevelopment to BART to enable BART to conduct a comprehensive fare gate capacity assessment at the West Oakland BART station. Pending the results of this assessment, the City and the Port may need to participate in funding the cost of adding one or more fare gates at the West Oakland BART station.

BART staff's preliminary assessment is that no new fare gates would be required, but the City and Port should coordinate with BART to confirm this is the case. Uncongested fare gates are required to encourage BART ridership.

Redevelopment EIR 5.3-7: The City and Port shall cooperatively develop a program that combines multiple strategic objectives and implementation tools designed to reduce cumulative truck parking and other AMS impacts.

This program should consider strategies that may include, but should not be limited to the following:

- Pursue truck traffic mitigation steps, information strategies, and rail intermodal strategies.
- Identify potential land swaps and utilize additional small parcels of land in the vicinity of the port, especially for truck parking and support services.
- Prioritize the use of harbor-area land for core services, maximize the efficient use of harbor-area land and facilities, and reduce the impacts in adjacent neighborhoods.
- Promote intensive land use (doing more with less) and extended terminal gate hours.
- Actively encourage relocation of selected services to other Oakland, East Bay, or Northern California (Hinterland Loop) locations.

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- Develop multi-user facilities in Oakland or in corridor locations (e.g., Richmond and San Leandro) for both core and non-core services.

Implementation of such a program may take many years, and the success of the program cannot be ascertained at this time. Therefore, this cumulative impact remains significant and unavoidable.

Redevelopment EIR 5.3-8: The City and Port shall work with BART and AC Transit to ensure adequate BART train and AC Transit capacity will be available for riders to and from the redevelopment project area, and possibly fund, on a fair share basis, BART train and AC Transit capacity improvements.

Redevelopment EIR 5.4-1: The City and the Port shall encourage, lobby, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality.

Such encouragement, lobbying, and participation may include the following:

- Retrofitting locomotive engines to meet current federal standards.
- Using reduced sulfur fuels in ships while the ships are in the San Francisco Bay.
- Treating NOx with selective catalytic reductions.
- Implementing random roadside emissions tests and develop a system of fines for trucks not in compliance with emission regulations.
- Establishing emissions-based berthing fees.
- Buying relatively old, highly polluting cars to take them off the road.

Although these programs may assist in advancing emission reduction technologies or implementing emission reduction methods, the incremental contribution of the redevelopment program would remain cumulative considerable, and the cumulative impact on air quality remains significant and unavoidable.

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Redevelopment EIR 4.9-2: The Port and City shall work with OES to ensure changes in local area circulation are reflected in the revised Response Concept.

The Port and City would provide information to the OES to facilitate that agency's accurate revision of its Response Concept and Annex H. In particular, the City and Port would provide OES information regarding new and proposed project area development, intensification and changes in land uses, realignment of area roadways, and construction of new local circulation facilities.

Redevelopment EIR 4.15-8: The City and the Port shall complete flood hazard mapping in the project area, where necessary and applicable, to delineate 100- and 500-year flood hazard zones.

The City and Port shall determine with the appropriate federal agencies (FEMA, Corps) the necessity and process for mapping flood hazard zones within the non-mapped portions of the project area. If necessary and applicable, the City and/or Port shall cause a flood hazard delineation for the 100-year and 500-year flood hazard zones to be prepared, which would submit the delineation to the Corps for verification. Once verified, the delineation would be submitted to FEMA, for inclusion to the Flood Insurance Program.

Note:
- "Redevelopment EIR" denotes mitigation measures from the 2002 Redevelopment Plan EIR
- "Auto Mall EIR" denotes mitigation measures from the 2006 Auto Mall Supplemental EIR

APPROVED AS TO FORM AND LEGALITY:

By: _____
Deputy Agency Counsel

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 JAN 10 PM 3:35

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. _____ C.M.S.

A RESOLUTION AUTHORIZING THE EXECUTION OF A DISPOSITION AND DEVELOPMENT AGREEMENT WITH ARGONAUT HOLDINGS, INC. FOR THE SALE OF APPROXIMATELY 6.3 ACRES WITHIN THE FORMER OAKLAND ARMY BASE FOR THE APPRAISED FAIR MARKET VALUE FOR THE DEVELOPMENT OF A GENERAL MOTORS DEALERSHIP

WHEREAS, the Oakland Army Base ("OARB") was identified for closure in 1995 by the Defense Base Closure and Realignment Commission ("Commission") and approved for closure by the President of the United States pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Public Law 150-526) and the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510) ("Acts") as amended; and

WHEREAS, on July 31, 2002 the Oakland City Planning Commission certified the Oakland Army Base Redevelopment plan EIR and the Oakland City Council, Oakland Base Reuse Authority ("OBRA") and Oakland Redevelopment Agency ("Agency") adopted all appropriate California Environmental Quality Act ("CEQA") findings; and

WHEREAS, the OBRA Governing Body at its meeting of July 31 2002 passed Resolution No. 2002-17 adopting the Final Reuse Plan for the Oakland Army Base ("Reuse Plan") and thereby endorsing a conceptual reuse scenario entitled "Flexible Alternative," which included a mix of land uses for the area, including: waterfront, light industrial, maritime support, research and development, "flex-office," selected retail and possibly a hotel; and

WHEREAS, the OBRA Governing Body at its meeting of June 26, 2006, passed Resolution No. 2006-09 authorizing its Executive Director to take all actions necessary to transfer all of the rights and obligations of OBRA to the Agency, effective August 7, 2006; and

WHEREAS, on December 5, 2006 the Oakland City Council certified the Supplemental Environmental Impact Report for the Oakland Army Base Auto Mall Project which analyzed the environmental impacts associated with the development of

an auto mall and relocation of ancillary maritime support services, and adopted all appropriate CEQA findings; and

WHEREAS, the Final Reuse Plan was amended by the Agency on December 5, 2006 by Resolution No. 2006-0084 C.M.S. to include an auto mall concept as an additional conceptual strategy for the North Gateway area of the OARB, and to relocate ancillary maritime support uses, which is a category that includes truck parking, logistics center, or other similar port-related uses, to the East Gateway and/or Central Gateway; and

WHEREAS, the proposed project has been analyzed in a First Addendum to the Supplemental Environmental Impact Report for the Oakland Army Base Auto Mall Project ("Addenda 1"); and

WHEREAS, the Final Reuse Plan was amended by the Agency on December 18, 2007 by Resolution No. 2007-0086, and by the City Council by Resolution No. 81004 C.M.S., in order to refine the proposed traffic circulation patterns for the auto mall project, relying on Addenda 1; and

WHEREAS, the Agency owns approximately 6.3 acres of unimproved and vacant real property located in the former Oakland Army Base Area (OARB) and within the North Gateway Development subarea, a triangular site bounded by the East Bay Municipal Utility District (EBMUD) Wastewater Plant on the north, West Grand Avenue to the south and I-880 to the east, of the OARB Redevelopment Area, which property is more particularly described as Lot 6 in Exhibit "A" attached hereto and made a part hereof ("Property"); and

WHEREAS, Health and Safety Code Section 33430 authorizes a redevelopment agency within a survey (project) area or for purposes of redevelopment to sell real property, Section 33432 requires that any sale of real property by a redevelopment agency in a project area must be conditioned on redevelopment and use of the property in conformity with the redevelopment plan, and Section 33439 provides that a redevelopment agency must retain controls and establish restrictions or covenants running with the land for property sold for private use as provided in the redevelopment plan; and

WHEREAS, the Agency has entered into negotiations with Argonaut Holdings, Inc., a Delaware corporation ("Buyer") to purchase the Property for development of an approximately 70,000 square-foot, three-story building, along with 400 spaces for surface parking and space for storage for a General Motors automobile dealership and service facility (the "Project"); and

WHEREAS, the Agency has held a public hearing on this sale, notice of which was given by publication at least once a week for two weeks in a newspaper of general circulation; now, therefore, be it

RESOLVED: That the Agency hereby finds and determines that the sale of the Property by the Agency to Buyer or a legal entity controlled by Buyer furthers the purposes of the California Community Redevelopment Law, contributes to the

elimination of blight in the OARB Redevelopment Project Area, conforms to the OARB Redevelopment Plan and 5 Year Implementation Plan; and be it

FURTHER RESOLVED: That the Redevelopment Agency, acting as a Responsible Agency, has independently reviewed, analyzed, and considered the 2002 Army Base EIR, the 2006 Supplemental EIR and Addenda #1 prior to acting on the approvals. Based upon such independent review, analysis, and consideration, and exercising its independent judgment, the Agency confirms that the 2002 Army Base EIR and 2006 Supplemental EIR can be applied to this set of proposed actions and approves Addenda #1 to the Supplemental EIR because the criteria of CEQA Guidelines Section 15162 requiring additional environmental review have **not** been met. Specifically, and without limitation, the Agency finds and determines that the project would not result in any new or more severe significant impacts, there is no new information of substantial importance that would result in any new or more severe significant impacts, there are no substantial changes in circumstances that would result in any new or more severe significant impacts, and there is no feasible mitigation measure or alternative that is considerably different from others previously analyzed that has not been adopted, based upon the December 18, 2007 City Council Agenda Report, Addenda #1 and elsewhere in the record for this project and be it

FURTHER RESOLVED: That the Agency reaffirms the statement of overriding considerations adopted for the 2006 Supplemental Automall EIR in Resolution No. 2006-0084 C.M.S. on December 5, 2006; reaffirms the rejection of alternatives adopted for the 2006 Supplemental Automall EIR in Resolution No. 2006-0084 C.M.S. and also adopts the reasons for rejection of alternative access to EBMUD as detailed in Addenda #1, all of which are incorporated herein by Reference; and be it

FURTHER RESOLVED: That the Agency adopts the Conditions of Approval and Mitigation Monitoring and Reporting Program (MMRP), as detailed in the December 18, 2007 City Council Agenda Report, and accompanying resolutions, hereby incorporated herein by reference as if fully set forth herein, and imposes such obligations on the Property Buyer. The monitoring and reporting of CEQA mitigation measures in connection with the project will be conducted in accordance with the MMRP. Adoption of this program will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in Section 261081.6 of CEQA. All proposed conditions of approval and mitigation measures are capable of being fully implemented, and shall be implemented by the efforts of the Agency or other identified public agencies or entities of responsibility as set forth in the conditions of approval and the MMRP; and be it

FURTHER RESOLVED: That the recitals contained in this Resolution are true and correct and are in integral part of the Agency decision; and be it further

FURTHER RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee to sell the Property to Buyer for the fair market value as determined by appraisal made at the time of the sale; and be it

FURTHER RESOLVED: That the Property shall be transferred to Buyer pursuant to terms of a Disposition and Development Agreement ("DDA") to be executed by Agency and Buyer; and be it

FURTHER RESOLVED: That the DDA must be executed by the Buyer within sixty (60) calendar days of the effective date of this Resolution or else the Agency Administrator must return to the Agency to seek direction on the sale of the Property; and be it

FURTHER RESOLVED: That the transaction shall include the following terms and conditions:

- The Buyer will pay a non-refundable deposit at the time the DDA is executed;
- The purchase price of the Property, which is the fair market value as determined by appraisal on the effective date of the DDA, shall be payable in cash at the close of escrow;
- The Buyer must meet a specific schedule of performance;
- The Buyer is required to pay their fair share of traffic mitigations and other mitigations that are referenced in the Oakland Army Base EIR;
- The Agency is required to use its best efforts to obtain a "media center" (i.e. electronic) billboard to help promoted the auto mall;
- The Buyer may terminate the DDA if the Agency does not provide adequate freeway signage;
- The Buyer is required to participate financially in a dealership association to market and promote the auto mall;
- The Agency has the right to review and approve the designs of the dealership buildings;
- The Buyer purchases the property on an "as-is, where-is" basis and assumes any obligations for environmental remediation or reporting that is required;
- The Agency will have the option to repurchase all or portions of the Property if Buyer does not commence construction of the Project within the time frames specified in the DDA;
- Buyer to comply with provisions of the OARB Final Reuse Plan and Redevelopment Plan all applicable state, City and Agency employment and labor laws; and
- Any other appropriate terms and conditions as the Agency Administrator or her designee may establish in his or her discretion or as the California Community Redevelopment Law or Redevelopment Plan may require;

and be it

FURTHER RESOLVED: That the Agency finds that the above transaction represents the fair market value of the Property in accordance with the Redevelopment Plan; and be it

FURTHER RESOLVED: That all documents shall be reviewed and approved by Agency Counsel prior to execution, and copies will be placed on file with the Agency Secretary; and be it

FURTHER RESOLVED: That the Agency hereby appoints the Agency Administrator or her designee as agent of the Redevelopment Agency to conduct negotiations, execute documents with respect to the sale of the Property, including any grant deeds or other documentation as necessary to effectuate the transaction, exercise any of the repurchase options, pay the purchase price, and accept property under those options, and take any other action with respect to the Property and the Project consistent with this Resolution and its basic purpose; and be it

FURTHER RESOLVED: That the Agency Administrator or her designee is hereby authorized to file a notice of determination on this action with the Office of the Alameda County Recorder, and the Agency Secretary is hereby authorized and directed to retain a copy of the SEIR in the record of proceedings for this Project, which shall be maintained by the Agency Secretary; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) the Community & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That land sale proceeds will be deposited in Oakland Army Base Redevelopment Area Operations Fund (9570), General Ledger Organization (08222).

IN AGENCY, OAKLAND, CALIFORNIA,_____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND CHAIRPERSON DE LA FUENTE,

NOES-

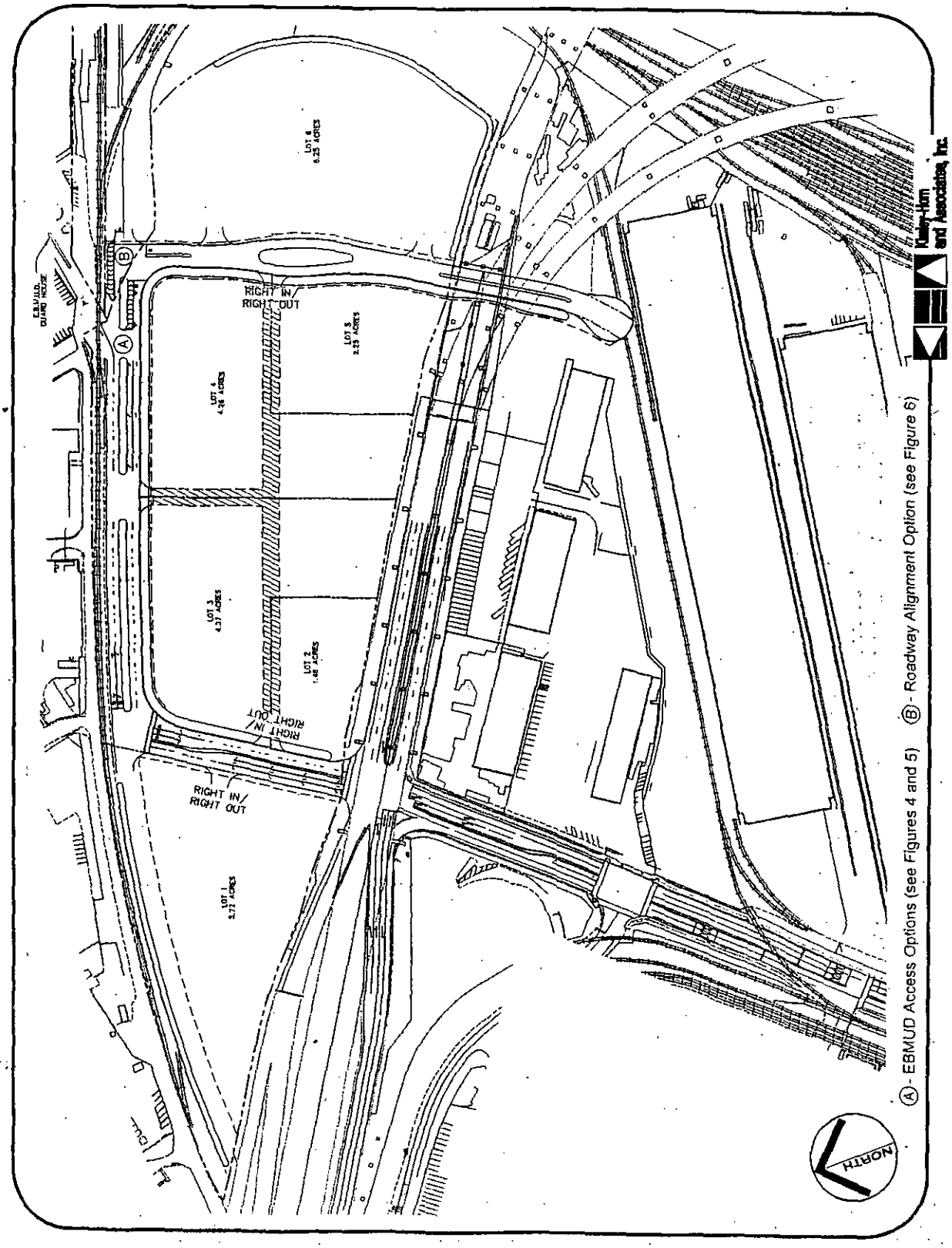
ABSENT-

ABSTENTION-

ATTEST:_____
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland

EXHIBIT A

Property Map



APPROVED AS TO FORM AND LEGALITY:

By: _____
Deputy Agency Counsel

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 JAN 10 PM 3:35

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. _____ C.M.S.

A RESOLUTION AUTHORIZING AN UP TO $1.5 MILLION FORGIVABLE LOAN TO ARGONAUT HOLDINGS, INC. FOR THE DEVELOPMENT OF A GENERAL MOTORS DEALERSHIP, TO BE FUNDED FROM LAND SALES PROCEEDS FROM THE SALE OF 6.3 ACRES WITHIN THE FORMER OAKLAND ARMY BASE

WHEREAS, the Oakland Army Base ("OARB") was identified for closure in 1995 by the Defense Base Closure and Realignment Commission ("Commission") and approved for closure by the President of the United States pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Public Law 150-526) and the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510) ("Acts") as amended; and

WHEREAS, on July 31, 2002, the Oakland City Planning Commission certified the Oakland Army Base Redevelopment plan EIR and the Oakland City Council, Oakland Base Reuse Authority ("OBRA") and Oakland Redevelopment Agency ("Agency") adopted all appropriate California Environmental Quality Act ("CEQA") findings; and

WHEREAS, the OBRA Governing Body at its meeting of July 31, 2002, passed Resolution No. 2002-17 adopting the Final Reuse Plan for the Oakland Army Base ("Reuse Plan") and thereby endorsing a conceptual reuse scenario entitled "Flexible Alternative," which included a mix of land uses for the area, including: waterfront, light industrial, maritime support, research and development, "flex-office," selected retail and possibly a hotel; and

WHEREAS, the OBRA Governing Body at its meeting of June 26, 2006, passed Resolution No. 2006-09 authorizing its Executive Director to take all actions necessary to transfer all of the rights and obligations of OBRA to the Agency, effective August 7, 2006; and

WHEREAS, on December 5, 2006 the Oakland City Council certified the Supplemental Environmental Impact Report for the Oakland Army Base Auto Mall Project which analyzed the environmental impacts associated with the development of

an auto mall and relocation of ancillary maritime support services, and adopted all appropriate CEQA findings; and

WHEREAS, the Final Reuse Plan was amended by the Agency on December 5, 2006 by Resolution No. 2006-0084 C.M.S. to include an auto mall concept as an additional conceptual strategy for the North Gateway area of the OARB, and to relocate ancillary maritime support uses, which is a category that includes truck parking, logistics center, or other similar port-related uses, to the East Gateway and/or Central Gateway; and

WHEREAS, the proposed project has been analyzed in a First Addendum to the Supplemental Environmental Impact Report for the Oakland Army Base Auto Mall Project ("Addenda 1"); and

WHEREAS, the Final Reuse Plan was amended by the Agency on December 18, 2007 by Resolution No. 2007-0086, and by the City Council by Resolution No. 81004 C.M.S., in order to refine the proposed traffic circulation patterns for the auto mall project, relying on Addenda 1: and

WHEREAS, the Agency owns approximately 6.3 acres of unimproved and vacant real property located in the former Oakland Army Base Area (OARB) and within the North Gateway Development subarea, a triangular site bounded by the East Bay Municipal Utility District (EBMUD) Wastewater Plant on the north, West Grand Avenue to the south and I-880 to the east, of the OARB Redevelopment Area, which property is more particularly described in Exhibit "A" attached hereto and made a part hereof ("Property"); and

WHEREAS, the Agency negotiated and approved Disposition and Development Agreements ("DDAs") with Argonaut Holdings, Inc., a Delaware corporation ("Buyer") and two other automobile dealerships on December 5, 2006 (Resolutions No. 2006-0085, 2006-0086 and 2006-0087 C.M.S.); and

WHEREAS, None of the DDAs were executed in the 60 day term required by the authorizing resolutions because the dealerships and automobile manufacturers were reorganizing their structures and changing their requests; and

WHEREAS, the Agency has negotiated a new Disposition and Development Agreement ("DDA") with Buyer to sell the Property for development of an approximately 70,000 square-foot, three-story building, along with 400 spaces for surface parking and space for storage for a General Motors automobile dealership and service facility (the "Project"); and

WHEREAS, to reward the first dealership to locate itself at the Army Base, Agency staff recommends providing an incentive in the form of a forgivable loan of up to $1.5 million;

now, therefore, be it

RESOLVED: That the Agency hereby approves the forgivable loan of up to One Million Five Hundred Thousand Dollars ($1,500,000) ("Loan") for the first automobile dealership that both signs a disposition and development agreement and starts construction; and be it

FURTHER RESOLVED: That the Loan shall be made to Buyer pursuant to terms of a DDA to be executed by Agency and Buyer; and be it

FURTHER RESOLVED: That the Loan shall include the following terms and conditions:

- All City Programs apply;
- First Source Hiring required;
- Project must start within 30 days of site readiness;
- Construction must be completed within approximately 16 months;
- Loan would be forgiven to the extent the dealership meets increased sales tax projections;
- Loan to be funded out of the land sales proceeds from the site;
- Dealer will commit to stay in Oakland 1.5 times the length of the sales tax rebate; and
- Loan to be repaid if dealership does not meet schedule for project completion and/or sales tax projections;

and be it further

FURTHER RESOLVED: That the Redevelopment Agency, acting as a Responsible Agency, has independently reviewed, analyzed, and considered the 2002 Army Base EIR, the 2006 Supplemental EIR and Addenda #1 prior to acting on the approvals. Based upon such independent review, analysis, and consideration, and exercising its independent judgment, the Agency confirms that the 2002 Army Base EIR and 2006 Supplemental EIR can be applied to this set of proposed actions and approves Addenda #1 to the Supplemental EIR because the criteria of CEQA Guidelines Section 15162 requiring additional environmental review have **not** been met. Specifically, and without limitation, the Agency finds and determines that the project would not result in any new or more severe significant impacts, there is no new information of substantial importance that would result in any new or more severe significant impacts, there are no substantial changes in circumstances that would result in any new or more severe significant impacts, and there is no feasible mitigation measure or alternative that is considerably different from others previously analyzed that has not been adopted, based upon the December 18, 2007 City Council Agenda Report, Addenda #1 and elsewhere in the record for this project; and be it

FURTHER RESOLVED: That the Agency reaffirms the statement of overriding considerations adopted for the 2006 Supplemental Automall EIR in Resolution No. 2006-0084 C.M.S. on December 5, 2006; reaffirms the rejection of alternatives adopted for the 2006 Supplemental Automall EIR in Resolution No. 2006-0084 C.M.S. and also adopts the reasons for rejection of alternative access to EBMUD as detailed in Addenda #1, all of which are incorporated herein by Reference; and be it

FURTHER RESOLVED: That the Agency adopts the Conditions of Approval and Mitigation Monitoring and Reporting Program (MMRP), as detailed in the December 18, 2007 City Council Agenda Report, and accompanying resolutions, hereby incorporated herein by reference as if fully set forth herein, and imposes such obligations on the Property Buyer. The monitoring and reporting of CEQA mitigation measures in connection with the project will be conducted in accordance with the MMRP. Adoption of this program will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in Section 261081.6 of CEQA. All proposed conditions of approval and mitigation measures are capable of being fully implemented, and shall be implemented by the efforts of the Agency or other identified public agencies or entities of responsibility as set forth in the conditions of approval and the MMRP; and be it

FURTHER RESOLVED: That the recitals contained in this Resolution are true and correct and are in integral part of the Agency decision; and be it

FURTHER RESOLVED: That all documents shall be reviewed and approved by Agency Counsel prior to execution, and copies will be placed on file with the Agency Secretary; and be it

FURTHER RESOLVED: That the Agency hereby appoints the Agency Administrator or her designee as agent of the Redevelopment Agency to conduct negotiations, execute documents with respect to the Loan, and take any other action with respect to the Project consistent with this Resolution and its basic purpose; and be it

FURTHER RESOLVED: That the Agency Administrator or her designee is hereby authorized to file a notice of determination on this action with the Office of the Alameda County Recorder, and the Agency Secretary is hereby authorized and directed to retain a copy of the SEIR in the record of proceedings for this Project, which shall be maintained by the Agency Secretary; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) the Community & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That $1.5 million of the land sale proceeds will be appropriated in Oakland Army Base Redevelopment Area Operations Fund (9570), West Oakland Base Reuse Organization (88679).

IN AGENCY, OAKLAND, CALIFORNIA,_____ , 2008

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND CHAIRPERSON DE LA FUENTE,

NOES-

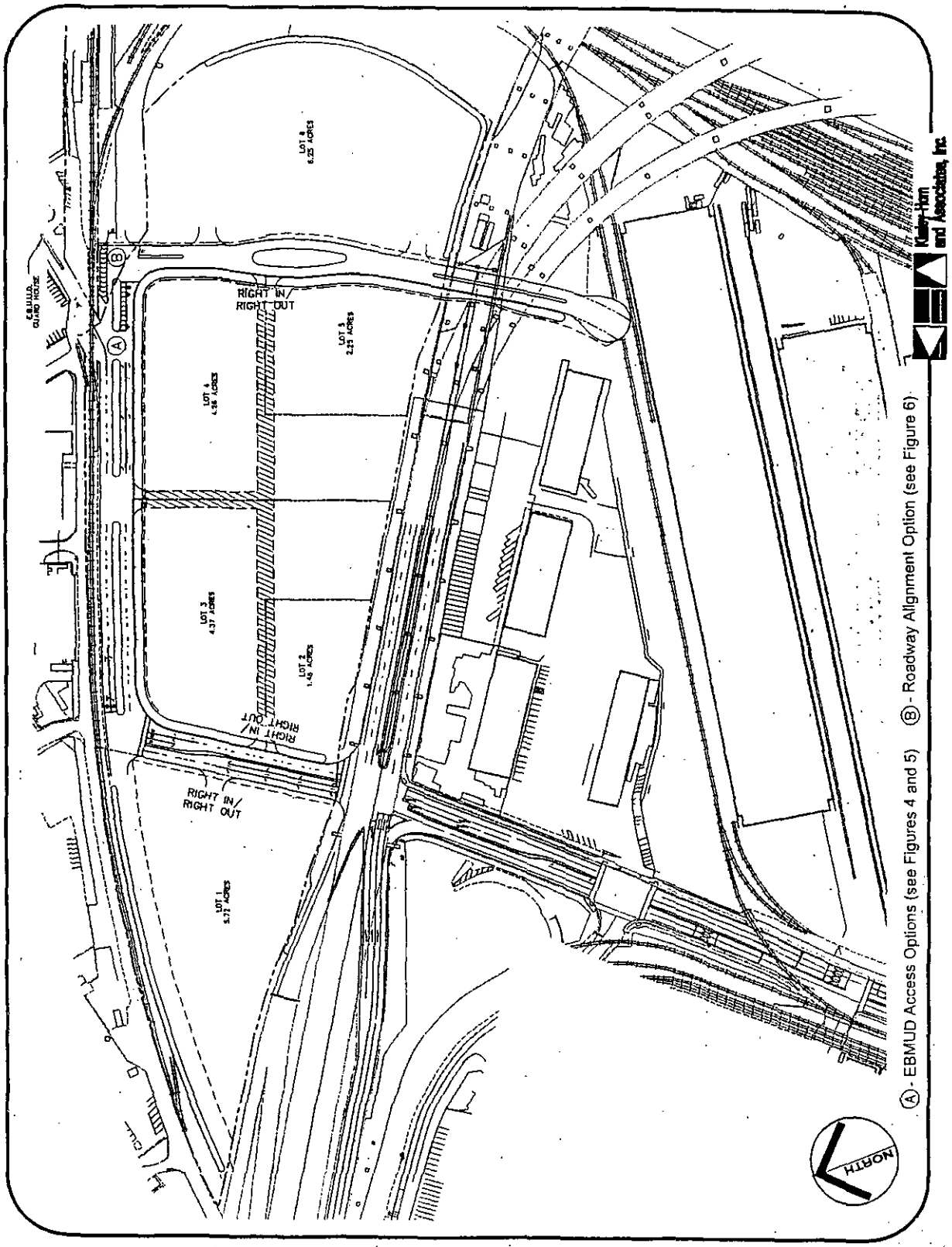
ABSENT-

ABSTENTION-

ATTEST:_____
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland

EXHIBIT A

Property Map



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 JAN 10 PM 3:35

APPROVED AS TO FORM AND LEGALITY:

By: _____
Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION APPROVING THE SALE OF APPROXIMATELY 6.3 ACRES OF REAL PROPERTY LOCATED WITHIN THE FORMER OAKLAND ARMY BASE FOR THE APPRAISED FAIR MARKET VALUE TO ARGONAUT HOLDINGS, INC. FOR ITS DEVELOPMENT OF A GENERAL MOTORS DEALERSHIP

WHEREAS, the Oakland Army Base ("OARB") was identified for closure in 1995 by the Defense Base Closure and Realignment Commission ("Commission") and approved for closure by the President of the United States pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Public Law 150-526) and the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510) ("Acts") as amended; and

WHEREAS, on July 31, 2002 the Oakland City Planning Commission certified the Oakland Army Base Redevelopment plan EIR and the Oakland City Council, Oakland Base Reuse Authority ("OBRA") and Oakland Redevelopment Agency ("Agency") adopted all appropriate California Environmental Quality Act ("CEQA") findings; and

WHEREAS, the OBRA Governing Body at its meeting of July 31, 2002, passed Resolution No. 2002-17 adopting the Final Reuse Plan for the Oakland Army Base ("Reuse Plan") and thereby endorsing a conceptual reuse scenario entitled "Flexible Alternative," which included a mix of land uses for the area, including: waterfront, light industrial, maritime support, research and development, "flex-office," selected retail and possibly a hotel; and

WHEREAS, the OBRA Governing Body at its meeting of June 26, 2006, passed Resolution No. 2006-09 authorizing its Executive Director to take all actions necessary to transfer all of the rights and obligations of OBRA to the Agency, effective August 7, 2006; and

WHEREAS, on December 5, 2006 the Oakland City Council certified the Supplemental Environmental Impact Report for the Oakland Army Base Auto Mall Project which analyzed the environmental impacts associated with the development of an auto mall and relocation of ancillary maritime support services, and adopted all appropriate CEQA findings; and

WHEREAS, the Final Reuse Plan was amended by the Agency on December 5, 2006 by Resolution No. 2006-0084 C.M.S. to include an auto mall concept as

an additional conceptual strategy for the North Gateway area of the OARB, and to relocate ancillary maritime support uses, which is a category that includes truck parking, logistics center, or other similar port-related uses, to the East Gateway and/or Central Gateway; and

WHEREAS, the proposed project has been analyzed in a First Addendum to the Supplemental Environmental Impact Report for the Oakland Army Base Auto Mall Project ("Addenda 1"); and

WHEREAS, the Final Reuse Plan was amended by the Agency on December 18, 2007 by Resolution No. 2007-0086, and by the City Council by Resolution No. 81004 C.M.S., in order to refine the proposed traffic circulation patterns for the auto mall project, relying on Addenda 1: and

WHEREAS, the California Community Redevelopment Law, Health and Safety Code Section 33430, authorizes a redevelopment agency within a survey (project) area or for purposes of redevelopment to sell real property; and

WHEREAS, the California Community Redevelopment Law, Health and Safety Code Section 33433, requires that before any property of a redevelopment agency that is acquired in whole or in part with tax increment moneys is sold for development pursuant to a redevelopment plan, the sale must first be approved by the legislative body, i.e., the City Council, by resolution after a public hearing; and

WHEREAS, the Agency owns approximately 6.3 acres of unimproved and vacant real property located in the former Oakland Army Base Area (OARB) and within the North Gateway Development subarea, a triangular site bounded by the East Bay Municipal Utility District Wastewater Plant on the north, West Grand Avenue to the south and I-880 to the east, of the OARB Redevelopment Area, which property is more particularly described as Lot 6 in Exhibit "A" attached hereto and made a part hereof ("Property"); and

WHEREAS, Argonaut Holdings, Inc., a Delaware corporation ("Argonaut"), desires to purchase the Property from the Agency for development of a General Motors dealership and service facility (the "Project"); and

WHEREAS, staff has negotiated and proposes entering into a Disposition and Development Agreement ("DDA") with Argonaut which sets forth the terms and conditions of the sale of the Property to Argonaut and governs the development of the Project and the use of the Property by Argonaut through recorded covenants running with the land; and

WHEREAS, the DDA requires that Argonaut construct and operate the Project consistent with the Redevelopment Plan; and

WHEREAS, the DDA and the grant deed that will convey the Property to Argonaut adequately condition the sale of the Property on the redevelopment and use of the Property in conformity with the Oakland Army Base Redevelopment Plan, and such documents prohibit discrimination in any aspect of the Project as required under the Oakland Army Base Redevelopment Plan and the California Community Redevelopment Law; and

WHEREAS, the Project uses are in conformity with the Oakland Army Base Redevelopment Plan, the Project will assist in the elimination of blight in the Central District and the Project will help meet the objectives of the Oakland Army Base Redevelopment Plan; and

WHEREAS, a joint public hearing between the Agency and the City Council was held to hear public comments on the sale of the Property for the Project; and

WHEREAS, notice of the sale of the Property and the public hearing was given by publication at least once a week for not less than two weeks prior to the public hearing in a newspaper of general circulation in Alameda County; now, therefore, be it

RESOLVED: That the City Council hereby finds and determines that the sale of the Property by the Agency to Argonaut for the Project furthers the purposes of the California Community Redevelopment Law, contributes to the elimination of blight in the OARB Redevelopment Project Area, conforms to the OARB Redevelopment Plan, including its Implementation Plan, and furthers the goals and objectives of said Redevelopment Plan in that:; and be it

FURTHER RESOLVED: That the City Council, acting as the Lead Agency, has independently reviewed, analyzed, and considered the 2002 Army Base EIR, the 2006 Supplemental EIR and Addenda #1 prior to acting on the approvals. Based upon such independent review, analysis, and consideration, and exercising its independent judgment, the City Council confirms that the 2002 Army Base EIR and 2006 Supplemental EIR can be applied to this set of proposed actions and approves Addenda #1 to the Supplemental EIR because the criteria of CEQA Guidelines Section 15162 requiring additional environmental review have **not** been met. Specifically, and without limitation, the City Council finds and determines that the project would not result in any new or more severe significant impacts, there is no new information of substantial importance that would result in any new or more severe significant impacts, there are no substantial changes in circumstances that would result in any new or more severe significant impacts, and there is no feasible mitigation measure or alternative that is considerably different from others previously analyzed that has not been adopted, based upon the accompanying December 18, 2007 City Council Agenda Report, Addenda #1 and elsewhere in the record for this project and be it

FURTHER RESOLVED: That the City Council reaffirms the statement of overriding considerations adopted for the 2006 Supplemental Automall EIR in Resolution No. 2006-0084 C.M.S. on December 5, 2006; reaffirms the rejection of alternatives adopted for the 2006 Supplemental Automall EIR in Resolution No. 2006-0084 C.M.S. and also adopts the reasons for rejection of alternative access to EBMUD as detailed in Addenda #1, all of which are incorporated herein by Reference; and be it

FURTHER RESOLVED: That the City Council adopts the Conditions of Approval as set forth in Exhibit B attached hereto and incorporated herein by reference, to further reduce less than significant wastewater impacts, and the Mitigation Monitoring and

Reporting Program (MMRP), as set forth in Exhibit C attached hereto and incorporated by herein by reference. The monitoring and reporting of CEQA mitigation measures in connection with the project will be conducted in accordance with the MMRP. Adoption of this program will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in Section 261081.6 of CEQA. All proposed conditions of approval and mitigation measures are capable of being fully implemented, and shall be implemented by the efforts of the City Council or other identified public agencies or entities of responsibility as set forth in the conditions of approval and the MMRP; and be it

FURTHER RESOLVED: That the City Council hereby approves the sale of the Property to Argonaut by the Agency, subject to the terms and conditions of the DDA; and be it

FURTHER RESOLVED: That the City Council finds and determines that the consideration for the sale of the Property is not less than its fair reuse value at the use and with the covenants and conditions and development costs authorized under the DDA, for the reasons set forth in the report prepared in accordance with Health and Safety Code Section 33433; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) the Community and Economic Development Agency, Redevelopment Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland; (b) the Community and Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland; and be it

FURTHER RESOLVED: That the City Council hereby appoints the City Administrator or his or her designee to take any other action with respect to the Property or the Project, consistent with this Resolution and its basic purpose.

IN COUNCIL, OAKLAND, CALIFORNIA,_____, 2008

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

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

EXHIBIT A

Property Map