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OAKLAND

CITY OF OAKLAND 2012 JUN 14 PM 6:06

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: Oakland Army Base Development
Supplemental Report

DATE: June 14, 2012

City Administrator
Approval Deanna Santana

Date 6/14/12

COUNCIL DISTRICT: 3

RECOMMENDATION

Staff recommends that the City Council consider the updated versions of the Lease Disposition and Development Agreement and Related Documents (Collectively "LDDA") between the City of Oakland and Prologis CCIG Oakland Global, LLC, a Delaware limited liability company (or their related entities or affiliates).

REASON FOR SUPPLEMENTAL

Continued negotiations per the direction of the Community and Economic Development Committee (CEDC) of June 12, 2012 have resulted in additional agreement on the LDDA, including several of its attachments, and the Cooperation Agreement. The updated documents attached to this report are current as of the publication date of the report and include the following:

Supplemental Attachment A: Lease Disposition and Development Agreement and related documents are collectively to be inserted as part of Exhibit C of the Ordinance.

In addition, this report provides responses to the CEQA-related questions raised by Councilmember Nadel and community members at the CEDC June 12th meeting.

AGREEMENT UPDATES

For the LDDA, agreement was reached on the following issues:

- Provisions related to Assignment and Transfer under the LDDA
- Provisions related to the delivery of the Public Improvements under the LDDA

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- Form of the Ground Leases
- Scope of Development of the Public Improvements
- Scope of Development for Private Improvements
- Schedule of Performance and related Defaults and Remedies
- Due Diligence Right of Entry form
- Community Benefits Matrix and Jobs Policies

The term sheet for the proposed Billboard Agreement is being negotiated and will be read into the record at City Council on June 19, 2012.

The Community Benefits Matrix has been updated, but the Construction and Operations Jobs Policies have not changed since the June 12th CEDC meeting. The Matrix and the Jobs Policies are included as part 5 of *Supplemental Attachment A* to this report.

For the Cooperation Agreement, the following language has been inserted into the Cooperation Agreement (page 3, section C “Labor Peace”):

C. Labor Peace. In order to protect the City’s proprietary interest in prompt completion of publicly funded infrastructure, and to implement the Construction Jobs Policy, the City shall negotiate and enter into a Project Labor Agreement (PLA) with the Building and Construction Trades Council covering the publicly funded infrastructure phases of this project, with contractors and subcontractors to perform work under terms of such PLA, and such PLA to be consistent with and facilitate compliance with the Construction Jobs Policy.

Staff continues to negotiate the following issues:

1. Ban the box
2. Residency definition
3. Definition of Large Employer
4. Use of temporary staffing agencies
5. Apprenticeship issues
6. Core workforce for Vertical construction
7. Arbitration option

CEQA

At the June 12th CEDC Meeting Councilmember Nadel and community members asked about CEQA-related topics, Air Quality, Posting/Notification of Contractor Information, Green Building, and Cultural Resources. The following information is given in response. All page numbers reference the 2012 OARB Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP), which was previously distributed along with the Initial Study/Addendum.

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Air Quality:

The SCA/MMRP for the 2012 Oakland Army Base Project includes mitigation measures and SCAs that require the development of plans that address air quality (and the reduction of emissions). The SCA/MMRP also identifies responsible parties and the timing or schedule applicable to a particular mitigation measure or SCA.

Specifically, Mitigation Measure 4.4-4 (p.5) requires that the City and Port jointly create, maintain and fund on a fair share basis, a truck diesel emission reduction program that defines measurable reduction within specific time periods that must be reviewed and updated every one to three years; Mitigation Measure 4.4-3 (p.4) requires the Port to develop a criteria pollutant reduction program related to its rail and maritime operations that must be reviewed and updated every one to three years. The IS/Addendum also imposes several SCAs that address reducing emissions: SCA AIR-1 (p. 7) and SCA AIR-2 (p.3) which requires the development of a construction management plan, and construction-related air pollution controls; SCA AIR-3 (p. 8) requires measures to reduce exposure to Toxic Air Contaminants (TACs); SCA GCC-1 (p.23) requires the preparation of a Greenhouse Gas Reduction Plan; SCA TRANS-1 (p.44) and SCA TRANS-2 (p.52) require development of a Parking and Transportation Demand Management Plan, including the provision of an ongoing contribution to AC Transit Service or to an area shuttle service between the Project area and the nearest mass transit station (see SCA TRANS-1, section "h"), and other strategies to manage construction traffic and parking.

In addition, although not required by CEQA, LDDA Article 6.2(vi) states "Air Quality Monitoring Program. The City and Developer shall have agreed upon the scope of and procedure for implementing the air quality monitoring program required in Item 16 of Attachment 15 prior to the date set forth in the Schedule of Performance" This Air Quality Monitoring Program will be worked out in consultation with the regulatory agencies and the community.

Posting/Notification of Contractor Information

Multiple SCAs require the posting of a publicly visible sign with contractor information, as well as other public agency contact information to register complaints (see SCA AIR-2, section "j" on p.3 and SCA NOI-3 on p.38). The West Oakland Branch Library will be one of the official places for such postings

Green Building:

Mitigation Measure 4.4-6 requires that the City and Port implement sustainable development policies and strategies related to new development design and construction. SCA UTL-1a and SCA UTL-1b (p.63) require compliance with the City's Green Building Ordinance (OMC Chapter 18.02).

Cultural Resources:

Regarding the comment made to consider the retention of Building 812 or similar structure as a means to implement required cultural resource Mitigation Measure 4.6-2 (related to development of a commemoration site), Staff believes that Modified Mitigation Measure 4.6-14, Mitigation

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Measure 4.6-9 and SCA CULT-4 (which requires a good faith effort to relocate historic buildings) provide the flexibility for such consideration to occur at the point when the Developer returns to the appropriate bodies for approval of various land use entitlements. (Note, that SCA CULT-4 was inadvertently omitted from the draft SCA/MMRP, but is nevertheless applicable and will be included in the Final, adopted SCA/MMRP)

For questions regarding this report, please contact Pat Cashman, Project Manager, at 510-238-6281.

Respectfully submitted,



FRED BLACKWELL
Assistant City Administrator

Prepared by: Hui Wang
Office of Neighborhood Investment

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO:

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

(Space Above For Recorder's Use)

ARMY BASE GATEWAY REDEVELOPMENT PROJECT

**LEASE DISPOSITION
AND DEVELOPMENT AGREEMENT**

between

THE CITY OF OAKLAND

"City"

and

PROLOGIS CCIG OAKLAND GLOBAL, LLC

"Developer"

Effective Date: _____, 2012

LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

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

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

- A. In 2003, in order to enable local economic redevelopment and job creation and ease the economic hardship on the local community caused by the base closure per Section 2903 of Title XXIX of Public Law 101-510, the U.S. Department of the Army ("Army") transferred via No-Cost Economic Development Conveyance ("EDC") certain real property (the "EDC Property") located in the City of Oakland, County of Alameda, State of California, to the Oakland Base Reuse Authority ("OBRA"), a joint powers authority composed of the City and the former Redevelopment Agency of the City of Oakland ("Agency") under the California Joint Exercise of Powers Act as set forth in Title 1, Division 7, Chapter 5, Article 1 of the Government Code of the State of California (Government Code § 6470 *et seq.*) through that certain EDC Memorandum of Agreement between the Army and OBRA dated September 27, 2002 ("EDC MOA") by that certain Quitclaim Deed for No-Cost Economic Development Conveyance Parcel ("Army EDC Deed"), recorded August 8, 2003, as Doc. 2003-466370 in the Official Records. Immediately thereafter, OBRA transferred portions of the EDC Property to the Port, such that the Port now owns approximately 241 acres of the EDC Property (the "Port Development Area") and OBRA retained approximately 170 acres, known as the Gateway Development Area. The EDC Property is generally depicted on the site map attached as Attachment 1 ("Site Map").
- B. 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 ("SLC"), the City, the Port, OBRA and the Agency, dated June 30, 2006 ("Exchange Agreement"), the parties to such agreement completed an exchange of public trust lands, such that the public trust was terminated on all of the EDC Property then owned by OBRA (see State of California Patent and Trust Termination recorded August 7, 2006, as Doc. 2006-301853 in the Official Records), except on one, approximately 16.7 acre parcel conveyed from the SLC to the Agency by State of California Patent and Trust Termination recorded August 7, 2006, as Doc. 2006-301850 ("Parcel E"). Parcel E was transferred to the Agency pursuant to the Exchange Agreement.
- C. Also in 2006 and 2007, the portions of the EDC Property owned by OBRA that were not subject to the public trust were conveyed by OBRA to the Agency by the following

Quitclaim Deeds, recorded September 19, 2006 as Docs. 2006-354006 and 2006-354007 and May 17, 2007 as Doc. 2007-190760 in the Official Records.

- D. On March 3, 2011, the Agency and the City entered into a Purchase and Sale Agreement, approved by City Council Ordinance No. 83254 C.M.S. and Agency Resolution No. 2011-0025 C.M.S. (the "Agency-City PSA"), whereby the Agency agreed to sell and convey, inter alia, the Agency-owned portions of the EDC Property, excepting Parcel E, to the City under its own auspices, and the City agreed to accept assignment of all agreements related to such property (the "EDC Property Agreements"). The EDC Property Agreements include, but are not necessarily limited to the agreements set forth in Attachment 12.
- E. On June 29, 2011, Governor Jerry Brown signed AB 26, which is state legislation requiring the dissolution of all redevelopment agencies ("AB 26").
- F. On January 10, 2012, the City Council passed Resolution No. 83679 C.M.S., electing to serve as the Successor Agency pursuant to AB 26.
- G. On January 31, 2012, the City closed escrow under the Agency-City PSA and took title to the Agency-owned portions of the EDC Property (excluding Parcel E) pursuant to the grant deed recorded January 31, 2012 as Doc. 2012-30757 in the Official Records and assumed all of the Agency's right and obligations under the EDC Agreements with respect to such property.
- H. On February 1, 2012, the Agency was dissolved, and Parcel E and the Agency's rights and obligations under the EDC Property Agreements with respect to Parcel E were transferred to the City as Successor Agency by operation of law pursuant to AB 26.
- I. The transfers of the Agency-owned portions of the EDC Property from the Agency to the City and the City as Successor Agency are subject to approval by the Army pursuant to that certain EDC MOA, and may require Department of Toxic Substances Control ("DTSC") approval in accordance with that certain Consent Agreement between the City and the DTSC, dated September 27, 2002, as revised May 19, 2003 and amended May 2, 2005 ("Consent Agreement"). The transfers of the Agency-owned portions of the EDC Property and assumption of the related contractual obligations under the EDC Property Agreements to the City in its capacity as an independent municipal corporation (rather than as the Successor Agency) are subject to approval or other action (e.g., involuntary transfer to the Successor Agency) by the Oversight Board, State Controller and/or the California Department of Finance, as applicable, pursuant to the requirements of AB 26. The transfer of the portions of the Lease Property to Developer pursuant to this Agreement, the Billboard Agreement and the Ground Leases are subject to the approval of the Army pursuant to the EDC MOA, may also require the approval of the DTSC pursuant to the Consent Agreement and the approval of the Oversight Board, State Controller and/or the California Department of Finance, as applicable, pursuant to the requirements of AB 26. The foregoing approvals have not yet been finalized.

- J. Nevertheless, the City has contractual obligations stemming from the EDC to the Army and DTSC that require remediation and redevelopment of the EDC Property that necessitate the continued pursuit of redevelopment, therefore, the City desires to continue the redevelopment efforts in the Gateway Development Area, and the City of Oakland Charter Section 305 authorizes the City's Mayor to encourage economic development in the City.
- K. To guide redevelopment of the EDC Property, the City adopted the Oakland Army Base Area Redevelopment Plan in 2000, as most recently amended and restated March 21, 2006 per City Ordinance No. 12734 C.M.S , and adopted the Base Reuse Plan in _____, 20__, which plans affect and control the development of the EDC Property.
- L. In 2008, the City issued a Request for Qualifications to identify potential development teams for redevelopment of certain portions of the Gateway Development Area, generally consisting of the West Gateway, Central Gateway and East Gateway as depicted on the Site Map, and City selected Prologis Property, L.P. ("Prologis") (then named AMB Property, L.P., a Delaware limited partnership), and CCIG Oakland Global, LLC ("CCIG"), a California limited liability company (successor-in-interest to California Capital Group, a California general partnership to negotiate with regarding development on portions of the Gateway Development Area. Prologis and CCIG are the joint venture members of Developer.
- M. The City and Developer (through their joint venture members) entered into an Exclusive Negotiating Agreement ("ENA") on January 22, 2010, a first amendment to the ENA was executed on August 10, 2010 ("First Amendment to ENA"), a second amendment was executed on April 11, 2011 ("Second Amendment to ENA"), and a third amendment was executed on _____, 2012 ("Third Amendment to ENA").
- N. During the ENA period, the City and Developer evaluated the design and financial feasibility of a proposed mixed-use industrial (warehousing and logistics), commercial, including billboards, maritime, rail, and open space project and related infrastructure needs on approximately 130 acres of the Gateway Development Area and adjacent Port-owned lands (the "Project Site"), as depicted on the Site Map.
- O. To support redevelopment of the EDC Property, beginning in 2008, the Port, then the City and the Port, began pursuing Trade Corridors Improvement Fund ("TCIF") grant monies under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 for infrastructure improvements to serve the EDC Property, known as the Outer Harbor Intermodal Terminals ("OHIT") improvements.
- P. The development contemplated in the ENA, the Project and this Agreement are dependent on the OHIT improvements, including the Port Rail Terminal being funded in part by the TCIF grant funds. To that end, the City and Port contemplate entering into an Amended and Restated Cost Sharing Agreement (the "Amended and Restated CSA"), which agreement describes how the City and Port will cooperate on developing the shared infrastructure included in the OHIT improvements and funding the related costs.

- Q. During the term of the ENA and pursuant to the Second Amendment to the ENA,, the City and a Developer Affiliate agreed to prepare a master plan for the Project and the related improvements (the "Master Plan"). The draft Master Plan is subject to the approval of the City and the Port pursuant to the provisions of the Amended and Restated CSA.
- R. The City desires to have the Developer, and in the case of only subsection (b) below, its Affiliate the California Capital & Investment Group, Inc. ("CCIG, Inc.") to: (a) act as the franchisee/licensee for the construction and operation of certain billboards on the Project Site (per the Billboard Franchise/Lease Agreement attached as Attachment 4 to this Agreement); (b) manage the Lease Property for leasing, pre-construction work (e.g., site control and security and soils handling) and the construction of the public infrastructure described in Attachment 6 (collectively, the "Public Improvements") through a design-build delivery method by means of a Property Management Agreement. The City has determined that pursuing the Public Improvements under a design-build delivery method without formal bidding, as provided for in the City's Charter and Municipal Code, is in the best interests of the City, is consistent with the Request for Qualifications and enables TCIF project timelines to be met.
- S. The City also desires to ground lease to Developer approximately 130 acres of land within the Gateway Development Area (which areas are defined as the "Lease Property") for purposes of developing and operating mixed-use industrial (warehousing and logistics), commercial, maritime, rail, and related support uses, as defined in the Scope of Development attached as Attachment 7 ("Private Improvements"). The Lease Property is generally depicted on the Site Map. The Lease Property may be revised to exclude certain portions currently included or to include additional portions of the EDC Property and adjacent areas that may come into City control in the future in accordance with this Agreement.
- T. Together, the Public Improvements and Private Improvements to be completed in accordance with this Agreement and the applicable Ground Lease are considered the "Project."
- U. Consistent with the purposes of the EDC transfer from the Army to create local jobs, the City and Developer desire to provide Community Benefits as set forth in this Agreement and have negotiated a plan that commits to, among other things, creating jobs for the local community in West Oakland. To that end, the plan includes efforts to create a jobs center in West Oakland and negotiated employment policies and procedures specific to the Project. The policies relating to the Private Improvements construction and operations jobs create obligations that otherwise would not be applicable through the City's social justice policies. The policy related to construction of the Public Improvements applies specifically to the City's public infrastructure portion of the Project and expressly supersedes the employment portions of City Council Ordinance No. 12389 (12/18/01), as amended by City Council Ordinance 13101 (12/20/11), and the provisions of the Jobs/Housing Ordinance, City Council Ordinance 12442 (7/30/02), as more particularly set forth in this Agreement. The other community benefits provided in the plan include funding, implementation of the City's social justice policies, and environmental and green development measures.

- V. The City has found that the Project will implement the goals and objectives of the Oakland Army Base Area Redevelopment Plan.
- W. Consistent with the purposes of the EDC transfer from the Army, the City is amending the Base Reuse Plan to reflect the Project considered herein.
- X. The City has conducted all required hearings on the Project and has fully analyzed all potentially significant environmental effects in compliance with the CEQA and the CEQA Guidelines as more fully described in the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report ("EIR") and the Addendum _____ ("EIR Addendum").
- Y. The actions contemplated in this Agreement are authorized by City Ordinance No. _____, dated _____, 2012 ("Ordinance").

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

ARTICLE I

GENERAL

L1 Effective Date and Term.

This Agreement shall become effective as of the last to occur of the following: (1) the Ordinance is effective and (2) each of the Parties has duly executed and delivered this Agreement to the other Party. The Effective Date of this Agreement will be inserted by the City of the cover page of this Agreement; provided however, no failure by the City to do so shall in anyway invalidate this Agreement.

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

1.2 Definitions.

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

L3 Execution and Relationship of this Agreement to Attached Agreements. In furtherance of this Agreement and the development of the Project, the Parties intent to enter into certain agreements in the times set forth on the Schedule of Performance, this Section 1.3 is intended to establish the obligations of the Parties to enter into such agreements and to guide the relationship of this Agreement to those agreements.

1.3.1 Billboard Agreement

This Agreement and the Billboard Agreement establish the rights and obligations of the Parties as to the development and operation of the billboard sites identified in the Scope of Development for the Private Improvements at Attachment 7. This Agreement contemplates that the City and Developer will enter into a Billboard Agreement that will reflect in material content the term sheet provided at Attachment 4 and executed in a form acceptable to the Developer, City Administrator and the City Attorney. Upon execution of the Billboard Agreement, the Billboard Agreement shall exclusively govern the rights and obligations of the Parties with respect to the subject of the Billboard Agreement. The parties contemplate that, in accordance with the terms of the Billboard Agreement, the Billboard Agreement may survive termination of this Agreement.

1.3.2 Property Management Agreement

This Agreement and the Property Management Agreement establish the rights and obligations of the Parties as to certain site management activities, including lease management, soils handling, and oversight responsibilities for the design and construction of the Public Improvements on the Project Site. This Agreement contemplates that the City and CCIG, Inc. will enter into a Property Management Agreement that will reflect in material content the term sheet provided at Attachment 5 and executed in a form acceptable to the Developer, City Administrator and the City Attorney. Upon the execution of the Property Management Agreement, the Property Management Agreement shall exclusively govern the rights and obligations of the Parties with respect to the subject of the Property Management Agreement. The Property Management Agreement shall terminate automatically and have no further effect as to each Phase upon the Close of Escrow for such Phase. In addition, in the event this Agreement is terminated by its terms, the Property Management Agreement shall terminate automatically and have no further force or effect.

1.3.3 Ground Leases

This Agreement contemplates a separate Ground Lease for each of the three Phases of the Lease Property: the West Gateway, Central Gateway, the East Gateway in a form substantially similar to the forms provided in Attachment 3. The Parties acknowledge and agree that CCIG is anticipated and approved as the Tenant under the Ground Lease for the West Gateway, and that a Prologis will be the Tenant under the Ground Leases for the Central Gateway and the East Gateway. If all of the conditions precedent applicable to the Close of Escrow, as set forth in Article V of this Agreement, are satisfied as to a Phase, then the Parties shall execute and deliver the applicable Ground Lease for such Phase and City shall thereupon lease the applicable Phase to the Developer and the Developer shall lease the applicable Phase from the City, pursuant to such Ground Lease. Except as otherwise expressly set forth herein or in the Ground Lease, the provisions of this Agreement will govern the rights and obligations of the Parties as to each Phase until the Close of Escrow for such Phase and the provisions of the applicable Ground Lease shall exclusively govern the rights and obligations of the Parties as to each Phase after the Close of Escrow for such Phase. The Parties contemplate that the Ground Leases, upon Close of Escrow and in accordance with the terms of such Ground Leases, will survive termination of this Agreement.

1.4 Security Deposit.

Developer's obligations under this Agreement shall be secured by a \$500,000 cash security deposit (the "Security Deposit"), which shall be deposited into an escrow account ("Escrow") with First American Title Company (Escrow Agent") within ten (10) days after the Effective Date of this Agreement. Concurrently with Developer's payment of the Security Deposit into Escrow, the Parties shall execute, deliver and cause the Escrow Agent to countersign, the Escrow Agreement in substantially the form approved by the City in its sole discretion. *[subject to City receipt/review of escrow instructions; delete all references to escrow if form not agreed to by 6/19/12]* The Parties acknowledge and agree that the Security Deposit shall be reduced by a pro rata by acreage amount at each Close of Escrow for the three Phases and such amount shall be credited against the Security Deposit required under each applicable Ground Lease.

1.5 Potential Modifications to the Lease Property.

1.5.1 Potential Exclusions from Lease Property. The Parties shall have the right to exclude the following portions of the Lease Property:

(a) AMS Site. The City shall have the right to exclude the approximately 15-acre AMS Site from the Lease Property if the City enters into a binding contract for the use of the AMS Site to fulfill BCDC's 15-acre truck parking requirement *[insert reference to Bay Plan in execution version]* for the City Property prior to the time set forth on the Schedule of Performance. If the City fails to enter into such a contract in a timely manner, the City's right to exclude the AMS Site from the Lease Property shall terminate.

(b) City Exchange Properties. The City shall have the right to exclude the City Exchange Properties from the Lease Property in exchange for the inclusion of the Port Exchange Properties in the Exchange Parcel as set forth in Section 1.5.2, if the City enters into a binding agreement to acquire or acquires title to the Port Exchange Properties prior to the time set forth in the Schedule of Performance. If the City fails to timely enter into a binding agreement for the acquisition of or acquire title to the Port Exchange Properties, the City's right to exclude the City Exchange Properties from the Lease Property shall terminate.

(c) Impacted Sites. The Developer shall have the right to exclude certain portions of a Phase prior to Close pursuant to the terms of Article V.

1.5.2 Potential Additions to Lease Property. The City has the right to include the Port Exchange Properties in the Lease Property in exchange for the exclusion of the City Exchange Properties from the Lease Property as contemplated in Section 1.5.1(b) above. If the City fails to timely enter into a binding agreement for the acquisition of or acquire title to the Port Exchange Properties, the City's right to include the Port Exchange Properties in the Lease Property shall terminate.

1.6 Recordation of Memorandum of LDDA.

Concurrently with the execution and delivery of this Agreement, the Parties have executed and caused to be notarized the Memorandum of Lease Disposition and Development Agreement in the form attached hereto as Attachment 9. The Memorandum of LDDA shall be recorded in the Official Records within the time set forth on the Schedule of Performance.

ARTICLE II

THIRD PARTY COORDINATION

2.1 Cooperation by the Parties

The Parties acknowledge that the Project requires a number of discretionary approvals and agreements with non-City governmental entities and other third parties which have a material affect on Project feasibility, the Schedule of Performance, and the implementation of this Agreement. Therefore, the Parties agree to communicate regularly and to cooperate in good faith, including meeting and conferring as necessary, joint invitations to and attendance at meetings, copies of correspondence, execution of the mutually agreeable forms of the agreements provided in Section 2.2, below, and execution of mutually acceptable applications as owner and applicant where necessary and appropriate to implement the Project and this Agreement.

2.2 Third Parties Agreements, Approvals and Permits

The following is a summary of the agreements, approvals and permits that the Parties acknowledge are essential to the success of the Project. The Parties shall cooperate as set forth in Section 2.1 above with respect to the City's pursuit and acquisition of such matters. For each such matter, during the time period between the execution or acquisition of the same and the termination of this Agreement: (a) the City shall use its best efforts to perform its obligations and secure the material benefit of its rights under such matter, each prior to the times set forth in the Schedule of Performance, if applicable, and (b) the City shall not seek or agree to amend the provisions of such matter without Developer's prior written consent, which may not be unreasonably withheld, conditioned or delayed.

2.2.1 Third Party Approvals of Prior Transfers and this Agreement

The City shall have obtained the approval or other applicable form of confirmation from: (a) the Army, pursuant to the requirements of the EDC MOA and the ESCA; (b) DTSC, if needed pursuant to the requirements of the Consent Agreement; and (c) the Oversight Board/Department of Finance/State of California, as applicable, pursuant to the requirements of AB 26, each with respect to (i) the prior transfers of the Lease Property and EDC Property Agreements from the Agency to the City and (ii) the subsequent transfers of the Lease Property pursuant to this Agreement prior to the applicable time(s) set forth in the Schedule of Performance.

2.2.2 Amended and Restated CSA

The City and Port shall execute an Amended and Restated CSA in a form substantially similar to the attachment to the Staff Report for the June 19, 2012 City Council meeting by the time set forth in the Schedule of Performance. Thereafter, the Port and City, as applicable, shall have met the performance milestones set forth therein with respect to the delivery of Port Rail Terminal at the times set forth on the Schedule of Performance. In the event, the Port fails to meet one or more of such milestones, and the City is entitled to exercise a self help remedy under the Amended and Restated CSA, to the extent permitted under the Amended and Restated CSA, the City shall assign such remedy to the Developer at Developer's written request therefor.

2.2.3 Amended OHIT Baseline Agreement.

The Port, City, the California Department of Transportation (“Caltrans”) and the California Transportation Commission (the “CTC”) shall enter into an amended and restated Trade Corridors Improvement Fund Project Baseline Agreement for the amended OHIT project as contemplated in Section ___ of the proposed Amended and Restated CSA (the “Amended OHIT Baseline Agreement”) prior to the time set forth in the Schedule of Performance, which agreement: (a) expressly approves of the parties to the Design Build Contract described in Section 3. [] below, (b) expressly approves of the application of the cost of the design and construction of the Private Improvements as matching funds, (c) expressly approves private improvement matching funds for the Private Improvements being expended after the majority of the TCIF funds for the Public Improvements and (d) includes a date for the final audit of the required matching funds that is no earlier than January 1, 2024.

2.2.4 Cooperation Agreement and Project Labor Agreement

The City and the applicable third parties shall have entered into a Cooperation Agreement in substantially the form of the draft agreement included in the Staff Report for the June 19, 2012 City Council meeting and a Project Labor Agreement pursuant to the goals and objectives of the Community Benefits Program prior to the time set forth in the Schedule of Performance.

2.2.5 Rail Service Agreement

The City, Port and, if applicable, the Port Rail Terminal Operator shall have entered into that certain Rail Service Agreement as contemplated in Section ___ of the Amended and Restated CSA prior to the time set forth in the Schedule of Performance.

2.2.6 Caltrans

2.2.6.1 Construction Easement

Caltrans shall have vacated its right to occupy a portion of the West Gateway pursuant to that certain temporary construction easement recorded in the Official Records on February 13, 2002 as Instrument No. 2002-72862 (the “Caltrans WGW Easement”) prior to the time set forth in the Schedule of Performance. Developer shall have the right to negotiate directly with Caltrans with respect to an early vacation of all or a portion of the Caltrans WGW Easement area

and the City shall cooperate with such efforts at no loss of prepaid rent or third party cost to the City.

2.2.6.2 Billboard Sites

The City shall use commercially reasonable efforts to obtain Caltrans' consent to the City's reservation of the sites for bill boards 1 and 2 as identified in the Scope of Private Improvements, and reasonable access and utility easements thereto, from its conveyance of the [note: insert reference to parcel] to Caltrans for inclusion in the Billboard Agreement premises. If Caltrans initially refuses to agree to the proposed reservation, the City shall continue to use commercially reasonable effort to obtain the right to locate billboards on such sites (at no third party cost to the City, but with an obligation to convey offers from the Developer) and if the City subsequently obtains such rights, the sites shall be added to the premises under the Billboard Agreement for no additional consideration.

2.2.6.3 Underfreeway Easement

The City shall use commercially reasonable efforts to obtain Caltrans' agreement to amend the [note: insert reference to West Grand underfreeway easement] ("Underfreeway Easement") to add the following to the list of the rights reserved to the City pursuant to the Underfreeway Easement: the right to install, maintain, repair and replace (a) improvements related to two railroad lines accessing the West Gateway and the Central Gateway; (b) the vehicular, bike and pedestrian access improvements to the West Gateway; and (c) any other Public Improvements intended to be installed and maintained in such location, each as contemplated by the Master Plan. The City may satisfy its obligations under this Section by obtaining the right to install at least one rail line.

2.2.7 EBMUD MOA

The City, the required Affiliate of Developer and the East Bay Municipal District shall enter into a Memorandum of Agreement in substantially similar form attached to the June 19, 2012 Staff Report to the City Council hereto prior to the time set forth in the Schedule of Performance (the "EBMUD MOA"). Upon final execution, the EBMUD MOA shall be inserted as Attachment 16 to this Agreement.

2.2.8 Other Non-City Approvals

City shall use commercially reasonable efforts to obtain all necessary permits or approvals necessary to construct the Public Infrastructure in accordance with the Schedule of Performance and shall cooperate with Developer in its pursuit of third party permits and approval related to the Private Improvements. If City is unable to obtain a required permit for the Public Infrastructure, parties will commence the meet and confer process set forth in Section 2.3 below.

2.3 Meet and Confer Process for Material Issues

The parties desire that this Agreement and the ability to develop the Project or substantial portions of the Project not automatically terminate upon the non-satisfaction of certain conditions precedent (primarily related to the loss of TCIF funds or the inability to deliver the Public Infrastructure or realize the benefit of the Port Rail Terminal). Therefore, as specified in this Agreement, the parties agree to meet and confer and exclusively negotiate with each other in good faith to determine means to preserve the mutual benefits of the Project given the changed circumstances. During an initial period to expire on December 1, 2012, the parties would negotiate regarding the feasibility of developing substantially the same project, with no change in the Permitted Uses set forth in the Scope of Private Development or the Rent contemplated under the Ground Leases. If the parties are unable to agree upon a means to deliver such project, the parties would continue to negotiate exclusively and in good faith through May 31, 2013 regarding the feasibility of developing a different, but mutually beneficial project to be developed at the Lease Property. Notwithstanding the terms of this Section to the contrary, the Developer shall have the right to terminate the negotiation period upon written notice to the City. In the event that the City Administrator deemed it to be in the best interest of the City in his or her sole discretion, the City Administrator shall have the authority to extend the exclusive negotiating period to by entering into an amendment to this Agreement.

ARTICLE III

DEVELOPMENT OF THE PUBLIC IMPROVEMENTS

3.1 Scope of the City's Construction Obligation. The Public Improvements include (a) the deconstruction/demolition of the existing improvements on the Lease Property and (b) the surcharging, fill, grading, utility, on- and off-site street/circulation, lighting, landscaping, rail and wharf improvements listed in Attachment 6 and more particularly described in the Master Plan. Developer's ability to develop each Phase requires the prior completion of a particular subset of the Public Improvements. Attachment 6 allocates the Public Improvements into four categories: (i) those Public Improvements that are required for all three (3) Phases; (ii) those Public Improvements that are required by the East Gateway; (iii) those Public Improvements that are required by the Central Gateway; and (iv) those Public Improvements that are required by the West Gateway.

3.2 Delivery Method. The Parties intend that the design and construction of the Public Improvements will be delivered pursuant to the terms of the Property Management Agreement and a design-build contract entered into between CCIG, Inc. and a third-party design build contractor (the "Contractor") in accordance with the terms of the Property Management Agreement (that contract, the "Design Build Contract").

3.2.1 Bridging Documents. Under the Property Management Agreement, CCIG, Inc. will act as the City's construction project manager to coordinate, for the Parties' approval, the development of documents (equivalent to construction drawings that are approximately 35% complete) that set forth the mandatory construction criteria for the Public Improvements, consistent with the approved Master Plan (the "Bridging Documents"). The Parties intend that they will coordinate closely regarding the development of the Bridging Documents. To that end, the City shall provide the Developer with copies of interim drafts of the Bridging Documents as the same are produced by the applicable consultants. The Developer shall provide concurrent comments regarding the draft documents in a timely manner. Once the City has deemed the

Bridging Documents to be complete, the City will submit the same to Developer for final review and approval. The Developer shall review, comment on and approve or disapprove of the proposed Bridging Documents pursuant to the provisions of Section 3.2.3 below. Upon approval by both City and Developer, the proposed Bridging Documents shall thereafter be referred to as the "Approved Bridging Documents."

3.2.2 Design Build Contract. The Design Build Contract shall require the Contractor to (a) complete the Construction Drawings (defined below) based on the Approved Bridging Documents; (b) competitively bid all construction sub-contracts; however, Contractor shall be entitled to bid and, if Contractor is the lowest responsible bidder, self-perform up to 35% of the scope of work; (c) provide a guaranteed maximum price (excluding hazardous materials remediation costs) based on such bids for the construction of the Public Improvements (the "G-Max Price"). If the G-Max Price is approved pursuant to Section 3.3.1.2 below, CCIG, Inc. shall accept G-Max Price and the Contractor shall be "at risk" with respect to the delivery of the Public Improvements within such G-Max Price, subject to adjustment in accordance with the terms of the Design Build Contract. The Design Build Contract shall require Contractor and any consultants and subcontractors to name Developer and its affiliates as additional insureds under any required commercial general liability insurance, name Developer and its affiliates as express third party beneficiaries of any warranties related to the Public Improvements and require consultants to include Developer and its affiliates within the scope of parties that may rely on their reports prepared in conjunction with the Design Build Contract.

3.2.3. Construction Drawings. In accordance with the terms of the Design Build Contract, the Contractor shall develop the Approved Bridging Documents into complete construction drawings for the Public Improvements (the "Construction Drawings"). The Parties intend that they will coordinate closely regarding the development of the Construction Drawings. To that end, the City shall provide the Developer with copies of interim drafts of the Construction Drawings as the same are produced by the Contractor. The Developer shall provide concurrent comments regarding the draft documents in a timely manner. Once the City has deemed the Construction Drawings to be complete, the City will submit the same to Developer for final review and approval. The Developer shall review, comment on and approve or disapprove of the proposed Construction Drawings pursuant to the provisions of Section 3.2.4 below. Upon approval of the proposed Construction Drawings by both City and Developer, they shall thereafter be referred to as the "Approved Construction Drawings."

3.2.4 Review, Comment and Approval. Developer shall have five (5) business days within which to review any draft document provided to Developer pursuant to Section 3.2.1 or 3.2.3 and provide the City with written notice of Developer's approval of or comments on such documents. If a draft document is consistent with the approved Master Plan or prior drafts reviewed and approved by Developer, Developer shall not unreasonably withhold, condition or delay its approval of that proposed document. If the Developer fails to provide the City written comments to the subject documents within the five (5) business-day period, Developer shall conclusively be deemed to have approved the same. If Developer submits comments to any draft document, City shall incorporate any reasonable comments into later drafts. If City rejects any Developer comment, City shall notify Developer thereof, which notice shall include a reasonably detailed explanation of the City's basis for rejection. The Parties

shall meet and confer regarding all rejected comments and, if agreement is not reached within five (5) business days after the Parties commence the meet and confer process, Developer shall have an additional five (5) business days to deliver its final approval or disapproval of the proposed documents to City.

3.3 Funding.

3.3.1 Budgets.

3.3.1.1 Preliminary Budget. The parties have agreed upon a \$ _____ preliminary budget for the design and construction of the Public Improvements (the "Preliminary Budget"). The Preliminary Budget is based on the scope of the Public Improvements and the following available or proposed uses:

- (a) City. City shall contribute a maximum of \$45,000,000 towards the design and construction of the Public Improvements (the "City Contribution"). To date, the City has expended \$ _____ in costs related to the design of the Public Improvements and has \$ _____ in remaining funds. If City is required to disgorge any funds currently earmarked for the Project pursuant to the provisions of AB26, the total amount required to be expended pursuant to this Section 3.3.1.1(a) shall be automatically reduced on a dollar-for-dollar basis by an amount equal to the funds disgorged.
- (b) Developer. Developer shall contribute a maximum of \$25,900,000 to the design and construction of a portion of the wharf improvements to the West Gateway premises (the "Developer Funded Wharf Improvements"). The Contractor shall be directed to develop a separate scope of work for the Developer Funded Wharf Improvements as part of the Approved Construction Drawings, which plans shall be the subject of a separate guaranteed maximum price under the Design Build Contract. Developer shall be required to fund the \$25,900,000 required under this Section 3.3.3.1(b) concurrently with the City's construction of the Developer Funded Wharf Improvements as the City receives invoices for the same.. Notwithstanding any term or provision set forth in this Agreement to the contrary, the City's obligation to deliver the Developer Funded Wharf Improvements as a part of the Public Improvements is expressly conditioned upon the City's timely receipt of Developer's funds hereunder.
- (c) TCIF Funds. The Parties expect that the City will have the right to expend \$176,300,000 in TCIF funds towards the completion of the design and construction of the Public Improvements pursuant to the terms of the Amended OHIT Baseline Agreement.

3.3.1.2 Design Build G-Max Price. The Contractor shall develop the G-Max Price pursuant to the terms of the Design Build Contract prior to the date that is set forth in the Schedule of Performance. The Parties shall have the right to review and approve the G-Max Price. If the G-Max Price is equal to or less than the aggregate amount of funds available to the City pursuant to Section 3.3.1.1, the G-Max Price shall be deemed approved. In the event that the G-Max Price exceeds the aggregate amount of funds available to the City pursuant to Section 3.3.1.1, the Parties shall meet and confer pursuant to Section 2.3 above for the purpose of adjusting the scope of work to eliminate such excess.

3.4 Scheduling. The parties shall coordinate with CCIG, Inc. and the Contractor to develop a schedule for the completion of the Public Improvements in a manner that is consistent, to the maximum extent practicable, with the schedules included in the OHIT Baseline Agreement and the Amended and Restated CSA (the "Public Improvements Schedule of Performance"). The Parties shall not unreasonably withhold, condition or delay their approval of the Public Improvements Schedule of Performance.

3.5 Construction. As soon as reasonably possible after the Parties' approval of the Construction Drawings, G-Max Price and the Public Improvement Schedule of Performance, City shall commence construction of the Public Improvements and shall thereafter diligently prosecute the same to Completion. As used in this Section 3.5, the term, "Completion" shall mean that the Public Improvements (a) have been constructed pursuant to the Approved Construction Drawings (as approved by the applicable third-party public agency(ies)/utility(ies), if required); (b) where applicable, have received the final inspection required by City and/or the applicable third-party public agency(ies)/utility(ies) and the applicable entity has accepted the improvement for permanent maintenance; (c) where applicable, are available for use by the public for their intended purpose, and (d) where a portion of the Public Improvements is not to be accepted by a public entity, Contractor shall have caused the project civil engineer to certify in writing to Developer that the applicable improvement has been constructed pursuant to the Approved Construction Drawings. [*Note: Need to discuss records/certification and confirmation.*]

3.6 Formation of Special District. The City shall be required to form, at Developer's initial cost subject to reimbursement as set forth below, a Special District which shall be responsible for maintaining, operating, repairing, replacing that portion of the Public Improvements to be owned and otherwise maintained by the City. The Special District shall be managed by a three (3) member board of directors. The board members shall be recommended by the City Administrator and confirmed by the City Council; provided, however, the City shall appoint Developer representatives to two (2) board positions until the expiration of all of the Ground Leases. Developer's representatives shall be subject to removal by City Council for cause. The Special District shall (a) be imposed on the Lease Property, North Gateway and the AMS Site, (b) adopt the maintenance standards reasonably and mutually acceptable to City and Developer; and (c) adopt an initial budget that (i) provides for a reimbursement of Developer's formation costs and (ii) a capital reserve schedule reasonably approved by the Parties. Developer shall have the right to reasonably approve the underwriter, bond counsel, administrative load, amount and timing of funding, amount of capitalized interest and basis for spread of lien against the included parcels. The Parties shall commence the formation of the Special District and

complete the same prior to the expiration of the time periods set forth in the Schedule of Performance.

ARTICLE IV

COMMUNITY BENEFITS

The parties have negotiated and agreed upon a plan of community benefits related to the Project. As part of the mutual consideration for the respective rights received under this Agreement, the parties hereby agree to perform their respective obligations set forth in Attachment 15.

ARTICLE V

REMEDITATION

[Note to reviewers: subject to negotiation and review; applicable portions to be moved to ground lease]

5.1 City's Disclosure. The City hereby makes the following disclosures to the Developer:

(a) **Presence of Hazardous Materials.** Hazardous Materials exist in soil and groundwater at, on and under portions of the Project Site and in buildings currently existing on the Project Site. The City has provided Developer with a reference index of environmental assessment reports pertaining to the Gateway Development Area, the current version of which is attached as Attachment 10. The City shall continue to make available to the Developer for review and copying complete copies of all listed documents at the City's document repository of OARB environmental reports located at 250 Frank Ogawa Plaza, 3rd Floor, Dimond Room, Oakland, California. The City shall make access available at all reasonable times through at least Close of Escrow. The City shall promptly update Attachment 10 upon written request from Developer. In addition, if the City becomes aware of any material information relating to environmental conditions at, on under or emanating from the Project Site, including, without limitation, the presence of Hazardous Materials, the City shall so inform Developer and provide Developer with a copy of such information no later than ten (10) business days following the City's discovery of the information. The Port may have additional documents pertaining to the Gateway Development Area that are not identified in Exhibit 10.

(b) **HSC 25359.7 Notice of Release.** This LDDA, which is a public ordinance, was properly circulated in accordance with applicable Laws and City procedures and does not become effective until at least thirty (30) days after the first reading at a properly noticed meeting of the City Council. This LDDA provides the thirty (30) day written notice that there has been a release of hazardous materials on or beneath the Project Site pursuant to Health and Safety Code section 25359.7, as required in the Covenant.

(c) **Environmental Remediation Requirements.** As noted in Recital A, the EDC Property was transferred to the City through the City's predecessor in interest, OBRA, from

the Army in 2003 pursuant to the EDC MOA. The EDC MOA required the City to complete environmental services (including investigation, remediation and related document preparation activities) for the EDC Property as set forth in the Environmental Services Cooperative Agreement dated May 16, 2003 ("ESCA"). Pursuant to the ESCA, the City, through its predecessor in interest, OBRA, contractually assumed the Army's remediation responsibilities (except in limited circumstances specifically identified in the ESCA) and agreed to remediate the EDC Property so that the Army could obtain its Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") covenant certifying completion of remediation, as required by federal law. In the ESCA, the City committed to complete the environmental response activities set forth in the DTSC Consent Agreement described in Recital I, and the associated Remedial Action Plan ("RAP") and Risk Management Plan ("RMP"), each dated September 27, 2002, with the RAP amended on August 2, 2004 (collectively, the "RAP/RMP"), in order to achieve regulatory closure. The agreement by the City to assume remediation obligations was endorsed by Governor Gray Davis in the Governor's August 6, 2003 approval of the Army's Finding of Suitability for Early Transfer ("FOSET"). To approve the FOSET and meet the terms of the Consent Agreement, the City provided financial assurances that the remediation identified and required by the ESCA would be completed. Those assurances consisted of (a) purchasing an environment insurance policy, the Remediation Cost Cap Environmental Site Liability Policy issued by Chubb Custom Insurance Company, Policy No. 3730-58-78 ("Environmental Insurance Policy"), which covers the period from August 7, 2003 to August 7, 2013, and (b) establishing a separate account (the "Remediation Fund"), which was jointly established with the Port and set aside eleven million and four hundred thousand dollars (\$11,400,000) for the sole purpose of paying for remediation costs on the EDC Property. To date, the City and the Port have expended approximately \$ 3.3 million from the Remediation Fund. Finally, the EDC Property is also subject to the Regional Water Quality Control Board Order No. R2-2004-0086 dated November 5, 2004 ("RWQCB Order").

(1) ARMOA. Because the City and Port each own portions of the EDC Property, the City and Port contractually allocated responsibility for cleanup of the EDC Property pursuant to the terms of that certain Amended and Restated Memorandum of Agreement ("City/Port ARMOA") dated February 27, 2008, which agreement requires the City and Port to coordinate on (a) all remediation work plans and schedules under the Consent Agreement and RAP/RMP, (b) insurance submittals pursuant to the Environmental Insurance Policy, and (c) payments to and from the Remediation Fund.

(2) The Consent Agreement, RAP/RMP, RWQCB Order, Covenant and Army EDC Deed. The Consent Agreement, RAP/RMP and RWQCB Order contain controlling environmental requirements and standards for Remediation of Hazardous Materials at the EDC Property and are included as Attachments 11A, 11B and 11C, respectively. The Consent Agreement specifically sets forth the scope and schedule of work to be completed to remediate environmental hazards on the EDC Property. The RAP identifies the priority remediation sites ("RAP Sites") at the former Oakland Army Base and establishes the cleanup goals for the entire EDC Property. The RMP sets forth the risk management protocols and the procedures for addressing environmental conditions at the EDC Property, including the presence and potential presence of Hazardous Materials, as they are identified. The RWQCB Order specifies the cleanup requirements for petroleum impacted soil and groundwater on the EDC Property. The Consent Agreement includes a Covenant to Restrict Use of the Property

(“Covenant”), which prohibits certain sensitive land uses, requires notice of a release of Hazardous Materials to future owners or lessees of the land, requires an annual certification be submitted to DTSC attesting to compliance with the Covenant and reserves DTSC’s right of access to the EDC Property. The Army EDC Deed, described in Recital A, also incorporates the Covenant, requires that the City provide written notice to the Army of any noncompliance with the Covenant and requires that the Army be provided with a right of access to the EDC Property for purposes of environmental investigation, remediation or other corrective action, if and to the extent required. For purposes of this Agreement, DTSC, the RWQCB and the Army are collectively referred to as the “Resource Agencies” and the documents identified in this section, together with any other requirements of the applicable Hazardous Materials Laws, are collectively referred to as the “Environmental Remediation Requirements.”

(d) **Notice of Restrictions in the Covenant and EDC Deed.** The Covenant required by DTSC as part of the Consent Agreement provides that all of the environmental restrictions set forth in the Covenant shall be included in any transfer of the EDC Property or any interest therein. The Covenant is provided in full in Attachment 12A. Further, the Army EDC Deed provides that all of the environmental protection provisions of the Army EDC Deed shall be included either verbatim or by reference into any transfer of the EDC Property or any interest therein. The Army EDC Deed is provided in full in Attachment 12B. Required notices and copies of the Covenant and Army EDC Deed shall also be provided in all relevant agreements flowing from the LDDA, including the Property Management Agreement, the Billboard Agreement, each Ground Lease and any subsequent subleases. Developer covenants that it will include or reference the Covenant and Army EDC Deed in each of its future leases and/or subleases.

5.2 Responsibility for Environmental Remediation.

(a) **Pre-Close of Escrow.** With respect to each Phase or portion of the Project Site, the City shall be responsible for Remediation obligations at the Project Site as set forth below; except that the City shall not be responsible for Remediation obligations retained by the Army pursuant to the EDC MOA and the ESCA (collectively, “Army Retained Conditions”).

(i) **RAP Sites.** The City shall be responsible for all Hazardous Materials and Remediation at RAP Sites in accordance with the RAP/RMP and the Environmental Remediation Requirements and the coordination process set forth in Section 5.3.

(ii) **Demolition.** The City shall be responsible for all necessary demolition on the Project Site in accordance with the coordination procedures set forth in Section 5.3. The demolition work includes the Remediation of asbestos-containing building materials and building materials containing lead-based paints, which are subject to special management and disposal requirements under applicable Hazardous Material Laws.

(iii) **Public Improvements.** The City shall be responsible for all Hazardous Materials and Remediation identified during, required by or otherwise associated with construction and/or completion of the Public Improvements, including conditions identified during environmental investigation(s) conducted in advance of or as part of the Public Improvements and Remediation required during the course of the construction of the Public

Infrastructure (collectively, the “Public Improvements Remediation”) in accordance with the RAP/RMP and the Environmental Remediation Requirements, as follows:

(A) The Parties acknowledge that the Public Improvements will include substantial grading, surcharging, dynamic compaction and wicking activities, which work will be performed in accordance with the RAP/RMP.

(B) The City shall conduct all Public Improvements Remediation consistent with the RAP/RMP and the Environmental Remediation Requirements and in accordance with the coordination procedures set forth in Section 5.3.

(C) The City shall work diligently with the Army to obtain closure of any Army Retained Conditions in accordance with the coordination procedures set forth in Section 5.3.

(iv) **Developer’s Pre-Close of Escrow Inspection Items.** Developer may, at its discretion, conduct environmental testing anywhere on the Lease Property to confirm the presence or absence of additional conditions that may require Remediation pursuant to the RAP/RMP. Developer shall perform such work at its own cost and expense pursuant to the Right of Entry attached to this Agreement as Attachment 14. The City shall be responsible for any required Remediation related to such conditions, including at previously sites previously closed by the City, except to the extent Developer or its contractors or employees cause or contribute to such a condition, as follows:

(A) Within ninety (90) days following the Effective Date of this Agreement, the Parties shall meet and confer in good faith to mutually adopt a phasing plan for surcharging of the Project Site (the “Surcharging Schedule”). The surcharging shall occur on a phase by phase basis (with such phases not necessarily equal to or defined by the various project Phases). The Parties shall review the Surcharging Schedule together no less than every three months following the date it is first established and modify the schedule reasonably and in good faith to reflect then-current progress and/or delay in the planned surcharging.

(B) Within thirty (30) days following the Parties’ adoption of the initial Surcharging Schedule, the Parties shall meet and confer in good faith to agree upon a written schedule for Developer’s pre-Close of Escrow environmental inspections of the Lease Property (each a “Developer’s Pre-Close of Escrow Environmental Inspection”). It is the intent of the Parties that Developer’s Pre-Close of Escrow Environmental Inspections relate to the then-current Surcharging Schedule, as follows.

(i) With respect to each phase identified in the Surcharging Schedule, no less than ninety (90) days prior to the date identified in the then-current Surcharging Schedule for commencement of the surcharging for that phase, Developer shall provide the City with written notice of its intent to perform a Developer’s Pre-Close of Escrow Environmental Inspection along with a work plan that includes the planned scope and schedule for the inspection. The City shall promptly (within 3 business days) send copies of the plan to the Port and shall within five (5) business days after receiving comments from the Port pursuant to the ARMOA review and approve the proposed inspection work plan, which

approval shall not be unreasonably conditioned, withheld or delayed. If the City does not approve or provide comments to the Developer within the foregoing five day period, the City shall be deemed to have waived its right to object to the planned inspection. Such work plan shall then be subject to DTSC and/or RWQCB approval, as appropriate.

(ii) Developer shall use its best efforts to complete the inspection for the phase, including all sampling activities, within thirty (30) days following the date of the City's approval of the Developer's proposed inspection notice or expiration of the above five-day period. The City shall have the right to attend and observe Developer's inspection and to take independent samples or obtain split samples, at the City's discretion, with respect to all sampling performed by Developer. In event that Developer fails to commence the inspection within sixty (60) days following of the City's written approval of the inspection work plan, Developer shall be deemed to have waived its right to conduct such inspection. Once a phase or portion of the Lease Property has been inspected, Developer shall not have the right to conduct further subsurface inspections on that Phase or portion of the Lease Property.

(iii) No later than fifteen (15) days following the date of Developer's receipt of the sampling results from the inspection, the City and Developer shall exchange all sampling data relating to the inspection and shall promptly meet and confer to determine whether conditions at and beneath the investigation location exceed the standards in the approved RAP/RMP and require Remediation (or further Remediation) pursuant to the RAP/RMP.

(iv) In the event that the Pre-Close of Escrow Environmental Inspection(s) for a Phase or portions of the Lease Property reveal conditions, including conditions at closed sites, that require Remediation pursuant to the RAP/RMP, then such conditions shall be referred to individually and collectively as "Developer's Pre-Close of Escrow Inspection Items". The City shall be responsible for Remediation of all Developer's Pre-Close of Escrow Inspection Items consistent with the RAP/RMP and all Environmental Remediation Requirements, and in accordance with the coordination procedures set forth in Section 5.3.

(b) **Post-Close of Escrow**

(i) **Developer Responsibilities.** Upon Close of Escrow for each Phase or portion of the Lease Property, with the exception of the City's obligations for Regulatory Reopeners as described below, Developer accepts such portion of the Lease Property "As-Is, Where-Is" and as between Developer and the City, shall be responsible for all Hazardous Materials and Remediation required on, under or about the Lease Property during its tenancy in accordance with the Environmental Remediation Requirements, except to the extent the City or its contractors or employees cause or contribute to such conditions.

(ii) **Regulatory Reopeners; City and Developer Responsibilities.**

(A) **Land Outside of Building Footprints.** Notwithstanding issuance by any Regulatory Agency of one or more No Further Action letters, as between the City and Developer, the City shall remain responsible for all additional Remediation required as

a result of any Regulatory Reopener on land within a phase that is not within the footprint of a building constructed by or on behalf of Developer as part of the Private Development (“Unbuilt Land”). For clarification, Unbuilt Land includes graded areas, hardscape, landscaping, parking lots and underground utilities. [*Discuss*]

(B) **Land Beneath Building Footprints.** As between the Developer and the City, following Close of Escrow, Developer shall be responsible for all Remediation required as a result of any Regulatory Reopener on land that is within the footprint of a building constructed by or on behalf of Developer as part of the Private Development.

(C) **Conditions Located Partially Beneath Building Footprints.** For Regulatory Reopeners that apply to conditions that lie partially beneath building footprints and partially under Unbuilt Land, the City is responsible for that portion of Remediation that can be accomplished without adversely affecting the integrity of the building and the Developer is responsible for that portion of Remediation that affects the building.

(iii) **Army-Retained Conditions.** The Army shall have responsibility for Remediation obligations related to Army Retained Conditions. The Parties shall work together to facilitate timely completion of any required Remediation of Army Retained Conditions.

5.3 Pre-Close of Escrow; City and Developer Coordination. The following requirements shall apply to each of the City’s pre-Close of Escrow obligations set forth in Section 5.2(a) above (the requirements related to City post-Close of Escrow obligations are set forth in Section 5.4 below):

(a) **Coordination.** The City shall complete all Remediation activities pursuant to one or more work plans reviewed and approved by DTSC and/or RWQCB, if applicable under the Environmental Remediation Requirements. The Parties intend that the City shall be the lead with the Resource Agencies, but shall require that Developer perform the Remediation work under the Property Management Agreement or subsequent Design Build Contract, as applicable. Prior to submitting the work plan(s) to DTSC and/or RWQCB, the City shall provide a copy of such work plan(s) to Developer. Developer shall have five (5) business days following receipt of the work plan(s) to review and provide comments to the City regarding the work plan(s). If Developer does not offer comments to the City within the foregoing time, Developer shall be deemed to have waived its right to comment on the work plan(s). If Developer does provide comments to the City within the foregoing time, the City shall incorporate all reasonable comments and, with respect to comments it deems unreasonable, respond to Developer within five (5) business days following the City’s receipt of such comments. Thereafter, Developer may, but need not, respond or provide additional comments. Developer’s election not to provide comments or not to provide further comments to the work plan(s) shall not be deemed an endorsement or approval of the methods or activities proposed. The Parties shall act in good faith in making and responding to comments and attempt to promptly resolve any disputes that may arise regarding the work plan(s).

(b) **Communications.**

(i) **Documents and Correspondence.** Subject to the coordination obligations set forth in this Agreement, the City shall provide the Developer with copies of all correspondence (including all electronic correspondence), documents, notices, plans and reports, including all drafts, directed to or received from (a) the City, (b) DTSC, (c) the RWQCB and/or (d) any other Regulatory Agency, relating to the Remediation of the EDC Property or any portion thereof. The City shall provide such copies to Developer concurrently to the extent feasible with its transmittal of the communications and, with respect to materials received by the City, shall make best efforts to provide the documents within five (5) business days following such receipt.

(ii) **Meetings.** The City shall provide the Developer with at least seven (7) days' advance written notice of any meeting with the Port, the Army or any Regulatory Agency, including DTSC and/or the RWQCB, relating to the Remediation of the EDC Property or any portion thereof so that the Developer may request attendance at such meeting at its own cost, which the City may grant in its sole discretion. To the extent it is not practicable for the City to provide the full seven (7) days' notice, then the City shall provide the Developer as much notice as is reasonably possible. Developer agrees that it shall not interfere with or oppose the City's Remediation proposals or conclusions as provided to applicable Regulatory Agencies.

(c) **Remediation Standard; Developer's Carve-Out Option.** Remediation shall be completed consistent with the Environmental Remediation Requirements. If the City plans to apply risk mitigation measures (such as vapor barriers, capping or additional deed restrictions beyond those set forth in the Covenant and Army EDC Deed) at or affecting the Lease Property over Developer's objection, then Parties shall meet and confer in good faith for a period of fifteen (15) days to evaluate alternate Remediation strategies for the affected area and the cost/benefit calculus of alternative Remediation approaches. Upon the expiration of the meet and confer period, as it may be extended by the written agreement of the Parties, Developer shall have the right but not the obligation to exclude from the Phase for the purposes of the applicable Ground Lease that portion of the Phase encumbered or otherwise affected by the risk mitigation measures by providing written notice to the City delivered within fifteen (15) days following the expiration of the preceding meet and confer period.

(d) **City Funding.** The City has committed to spend up to the sum of the funds available to the City from (a) the Remediation Fund and the (b) the Environmental Insurance Policy, and acknowledges that additional sums may be paid or reimbursed as part of the TCIF Funds (the "Remediation Funds"), for required Remediation at the EDC Property occurring prior to the final Close of Escrow. In the event that the Remediation Funds are insufficient to fund all of the City's pre-Close of Escrow obligations as identified in Section 5.2(a), then the Parties shall meet and confer. The City's obligations to fund City's post-Close of Escrow Remediation obligations, required pursuant to this Agreement, which is limited to Regulatory Reopeners as set forth in Section 5.2(b)(ii), shall not be capped or in any way limited to the funding sources identified in this Agreement.

5.4 Post-Close of Escrow Remediation; City and Developer Coordination. Following Close of Escrow, the following procedures will be followed with respect to the presence or potential presence of Hazardous Materials in connection with Developer's construction and operation of the Private Improvements on the Lease Property:

(a) **Compliance with Environmental Remediation Requirements.** Except with respect to the City's Post-Close of Escrow obligations and Army Retained Conditions, Developer shall comply with, and cause its contractors, sublessees and invitees to comply with, all Environmental Remediation Requirements to which Developer is subject, including, without limitation, the Covenant and Army EDC Deed, during the construction and operation of the Private Improvements on the Lease Property.

(b) **Notice to City of Subsurface Activities.** Developer shall notify the City's Remediation Manager in writing at least five (5) business days in advance of Developer's planned subsurface activities to provide the City with the opportunity to send its environmental representative to observe such work at the City's sole cost and expense.

(c) **Investigation of Potential Releases.** If Developer identifies a potential Release, except as required by law or to respond to an emergency, Developer shall (i) immediately suspend work in the area, (ii) secure the site, (iii) contact the City's Remediation Manager as soon as practicable but in no case greater than five (5) days following confirmation of the Release; (iv) conduct appropriate soil and groundwater evaluation consistent with applicable Environmental Remediation Requirements; and (v) promptly provide copies of all testing results to the City's Remediation Manager. After review of the testing results, Developer shall notify the City whether contamination was detected at the suspect location(s) in excess of the standards in the approved RAP/RMP. If no contamination in excess of the standards in the approved RAP/RMP is identified, and either the City consents, or fails to provide a written objection within five (5) business days, and DTCS and/or RWQCB, as applicable agrees and then subsurface activities at the location may resume.

(d) **Identification of Hazardous Materials:** If the Developer's investigation reveals contamination at the suspect location(s) in excess of the standards in the approved RAP/RMP, then Developer shall not resume work in the Release area until the Parties confirm whether the condition and/or impacted area is (i) a City Post-Close of Escrow obligation per Section 5.2(b), (ii) an Army Retained Condition, or (iii) a Developer Remediation obligation per Section 5.2(b), which the Parties shall determine as soon as possible, but in no case later than five (5) business days following the City's receipt of the testing results, which time period may be extended if consultation with DTSC is needed. If the Parties cannot reach agreement within such period then either Party may pursue any remedies that it has available.

(i) **City Post-Close of Escrow Remediation Obligation.** If the Parties determine that the contamination is a City post-Close of Escrow Remediation obligation, which is limited to Regulatory Reopeners as set forth in Section 5.2(b)(ii), then the Parties shall meet and confer regarding the scope of Remediation and an appropriate schedule. The City shall complete all post-Close of Escrow Remediation work in accordance with the RAP/RMP and Environmental Remediation Requirements. To the extent the City's proposed remedy includes engineering controls or additional land use restrictions beyond those required in the Covenant

and the EDC Army Deed, the City shall pay or otherwise reimburse the cost of designing, constructing, implementing and operating the engineering controls for the affected area during the term of the Lease. For all City post-Close of Escrow Remediation work, it shall be the goal of the Parties to identify and implement an expeditious cleanup that is protective of human health and the environment. If the Parties cannot reach agreement on an appropriate scope and schedule for such work, then either Party may pursue any remedies that it has available.

(A) The City shall promptly implement the agreed Remediation and complete Remediation in accordance with the RAP/RMP and Environmental Remediation Requirements. Developer shall have the right and the opportunity to participate in all aspects of the Remediation process, including observing the City's field work and participating in relevant communications with DTSC and/or RWQCB staff. In addition, subject to the other coordination provisions under Section 5.4, the City shall provide the Developer with copies of all correspondence (including all electronic correspondence), documents, notices, plans and reports, including all drafts, directed to or received from (a) the City, (b) DTSC, (c) the RWQCB and/or (d) any other Regulatory Agency, relating to the Remediation. The City shall provide such copies to Developer concurrently with its transmittal of the communications and, with respect to materials received by the City shall make best efforts to provide the documents within five (5) business days following such receipt.

(B) If, at any time, the City fails to implement the Remediation in accordance with the agreed goals of the Parties in a commercially reasonable and expeditious manner, except to the extent that such failure is caused by Force Majeure, then the Developer may provide written notice of the City's default under Section ~~IX~~ ("Remediation Default Notice"). If the City fails to cure the alleged default by making material progress toward completion of the Remediation within thirty (30) days following the City's receipt of the Default Notice, then Developer shall have the right to take over from the City and complete the required Remediation. In such an event, the City shall cooperate in transferring oversight of such work, including assignment of applicable contracts, to the Developer, and shall reimburse the Developer, on a monthly basis, the sum of 110% of the Developer's actual, out of pocket costs for Remediation-related activities incurred from the date of transfer of responsibility through the date of receipt by Developer of No Further Action letters from DTSC and/or the RWQCB, as applicable and if required by Environmental Remediation Requirements, except that the City shall remain the lead entity with respect to the Resource Agencies. In the event that the Developer takes over the required Remediation activities, it agrees to indemnify the City against all losses incurred by the City as a result of any gross negligence or willful misconduct by Developer. Such indemnity shall terminate on a Phase by Phase/parcel by parcel basis upon issuance of No Further Action letters by DTSC and/or the RWQCB, as applicable and if required by Environmental Remediation Requirements for the area at issue.

(C) To the extent that the contamination and/or required Remediation materially affects Developer's ability to develop the Lease Property, the Parties agree that beginning on the date thirty (30) days following the City's receipt of the Default Notice through and including the last date of issuance of No Further Action letters by DTSC and/or the RWQCB, as applicable: (1) all time periods with respect to the Minimum Project set forth in Section 6.1 of the Ground Lease shall be tolled pursuant to the provisions of Section

____ of the applicable Ground Lease, and (2) Developer's base rent for all areas affected by the contamination or required Remediation shall be fully abated.

(ii) **Army Retained Conditions Remediation.** If the Parties determine that the contamination is an Army Retained Condition, then to the extent that the contamination and/or required Remediation materially affects Developer's ability to develop the Lease Property, all time periods with respect to the Minimum Project set forth in Section 6.1 of the Ground Lease shall be tolled pursuant to the provisions of Section ____ beginning from the date of Developer's discovery of the contamination through the last date of issuance of No Further Action letters by DTSC and/or the RWQCB, as applicable.

(iii) **Developer Remediation Obligations.** If the Parties determine that the contamination is neither a City Post-Close of Escrow Remediation obligation, which is limited to Regulatory Reopeners as set forth in Section 5.2(b)(ii), nor an Army Retained Condition, then as between Developer and the City, the Developer shall be responsible for Remediation in accordance with the following procedures.

(A) The Developer shall remediate the affected area in accordance with the Environmental Remediation Requirements (including the ability to utilize risk management measures in accordance with the RAP/RMP).

(B) Developer shall complete all Remediation activities pursuant to one or more work plans reviewed and approved by DTSC and/or RWQCB, if applicable in conformance with the Environmental Remediation Requirements. Prior to submitting the work plan(s) to DTSC, the Developer shall provide a copy of such work plan(s) to the City. The City shall have five (5) business days following receipt of the work plan(s) to review the work plan(s) and, if required, provide such document(s) to the Port pursuant to the ARMOA. The City shall use its best efforts to obtain approval of the work plans(s) and/or any comments from the Port, and to provide all approvals and/or comments to the Developer within ten (10) business days following receipt of the work plan(s), or as soon thereafter as is reasonably possible. Once the scope of work is approved, Developer shall promptly implement the agreed Remediation and complete the Remediation obligations. The Parties shall act in good faith in making and responding to comments and attempt to promptly resolve any disputes that may arise regarding the work plan(s). If the Parties cannot reach agreement within such period, then either Party may pursue any remedies that it has available. The City's election not to provide comments shall not be deemed an endorsement or approval of the methods or activities proposed.

(C) Developer shall provide the City with copies of all correspondence (including all electronic correspondence), documents, notices, plans and reports, including all drafts, directed to or received from (a) Developer, (b) DTSC, (c) the RWQCB and/or (d) any other Regulatory Agency, relating to the Remediation of the EDC Property or any portion thereof. Developer shall provide such copies as soon as reasonably possible, but in no case later than three (3) business days following its transmittal or receipt of such materials.

(D) Developer shall provide the City's Remediation Manager with at least ten (10) days advance written notice of any meeting with any Regulatory Agency,

including DTSC and/or the RWQCB, relating to the Remediation of the EDC Property or any portion thereof so that the City may attend such meeting, in its sole discretion; if the City cannot attend the Developer shall coordinate to with the City to reschedule within ten (10) days.

(E) In conducting any Remediation activities, Developer shall require its contractors to comply with and maintain compliance with all applicable provisions of the Environmental Remediation Requirements, including, for example, complying with Section 5.1 of the City/Port ARMOA imposing Commercial General Liability & Contractors PLL Insurance Policy requirements for contractors.

(F) Upon advance written request by the City, Developer shall provide reasonable access to the Premises to the City and the City's employees and contractors to observe the Remediation. Developer shall provide reasonable access to the Lease Property to all Regulatory Agencies as required by applicable Environmental Regulatory Requirements.

(iv) City Accounting. Developer shall reasonably cooperate with the City in accounting for Remediation costs expended by the Developer on the Property for accounting against the Remediation Fund or the Environmental Insurance Policy, as applicable. All such Remediation accounting shall be submitted by Developer to the City's Remediation Manager within thirty (30) days of incurring such costs.

ARTICLE VI

DISPOSITION OF THE LEASE PROPERTY THROUGH ESCROW

6.1 Agreement to Ground Lease the Lease Property.

Subject to the terms, covenants and conditions of this Agreement, the City agrees to lease the Lease Property to the Developer for the development of the Project, all in accordance with the terms and conditions set forth in this Agreement. Close of Escrow to occur in three Phases, one each for East Gateway, Central Gateway, and West Gateway within the specific time period after the satisfaction (or written waiver, where applicable) of the applicable conditions precedent.

6.2 Conditions to the City's Obligation to Close of Escrow. The following shall be conditions precedent to the City's obligation to lease the Lease Property and Close the Escrow for the Ground Lease, and thereby deliver the Lease Property to the Developer; the conditions shall be met before conveyance by Ground Lease of the Lease Property as applicable to each Phase. *[Note to reviewers: additional conditions precedent may be added from the Schedule of Performance or other Sections of this Agreement in final execution version]*

(i) The Developer shall have performed in all material respects all obligations under this Agreement required to be performed on its part before the Close of Escrow, and there shall not exist any Event of Default or Unmatured Event of Default on the Developer's part under this Agreement, and all of the Developer's representations and warranties made in Article VIII of this Agreement shall have been true and correct in all material respects

when made and shall be true and correct in all material respects as of the Closing Date. At Closing, the Developer shall deliver to the City a certificate to confirm the accuracy of such representations and warranties in all material respects.

(ii) Third Party Approvals. The City shall have obtained the third party approvals set forth in Section 2.2.1 prior to the expiration of the applicable time periods set forth in the Schedule of Performance.

(iii) Amended and Restated CSA. The Port shall have entered into the Amended and Restated CSA prior to the expiration of the time period set forth in the Schedule of Performance and Developer shall have approved such Restated Cost Sharing Agreement pursuant to the provisions of Section 2.1.

(iv) EBMUD MOA. The Developer and EBMUD shall have entered into the EBMUD MOA in the time set forth on the Schedule of Performance.

(v) Property Management Agreement. The Developer shall have caused its Affiliate, CCIG, Inc. to execute the Property Management Agreement with the City prior to the expiration of the time period set forth in the Schedule of Performance and, as to the West Gateway Ground Lease only, there shall be no material defaults by CCIG, Inc. under such Property Management Agreement.

(vi) Cooperation Agreement and PLAs. The City shall have entered into a Cooperation Agreement and Project Labor Agreement related to the Public Improvements as contemplated in Items 2 and 12 of Exhibit 15 prior to the expiration of the applicable time period set forth in the Schedule of Performance. Developer shall have entered into a PLA as contemplated in Item 13 of Attachment 15 prior to the expiration of the applicable time period set forth in the Schedule of Performance.

(vii) Master Plan; Budgets. The Port and the City shall have approved the final form of the Master Plan pursuant to Section ___ of the Amended and Restated CSA and agreed upon any necessary changes to the baseline budgets for the revised OHIT project prior to the expiration of the applicable time periods set forth in the Schedule of Performance and Developer shall have approved of the Master Plan and any necessary changes to the Baseline Budgets pursuant to the terms of Section 2.1.

(viii) TCIF Matters. The following events shall have occurred prior to the expiration of the applicable time periods set forth in the Schedule of Performance:

(A) Amended OHIT Baseline Agreement. The applicable parties shall have entered into the Amended OHIT Baseline Agreement and Developer shall have approved of such agreement pursuant to the terms of Section 2.1.

(B) Other Matching Funds. The City shall have provided Developer with evidence reasonably acceptable to Developer that the matching funds required under the Amended OHIT Baseline Agreement from the Port, the City, and the developer of the North Gateway Parcel shall have been properly authorized and, where applicable, that the City

entered into contractual arrangement reasonably acceptable to Developer regarding the securing of same.

(C) TCIF Funding. All of the conditions precedent under the Amended OHIT Baseline Agreement to the payment of the applicable TCIF funds to the City shall have been satisfied or waived by Caltrans and the CTC in writing and such funds shall have actually been paid to the City.

(vi) Air Quality Monitoring Program. The City and Developer shall have agreed upon the scope of and procedure for implementing the air quality monitoring program required in Item 16 of Attachment 15 prior to the date set forth in the Schedule of Performance.

(vii) Port Rail Terminal. The following events shall have occurred prior to the expiration of the applicable time periods set forth in the Schedule of Performance:

(A) Union Pacific ROW/Improvements. The Port shall have entered into a written agreement with respect to the acquisition of the right of way and the construction of the rail improvements included within the scope of the "Port Rail Terminal" as defined in the Amended and Restated CSA which are on Union Pacific Railroad ("UPRR") property, including lead tracks north of the Port Property to Powell Street, switching improvements at the 7th Street Grade Separation, and connections from UPRR's Oakland International Gateway rail terminal and Burlington Northern Santa Fe's Joint Intermodal Terminal to the south.

(B) Operator. The Port shall have issued a Request for Proposals regarding the selection of an operator for the Port Rail Terminal the Port shall have selected the operator for the Port Rail Terminal pursuant to the Request for Proposals.

(C) Rail Access Agreement. The Port and the City shall have executed a definitive, written agreement regarding (i) the rights of use with respect to the Port Rail Terminal to be reserved in favor of the Lease Property, (ii) the services to the operator to be delivered by the Port Rail Operator and (iii) the rates to be charge for such services (the "Rail Access Agreement") and Developer shall have approved of such agreement pursuant to the terms of Section 2.1.

(D) Design Build Contract. The Port shall have issued a Request for Proposals related to the design and construction of the Port Rail Terminal and the Port shall have entered into a contract for the design and construction of the Port Rail Terminal pursuant to the Request for Proposals.

(E) Commencement of Construction for the Port Rail Terminal. The Port shall have commenced construction of the Port Rail Terminal.

(F) Completion of the Port Rail Terminal. The Port Rail Terminal shall have been Substantially Completed (as defined in Section ____ of the Amended and Restated CSA) and the operator for the Port Rail Terminal shall have the staff and equipment on site and operational as necessary to deliver the services required pursuant to the approved Rail Access Agreement.

(viii) Public Improvements. The following events shall have occurred prior to the dates set forth in the, as applicable, Schedule of Performance or the most recent Schedule of Performance for the Public Improvements:

(A) The Parties shall have approved of the Approved Bridging Documents pursuant to Section 3.____;

(B) Parties shall have approved the form of the Design Build Contract pursuant to Section 3.____;

(C) The Parties shall have approved of the Approved Construction Drawings pursuant to Section 3.____; and

(D) With respect to each Phase, the City shall have Completed the Public Improvements applicable to such Phase as outlined in Attachment 6 or the Developer shall have waived its condition precedent regarding the delivery of the Public Improvements pursuant to Section 6.3, below, and Developer and City shall have entered into a right of entry to permit the City the appropriate access and rights to complete the Public Improvements with respect to such Phase.

(ix) Under Freeway Easement. As to the West Gateway and Central Gateway, the City and Caltrans shall have entered into an amendment to the Under Freeway Easement pursuant to Section 2.2.6.3.

The Developer has met all the requirements of the Schedule of Performance which, pursuant to the express terms of the Schedule of Performance, must be satisfied prior to the Close of Escrow, not otherwise waived in writing by the City.

(x) The Developer has submitted into escrow such evidence of authority to enter into this Agreement and the Ground Lease, and the transactions that these documents contemplate, as the City and the escrow holder may reasonably require.

(xi) At the time for the Close of Escrow there shall not be any litigation or administrative challenges pending concerning (A) this Agreement, (B) the Ground Lease, (C) the City's approval of this Agreement, the Ground Lease (D) any Regulatory Approval required for development, construction, use or occupancy of the Project (including the EIR Addendum or any environmental review for such Regulatory Approval).

(xii) Special District. The City shall have formed the Special District prior to the time period set forth in the Schedule of Performance.

(ix) (xii) Title Insurance. With respect to each Phase, the Title Company shall be irrevocably committed (upon payment of the applicable premium) to issue the Title Policy for such Phase pursuant to the provisions of Section 6.8.

(x) (xiii) Remediation of Hazardous Materials. With respect to each Phase, the City shall have completed all Pre-Closing Remediation with respect to such Phase, as

evidenced by the City's receipt of a No Further Action letter (or its equivalent) from DTSC or the RWQCB, as applicable.

(xiv) Additional Schedule of Performance Items. The events set forth in items [tbd catch all] of the Schedule of Performance shall have occurred prior to the expiration of the applicable time period set forth in the Schedule of Performance.

(xv) The applicable Phase shall be a separate legal parcel pursuant to the Subdivision Map Act (neither City nor Developer may waive this condition).

Satisfaction of the City's Conditions. The conditions precedent set forth above are intended solely for the benefit of the City. Subject to Force Majeure, if any such condition precedent is not satisfied on or before the required completion date specified therefore in this Agreement or in the Schedule of Performance, the City shall have the right in its sole discretion either to waive in writing the condition precedent in question and proceed with the Close of Escrow and lease of the Lease Property or, in the alternative, to terminate this Agreement by written notice to the Developer. In addition, the date for the Close of Escrow may be extended, at the City's option for a reasonable period of time, not to exceed thirty (30) days, specified by the City in a written notice to the Developer, or by Force Majeure, to allow such conditions precedent to be satisfied, subject to the City's further right to terminate this Agreement upon the expiration of the period of any such extension if all such conditions precedent have not been satisfied.

6.3 Conditions to the Developer's Obligation to Close Escrow. Developer's obligations under this Agreement and any Close of Escrow with respect to any particular Phase are subject to the satisfaction (or timely written waiver, where applicable) of the following conditions precedent prior to the expiration of the applicable time period (if none stated, the Outside Closing Date (defined below))

(i) **Third Party Approvals.** The City shall have obtained the third party approvals set forth in Section 2.2.1 prior to the prior to the expiration of the applicable time periods set forth in the Schedule of Performance.

(ii) **Amended and Restated CSA.** The Port and the City shall have entered into the Amended and Restated CSA prior to the expiration of the time period set forth in the Schedule of Performance and Developer shall have approved such Restated Cost Sharing Agreement pursuant to the provisions of Section 2.1.

(iii) **Develop Agreement; Planned Unit Development.** The City shall have granted Final Approval (defined below) of a Development Agreement and a Planned Unit Development zoning ordinance ("PUD") for the Lease Property, each (a) in a form acceptable to Developer in its sole and absolute discretion [*City staff to confirm*] and (b) prior to the expiration of the applicable time periods set forth in the Schedule of Performance. As used in this Section 6.2 (iii), the term "Final Approval" shall mean that the City's Planning Commission or City Council, as applicable, shall have made a final determination in favor of the proposed action and all applicable administrative appeal or legal challenge periods shall have expired without the filing of a timely appeal or challenge, or in the event of a timely filing, the appeal or challenge shall have been finally resolved to Developer's sole satisfaction.

(iv) Master Plan; Budgets. The Port and the City shall have approved the final form of the Master Plan pursuant to Section ___ of the Amended and Restated CSA and agreed upon any necessary changes to the baseline budgets for the revised OHIT project prior to the expiration of the applicable time periods set forth in the Schedule of Performance and Developer shall have approved of the Master Plan and any necessary changes to the Baseline Budgets pursuant to the terms of Section 2.1.

(v) Property Management Agreement. The City shall have entered into the Property Management Agreement with CCIG, Inc. prior to the expiration of the time period set forth in the Schedule of Performance.

(vi) TCIF Matters. The following events shall have occurred prior to the expiration of the applicable time periods set forth in the Schedule of Performance:

(A) Amended OHIT Baseline Agreement. The applicable parties shall have entered into the Amended OHIT Baseline Agreement and Developer shall have approved of such agreement pursuant to the terms of Section 2.1.

(B) Other Matching Funds. The City shall have provided Developer with evidence reasonably acceptable to Developer that the matching funds required under the Amended OHIT Baseline Agreement from the Port, the City, and the developer of the North Gateway Parcel shall have been properly authorized and, where applicable, that the City entered into contractual arrangement reasonably acceptable to Developer regarding the securing of same.

(C) TCIF Funding. All of the conditions precedent under the Amended OHIT Baseline Agreement to the payment of the applicable TCIF funds to the City shall have been satisfied or waived by Caltrans and the CTC in writing and such funds shall have actually been paid to the City.

(v) Existing Leases. The City shall have terminated all leases, license agreements or other agreements permitting a third party to occupy the Premises and the tenants thereunder shall have vacated the Premises prior to the expiration of the applicable time period set forth in the Schedule of Performance.

(vi) Air Quality Monitoring Program. The City and Developer shall have agreed upon the scope of and procedure for implementing the air quality monitoring program required in Item 16 of Attachment 15 prior to the date set forth in the Schedule of Performance.

(vii) Port Rail Terminal. The following events shall have occurred prior to the expiration of the applicable time periods set forth in the Schedule of Performance:

(A) Union Pacific ROW/Improvements. The Port shall have entered into a written agreement with respect to the acquisition of the right of way and the construction of the rail improvements included within the scope of the "Port Rail Terminal" as defined in the Amended and Restated CSA which are on Union Pacific Railroad ("UPRR") property, including

lead tracks north of the Port Property to Powell Street, switching improvements at the 7th Street Grade Separation, and connections from UPRR's Oakland International Gateway rail terminal and Burlington Northern Santa Fe's Joint Intermodal Terminal to the south.

(B) Operator. The Port shall have issued a Request for Proposals regarding the selection of an operator for the Port Rail Terminal the Port shall have selected the operator for the Port Rail Terminal pursuant to the Request for Proposals.

(C) Rail Access Agreement. The Port and the City shall have executed a definitive, written agreement regarding (i) the rights of use with respect to the Port Rail Terminal to be reserved in favor of the Lease Property, (ii) the services to be delivered by the Port Rail Operator and (iii) the rates to be charge for such services (the "Rail Access Agreement") and Developer shall have approved of such agreement pursuant to the terms of Section 2.1.

(D) Design Build Contract. The Port shall have issued a Request for Proposals related to the design and construction of the Port Rail Terminal and the Port shall have entered into a contract for the design and construction of the Port Rail Terminal pursuant to the Request for Proposals.

(E) Commencement of Construction for the Port Rail Terminal. The Port shall have commenced construction of the Port Rail Terminal.

(F) Completion of the Port Rail Terminal. The Port Rail Terminal shall have been Substantially Completed (as defined in Section ____ of the Amended and Restated CSA) and the operator for the Port Rail Terminal shall have the staff and equipment on site and operational as necessary to deliver the services required pursuant to the approved Rail Access Agreement.

(viii) Public Improvements. The following events shall have occurred prior to the dates set forth in the, as applicable, Schedule of Performance or the most recent Schedule of Performance for the Public Improvements:

(A) The Parties shall have approved of the Approved Bridging Documents pursuant to Section 3. ____;

(B) The Parties shall have approved the form of the Design Build Contract pursuant to Section 3. ____;

(C) The Parties shall have approved of the Approved Construction Drawings pursuant to Section 3. ____; and

(D) With respect to each Phase, the City shall have Completed the Public Improvements applicable to such Phase as outlined in Attachment 6.

(ix) Caltrans. The following events shall have occurred prior to the applicable time periods set forth in the Schedule of Performance:

(A) Vacation of West Gateway. With respect to the West Gateway only, Caltrans shall have vacated the portions of the West Gateway occupied pursuant to Caltrans WGWEasement and its right to occupy portions of the West Gateway thereunder shall have terminated.

(B) Under Freeway Easement. The City and Caltrans shall have entered into an amendment to the Under Freeway Easement pursuant to Section 2.2.6.3.

(x) Special District. The City shall have formed the Special District prior to the time period set forth in the Schedule of Performance.

(xi) Title Insurance. With respect to each Phase, the Title Company shall be irrevocably committed (upon payment of the applicable premium) to issue the Title Policy for such Phase pursuant to the provisions of Section 5.7(a).

(xii) Remediation of Hazardous Materials. With respect to each Phase, the City shall have completed all Pre-Closing Remediation with respect to such Phase, as evidenced by the City's receipt of a No Further Action letter (or its equivalent) from DTSC or the RWQCB, as applicable.

(xiii) No Litigation; Challenges. At the time for the Close of Escrow there shall not be any litigation or administrative challenges pending concerning (a) this Agreement, (b) the Ground Lease, (c) the City's approval of this Agreement, the Ground Lease or (d) any Regulatory Approval required for development, construction, use or occupancy of the Project (including environmental review for such Regulatory Approval).

(xiv) No Moratorium. No governmental or quasi-governmental agency or authority, including, without limitation, the City of Oakland, shall have imposed a moratorium on the issuance of building permits or certificates of occupancy and no utility serving the Lease Property shall have issued a moratorium on the provision of any new or increased services.

(xv) Subdivision. The applicable Phase shall have been created as a separate legal parcel. Pursuant to the provisions of the Subdivision Map Act, this condition may not be waived. Developer shall have reasonably approved of the form of the parcel map or other applicable subdivision instrument as reasonably consistent with the Master Plan prior to the date such instrument is to be recorded pursuant to the Schedule of Performance.

(xvi) Cooperation Agreement and PLAs. The City shall have entered into a Cooperation Agreement and Project Labor Agreement related to the Public Improvements as contemplated in Items 2 and 12 of Exhibit 15 prior to the expiration of the applicable time period set forth in the Schedule of Performance. Developer shall have entered into a PLA as contemplated in Item 13 of Attachment 15 prior to the expiration of the applicable time period set forth in the Schedule of Performance.

(xvii) Additional Schedule of Performance Items. The events set forth in items [*tbd catch all*] of the Schedule of Performance shall have occurred prior to the expiration of the applicable time period set forth in the Schedule of Performance.

(xviii) City Representations and Warranties. All representations and warranties of the City contained in this Agreement shall be true and correct in all material respects on the Effective Date and as of the Close of Escrow with the same effect as though such representations and warranties were made at and as of the Close of Escrow.

(xiv) City Covenants. With respect to each Phase, the City shall have performed and satisfied all material agreements and covenants required hereby to be performed by the City Seller prior to or at the applicable Close of Escrow.

Satisfaction of Developer's Conditions. The conditions precedent set forth above are intended solely for the benefit of Developer. Subject to Force Majeure, if any such condition precedent is not satisfied on or before the required completion date specified therefore in this Agreement or in the Schedule of Performance, Developer shall have the right in its sole discretion either to waive in writing the condition precedent in question and proceed with the Close of Escrow and lease of the Lease Property or, in the alternative, to terminate this Agreement by written notice to the City. In addition, the date for the Close of Escrow may be extended, at Developer's option for a reasonable period of time, not to exceed thirty (30) days, specified by Developer.

6.4 Closing Dates.

6.4.1 Notice of Completion. With respect to each Phase, the City shall provide the Developer with a written notice of the anticipated Completion of the Public Improvements ("Notice of Completion of Public Improvements") for such Phase at the following times: (a) least 6 months prior to Completion, (b) ninety (90) days prior to Completion and (c) thirty (30) days prior to Completion.

6.4.2 Closing Date. The Close of Escrow for each Phase shall occur within three (3) months after the date that Developer receives both (a) written notice from the City that all of the applicable conditions precedent to such Closing shall have been satisfied (or, when applicable, waived in writing by the applicable party) and (b) any of the documentation related to the satisfaction of such condition required pursuant to Section 5.3 (the "Closing Date"). Notwithstanding the foregoing to the contrary, Developer shall have the right to extend such Closing Date for up to three (3) periods of one (1) month each if Developer proves, to the City Administrator's reasonable satisfaction, that Developer is using commercially reasonable efforts to Close Escrow.

6.4.3 Outside Closing Date. The Parties shall establish an Outside Closing Date for the Close of Escrow for all Phases of the Lease Property concurrent with the approval of the Schedule of Performance for the Public Improvements pursuant to Section 3.1 (the "Outside Closing Date"). The Parties shall memorialize the agreed upon Outside Closing Date pursuant to an written amendment to this Agreement. In the event that all applicable conditions precedent to

a particular Close of Escrow have not been satisfied (or, when applicable, waived in writing) prior to the Outside Closing Date, this Agreement shall terminate, and thereafter neither party shall have any further obligations under this Agreement except for those which expressly survive termination. Provided that Developer is not in default as of the date of such termination, the Security Deposit shall be returned to the Developer.

6.3 Escrow.

(a) **Opening of Escrow.** The Developer shall open an escrow for the conveyance of the applicable Phase through the Ground Lease ("Escrow") with the local office of such title company as the Developer may select and the City may find reasonably satisfactory ("Title Company") upon receipt of the second Notice of Completion of the Public Improvements.

(b) **Joint Escrow Instructions; Closing Date.** No later than ten (10) days prior to the Close of Escrow, the Parties shall prepare joint escrow instructions as necessary and consistent with this Agreement, and deliver such escrow instructions to the Title Company. The Close of Escrow shall occur after the date all of the conditions precedent described in Section 6.2 and 6.3 (conditions precedent) are either satisfied or waived (as permitted) in writing by the Party that is benefited by such conditions.

6.4 Delivery of the Lease Property.

(a) **The Parties Obligation to Close Escrow.** Provided that the conditions to the City's obligations with respect to delivery of the Lease Property set forth in Section 6.2 and the conditions to the Developer's obligations with respect to Close of Escrow and acceptance of Delivery of the Lease Property as set forth in Section 6.3 have been satisfied or expressly waived (as permitted) in accordance with this Agreement, the City and the Developer shall instruct the Title Company to complete the Close of Escrow, as set forth below. Upon the Close of Escrow, the City shall deliver the Lease Property to the Developer, and the Developer shall accept the delivery of the Lease Property, under the Ground Lease.

(b) **Steps to Close Escrow.** The Close of Escrow for the Lease Property shall be completed as follows:

(i) On or before the Close of Escrow, the City shall execute and acknowledge, as necessary, and deposit into Escrow with the Title Company the following: (1) two counterpart originals of the Ground Lease; (2) one original counterpart Memorandum of Ground Lease in recordable form, (3) a copy of any resolution(s) of the City authorizing the execution and delivery of the Ground Lease and any other evidence of authority as the Developer or the Title Company may reasonably require.

(ii) On or before the Close of Escrow, the Developer shall execute and acknowledge, as necessary, and deposit into escrow with the Title Company the following: (1) two counterpart originals of the Ground Lease and one original counterpart Memorandum of Ground Lease in recordable form; (2) the certificate as to the accuracy of the representations and warranties under this Agreement required by Section 8.1; (3) such resolutions of the Developer and its constituent members authorizing the execution and delivery of the Ground Lease and any

other evidence of authority as the City or the Title Company may reasonably require; (4) the insurance certificates required under the applicable Ground Lease, (5) the Security Deposit required under the applicable Ground Lease, subject to the credit provided in Section 1.4, (6) all costs of escrow to be paid per Section 6.6.

(iii) The City and the Developer shall instruct the Title Company to consummate the Escrow as provided in this Article V. Upon the Close of Escrow, the Memorandum of Ground Lease shall be recorded.

(iv) The Title Company shall issue title policies to the Developer and the City as required under Section 6.8.

(v) The Title Company shall deliver to each Party the counterpart copies of each agreement referred to in this Section 6.6(b) signed by the other Party, and any other documents held for the account of such Party.

(c) **Costs of Escrow.** To be paid per the custom and practice in the County of Alameda, with the exception that the City-imposed transfer tax, if any levied by the city on the possessory interest due to the initial Ground Lease for each applicable Phase, will be waived or paid for by the City.

6.5 Condition of Title to the Lease Property.

(a) **Permitted Title Exceptions.** Except for those "Approved Title Exceptions" shown on Attachment 17 [~~specific non-permitted exceptions to be inserted~~] (collectively, the "Permitted Exceptions"), the City shall deliver to the Developer the Lease Property under and subject to the provisions of the Ground Lease for the term specified in the Ground Lease, free and clear of (i) possession or right of possession by others, (ii) unpaid or delinquent taxes of any kind and (iii) any liens, covenants, assessments, agreements, easements, leases or other encumbrances.

(b) **Title Defect.** If at the time scheduled for Close of Escrow in the Schedule of Performance, any (i) possession by others, (ii) rights of possession other than those of the Developer, or (iii) lien, encumbrance, covenant, assessment, agreement, easement, lease or other matter which is not a Permitted Title Exception encumbers the Lease Property and would materially and adversely affect the development of the Lease Property ("Title Defect"), the City will have up to thirty (30) days after the date scheduled for Close of Escrow to remove all such Title Defects. The Close of Escrow shall be extended to the earlier of seven (7) Business Days after all such Title Defects are removed or the expiration of the thirty (30) day period ("Extended Closing Date"). If the Title Defect can be removed by bonding or the payment of a liquidated sum of money and the City has not so bonded or made such payment within the thirty (30) day period, the Developer shall have the right but not the obligation to cause a bond to be issued. The City shall not intentionally materially alter the condition of title to the Lease Property existing as of the date of this Agreement except for the documents and transactions contemplated hereunder.

(c) **The Developer's Remedies with Respect to Uncured Title Defects.** Except as otherwise provided herein, and subject to Force Majeure, if at the date specified as the

Extended Closing Date, unless the Parties mutually agree to extend such date, a Title Defect still exists, the Developer may by written notice to the City either (i) terminate this Agreement or (ii) accept delivery of the Lease Property under the Ground Lease; provided, however, that if the Title Defect is the result of a breach of City's covenant under the last sentence of Section 6.7(b) hereof, Developer may seek specific performance. If the Developer accepts delivery, the Title Defect will be deemed waived unless it is the result of a breach of City's covenant under the last sentence of Section 6.7(b) hereof. If the Developer does not accept delivery and fails to terminate this Agreement within seven (7) days after the date specified for the Extended Close of Escrow, or any extension provided above, the City may terminate this Agreement upon three (3) Business Days written notice to the Developer. If the Agreement is terminated under this Section, the Developer shall have no further remedies against the City with respect to such termination.

6.6 Title Insurance.

(a) Title Insurance to be Issued at the Close of Escrow. The joint escrow instructions will provide that concurrently with Delivery, the Title Company will issue and deliver to the Developer, an A.L.T.A. extended coverage title insurance policy, with such coinsurance or reinsurance and direct access agreements as the Developer may request reasonably, in an amount designated by the Developer which is satisfactory to the Title Company, insuring that the leasehold estate in the Lease Property are vested in the Developer subject only to the Permitted Title Exceptions, and with such endorsements as may be reasonably requested by the Developer, all at the sole cost and expense of the Developer; and

(b) Surveys. The Developer shall be responsible for securing any and all surveys and engineering studies at its sole cost and expense, as needed for the title insurance required under this Agreement or as otherwise required to consummate the transactions contemplated by this Agreement. The Developer shall provide the City with complete and accurate copies of all such final surveys and engineering studies.

6.7 Taxes and Assessments.

With the exception of the initial transfer tax provided in Section 6.6, Developer understands that this Agreement or the Ground Lease may constitute a possessory interest and that interest may be subject to property taxation. If for any reason imposed, ad valorem taxes and assessments levied, assessed or imposed for any period either before (as a result of the parties' execution of this Agreement) or after Delivery of the Lease Property, including but not limited to, possessory interest taxes, shall be the sole responsibility of the Developer.

6.8 Lease Property As Is Risk of Loss.

(a) Acceptance of Lease Property in "As Is With All Faults" Condition; Risk of Loss. With the exception of the Regulatory Reopeners as set forth in Article V and the Permitted Title Exceptions, the Developer agrees to accept the Lease Property in its "AS-IS WITH ALL FAULTS" condition on the date of Close of Escrow; provided that there is no material change in the physical condition of the Lease Property caused by an event outside the control of the Developer or its agents between the Effective Date of this Agreement and the date

of Close of Escrow that would materially adversely interfere with the development, construction, use or occupancy of the Project for its intended uses, in which event the Developer shall be entitled to terminate this Agreement, by written notice to City; and provided further that the City will not under any circumstances be liable to the Developer for any monetary damages which may result should any portion of the Lease Property be damaged or destroyed partially, substantially or totally at any time before delivery to the Developer. The Developer acknowledges that it has been afforded a full opportunity to inspect all of the public records of the City and the Lease Property relating to the Developer's proposed use of the Lease Property. The City makes no representations or warranties as to the accuracy or completeness of any matters in such records. The Developer shall perform a diligent and thorough inspection and investigation of the Lease Property, either independently or through its experts, including, but not limited to the quality and nature, adequacy and physical condition of the Lease Property, geotechnical and environmental condition of the Lease Property including, without limitation, presence of lead, asbestos, other Hazardous Materials, any groundwater contamination, soils, the suitability of the Private Improvements for the Project, zoning, land use regulations, historic preservation laws, and other Laws governing the use of or construction on the Lease Property, and all other matters of material significance affecting the Lease Property and its development, use, operation, and enjoyment under this Agreement or the Ground Lease.

(b) **DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.** EXCEPT FOR THE REGULATORY REOPENERS AS SET FORTH IN ARTICLE V AND THE PERMITTED TITLE EXCEPTIONS, THE DEVELOPER AGREES THAT THE LEASE PROPERTY IS BEING DELIVERED BY THE CITY AND ACCEPTED BY THE DEVELOPER IN ITS "AS-IS WITH ALL FAULTS" CONDITION. THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY, NOR ANY EMPLOYEE, OFFICER, COMMISSIONER, REPRESENTATIVE, OR OTHER AGENT OF THE CITY HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE LEASE PROPERTY, THE SUITABILITY OR FITNESS OF THE LEASE PROPERTY OR APPURTENANCES TO THE LEASE PROPERTY FOR THE DEVELOPMENT, USE, OR OPERATION OF THE PROJECT, ANY COMPLIANCE WITH LAWS OR APPLICABLE LAND USE OR ZONING REGULATIONS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE LEASE PROPERTY, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE LEASE PROPERTY OR THE PROJECT.

Developer Initials: _____

6.9 Release Concerning the Physical Condition of the Lease Property.

Except with respect to Regulatory Reopeners as provided in Article V, as part of its agreement to accept the Lease Property in its "As-Is With All Faults" condition, the

Developer on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge the City, and its employees, officers, commissioners, representatives, or other agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Developer may now have or that may arise of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Lease Property or Project, including, without limitation, any Hazardous Materials in, on, under, the Project (including, but not limited to, soils and groundwater conditions), and (ii) any Laws applicable to such conditions (including, without limitation, Hazardous Materials Laws, but excluding any claims, demands, or causes of action Developer may now or hereafter have against third party claims related to the condition of the Lease Property or any Laws applicable thereto that arose during or relate to the period prior to the Close of Escrow.

In connection with the foregoing release, the Developer acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Developer Initials: _____

By initialing above, the Developer expressly agrees that the release contemplated by this Section includes unknown claims. Accordingly, the Developer hereby waives the benefits of Civil Code § 1542, and benefits under any other statute or common-law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Agreement, the foregoing release shall survive any termination of this Agreement.

ARTICLE VII

ASSIGNMENT AND TRANSFER

7.1 Developer as Party is Material Consideration. Developer and City acknowledge and agree that identity of Developer, and of any Transferee of any right or interest in this Agreement, and the grant of the rights under this Agreement involves the exercise of broad proprietary discretion by City in promoting the development, leasing, occupancy and operation of the Property and other purposes of this Agreement. Developer agrees that its particular business

capabilities, financial capacity, reputation, and business philosophy were a material inducement to City for entering into this Agreement.

7.2 Consent of City. Except as otherwise expressly permitted in this Article VII, Developer, its successors and permitted assigns shall not (i) suffer or permit any Significant Change to occur, or (ii) assign, sell, lien, encumber, or otherwise transfer all or any part of Developer's interest in and to this Agreement, in whole or part, either voluntarily or by operation of law (either or both (i) and (ii) above, a "Transfer"), without the prior written consent of City as set forth herein and the satisfaction, or written waiver thereof by City in its sole and absolute discretion, of all conditions precedent set forth in this Article VII.

7.2 Permitted Transfers. The Parties acknowledge and agree that this Agreement authorizes the following as "Permitted Transfers": (i) CCIG may be the Tenant under the Ground Lease for the West Gateway, (b) Prologis may be the Tenant under the Ground Leases for the East Gateway and the Central Gateway.

7.3 Conditions Precedent to Transfer. Notwithstanding any provision herein to the contrary, any Transfer is subject to the satisfaction in full of all of the following conditions precedent and covenants of Developer, or the written waiver thereof by City in its sole and absolute discretion, each of which is hereby agreed to be reasonable in light of the material nature of the identity of the Developer hereunder:

7.3.1 Developer provides City with at least ninety (90) days prior written notice of the proposed Transfer;

7.3.2 City determines, in its reasonable judgment, that the proposed transferee (A) has the financial capacity implement the Project as contemplated hereunder and otherwise to perform all of Developer's obligations under this Agreement that are applicable to the interest subject of the Transfer; (B) has a good reputation; and (C) has sufficient experience in the operation, use and maintenance of projects of a type and size comparable to the Project.

7.3.3 Any proposed transferee, by instrument in writing in a form approved by the City for itself and its successors and assigns, and expressly for the benefit of City, must expressly assume all of the obligations of "Developer" under this Agreement and any other agreements or documents entered into by and between City and Developer relating to the Project, or the portion of the Project subject to the proposed Transfer.

7.3.6 There shall be no uncured Event of Default or Unmatured Event of Default on the part of Developer under this Agreement.

7.3.7 The proposed transferee has demonstrated to City's reasonable satisfaction that the proposed transferee is subject to the jurisdiction of the courts of the State of California.

7.3.8 Developer deposits sufficient funds to reimburse City for its reasonable legal expenses to review the proposed Transfer.

7.3.9 Developer has delivered to City such other information and documents relating to the proposed transferee's business, experience and finances as City may reasonably request.

7.4 Delivery of Executed Assignment. No assignment of any interest in this Agreement made with City's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to City, within thirty (30) days after Developer entered into such assignment, an executed counterpart of such assignment containing an agreement executed by Developer and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on the assignor's part to be performed under this Agreement. The form of such instrument of assignment shall be subject to City Attorney and City Administrator's approval, which approval shall not be unreasonably withheld, delayed or conditioned.

7.5 No Release of Developer's Liability or Waiver by Virtue of Consent. Unless otherwise expressly agreed to the City in the form of instrument of assignment, the consent by City to any Transfer and any Transfer hereunder shall not, nor shall such consent or Transfer in any way be construed to, (i) relieve or release Developer from any liability or obligation arising at any time out of or with regard to the performance of any covenants or obligations to be performed by Developer at any time hereunder, or (ii) relieve any transferee of Developer from its obligation to obtain the express consent in writing of City to any further Transfer.

7.6 Effect of Prohibited Transfer. Any Transfer made in violation of the provisions of this Article VII shall be null and void ab initio and of no force and effect.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

8.1 Developer Representations and Warranties. The Developer represents and warrants as follows, as of the Effective Date and as of the Close of Escrow of the Lease Property:

(a) **Valid Existence; Good Standing.** The Developer is a limited partnership duly organized and validly existing under the laws of the State of California. The Developer has all requisite power and authority to own its property and conduct its business as presently conducted. The Developer has made all tilings and is in good standing in the State of California.

(b) **Authority.** The Developer has all requisite power and authority to execute and deliver this Agreement and the agreements contemplated by this Agreement and to carry out and perform all of the terms and covenants of this Agreement and the agreements contemplated by this Agreement.

(c) **No Limitation on Ability to Perform.** Neither the Developer's organizational documents, nor the organizational documents of any of its members, nor any other agreement or Law in any way prohibit, limits or otherwise affects the right or power of the Developer to enter into and perform all of the terms and covenants of this Agreement. Neither the Developer nor any of its members are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or

otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by the Developer of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or threatened suits or proceedings or undischarged judgments affecting the Developer or any of its members before any court, governmental City, or arbitrator which might materially adversely affect the enforceability of this Agreement or the business, operations, assets or condition of the Developer.

(d) **Valid Execution.** The Developer's execution and delivery of this Agreement and the agreements contemplated hereby have been duly and validly authorized by all necessary action and in full compliance with all applicable laws. This Agreement will be a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to the application of bankruptcy and insolvency laws, and for the possible unavailability of specific performance which is dependent on the exercise of judicial discretion. The Developer has provided to the City a written resolution of the Developer authorizing the execution of this Agreement and the agreements contemplated by this Agreement.

(e) **Defaults.** The execution, delivery and performance of this Agreement (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which the Developer or any member is a party or by which the Developer's assets or any member's assets may be bound or affected, or (B) any law, statute, ordinance, regulation, or (C) the Articles of Organization or the Operating Agreement of the Developer, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of the Developer or its members.

(f) **Meeting Financial Obligations.** The Developer is meeting its current liabilities as they mature; no federal or state tax liens have been tiled against it; and the Developer is not in default or claimed default under any agreement for borrowed money.

(g) **Ongoing Obligation.** The Developer shall notify the City within ten (10) days of a material change in any representation or warranty under this Section 8.1.

8.2 City Representations and Warranties.

The City hereby represents and warrants as follows, as of the Effective Date and as of the date of each Close of Escrow for the Lease Property:

(a) **Authority:** Except for the approvals disclosed in Section 2.3.1, above, the City has the necessary authority, power and capacity to own the Lease Property and to enter into this Agreement and the documents and transactions contemplated herein and to carry out the obligations of this Agreement and the documents and transactions contemplated herein. The City has good right, full power and absolute authority to ground lease the Lease Property to the Developer in the manner contemplated herein. The City has taken all necessary or desirable actions, steps and company and other proceedings to approve or authorize, validly and

effectively, the entering into, and the execution, delivery and performance of, this Agreement and the ground lease of the Lease Property by the City to the Developer. This Agreement is a legal, valid and binding obligation of the City, enforceable against it in accordance with its terms subject to: (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (b) the fact that equitable remedies, including the remedies of specific performance and injunction, may only be granted in the discretion of a court.

(b) Leases and Contracts: As of the Close of Escrow only, there are no sale, lease, management, maintenance, service, supply, insurance or other contracts (or any amendments thereto) that affect any portion of the Lease Property or its operation and that will be binding upon the Developer or the Lease Property after the Close of Escrow.

(c) Litigation; Condemnation: Except for those matters first arising after the Effective Date and disclosed in writing by the City to the Developer promptly upon obtaining knowledge of same, the City has received no written notice regarding any, and to the best of the City's knowledge there are no, actions, proceedings, litigation or governmental investigations or condemnation actions either pending or threatened against the Lease Property.

(d) Violation of Laws. Except for those matters first arising after the Effective Date and disclosed in writing by the City to the Developer promptly upon obtaining knowledge of same, and except as set forth in that certain letter to the City from the state controller dated April 20, 2012, which ordered the City to reverse any redevelopment asset transfer that occurred after January 2, 2011 per AB 26, the City has received no written notice from any government authority regarding any, and to the best of the City's knowledge there are no, violations with respect to any law, statute, ordinance, rule, regulation, or administrative or judicial order or holding (each, a "Law"), whether or not appearing in any public records, with respect to the Lease Property, which violations remain uncured as of the date hereof

(e) No Attachments. Except for those matters first arising after the Effective Date and disclosed in writing by the City to the Developer promptly upon obtaining knowledge of same, there are no attachments, executions or assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any other debtor-relief laws pending or threatened against the City with respect to the Lease Property.

(f) No Bulk Sale. The transaction set forth in this Agreement does not constitute a "bulk sale" as set forth in California Commercial Code Section 6102.

8.3 Remedy for Breach of Representation or Warranty. In the event that, prior to Close of Escrow, the Developer has current actual knowledge that any one of the City's representations and warranties is materially inaccurate, the Developer (as its sole and exclusive remedy for same) shall have the right to terminate this Agreement by written notice to the City of such election prior to the Closing. If, notwithstanding the Developer's current actual knowledge of a materially inaccurate representation or warranty, the Developer closes escrow on the acquisition of the Lease Property, the Developer shall be deemed to have waived any claim arising out of such material inaccuracy as to such Ground Lease. If the Developer elects to

terminate this Agreement pursuant to this Section, the Security Deposit shall be returned to the Developer, and neither party shall have any further liability or obligations hereunder.

ARTICLE IX

DEFAULTS, REMEDIES AND TERMINATION

9.1 **Remedies In General.** City and Developer agree that in no event shall any Party be entitled to any consequential, punitive or special damages.

9.2 **Cure Period.** Subject to Force Majeure and extensions of time by mutual consent in writing of the Parties, breach of, failure, or delay by the City or Developer to perform any material term or condition of this Agreement shall constitute a Default ("Event of Default"). In the event of any alleged Default of any term, condition, or obligation of this Agreement, the party alleging such Default shall give the defaulting party notice in writing specifying the nature of the alleged Default and the manner in which such Default may be satisfactorily cured ("Notice of Default"). The defaulting party (City or Developer) shall cure the Default within thirty (30) days following receipt of the Notice of Breach, provided, however, if the nature of the alleged Default is such that it cannot reasonably be cured within such thirty (30) day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no Default shall exist and the noticing party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting party having alleged Default may exercise any of the remedies available under Section 9.4.1 and 9.4.2, as applicable.

9.3 **Liquidated Damages in the Event of Developer Default.** DEVELOPER ACKNOWLEDGES AND AGREES THAT THE DEVELOPER CLOSING ESCROW UNDER THIS AGREEMENT IS A MATERIAL CONSIDERATION FOR CITY'S AGREEMENT TO ENTER INTO THIS AGREEMENT. SUBJECT TO NOTICE AND EXPIRATION OF APPLICABLE CURE PERIODS AND ANY PERMITTED EXTENSIONS OF TIME AS PROVIDED IN SECTION 9.2, THE PARTIES AGREE THAT IF DEVELOPER FAILS TO CLOSE ESCROW AS REQUIRED UNDER ARTICLE VI, CITY WILL SUFFER DAMAGES AND THAT IT IS IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES. THEREFORE, THE PARTIES AGREE THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF AGREEMENT, IN THE EVENT DEVELOPER FAILS TO CLOSE ESCROW AS REQUIRED UNDER ARTICLE VI, DEVELOPER SHALL PAY TO CITY, AS LIQUIDATED DAMAGES, WITHIN THIRTY (30) DAYS FOLLOWING CITY'S WRITTEN DEMAND THEREFOR, CASH OR OTHER IMMEDIATELY AVAILABLE FUNDS IN THE AMOUNT OF FIVE MILLION DOLLARS, INCLUDING THE AMOUNT OF THE SECURITY DEPOSIT PURSUANT TO SECTION 1.4 (\$5,000,000) ("LIQUIDATED DAMAGES"). THE AMOUNT OF THE LIQUIDATED DAMAGES SHALL BE REDUCED ON A PRO RATA BASIS BASED ON THE ACREAGE OF THE PHASE AT EACH CLOSE OF ESCROW. THE PARTIES AGREE THAT THE FOREGOING PAYMENT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT

CITY WOULD INCUR AND DEVELOPER SHALL BE OBLIGATED TO PAY TO AGENCY THE LIQUIDATED DAMAGES. THE PAYMENT OF LIQUIDATED DAMAGES PROVIDED FOR HEREIN IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTIONS 3275 OR 3369 OF THE CALIFORNIA CIVIL CODE, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO CITY PURSUANT TO SECTION 1671 OF THE CALIFORNIA CIVIL CODE. BY PLACING ITS INITIALS BELOW, DEVELOPER SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE, THE REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES AGREED UPON, AND THE FACT THAT DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIAL:

CITY

DEVELOPER

9.4 Defaults and Remedies.

9.4.1 Developer Defaults; City Remedies. Subject to the provisions of Section 9.2, each of the following shall be an Event of Default by the Developer, and upon the occurrence of each of the following Events of Default, City shall have the remedy or remedies set forth opposite the description of each such Event of Default:

[note to reviewers: each event of default identified in Attachment 8 to be inserted or referenced, along with the corresponding remedy]

9.4.2 City Defaults; Developer Remedies. Subject to the provisions of Section 9.2, each of the following shall be an Event of Default by the City, and upon the occurrence of each of the following Events of Default, Developer shall have the remedy or remedies set forth opposite the description of each such Event of Default:

[note to reviewers: each event of default identified in Attachment 8 to be inserted or referenced, along with the corresponding remedy]

9.5 Effect of Termination. If a Party terminates this Agreement pursuant to a remedy stated in Section 9.4.1 or 9.4.2 above, such Party shall deliver written notice to the other Party, and this Agreement will terminate upon the effective date of termination stated in such written notice. Upon any such termination, neither party shall have any further rights, obligations or liabilities hereunder.

9.6 Action for Specific Performance. If a Party has a right to bring an action for specific performance pursuant to a remedy stated in Section 9.4.1 or 9.4.2 above, such Party shall be entitled to an award of its attorney fees and costs in pursuing such action if it is the prevailing party in such action.

9.7. Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies

shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party, except as otherwise expressly provided in Section 9.4.1 or 9.4.2.

9.8 Inaction Not a Waiver of Default. Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Event of Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

9.9 Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Administrator, or in such other manner as may be provided by law. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer at the address provided for notices or such other addresses and shall have been given to the City by the Developer under Section 10.2, or in such other manner as may be provided by law.

9.10 Limitation of Cross Defaults. *[[CCIG failure to close as the WGL is not a cross default as to the EGL or CGL and vis versa, for purposes of any City remedy under this Article, including liquidated damages' but Prologis failure as to EGL does cross default to CGL and vis versa]*

ARTICLE X

GENERAL PROVISIONS

10.1 Force Majeure – Extension of Time of Performance.

(a) **Effect of Force Majeure.** Subject to Sections 10.1(b), (c), and (d), below, neither the City, the Developer, nor any successor-in-interest to either (the "Delayed Party", as applicable) will be considered in breach or in default of any obligation or satisfaction of a condition to an obligation of another Party which is provided for in this Agreement, including, without limitation, the Schedule of Performance, but excluding any provision for the payment of money, if an event of Force Majeure has occurred with respect to such obligation or condition. Subject to the provisions of Sections 10.1(b), (c), and (d) below, the time fixed for performance of any obligation under this Agreement shall be extended for the duration of the event of Force Majeure.

(b) **Definition of Force Majeure.** "Force Majeure" means events that cause enforced delays in the Delayed Party's performance of its obligations under this Agreement, or in the satisfaction of a condition to another Party's performance under this Agreement (other than the obligations or conditions relating to the payment of money), due primarily to causes beyond the Delayed Party's control, including, but not restricted to acts of God or of a public enemy; fires, floods, tidal waves, epidemics, quarantine restrictions, freight embargoes, earthquakes, unusually severe weather, acts of local civil disorder, delays of contractors or subcontractors due to any of these causes; substantial interruption of work because of other

construction by third parties in the immediate vicinity of the Lease Property; archeological finds on the Lease Property; discovery of the presence or habitat of a threatened, candidate or endangered species protected by the Federal Endangered Species Act or the California Endangered Species Act; strikes, and substantial interruption of work because of labor disputes; inability to obtain materials or reasonably acceptable substitute materials (provided that the Developer has ordered such materials on a timely basis and the acts or omissions of the Developer are not otherwise at fault for such inability to obtain materials); unlawful detainer actions or other administrative appeals, litigation or arbitration relating to the relocation of tenants or elimination of the rights or interests of third parties, if any, from the Lease Property; delay in the issuance of any City or other governmental permits or approvals beyond customary processing times for a project of similar magnitude and complexity, provided that: the Developer timely sought such permits or approvals and diligently responds to any requests for further information or submittals; or any Litigation Force Majeure. In the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Developer or the City will be extended for the period of the delay; provided, however, within thirty (30) days after the beginning of any such delay, the Delayed Party shall have first notified the other Parties in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the enforced delay. Notwithstanding anything to the contrary in this Section 10.1(b), the condition of the market, lack of credit or financing (unless such lack is itself a result of some other event of Force Majeure) shall not be considered to be a matter beyond the Developer's control and therefore no event caused by a lack of such financing or credit in and of itself shall be considered to be an event of Force Majeure for purposes of this Agreement.

(c) **Definition of Litigation Force Majeure.** "Litigation Force Majeure" means any action or proceeding before any court, tribunal, arbitration or other judicial, adjudicative or legislation-making body, including any administrative appeal, brought by a third party, who is not an Affiliate or related to Developer, which (i) seeks to challenge the validity of any action taken by the City in connection with the Project, including the City's approval, execution and delivery of this Agreement, the Ground Lease, and its performance thereunder, including any challenge under the California Environmental Quality Act, the performance of any action required or permitted to be performed by the City hereunder, or any findings upon which any of the foregoing are predicated, or (ii) seeks to challenge the validity of any other Regulatory Approval.

(d) **Limitation.** Provided the Parties are proceeding diligently and prosecuting all matters within their respective control with diligence, Force Majeure, other than Litigation Force Majeure, for which there shall be no time limit, will be limited, in the aggregate, to a total of thirty six months, and in no event shall an obligation to occur after the Outside Date. At any time thereafter, the other Party may terminate the Agreement by giving thirty (30) days' notice to the Delayed Party.

10.2 Notices and Approvals.

(a) **Manner of Delivery.** Except as otherwise expressly provided for in this Agreement, all notices, demands, approvals, consents and other formal communications between the City and the Developer required or permitted under this Agreement shall be in

writing and shall be deemed given and effective (i) upon the date of receipt if given by personal delivery on a business day before 5:00 p.m. local time (or the next business day if delivered personally after 5:00 p.m. or on a day that is not a business day), or (ii) three (3) Business Days after deposit with the U.S. Postal Service for delivery by United States Registered or Certified Mail, First Class postage pre-paid, to the City or the Developer at their respective addresses for notice designated herein. For the Parties' convenience, copies of the notices may be given by email to the addresses set forth below for Party; however, no Party may give official or binding notice by email.

(b) **Requests for Approval.** In order for a request for any approval or other determination by the City or the City required under the terms of this Agreement to be effective, it shall be clearly marked "Request for Approval" and state (or be accompanied by a cover letter stating) substantially the following:

(i) the Section of this Agreement under which the request is made and the action or response required;

(ii) if applicable under the terms of this Agreement, the period of time as stated in this Agreement within which the recipient of the notice shall respond; and

(iii) if applicable under the terms of this Agreement, that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the request for approval which is the subject matter of the notice.

In the event that a request for approval states a period of time for approval which is less than the time period provided for in this Agreement for such approval, the time period stated in this Agreement shall be the controlling time period.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section.

(c) **Addresses for Notices.** All notices shall be properly addressed and delivered to the Parties at the addresses set forth below or at such other addresses as either Party may designate by written notice given the manner provided in herein.

To the City: City of Oakland
1 Frank H. Ogawa Plaza
Oakland, CA 94612
Attn: City Administrator
Facsimile: 510.238.2223

And with a copy to: Office of the City Attorney
1 Frank H. Ogawa Plaza
Oakland, CA 94612
Attn: City Attorney
Facsimile: 510.238.6500

To the Developer: Prologis CCIG Oakland Global, LLC
Attention: Mr. Mark Hansen
Pier 1, Bay 1
San Francisco, CA 94111
Facsimile: 415.____.____

With a copy to:

Prologis CCIG Oakland Global, LLC
Attention: Mr. Phil Tagami
c/o California Capital & Investments, Inc.
The Rotunda Building
300 Frank Ogawa Plaza, Suite 340
Oakland, CA 94612
Facsimile: 510.834.5380

With a copy to: Jeffrey A. Trant, Esq.
Law Office of Jeffrey A. Trant
60815 Falcon Pointe Lane
Bend, OR 97702
Facsimile: 541.639.8201

Marc Stice, Esq.
Law Office of Marc Stice
2201 Broadway, Suite 604
Oakland, CA 94612
Facsimile: 510.832.2638

10.3 Conflict of Interest.

No member, director, official or employee of the City may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interest of any corporation, partnership or association in which she or he is interested directly or indirectly.

10.4 Covenant of Non-Discrimination.

The Developer expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that as to the Lease Property and any Private Improvements constructed or to be constructed thereon, or any part thereof, or alterations or changes thereto, and in addition to any other term, covenant and condition of this Agreement, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, sexual orientation, gender, disability, marital status, domestic partner status, Acquired Immune Deficiency Syndrome or HFV status, religion, age, national origin or ancestry by the Developer or any occupant or user of the Lease Property in the sale,

lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Lease Property, or any part thereof, and the Developer itself (and any Person claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Lease Property or any part thereof nor shall Developer or any occupant or user of the Lease Property or any part thereof or any transferee, successor, assign or holder of any interest in the Lease Property or any part thereof or any person or entity claiming under or through such transferee, successor, assign or holder, establish or permit any such practice or practices of discrimination or segregation, including without limitation, with respect to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or others of the Lease Property or any part thereof. The Developer shall ensure that language substantially similar to the above is incorporated into all leases, rental agreements and grant deeds for the Project.

Any transferee, successor, assign, or holder of any interest in this Agreement or the Lease Property, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed or mortgage or otherwise, and whether or not any written instrument or oral agreement contains the foregoing prohibitions against discrimination, will be bound hereby and shall not violate in whole or in part, directly or indirectly, these nondiscrimination requirements.

10.5 Time of Performance.

(a) **Expiration.** All performance dates (including cure dates) expire at 5:00 p.m., California time, on the performance or cure date.

(b) **Weekends and Holidays.** A performance date which falls on a Saturday, Sunday or federal holiday is deemed extended to the next working day.

(c) **Days for Performance.** All periods for performance specified in this Agreement in terms of days shall be calendar days and not Business Days, unless otherwise expressly provided in this Agreement.

(d) **Time of the Essence.** Time is of the essence with respect to each required completion date in the Schedule of Performance, subject to the provisions of Section 10.1 relating to Force Majeure.

(e) **Interpretation of Agreement.**

(i) **Exhibits.** Whenever an Attachment is referenced, it means an Attachment to this Agreement unless otherwise specifically identified. All such Attachments are incorporated in this Agreement by reference.

(ii) **Captions.** Whenever a Section, Article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement and in the table of contents have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provisions of this Agreement.

(iii) **Words of Inclusion.** The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

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

(v) **Costs and Expenses.** The Party on which any obligations imposed in this Agreement shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(vi) **Agreement References.** Wherever references made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered Article, Section or Paragraph of this Agreement or any subdivision of this Agreement.

(vii) **City Approvals.** Unless this Agreement otherwise expressly provides, all approvals, consents or determinations to be made by or on behalf of the City under this Agreement shall be made by the City Administrator, and the Developer shall be entitled to rely conclusively upon the authority of the City Administrator to bind the City to such approvals, consents and determinations as are made by the City Administrator and delivered to the Developer in writing.

10.6 Successors and Assigns.

This Agreement is binding upon and will inure to the benefit of the successors and assigns of the City and the Developer, subject to the limitations on assignments set forth in Article VI. Where the term "Developer" or "City" is used in this Agreement, it means and includes each Party's respective successors and assigns.

10.7 No Third Party Beneficiaries.

This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have or acquire any right or action based upon any provisions of this Agreement.

10.8 Real Estate Commissions.

The Developer and the City each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the party to whom such claim is made agrees to indemnify the other Party from any Losses arising out of such a claim.

10.9 Counterparts.

This Agreement may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one in the same instrument.

10.10 Entire Agreement.

This Agreement (including the Attachments) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous agreements between the Parties, including but not limited to, the Exclusive Negotiating Agreements as amended, with respect to all or any part of the terms and conditions mentioned or incidental to this Agreement. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

10.11 Amendment.

Neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instrument executed by the Parties. The City Administrator shall be authorized to determine, on a case by case basis at his or her discretion, if a requested amendment is minor in nature, and may be authorized by the City Administrator or is major in nature and must be authorized by the City Council.

10.12 Applicable Law; Jurisdiction; Venue.

The applicable laws of the State of California shall govern the validity, construction and the effect of this Agreement. The City and the Developer both consent to exclusive personal and subject matter jurisdiction in the Superior Court of the State of California.

10.13 Further Assurances.

The Parties agree to execute and acknowledge such other and further documents as the Parties may deem necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Agreement. The City represents and warrants to the Developer that the City Administrator is authorized to execute on behalf of the City any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local entities to other Persons that are necessary or proper to achieve the purposes and objectives of this Agreement and do not materially increase the obligations of the City under this Agreement, if the City Administrator, in consultation with the Oakland City Attorney, determines that the document is necessary or proper and in the City's best interest. The City Administrator's signature on any such document, and approval as to form and legality by the Oakland City Attorney, shall conclusively evidence such a determination by him or her.

10.14 Attorneys' Fees.

Each Party shall bear its own costs in the preparation and execution of this Agreement. If any Party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable Attorneys' Fees and Costs incurred in any action or arbitration commenced pursuant to this Agreement. Any such Attorneys' Fees and Costs incurred by any Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severed from the other provisions of this Agreement and to survive and not be merged into such judgment.

10.15 Relationship of Parties.

The subject of this Agreement is a private development with no Party acting as the agent of the other Party in any respect and none of the provisions of this Agreement shall be deemed to render the City a partner in the Developer's business, or joint venture or member in any joint enterprise with the Developer. The Parties acknowledge that a CCIG, Inc., an Affiliate of Developer, will act as the City's agent under the terms of the Property Management Agreement; however, such relationship of Developer's Affiliate shall in no way create an agency relationship between the City and the Developer.

10.16 Severability.

If any provision of this Agreement where its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

10.17 Inspection of Books and Records.

The City and its agents have the right within three (3) Business Days after prior written notice to the Developer at all reasonable times and from time to time to inspect the books and records of the Developer in a location in Oakland during regular business hours pertaining to the Developer's compliance with its obligations under this Agreement. Nothing in this Section 10.17 shall affect the City's or the City's rights under other provisions of this Agreement or the Ground Lease.

10.18 Uses.

The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to all or any portion of the Lease Property, that the Developer, such

successors and assignees shall devote the Lease Property to the uses specified in the Scope of Development and the Ground Lease. In the event of any conflict, prior to the Close of Escrow, the Scope of Development shall control the uses permitted on the Lease Property and after Close of Escrow, the Ground Lease shall control the uses permitted on the Lease Property.

10.19 Estoppel Certificate by City.

City shall execute, acknowledge and deliver to Developer (or at Developer's request, to any prospective mortgagee of Developer's leasehold interest under the Ground Lease, or other prospective transferee of Developer's interest under this Agreement), within twenty (20) Business Days after a request, a certificate stating to the best of the City's knowledge (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect as modified, and stating the modifications or if this Agreement is not in full force and effect, so stating), (b) whether or not, to the knowledge of City, there are then existing any defaults under this Agreement (and if so, specifying the same) and (c) any other matter actually known to the City, directly related to this Agreement and reasonably requested by the requesting Party. In addition, if requested, City shall attach to such certificate a copy of this Agreement and any amendments thereto, and include in such certificate a statement by City that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Agreement, including all modifications thereto. Any such certificate may be relied upon by Developer, any successor, and any prospective mortgagee or transferee of Developer's interest in this Agreement.

ARTICLE XI

DEFINITIONS

For purposes of this Agreement initially capitalized terms shall have the meanings ascribed to them in the Sections where they are used or in this Article. To the extent there is any inconsistency, the meaning first ascribed to them in the Sections where the terms are used shall control.

[Note to reviewers: definitions glossary to be reviewed and completed in final execution form]

AB 26 means the provisions of California Assembly Bill 26 adopted into law June 28, 2011, and any successor statute thereto, as may be amended from time to time.

Affiliate means any Person directly or indirectly Controlling, Controlled by or under Common Control with another Person.

Agents means, when used with reference to any Party to this Agreement or any other Person, the members, officers, directors, commissioners, employees, agents and contractors of such Party or other Person, and their respective heirs, legal representatives, successors and assigns.

Agency means the former Redevelopment Agency of the City of Oakland.

Agency-City PSA as defined in Recital D.

Agreement means this Lease Disposition and Development Agreement, as it may be amended in accordance with its terms.

Amended and Restated CSA as defined in Section ____.

Amended Baseline Agreement as defined in Section ____.

AMS Site means the approximately 15-acre Ancillary Maritime Services Site as depicted on the Site Map attached as Attachment I.

Ancillary Maritime Uses as defined on the Scope of Private Improvements attached as Attachment 7.

Army means the United States of America, acting through the Secretary of the Army, Department of the Army, and any successor department, City or instrumentality.

Army EDC Deed means that certain quitclaim deed from the Army for the EDC Property as described in Section X.

Army Retained Conditions has the meaning set forth in the ESCA, Section 3.4.

Attorneys' Fees and Costs means reasonable attorneys' fees (including fees from attorneys in the Office of the City Attorney of Oakland), costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Award means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

Base Reuse Plan as defined in Recital J, as may be amended from time to time.

Billboard Agreement means that certain Billboard Franchise and Lease Agreement between City and Developer, regarding the installation and use of advertising billboards on or adjacent to the Premises, in substantially in the form provided in Attachment ____.

BCDC means the Bay Area Development and Conservation Commission.

Books and Records as defined in the Ground Lease.

Bona Fide Institutional Lender is defined in the Ground Lease.

Business Day means any day that is neither a Saturday, a Sunday, nor a day observed as a holiday by either the City or the State of California or the United States government.

Caltrans means the California Department of Transportation.

CCIG means CCIG Oakland Global, LLC.

Central Gateway means the 42.6± acres of real property, comprising a portion of the former Oakland Army Base and located between the East Gateway and West Gateway, commonly referred to as the West Gateway and depicted on Attachment 1.

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.).

CEQA means the California Environmental Quality Act.

City means the City of the City of Oakland, a municipal corporation.

City Administrator means the City Administrator of City or his or her designee.

City/Port ARMOA means the Amended and Restated Memorandum of Agreement for Oakland Army Base dated February 27, 2008, among the City, the City, and the Port, as the same may be amended from time to time.

City/Port Insurance Policy means the Remediation Cost Cap Environmental Site Liability Insurance Policy covering the OAB EDC Property issued by Chubb Custom Insurance Company, Policy No. 3730-58-78, which covers the period from August 7, 2003 to August 7, 2013, as the same may be amended from time to time.

Close of Escrow or Closing Date means the date of delivery through Escrow by the City of a leasehold estate in the Lease Property under the Ground Lease.

Commencement of Construction shall mean commencement of excavation [refine definition depending on how it is used].

Community Benefits or Community Benefits Program means those Project benefits to the community required as set forth in Article IV and Attachment 15.

Completion or Completed is defined in Section 6.1(c).

Consent Agreement means that certain agreement between the City and DTSC regarding the EDC Property dated September 27, 2002.

Control, Controlled by, Controlling, or Common Control is defined in the Ground Lease.

Cost Sharing Agreement as defined in Recital O.

Covenant means the land use covenant restricting the use of the EDC Property, as described in Section X ____.

CTC means the California Transportation Commission, a California agency.

Delayed Party is defined in Section 10.1.

Design Build Contract as defined in _____.

Developer means Prologis CCIG Oakland Global, LLC, or any successor permitted under this Agreement. The members of Developer are Prologis and CCIG.

Developer Affiliate means an entity that controls, is controlled by, or is under common control with the Developer.

Development Agreement means a development agreement with respect to all or any portion of the Project Site as may be finally approved by City at any time pursuant to California Government Code sections 65864 *et seq.* and applicable provisions of City's Municipal Code or ordinances pertaining to development agreements and executed by City and Developer pursuant to Section 1.1.

DTSC means the State of California, Environmental Protection Agency, Department of Toxic Substances Control, and any successor governmental authority of DTSC.

East Gateway means the 29.6± acres of real property, comprising a portion of the former Oakland Army Base and located adjacent to the East Gateway, commonly referred to as the West Gateway and depicted on Attachment 1.

EBMUD means East Bay Municipal Services District.

EDC means Economic Development Conveyance.

EDC Property means the former Oakland Army Base transferred by the Army in 2002 as defined in Recital A.

EDC MOA means that certain EDC Memorandum of Understanding dated September 27, 2002 regarding the conveyance of the EDC Property from the Army.

Effective Date as defined in Section 1.1.

EIR as defined in Recital W.

EIR Addendum as defined in Recital W.

ENA means Exclusive Negotiating Agreement, and all amendments as defined in Recital F.

Environmental Insurance Policy means that certain environmental remediation insurance policy for the EDC Property described in Section 1.1.

Environmental Remediation Requirements means the agreements, permits, and orders with the Regulatory Agencies regarding Hazardous Materials on the EDC Property and Hazardous Material Laws

ESCA means Environmental Services Cooperative Agreement regarding the EDC Property as described in Section ____.

Escrow as defined in Section 4.4(a).

Event of Default as defined in Article X.

Floor Area as defined in the Ground Lease.

Force Majeure means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, fires, floods, earthquakes, tidal waves, terrorist acts, acts of local civil disorder, strikes, freight embargoes, delays of subcontractors and unusually severe weather. Force Majeure does not include failure to obtain financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to complete performance of the hindered act.

FOSET means Finding of Suitability for Early Transfer as described in Section ____.

Governmental Approvals as defined in Section 5.19.

Ground Lease as provided in Attachment 4.

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under CERCLA or under Section 25281 or Section 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of a structure, or are naturally occurring substances on, in or about the Project Site and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

Hazardous Material Claims means any and all enforcement, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Material Laws, together with any and all Losses made or threatened by any third party against City or the LDDA Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Remediation costs, fines, natural

resource damages, damages for decrease in value of the LDDA Property or any structures thereon, the loss or restriction of the use of the LDDA Property, and attorneys' fees and consultants' fees and experts' fees and costs.

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Project Site, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions.

Indemnified Parties means either the City or the Developer, to the extent that either is making a claim pursuant to an indemnity provision under this Agreement including, but not limited to, and to the extent applicable, all of the City's or the Developer's or any Developer Affiliate's boards, commissions, departments, agencies or other subdivisions, including without limitation, all of the Agents of the City or the Developer, and their respective heirs, legal representatives, successors and assigns, and each of them.

Indemnify means indemnify, protect, defend and hold harmless.

Indemnifying Party means the City or the Developer, to the extent that any party is obliged to indemnify the other Parties pursuant to an indemnity provision under this Agreement.

Investigation or Investigate when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Lease Property, which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Lease Property.

Laws means all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, whether or not in the contemplation of the Parties, which may affect or be applicable to the Lease Property or any part of the Lease Property (including, without limitation, any subsurface area, use of the Lease Property and the buildings and improvements on or affixed to the Lease Property), or the use of the Lease Property including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers; any national or local board of fire underwriters, or any body or bodies exercising similar functions, having or acquiring jurisdiction of the Lease Property, and similarly the phrase "Law" shall be construed to mean the same as the above in the singular as well as the plural.

Leasehold Mortgage as defined in the Ground Lease.

Lease Property as defined in Recital R.

Loss or Losses means any and all claims, demands, losses, liabilities, damages (including/excluding [*confirm which*] foreseeable and unforeseeable consequential damages),

liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and out of pocket costs and expenses (including, without limitation, reasonable Attorney's Fees and Costs, and consultants' fees and costs, and consultants' fees and costs, and court costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Listed RAP/RMP Sites means those locations specifically identified in the RAP/RMP as RAP Sites and RMP Locations and as set forth in Exhibit E to the Consent Agreement.

Loss or Losses when used with reference to indemnification means any and all claims, demands, losses, liabilities, damages (excluding consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable attorneys' fees and costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Master Plan as defined in _____.

Memorandum of Lease Disposition and Development Agreement means the Memorandum of this Agreement between the City and the Developer, suitable for recordation in the Official Records and in the form of Attachment 8.

Memorandum of Ground Lease as defined in the Ground Lease.

Minimum Project as defined in the Ground Lease.

MMRP means those the Mitigation Monitoring and Reporting Plan attached as Attachment _____.

No Further Action Letter means a written determination from an applicable Regulatory Agency that no further action is required with respect to environmental conditions at the property.

OBRA means the Oakland Base Reuse Authority, a joint powers authority described in Recital A, which authority was dissolved on _____ [City to provide date.

OHIT as defined in Recital N.

Official Records mean, with reference to the recordation of documents, the Official Records of the County of Alameda.

Outside Lease Date means [January 1, 2016.]

Outside Date means June 30, 2020.

Parcel E as defined in Recital B.

Parties mean the City and Developer, as Parties to this Agreement;

Party means the City or Developer, as a Party to this Agreement;

Permitted Title Exceptions as referred to in Section 4.6 and attached as Attachment 17.

Permitted Transfers as defined in Section ____.

Person means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or association, the United States, or a federal, state or political subdivision thereof

Phase means, as applicable, the following areas of the Lease Property: the applicable, the West Gateway, the Central Gateway and the East Gateway.

Port means the Port of Oakland.

Private Improvements is defined in the Scope of Private Improvements attached as Attachment ____.

Project means the construction and operation of the Public Improvements and Private Improvements under the terms of this Agreement and the applicable Ground Lease.

Project Site as defined in Recital M.

Prologis means Prologis Property, L.P.

Property Management Agreement defined in _____ and substantially in the form of Attachment 18.

Public Improvements means backbone infrastructure planning, design and construction, including remediation of the Gateway Development Area, demolition, surcharging and final grade as more particularly described in the Scope of Public Improvements at Attachment ____.

Public Improvements Budget as defined in Section 4.2(a)(iii)(A).

Public Improvements Schedule of Performance as defined in _____.

PUD means a planned unit development with respect to all or any portion of the Project as may be finally approved by City at any time pursuant to applicable provisions of City's Municipal Code or ordinances pertaining to planned unit developments pursuant to Section ____.

RAP/RMP means that certain Remedial Action Plan/Risk Management Plan for the EDC Property described in Section ____.

RAP Sites means those locations specifically identified in the RAP/RMP as RAP Sites.

Regulatory Agency means any governmental agency having jurisdiction over the Project Site, including, but not limited to the Army, DTSC, and the RWQCB.

Regulatory Reopener means any additional Remediation required in writing at a formerly closed site by any Regulatory Agency due to reevaluation by any Regulatory Agency of the applied Remediation strategy or any change in law or regulation related to the Remediation standards, including any a change in remediation standards or risk screening levels. If there are additional requirements from the Regulatory Agency as a result of subsurface activities at a closed site, such requirements are subject to the RMP and shall not be deemed a Regulatory Reopener.

Release when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Material in, on, under or about the LDDA Property or any portion thereof

Remediate or Remediation when used with reference to Hazardous Materials means any activities undertaken to investigate, clean up, remove, transport, dispose, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the LDDA Property or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

Remediation Fund means that certain account established by the City and the Port for purposes of paying for Remediation at the EDC Property as described in Section X.

RWQCB means the San Francisco Bay Regional Water Quality Control Board.

RWQCB Order means the permit from the RWQCB related to the EDC Property as described in Section .

Schedule of Performance as attached hereto as Attachment 6.

Scope of Private Improvements as attached hereto as Attachment 5.

Scope of Public Improvements as attached hereto as Attachment .

Significant Change means any dissolution, merger, consolidation or other reorganization, or issuance, sale, assignment, hypothecation or other transfer of legal or beneficial interests in the Developer, directly or indirectly, in one or more transactions, by operation of law or otherwise, that results in any of the following: (a) a change in the identity of Persons Controlling the Developer; (b) the admission of any new shareholder or other equity investor that has the right to exercise Control over the Developer, (c) the dissolution of the Developer; or (d) the sale of 50% (fifty percent) or more of the Developer's assets, outstanding equity interests, capital or profits, or of the assets, outstanding equity interests, capital or profits of any Person controlling the Developer, except to a Developer affiliate and except for sales of publicly traded stock.

SLC means the California State Lands Commission.

Special District means any community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code sections 53311 *et seq.*) or otherwise, special assessment district, facilities assessment district, landscaping and lighting district, and any other infrastructure financing or infrastructure maintenance financing district or device established at any time upon the approval of City with respect to all or any portion of the Project.

State means the State of California.

State Patent means the State of California Patent and Trust Termination as defined in Recital B.

Successor Agency as defined in the introductory paragraph.

TCIF means the Trade Corridor Improvement Fund administered by CTC.

Term as defined in Section 1.1.

Title Company as defined in Section 4.4(a).

Title Defect as defined in Section 4.6(b).

Transfer as defined in Section 8.1(C).

Unmatured Event of Default means any Event of Default that, with the giving of notice of the passage of time, or both, would constitute an Event of Default under this Agreement.

West Gateway means the 34.1± acres of real property, comprising a portion of the former Oakland Army Base and located adjacent to the Central Gateway, commonly referred to as the West Gateway and depicted on Attachment 1.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly appointed representatives as of the date first above written.

DEVELOPER:

Prologis CCIG Oakland Global, LLC

By: _____

By: _____

By _____

[NAME]
[TITLE]

By: _____

By: _____

By _____
[NAME]
[TITLE]

CITY OF OAKLAND,
a municipal corporation

By _____
City Manager

Approved as to Form

By: _____
Deputy City Attorney

ATTACHMENTS TO LDDA

		<i>STATUS 6 14 12</i>
Attachment 1	Site Maps	<i>Same as prior</i>
Attachment 2	Legal Description of Lease Property	<i>Same as prior</i>
Attachment 3	Ground Lease forms	<i>Replace; confirm timing of delivery with David</i>
	-West Gateway	
	-Central and East	
Attachment 4	Billboard Agreement	<i>No supplemental insert; term sheet to be negotiated and read into record 1/19/12 and inserted if approved by Council.</i>
Attachment 5	Property Management Agreement	<i>Same as prior</i>
Attachment 6	Scope of Development for Public Improvements	<i>Same as prior</i>
Attachment 7	Scope of Development for Private Improvements	<i>Replace</i>
Attachment 8	Schedule of Performance	<i>Replace</i>
Attachment 9	Memorandum of LDDA	<i>Same as prior</i>
Attachment 10	City's Environmental Assessment Reports	<i>Same as prior</i>
Attachment 11A	Consent Agreement with DTSC	<i>Docs to be inserted in final form</i>
Attachment 11B	RAP/RMP	<i>Docs to be inserted in final form</i>
Attachment 11C	RWQCB Order	<i>Docs to be inserted in final form</i>
Attachment 12A	Covenant to Restrict Use of Property	<i>Docs to be inserted in final form</i>
Attachment 12B	Army EDC Deed	<i>Docs to be inserted in final form</i>
Attachment 13	Due Diligence Right of Entry	<i>Insert draft</i>
Attachment 14	Permitted Title Exceptions	<i>Same as prior</i>
Attachment 15	Community Benefits Matrix, with Operations and Construction Jobs Policies and certified MMRP	<i>Replace matrix and jobs policies; MMRP same as prior</i>
Attachment 16	EBMUD MOA	<i>Insert final, executed draft as part of execution</i>

Attachment 6

OAB Public Infrastructure

The future vertical development of the OAB requires improvements to the underlying land and infrastructure before vertical improvements can be realized. Vertical improvements are dependent upon the land being retrofitted along with new underground utilities and new on-surface roads and improvements. Vertical development, defined as buildings and above-ground structures, requires the following improvements at large and by Gateway Area. The improvements described in further detail in the April 1, 2012 *Oakland Army Base Master Plan Design Set*, as amended from time to time.

At Large/Applicable to Lease Property.

Import of clean till material, with compaction to city required building standards, to raise the existing roadways to a new elevation that conforms with current drainage regulations.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New recycled water piping to serve the landscaping throughout the site.

New on-site and off-site road work, including but not limited to building a new realigned Burma Road both east and west of Maritime Avenue, to rebuild Maritime Avenue from Engineer's Road to the south at the intersection of 7th Street including new signal improvements at intersections.

New on-site street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New on-site traffic signals for the roads mentioned above including new electrical improvements to serve the signals.

New domestic water piping to serve the vertical development for both domestic use and fire protection.

New sanitary sewer piping to serve the vertical development including pump stations due to low elevations of the system.

New electrical conduits, duct banks, conductors, vaults and switches to distribute power to vertical development and road related improvements.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, crosswalks and rail crossing gates to facilitate pedestrian and bike mobility through the site.

Implementation of Mitigation Measures 3.16-1 through 3.16-33, inclusive, and related Standard Conditions of Approval as set forth in the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program for the EIR Addendum for the 2012 OARB Project.

East Gateway

Import of clean till material, with compaction to city required building standards, to raise the existing site to a new elevation that conforms with current drainage regulations.

Remediation of existing sand till layer on the site to prevent future liquefaction during seismic events.

Remediation of existing native subsoil (Bay mud) to densify the material to avoid unacceptable settlement and displacement of buildings.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New recycled water piping to serve the landscaping throughout the site.

New road work to rebuild Maritime Avenue and construct a new East Burma Road.

New street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New traffic signals for the roads mentioned above including new electrical improvements to serve the signals.

New domestic water piping to serve the vertical development for both domestic use and fire protection.

New sanitary sewer piping to serve the vertical development including pump stations due to low elevations of the system.

New electrical conduits, duct banks, conductors, vaults and switches to distribute power to vertical development and road related improvements.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, crosswalks and rail crossing gates to facilitate pedestrian and bike mobility through the site.

Completion of contamination remediation RAP/RMP on subsoils by City and Port.

Grading and drainage work to facilitate construction of new rail tracks and related equipment.

Central Gateway

Import of clean till material, with compaction to city required building standards, to raise the existing site to a new elevation that conforms with current drainage regulations.

Remediation of existing sand till layer on the site to prevent future liquefaction during seismic events.

Remediation of existing native subsoil (Bay mud) to densify the material to avoid unacceptable settlement and displacement of buildings.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New recycled water piping to serve the landscaping throughout the site.

New road work to rebuild Maritime Avenue and construct a new West Burma Road.

New street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New traffic signals for the roads mentioned above including new electrical improvements to serve the signals.

New domestic water piping to serve the vertical development for both domestic use and tire protection.

New sanitary sewer piping to serve the vertical development including pump stations due to low elevations of the system.

New electrical conduits, duct banks, conductors, vaults and switches to distribute power to vertical development and road related improvements.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, crosswalks and rail crossing gates to facilitate pedestrian and bike mobility through the site.

Completion of contamination remediation RAP/RMP on subsoils by City and Port.

Grading and drainage work to facilitate construction of new rail tracks and related equipment.

Reconstruction of storm water outfalls to the Bay to facilitate receipt of increased size of drain piping and related water flow.

West Gateway

Import of clean till material, with compaction to city required building standards, to raise the existing site to a new elevation that conforms with current drainage regulations.

Remediation of existing sand till layer on the site to prevent liquefaction during seismic events.

Remediation of existing native subsoil (Bay mud) to densify the material to avoid unacceptable settlement and displacement of buildings.

New drainage piping to accept surface rain water and channel it to outfalls to the Bay including enlargement of some of the outfalls.

New recycled water piping to serve the landscaping throughout the site.

New road work to rebuild Maritime Avenue and construct a new West Burma Road.

New street lighting for the roads mentioned above including new electrical improvements to serve the lights.

New traffic signals for the roads mentioned above including new electrical improvements to serve the signals.

New domestic water piping to serve the vertical development for both domestic use and fire protection.

New sanitary sewer piping to serve the vertical development including pump stations due to low elevations of the system.

New electrical conduits, duct banks, conductors, vaults and switches to distribute power to vertical development and road related improvements.

New conduits and vault boxes for communication systems to facilitate connectivity for phones and IT systems.

New public safety features such as sidewalks, ramps, crosswalks and rail crossing gates to facilitate pedestrian and bike mobility through the site.

Completion of contamination remediation RAP/RMP on subsoils by City and Port.

Grading and drainage work to facilitate construction of new rail tracks and related equipment.

Wharf improvements to Berths 7 and 8. [Note: With a \$25.9mm contribution from the ground lessee of the West Gateway.]

Attachment 7
SCOPE OF DEVELOPMENT
(Private Improvements)

1. **Uses.** The purpose of this Agreement is to provide for the development of the Lease Property into a new facility that supports the international, national, regional and local movement of goods by way of the seaport, railroad and roadway networks. Once constructed, the Private Improvements will include the following uses:

- With respect to the Central and West Gateways: trade and logistics facilities (warehouse, distribution and related facilities), including, but not limited to, general purpose warehouses, cold and refrigerated storage, , container freight stations, deconsolidation facilities, truck terminals, and regional distribution centers (“Trade & Logistics”) and “Interim Support Improvements” of trailer and container cargo storage and movement, chassis pools, which can be used prior to the build out of the entire leasehold areas as building-oriented trade and logistics facilities ;
- With respect to the West Gateway: either (1) a ship-to-rail terminal designed for the export of non-containerized bulk goods and import of oversized or overweight cargo (the “Bulk Terminal”) (“Option A”) if the Public Improvements are funded by TCIF Funds, or (2) office or research and development facilities/trade and logistics facilities (“Option B”), at the Developer's option but only if the Public Improvements are not funded by TCIF Funds.
- ancillary circulation, utility and rail improvements and open storage Support Improvement uses (truck parking, trailer and container cargo storage and movement, and chassis pools) designed to supplement the Public Improvements consistent with the Master Plan (collectively, "Support hnpvements"); and
- tive billboards.

In the event that the AMS Site is included in the Lease Property, the Project will also include 15 acres of truck service uses, including parking, fueling stations, weighing stations, training and certification facilities, maintenance facilities, chassis pool and related retail (collectively, “Ancillary Maritime Uses”).

2. **Location and Density of Uses.** The Private Improvement uses would be located in the following Phases and in the following densities:

a. **East Gateway** (approximately 29.6 acres). The East Gateway would be developed with Trade & Logistics uses and, on an interim basis, related Support Improvements. New facilities may be developed with up to a maximum Floor Area of 388,000 square feet at any permissible FAR.

b. **Central Gateway** (approximately 42.6 acres). The Central Gateway would be developed with Trade & Logistics uses and related Support Improvements. New facilities may be developed with a maximum Floor Area of 556,000 square feet of new facilities at any permissible FAR, assuming that that the AMS Site is included in the Lease Property.

c. **West Gateway** (approximately 34.1 (Option A) or 17 (Option B) acres). Under Option A, the West Gateway would be improved with Bulk Terminal uses, Rail improvement uses and related Support Improvements, including the repurposing of the existing 146,460 square foot warehouse and the construction of new rail improvements, equipment yards and temporary structures. Under Option B, the West Gateway portion of the Lease Property would be improved with up to a maximum Floor Area of 175,000 square feet of new office or research and development uses and related Support Improvements.

d. **Billboards.** The billboards include the following:

Number	Billboard Location	Size	Sides	Display Type
1	Bay Bridge 500' East of Toll Plaza (West Gateway) – South Line, East & West Face	20'H x 60'W	2	LED
2	Bay Bridge 1000' East of Toll Plaza – South Line, West Face (West Gateway)	20'H x 60'W	1	Backlit
3	1-880 West Grand 500' North of Maritime (Central Gateway) – West Line, North & South Face	14'H x 48'W	2	LED
4	1-880 West Grand South of Maritime (East Gateway) – West Line, North & South Face	14'H x 48'W	2	Backlit
5	1-880 West Grand 500' South of Maritime (East Gateway) – West Line, North & South Face	14'H x 48'W	2	LED

Notes:

Backlit Display: Static translucent sign lit from behind, traditionally has two ad faces (front and back).

LED Display: Changeable digital sign comprised of LED bulbs, can have as many as 12 rotating digital ads.

Billboard locations subject to mutually agreed upon site relocations.

Attachment 8
Schedule of Performance

INTRODUCTION

Several principles apply to an effective understanding of this Schedule of Performance: (i) all terms used herein have the same meanings as provided in the Agreement (or "LDDA") to which this Schedule of Performance is attached; (ii) parenthetical numbers are references to sections of the Agreement; (iii) unless expressly limited in the Agreement, all **Required Completion Dates** provided for in this Schedule of Performance may be extended by applicable Force Majeure provisions; and (iv) in the event of an inconsistency between this Schedule of Performance and the Agreement, the Agreement shall prevail [*NOTE TO REVIEWERS; UNTIL FINAL EXECUTION DRAFT THIS SCHEDULE WILL PREVAIL OVER THE AGREEMENT*]. Except as otherwise provided in the Agreement, the Required Completion Date may be extended by mutual agreement of the Parties from time to time and documented in writing, so long as such extension does not exceed the Outside Date as defined in the Agreement. Except as otherwise provided in the Agreement, the City Administrator shall be authorized to grant extensions under this Schedule of Performance on behalf of the City so long as such extension does not exceed the Outside Date as defined in the Agreement.

	<u>LLDA Obligation</u> <i>(LLDA Section to be added)</i>	<u>Party(ies)</u> <u>Responsible for</u> <u>Compliance</u>	<u>Required</u> <u>Completion Date</u>	<u>Remedy for</u> <u>Default</u>
1	Execution of LDDA and Memorandum of LDDA	City and Developer	Prior to Effective Date of LDDA.	Not effective as to the parties if not executed.
2	Developer delivers Security Deposit to City. (§)	Developer	Within 10 days after Effective Date of LDDA.	Event of Default by Developer. Termination of LDDA. No other remedies.
3	Memorandum of LDDA recorded. (§1.4)	City or Developer	Within 10 days after Effective Date of LDDA.	Specific performance; self help.
4	Billboard Agreement Executed (§ 1.3.1)	City and Developer	Within 30 days after Effective Date of the LDDA	Right to SP to sign by parties; otherwise just comply with terms of billboard

				agreement [to include termination of billboard agreement with Dev if LDDA terminates due to Dev default; 20/10/10 year term if LDDA terminates with no fault or City fault *
5	Property Management Agreement Executed (§ 1.3.2)	City and Developer	Within 30 days after Effective Date of LDDA.	Right to Specific Performance or terminate, at election of parties.*
6	Amended and Restated CSA Executed. (§ 2.2.2)	City	Within 30 days after Effective Date of the LDDA	If not executed by Port or City: then Dev can elect workout provision if effect is loss of TCIF Funds.* If City or Port fail to comply with material terms of the CSA; Dev's remedies are self help; specific performance or workout if the effect is loss of TCIF.*
7	EBMUD MOA Executed by EBMUD, City and Developer Affiliate. (§ 2.2.7)	City and Developer	Within 30 days after Effective Date of the LDDA	SP for City/Dev to execute.
8	Master Plan and TCIF Baseline Budgets Approved by Developer and Port. (§)	N/A	By the dates provided in the Amended and	If not approved by Port or Developer: then

			Restated CSA.	only remedy is work out if effect is loss of TCIF.*
9	Port Land Exchanges Per Amended and Restated CSA Approved by Port, City and Developer and Recorded. (§ 1.5)	City	Enter binding land exchange agreement within 60 days of Effective Date of LDDA and then complete and record within prior to approval of final approved Bridging Documents, Final Budget, and Schedule of Performance for Public Improvements.	Failure to complete Port Land Exchanges with approval; not a default; proceed with project with existing land configuration*
10	Surcharging Schedule Approved. (§ __)	City and Developer	90 days from the Effective Date of the LDDA.	
11	Developer's Environmental Due Diligence Schedule Approved. (§ __)	City and Developer	30 days from the date the Surcharging Schedule is approved by the Parties.	
12	OHIT Baseline Agreement Executed. (§ __)	City	November 7, 2012	City and Dev. work out to find other public financing for Public Improvement.*
13	U.S. Army and DTSC consent to transfer of the Property to the City. (§ 2.3.1)	City	Prior to recordation of the Parcel Map, and in no event later than first Lease Closing.	Termination right by Developer if not received by the time provided; automatic unwinding and termination upon receipt of formal denial of consent.

14	Confirmation of City's authority to lease under AB 26 and effect on LDDA deal terms. (§ 2.3.1)	City	Prior to recordation of the Parcel Map, and in no event later than first Lease Closing.	Automatic unwinding and termination upon receipt of formal finding and order for clawback; City right to terminate if no clawback but there is a material effect on deal terms.
15	Parcel Map Recorded (§ ___)	City	Within 180 days of Effective Date of the LDDA; but in no event later than first Lease Closing.	Not an Event of Default until Lease Closing. Specific performance if not recorded by proposed close of escrow.
16	Caltrans Agreement Executed for Billboard Sites (§ ___)	City and Developer	No time requirement	No Default of either party for failure to obtain Caltrans approval for billboard sites.
17	Caltrans Agreement Executed for Under Freeway Rail (§ ___)	City and Developer	Within 180 days of Effective Date of the LDDA; not in no event later than the first Lease Closing.	So long Cahrans approves one rail line under freeway; no Default if not obtained.
18	Bridging Documents, Final Budget for Public Improvements, and Schedule of Performance for Public Improvements Approved by City and Developer. (§ ___)	City and Developer	Within 180 days of Effective Date of LDDA.	City and Dev's remedy is to enter work out if lack of public funds; terminate LDDA if can't reach agreement * [Cannot unreasonably withhold, condition or delay if

				consistency with Master Plan and OHIT Baseline Agreement.]
19	Development Agreement and PUD Approved by City Council. (§ ___)	City and Developer	Within 180 days of Effective Date of LDDA.	Developer's only remedy is to terminate if City does not process in good faith or DA/PUD approved, but does not contain the terms that support a financially feasible project* [All City regulatory authority to be reserved, once approved LDDA will require City ongoing obligation to comply and consult with Dev before amending or terminating]; not a Developer Default; no City remedies.]
20	CTC Approval of Guaranteed Maximum Price and Design Build Contract for Public Improvements. (§ ___)	City	Within 180 days of Effective Date of LDDA (automatically extended based on terms of Amended Baseline Agreement.)	Dev and City right to terminate if no CTC approval obtained; subject to Work out for alternate public financing.
21	Design Build Contract Executed. (§ ___)	Developer shall cause its Affiliate, CCIG, Inc. to execute.	Within 10 days of receipt of CTC approval.	Specific Performance; termination rights at election of City.

22	Necessary Non- City Governmental Approvals for Construction of Public Improvements Received by City. (§ ___)	City and Developer	Prior to construction of Public Improvements; within 180 days of Effective Date of LDDA.	If not obtained, only remedy is termination of LDDA.* No other remedies.
23	Project Labor Agreement and Cooperation Agreement Executed (§ ___)	City	Prior to commencement of construction of Public Improvements.	Dev/City to meet and confer prior to City execution; Dev right to review and right to terminate if material change community benefit
24	Air Quality Monitoring Plan Approved (§ ___)	City and Developer	Prior to commencement of construction of Public Improvements.	Dev/City to meet and confer prior.
25	Notice to Proceed and commencement of construction of Public Improvements. (§ ___)	City	In accordance with the earlier of (1) the terms of the OHIT Baseline Agreement or (2) agreed upon Schedule of Performance for the Public Improvements.	Termination of LDDA if City fails to meet Schedule or Performance.* No other remedies. Developer retains Security deposit.
26	Meet and Confer Regarding Public Improvement Progress and Budget. (§ ___)	City and Developer	As needed, but no less than once per quarter from the issuance of the Notice to Proceed until the Completion of the Public Improvements.	Not a Default. Dev can terminate LDDA only if City fails to meet Schedule of Performance. Specific Performance if necessary to enforce regular meeting

				attendance.
27	Port Rail Terminal Agreement with Union Pacific Railway. (§ ___)	City	By the date provided in the Amended and Restated Cost Sharing Agreement or as may be updated in the Amended Baseline Agreement CTC.	If Port does not approve agreement, Dev or City may elect self help to the extent allowed under CSA, specific performance, or terminate LDDA after workout.*
28	Request for Proposals Issued for Operator of Port Rail Terminal. (§ ___)	City	By the date provided in the Amended and Restated Cost Sharing Agreement or as may be updated in the Amended Baseline Agreement CTC.	If Port does not issue timely Dev or City may elect self help to the extent allowed under CSA, specific performance, or terminate LDDA after workout.*
29	City Access Agreement to Port Rail Terminal Approved by Developer and Executed by City and Port. (§ ___)	City and Developer	By the date provided in the Amended and Restated Cost Sharing Agreement or as may be updated in the Amended Baseline Agreement CTC.	If City or Port does not enter agreement then Dev or City may elect self help to the extent allowed under CSA, specific performance, or terminate LDDA after workout.*
30	Rail Terminal Design Build Contract Executed by Port. (§ ___)	City	By the date provided in the Amended and Restated Cost Sharing Agreement or as may be updated in the Amended Baseline Agreement CTC.	If City or Port does not enter agreement then Dev and City can terminate LDDA after workout.*
31	Rail Terminal Construction Commenced. (§ ___)	City	By the date provided in the Amended and	If City or Port does not enter

			Restated Cost Sharing Agreement or as may be updated in the Amended Baseline Agreement CTC.	agreement then Dev or City may elect self help to the extent allowed under CSA, specific performance, or terminate LDDA after workout.*
32	Rail Terminal Construction Completed and Operational. (§ ___)	City	By the date provided in the Amended and Restated Cost Sharing Agreement or as may be updated in the Amended Baseline Agreement CTC; but in no event later than Closing of first Lease.	If City or Port does not enter agreement then Dev or City may elect self help to the extent allowed under CSA, specific performance, or terminate LDDA after workout.*
33	Commence Formation of Special District. (§ ___)	City and Developer.	Within one (1) year of Effective Date of LDDA.	City self help; Developer's consent will be provided in LDDA. Specific Performance for consent.* Dev may bring specific performance to form.* No termination right.
34	City Enters Contract for Use of AMS Site. (§ ___)	City	The earlier of (1) the issuance of the Notice to Proceed with the construction of the Public Improvements, (2) one year from the Effective Date of the LDDA.	Not an event of default. If City not under contract with other operator by completion date, then deemed included in Lease Property and Dev must comply with Bay Plan truck parking requirements.

35	Completion of Public Improvements, including all necessary infrastructure remediation activities, de-construction/demolition of all existing improvements for the applicable Phase. City issues Notices of Completion to Developer for applicable Phase. (§ ___)	City	In accordance with the Schedule of Performance for the Public Improvements agreed to by the Parties in accordance with Section ___ of the LDDA.	Dev can terminate LDDA after workout.*
36	Termination of All Existing Leases, including Pass Through Lease as to the applicable portion of the Lease Property. (§ ___)	City	Prior to Lease Closing for applicable portion of the Lease Property.	Condition precedent to Lease Closing; remedies related to failure to close.
37	Termination of Caltrans Construction Easement. (§ ___)	City	Prior to Lease Closing for West Gateway.	No Default. Lease just cannot be closed until the existing term ends. City cannot amend or extend terms without Dev consent.
38	Escrow Opened for applicable Phase. (§ ___)	City and Developer	Within 30 days from receipt of a Notice of Completion of Public Improvements from City for the applicable Phase.	If either other party completely fails to cooperate in Opening Escrow, remedies are SR or termination by party seeking cooperation.*
39	Developer and City Execute Right of Entry Agreement (___)	Developer	Prior to entry on the Lease Property.	SP or termination by City if Developer does not proceed with diligence. If Developer defaults, City also keeps Security Deposit and Liquidated Damages. SP for

				Dev if City fails to execute Right of Entry.
40	Determination of Lease Property Square Footage for the applicable Phase for the Purposes of Final Legal Description and Base Rent. (§ ___)	City and Developer	Prior to Lease Closing.	No Default. City make initial determination and notifies the Developer; Developer may object within 10 days of receipt; otherwise deemed approved. If they object; an ALTA boundary survey based on the recorded Parcel Map would be prepared by Developer at Developer's cost.
41	Formation of Special District. (§ ___)	City and Developer	Prior to first Lease Closing.	City self help; Developer's consent will be provided in LDDA. Specific Performance for consent. * Dev may bring specific performance to form. * No termination right.
42	City and Developer Approve Permitted Title Exceptions for applicable Phase.	City and Developer	Prior to Lease Closing.	As long as no additional unpermitted exceptions; Developer has to approve. If new exceptions and City fails to remove; then Dev. terminate.*

	Developer Payment of Fair Share of West Oakland Community Fund for applicable Phase.	Developer	Prior to Lease Closing.	
43	Developer completes (or City waives in writing) all City Required Conditions Precedent to Lease and submits required information and documents to Escrow for the applicable Phase. (§ ___)	Developer	Prior to City obligation to enter Lease; but in no event later than the Closing Date as defined in the LDDA.	Specific Performance or Termination of LDDA if Dev has met conditions and City does not close.* Developer gets Security Deposit returned. No other remedies.
44	City completes (or Developer waives in writing) all Developer Required Conditions Precedent to Lease and submits required information and documents to Escrow for the applicable Phase. (§ ___)	City	Prior to City obligation to enter Lease; but in no event later than the Closing Date as defined in the LDDA.	If City has met all conditions and Dev does not close City option to (1) Specific Performance or (2) Termination of LDDA.* City also keeps Security Deposit (\$500M) and gets Liquidated Damages (\$5M, minus credit of Security Deposit). No other remedies.
45	Lease Closing on applicable Phase. (§ ___)	City and Developer	After all conditions precedent have been satisfied or waived by the Parties; but in no event later than the Closing Date as defined in the LDDA.	See 43, 44 above.
46	Partial Termination Notice Recorded Issued at Each Closing and Final Termination	City	Concurrent with Closing, or termination of the	Specific Performance*

	Notice recorded at Final Lease Closing. (§ ___)		LDDA by its terms	
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Attachment 9

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

Mail Tax Statements to the Above Address

THIS SPACE ABOVE FOR RECORDER'S USE

**MEMORANDUM OF LEASE DISPOSITION
AND DEVELOPMENT AGREEMENT**

This Memorandum of Lease Disposition and Development Agreement ("Memorandum") is entered into as of this ____ day of _____, _____, by and between the City of Oakland; a municipal corporation (the "Lessor") and _____, a _____ ("Lessee"), with respect to that certain Lease Disposition and Development Agreement dated as of _____, _____ (the "LDDA") with respect to the real property described on Exhibit A hereto.

This Memorandum shall incorporate herein all of the terms and provisions of the LDDA as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the LDDA, of which this is a memorandum.

This Memorandum may be executed in counterparts, each of which is deemed to be an original and all such counterparts constitute one and the same instrument.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Memorandum of Lease Disposition and Development Agreement this ____ day of _____, _____.

[SIGNATURES FOLLOW ON NEXT PAGE]

“LESSOR” THE CITY OF OAKLAND,
a municipal corporation

By: _____
City Administrator Approved as to
form and legality:

By: _____
Deputy City Attorney

“LESSEE”

_____,
a _____

By: _____,
a _____

By: _____,
a _____

Order No. _____

EXHIBIT "A"

LEGAL DESCRIPTION

**SUPPLEMENTAL
ATTACHMENT A-2**

ARMY BASE GATEWAY REDEVELOPMENT PROJECT

**GROUND LEASE
FOR
WEST GATEWAY,**

between

THE CITY OF OAKLAND

"City" or "Landlord"

and

**[CCIG OAKLAND GLOBAL, LLC OR OTHER ENTITY APPROVED BY CITY
PURSUANT TO LDDA]**

"Developer" or "Tenant"

Dated as of _____, 20____

**GROUND LEASE
FOR
WEST GATEWAY**

THIS GROUND LEASE (this "Lease") is entered into on _____, 2012 by and between the CITY OF OAKLAND, a municipal corporation and successor agency to the former Redevelopment Agency of the City of Oakland (the "City" or "Landlord"), and CCIG OAKLAND GLOBAL, LLC, a _____ limited liability company qualified to transact business in California **OR OTHER ENTITY APPROVED BY CITY PURSUANT TO LDDA**] (the "Developer" or "Tenant") (each individually referred to as a "Party" and collectively referred to as the "Parties").

RECITALS

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

- A. These Recitals refer to and use certain capitalized terms that are defined in Section 39 of this Lease.
- B. The City is the owner of that certain real property located in a portion of the former Oakland Army Base, comprised of approximately _____ acres of land [either 34.1 acres, if for use as break bulk marine terminal, or 11 acres if used for other purposes pursuant to Scope of Development], improvements, and appurtenances, and commonly referred to by the Parties as the West Gateway. Pursuant to the June 30, 2006 [confirm date] Oakland Army Base Title Settlement and Exchange Agreement, all of the [the West Gateway, Central Gateway or East Gateway] was freed from the public trust for commerce, navigation and fisheries ("public trust"), the terms and conditions of Chapter 657 of the Statutes of 1911, as amended ("1911 Grant"), and other statutory restrictions, with the exception of one approximately 16.7 acre parcel ("Parcel E"), which was impressed with the public trust and the terms and conditions of the 1911 Grant by patent from the State of California.
- C. The City and Developer (or an affiliate of Developer) have executed that certain Lease Disposition and Development for the Army Base Gateway Redevelopment Project, dated _____, 2012 (the "LDDA"), which provides, among other things, for the execution and delivery by the Parties, upon satisfaction of conditions precedent set forth therein, of a ground lease by City to Developer (or an affiliate of Developer) of the West Gateway (the "Phase"), and the development thereon of certain improvements consistent with the Scope of Development attached hereto as Exhibit _____ and the provisions of this Lease (the "Project").
- D. All conditions precedent to the execution and delivery of this Lease, as set forth in the LDDA, have been satisfied or waived by the Parties in accordance with the LDDA.

- E. This Lease is being made in conformance with and pursuant to the authority given to the City in the City Charter. The conveyance by ground lease of the West Gateway to the Developer was authorized by Council Ordinance No. ___ C.M.S. This Lease, as it pertains to Parcel E, is also consistent with the public trust and the terms and conditions of the 1911 Grant. In addition, the rents due to the City under Article 2 of this Lease are allocable between Parcel E and the remainder of the Premises for purposes of the City's compliance with its obligations under Section 6306 of the Public Resources Code.

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

ARTICLE 1. PREMISES; TERM

1.1 Premises.

(a) Lease of Premises; Description. For the Rent and subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the real property in the City of Oakland, California, located (i) in the West Gateway, as more particularly described on Exhibit attached hereto (the "West Gateway Property"), and (ii) in the North Gateway and adjacent real property, as more particularly described on Exhibit attached hereto (the "Railroad R/O/W Property," and, together with the "West Gateway Property, the "Property"). The Property includes the land and all Existing Improvements, together with all rights, privileges and licenses appurtenant to the Property and owned by Landlord. The Property is depicted on the Site Plan attached hereto as Exhibit. The Property, all Existing Improvements, and any and all other Improvements hereafter located on the Property are collectively referred to in this Lease as the "Premises." Notwithstanding any provision herein to the contrary, the Property and the Premises do not include any dedicated public rights of way within the Phase.

(b) Permitted Title Exceptions. The leasehold interest granted by Landlord to Tenant pursuant to Subsection 1.1(a) is subject to (i) the matters reflected in Exhibit (the "Permitted Title Exceptions"); (ii) any deed restrictions required by the LDDA or applicable Law to be recorded against the Property; (iii) any Regulatory Approvals required by applicable law to be recorded against the Property as a result of the development and activities permitted by the LDDA and this Lease; and (iv) other matters as Tenant shall cause or suffer to arise subject to the terms and conditions of this Lease. Upon Tenant's request prior to the construction of the Initial Improvements, and at Tenant's sole expense, Landlord shall reasonably cooperate with Tenant in Tenant's efforts to secure the relocation of any easements, of record as of the Commencement Date and in favor of public utilities or other third parties, that Tenant has established to Landlord's reasonable satisfaction will unreasonably interfere with Tenant's Permitted Uses of the Premises; provided that such cooperation shall under no circumstances include the institution, prosecution or joinder in any claims or litigation against the holder of any such easement. With respect to any title matters with respect to the Property caused or permitted by Landlord to first arise following the Commencement Date, and that materially interfere with Tenant's use of the Premises hereunder (in any case, specifically excluding therefrom any title

matters included within items (i), (ii), (iii) and/or (iv) in the foregoing sentence), Landlord agrees to reasonably cooperate with Tenant, upon Tenant's written request and at no cost, expense or liability to Landlord, in Tenant's efforts to remove or modify such title matters.

(c) "AS IS WITH ALL FAULTS". TENANT AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ARTICLE 15, THE PREMISES ARE BEING LEASED BY LANDLORD, AND ARE HEREBY ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, "AS IS, WITH ALL FAULTS." TENANT ACKNOWLEDGES AND AGREES THAT NEITHER LANDLORD, CITY, NOR ANY OF THE OTHER INDEMNIFIED PARTIES, NOR ANY AGENT OF ANY OF THEM, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE OR OPERATION OF THE PROJECT, THE COMPLIANCE OF THE PREMISES OR THE PROJECT WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR, EXCEPT AS MAY BE SPECIFICALLY PROVIDED IN THIS LEASE OR THE LDDA, WITH RESPECT TO ANY OTHER MATTER PERTAINING TO THE PREMISES OR THE PROJECT.

As part of its agreement to accept the Premises in its "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge, the Landlord and its Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Tenant may now have or that may arise an account of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Premises, including, without limitation, any Hazardous Materials in, on, under, or above, or about the Premises, except as otherwise expressly set forth in Article 15, and (ii) any Laws applicable to such conditions, including without limitation, Hazardous Material Laws, except as otherwise expressly set forth in Article 15.

In connection with the foregoing release, the Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Tenant agrees that the release contemplated by this Section includes unknown claims. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

DEVELOPER:

CCIG OAKLAND GLOBAL, LLC,
a _____ limited liability company
qualified to transact business in California

By: _____
[NAME]
[TITLE]

CITY:

CITY OF OAKLAND,
a municipal corporation

By _____
City Administrator

(d) No Subdivision of Property. Except as otherwise expressly provided in Section 12.1(d)(ix), Developer shall have no right to subdivide the Property or the Premises without Landlord's prior written consent in its sole and absolute discretion.

1.2 Term of Lease.

Subject to the Parties' execution of this Lease, the effectiveness of this Lease shall commence on the date written on the first page of this Lease (the "Commencement Date") and Landlord shall deliver to Tenant possession of the Premises on the Commencement Date. The Lease shall expire on the date that is sixty-six (66) years thereafter, unless earlier terminated by subsequent mutual written agreement of the Parties or otherwise in accordance with this Lease. The period from the Commencement Date until the expiration, or any such earlier termination, of this Lease is referred to herein as the "Term."

1.3 Definitions.

All initially capitalized terms used herein are defined in Article 40 or have the meanings given them when first defined.

1.4 Relationship of Lease to LDDA.

This Lease establishes the rights and obligations of Tenant and Landlord hereunder during the Term, but does not serve to relieve or release the Parties from any of their respective rights, obligations and liabilities arising at any time under the LDDA. In the event of any conflict or inconsistency between this Lease and the LDDA with respect to the Premises or the lease, development, use or occupancy thereof, the provisions of this Lease shall control over any such inconsistent or conflicting provisions of the LDDA.

1.5 Grant of Railroad Access and Other Ancillary Rights

Landlord hereby grants to Tenant, for the Term of this Lease, the following rights:

(a) Rail Access. Subject to and in accordance with the terms and conditions of the Amended and Restated Cost Sharing Agreement and the West Gateway Lease with respect to the Railroad R/O/W, Tenant shall have the right to access and use the Railroad R/O/W Property for rail access to and from the Premises in connection with the Permitted Uses; and subject to and in accordance with the terms and conditions of the Amended OHIT Baseline

Agreement and the Rail Service Agreement, Tenant shall have the right to access and use the Port Rail Terminal.

(b) Easement for Improvements. Landlord hereby grants to Tenant an easement in Landlord's property located underneath all portions of the Premises for the purpose of installation, repair and maintenance of foundation systems, elevator pits, sump pits, utilities, sub-base materials, pavement and other materials or structures which are part of or reasonably required by Tenant in order to complete and service the Improvements to be constructed by Tenant on the Premises and otherwise reasonably necessary for Tenant to comply with its obligations under Article 15 and other provisions of this Lease. Such easement shall be appurtenant to and run with the Premises and this Lease, and shall terminate upon expiration or earlier termination of this Lease.

1.6 Reserved Easements.

(a) Subject to the provisions of Section 1.1(b) and other applicable provisions of this Lease, Landlord reserves to itself the following rights (which shall not be deemed obligations):

(i) The right to grant to others in the future, easements, licenses, and permits for construction, maintenance, repair, replacement, relocation, and reconstruction, and related temporary access easements, and other easements, in each case, necessary for any utility facilities over, under, through, across, or on the Premises.

(ii) The right to construct, install, operate, maintain repair and replace any drainage facilities and any other infrastructure improvements and facilities located within or serving the Phase;

(iii) The right, including the right to grant others, to enter upon the Premises and perform such work as may reasonably be necessary to operate, maintain, repair, improve or access any of the reserved easement areas, to exercise any of Landlord's other rights under this Lease, or in the event of an emergency or as otherwise provided in this Lease.

(b) Prior to exercising any of its rights under Section 1.6(a), Landlord shall give reasonable notice thereof to Tenant (except in the event of an emergency in the opinion of Landlord acting reasonably). Subject to Tenant's reasonable cooperation with Landlord, the easements reserved for the benefit of Landlord (or its licensees or permittees) in this Section 1.6 shall not unreasonably interfere with Tenant's Permitted Uses of the Premises.

(c) In connection with exercising its reserved easements in this Section 1.6, Landlord shall repair, at no cost to Tenant or its Subtenants, any damage directly caused by work performed by Landlord in connection with the reserved easement, or its licensee's or permittee's (but excluding the repair of any damage caused or exacerbated by Tenant's or its Subtenant's acts or omissions) within thirty (30) calendar days after Landlord's receipt of notice of such damage, provided that if such repair reasonably cannot be completed within thirty (30) calendar days, such period shall be extended as reasonably necessary so long as Landlord diligently completes such repairs.

ARTICLE 2. RENT

2.1 Tenant's Covenant to Pay Rent.

During the Term of this Lease, Tenant shall pay, in advance, Rent for the Premises to Landlord in the amounts, at the times and in the manner provided in this Article 2 and elsewhere in this Lease.

2.2 Base Rent.

(a) Amount and Time of Payment. Not later than thirty (30) days after the commencement of each quarter of each Lease Year, Tenant shall pay to Landlord, in advance for such quarter, the following amounts ("Base Rent"):

(i) Lease Years 1-10. For each of the first ten (10) Lease Years, Tenant shall pay an amount ("Initial Base Rent") equal to the sum of (A) the product of \$0.04 per square foot per month multiplied by the total square footage of that portion of the Premises containing the West Gateway Property; plus (B) the product of \$0.03 per square foot per month multiplied by the total square footage of that portion of the Premises containing the Railroad R/O/W Property] The Parties acknowledge and agree, that for the purpose of calculating Initial Base Rent, hereunder: (1) the total square footage of that portion of the Premises containing the West Gateway Property is _____ square feet and the Initial Base Rent attributable to such portion of the Premises is \$ _____; (2) the total square footage of that portion of the Premises containing the Railroad R/O/W Property is _____ square feet and the Initial Base Rent attributable to that portion of the Premises is \$ _____; and (3) the total Initial Base Rent is \$ _____.

(ii) Lease Years 11-15. For each of the eleventh (11th) through the fifteenth (15th) Lease Years, Tenant shall pay an amount (the "First Adjusted Base Rent") equal to the Initial Base Rent as increased pursuant to this paragraph. To calculate the First Adjusted Base Rent, the Initial Base Rent shall be increased by the cumulative and annually compounded percentage increase in the CPI during each of the first ten (10) Lease Years (disregarding any decrease in the CPI during such period), based upon an Indexed comparison of the last CPI published prior to each Anniversary Date during the first ten (10) Lease Years (in each such instance, a "New CPI") to the CPI published one year prior to the New CPI; provided, however, that, (A) in the event that the Commencement Date of this Lease is after the Outside Lease Date, the Initial Base Rent shall be increased by the cumulative and annually compounded percentage increase in the CPI during each Pre-Lease Year and each of the first ten (10) Lease Years (disregarding any decrease in the CPI during such period), based upon an Indexed comparison of the last CPI published prior to each Anniversary Date during such period (in each such instance, a "New CPI") to the CPI published one year prior to the New CPI; and (B) subject to such cumulative and annually compounded increase, the calculated annual percentage increase in the Base Rent for any such Lease Year or Pre-Lease Year, as applicable, shall be not less than two percent (2%) greater nor more than three percent (3%) greater than the calculated Base Rent for the immediately preceding Lease Year or Pre-Lease Year, as applicable. By way of example, but not in modification or limitation, of the foregoing, an example calculation of First Adjusted Base Rent is set forth on Schedule 2.2(a)(ii).

(iii) Remaining Term. During each Lease Year following the First Adjustment Period (the "Remaining Term"), Tenant shall pay an amount (the "Remaining Term Base Rent") equal to the First Adjusted Base Rent, subject to increase every five (5) Lease Years during the Remaining Term (each a "5-Year Period") pursuant to this subparagraph (iii) (except as otherwise provided in Section 2.2(b)(i)(C)). Effective upon the start of each successive 5-Year Period, the Remaining Term Base Rent shall be increased by the cumulative and annually compounded percentage increase in the CPI during each of the immediately preceding five (5) Lease Years (disregarding any decrease in the CPI during such period), based upon an Indexed comparison of the last CPI published prior to each Anniversary Date during the preceding 5-Year Period (in each such instance, a "New CPI") to the CPI published one (1) year prior to the New CPI; provided, however, that, subject to such cumulative and annually compounded, increase, the calculated annual percentage increase in the Remaining Term Base Rent for any such Lease Year shall be not less than two percent (2%) greater nor more than three percent (3%) greater than the calculated Remaining Term Base Rent for the immediately preceding Lease Year. By way of example, but not in modification or limitation, of the foregoing, an example calculation of adjusted Remaining Term Base Rent is set forth on Schedule 2.2(a)(iii).

(b) Fair Market Rent Adjustment

(i) Timing and Amount. In the event that the Premises are not used as a break bulk marine terminal, then, in addition to the adjustments to Base Rent set forth in Section 2.2(a), the Base Rent shall be adjusted as set forth in this Section 2.2(b). Effective as of the first day of the twentieth (20th) Lease Year and as of the first day of the fortieth (40th) Lease Year (each, the "FMR Adjustment Date"), the Base Rent then in effect (each, the "Pre-FMR Adjustment Base Rent") shall be adjusted to an amount (the "FMR Adjusted Base Rent") equal to ninety-five percent (95%) of the Fair Market Rent (as defined in and determined in accordance with Section 2.2(b)(ii)) of the Property as of the applicable FMR Adjustment Date. Notwithstanding the preceding provisions of this Section 2.2(h)(i) or any other provision of this Lease to the contrary,

(A) in no event shall the FMR Adjusted Base Rent under this Section 2.2(b) be less than the Pre-FMR Adjustment Base Rent in effect immediately prior to the applicable FMR Adjustment Date;

(B) in no event shall the FMR Adjusted Base Rent under this Section 2.2(h) be greater than the sum of: (A) an amount equal to the Initial Base Rent for that portion of the Premises containing the West Gateway as increased each Lease Year, on a cumulative and annually compounded basis, at the rate of four and a half percent (4.5%) for each Lease Year prior to the FMR Adjustment Date; plus (B) an amount equal to the Initial Base Rent for that portion of the Premises containing the Railroad R/O/W Property as increased each Lease Year, on a cumulative and annually compounded basis, at the rate of four and a half percent (4.5%) for each Lease Year prior to the FMR Adjustment Date.

(C) in the event that the FMR Adjusted Base Rent as of the applicable FMR Adjustment Date, determined in accordance with this Section 2.2(b), is less than the Pre-FMR Adjustment Base Rent in effect immediately prior to the applicable FMR Adjustment Date, then the Base Rent for the 5-Year Period commencing on the applicable FMR

Adjustment Date shall remain equal to the Pre-FMR Adjustment Base Rent in effect immediately prior to the applicable FMR Adjustment Date, without giving effect to any CPI adjustment under Section 2.2(a)(iii) during such 5-Year Period. The Parties agree that, following application of the provisions of this Section 2.2(h)(i)(C), the adjustment to Base Rent set forth in Section 2.2(a)(iii) shall recommence for the balance of the Remaining Term.

(ii) Agreement on Fair Market Rent. The Fair Market Rent shall be determined in the manner specified in this Section 2.2(b)(ii) and, as and to the extent applicable, Section 2.2(b)(iii). The process for determining the Fair Market Rent shall begin one (1) year prior to the applicable FMR Adjustment Date (each, the "FMR Determination Initiation Date"). Upon the applicable FMR Determination Initiation Date, Landlord and Tenant shall attempt in good faith to agree upon Fair Market Rent for the Property. Landlord and Tenant shall have ninety (90) days from the applicable FMR Determination Initiation Date to agree on the Fair Market Rent ("Negotiation Period") as of the applicable FMR Adjustment Date. As used herein, "Fair Market Rent" means the annual fair market rental value of the Property, which shall be calculated by (i) determining the value of the fee interest in the Property in accordance with the provisions of this Section as of the applicable FMR Adjustment Date, taking into account the permitted uses of the Property as specified in Article 3 of this Lease (the "Fair Market Value"), and (ii) applying an appropriate rate of return to the Fair Market Value, taking into account in determining such rate of return the effect, if any, of the remaining Term of this Lease. If the Parties reach an agreement as to the Fair Market Rent, they shall promptly execute a written instrument to evidence such agreement, and such written instrument shall constitute a conclusive determination of Fair Market Rent for the applicable FMR Adjustment Date.

(iii) Appraisal. If the Parties have not agreed on the Fair Market Rent during the Negotiation Period, the Fair Market Rent shall be determined by the appraisal procedure set forth below.

(A) Appointment of Appraisers: Appraisal Instructions. Each Party shall appoint one (1) appraiser within thirty (30) days after the end of the Negotiation Period. Upon selecting its appraiser, each Party shall promptly notify the other Party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in Alameda County, disinterested and independent, and shall be a member in good standing of the Appraisal Institute (MAI), or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding professional designations. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing commercial real estate development sites in Alameda County. If either Party fails to appoint its appraiser within such 30 day period, the appraiser appointed by the other Party shall individually determine the Fair Market Rent in accordance with the provisions hereof. Each appraiser shall make an independent determination of the Fair Market Rent. The Tenant shall provide to each appraiser a current inventory of buildings and vacant space in the Project, lease abstracts for each Sub-Tenant, a current income statement detailing all income and expense data for the Project, and other Project information as may be necessary to make a determination of Fair Market Rent. Each appraiser shall share with the other the indicators of value that will be used to determine Fair Market Rent including but not necessarily limited to land value data, rental rates, capitalization rates, and rates of return on ground leases, but each appraiser shall independently

determine the appropriate assumptions to make based on the provisions of this Section of this Lease and each appraiser's own assessment of the market. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this subparagraph (A). Neither Party shall communicate with the appraiser appointed by the other Party regarding the instructions contained in this subparagraph (A) before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this subparagraph (A) or the interpretation of this Lease, such appraiser shall use its own professional judgment and shall make clear all assumptions upon which its professional conclusions are based, including any supplemental instructions or interpretative guidance received from the Party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this subparagraph (A). Each appraiser shall complete, sign and submit its written appraisal setting forth the Fair Market Rent to the Parties within sixty (60) days after the appointment of the last of such appraisers. If the higher appraised Fair Market Rent is not more than one hundred ten percent (110%) of the lower appraised Fair Market Rent, then the Fair Market Rent shall be the average of such two (2) Fair Market Rent figures.

(B) Third Appraiser. If the higher appraised Fair Market Rent determined pursuant subparagraph (A) is more than one hundred ten percent (110%) of the lower appraised Fair Market Rent determined pursuant to subparagraph (A), then the Parties shall agree upon and appoint a third independent appraiser within thirty (30) days after both of the first two (2) appraisals have been submitted to the Parties. The third appraiser shall have the minimum qualifications as required of an appraiser pursuant to subparagraph (A) above. If the Parties do not appoint such appraiser within such 30-day period, then either Party may apply to the Superior Court of the State of California in and for the County of Alameda for appointment of an appraiser meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent arbitrator meeting the foregoing qualifications. The third appraiser shall make an independent determination of the Fair Market Rent in accordance with the same standards and criteria set forth in subparagraph (A) above; provided, however, that (1) upon the third appraiser's request, the Parties shall submit (or cause to be submitted) to the third appraiser, and the third appraiser may consider, the appraisals prepared pursuant to subparagraph (A) above and any data and other information relied upon by the respective appraisers in preparing such appraisals, (2) the third appraiser may discuss such appraisals, data and other information with the other appraisers either individually or together, and (3) in no event shall the third appraiser's determination of Fair Market Rent be lower or higher, respectively, than the lower or the higher, respectively, of the two appraisals of Fair Market Rent determined pursuant to subparagraph (A). Neither Party shall communicate with the third appraiser regarding the instructions contained in this subparagraph (B) before the appraiser completes its appraisal. If the third appraiser has questions regarding the instructions in this subparagraph (B) or the interpretation of this Lease, the appraiser shall use its own professional judgment and shall make clear all assumptions upon which its professional conclusions are based, including any joint supplemental instructions or interpretative guidance received from the Parties together. There shall not be any arbitration or adjudication of the instructions to the third appraiser contained in this subparagraph (B). The third appraiser shall complete, sign and submit its written appraisal setting forth the Fair Market Rent to the Parties,

concurrently, within sixty (60) days after the appointment of such appraiser, and such appraised Fair Market Rent shall be the Fair Market Rent for the applicable Lease Year under this Section 2.2(b). The final determination of the third appraiser shall be conclusive, final and binding upon the Parties.

(C) Fees and Coast: Waiver. Each Party shall bear the fees, costs and expenses of the appraiser it selects under Subsection (b)(iii)(A) and of any experts and consultants used by the appraiser. The fees, costs and expenses of the third appraiser under Subsection (b)(iii)(B) shall be shared equally by Landlord and Tenant. Each Party waives any claims against the appraiser appointed by the other Party, and against the third appraiser, for negligence, malpractice or similar claims in the performance of the appraisals contemplated by this Section.

2.3 Participation Rent.

(a) Payment Obligation. In the event that the Premises are used as a break bulk marine terminal, then, in addition to Base Rent payable under Section 2.2, Tenant shall pay to Landlord, in accordance with this Section 2.3, an annual sum equal to ten percent (10%) of the Annual Gross Tariff Revenues ("Participation Rent").

(b) Participation Rent Payment and Statement. Participation Rent shall be paid at the same time as, and together with, payment of Base Rent, subject to Annual Reconciliation as provided in Section 2.3(c). Concurrently with each payment of Participation Rent, Tenant shall deliver to Landlord a statement ("Participation Rent Statement"). The Participation Rent Statement shall be prepared in accordance with GAAP, certified by Tenant as complete and correct in all material respects (subject only to changes resulting from the Annual Reconciliation described in Section 2.3(c), in a level of detail and format reasonably acceptable to Landlord, and itemizing the following, on a monthly basis, for the preceding quarterly period and for the Lease Year to date:

- (i) Annual Gross Tariff Revenues;
- (ii) A calculation and reporting of Participation Rent payable to City;

and

(iii) Disclosure of the nature and amount of all dealings with Affiliates with respect to Annual Gross Tariff Revenues.

Acceptance of any Participation Rent or Participation Rent Statement by Landlord shall not constitute a waiver of Landlord's right to additional Participation Rent justified by the Annual Reconciliation or any other inspection, review or audit undertaken by Landlord. Upon the expiration or any earlier termination of the Term, any unpaid Participation Rent owed by Tenant hereunder shall become immediately due and payable.

(c) Annual Reconciliation. Participation Rent shall be adjusted through an annual reconciliation at the end of each Lease Year and following the expiration or earlier termination of the Term. Within ninety (90) days after the expiration or earlier termination of each Lease Year and the expiration or earlier termination of the Term, Tenant shall deliver to

Landlord audited supplementary schedules for such Lease Year, which shall be prepared at Tenant's sole cost and expense by a certified public accounting firm reasonably approved by Landlord, prepared in accordance with GAAP and showing all of the matters required in each Participation Rent Statement ("Annual Reconciliation Statement"), except that each Annual Reconciliation Statement shall be based on the entire Lease Year, broken down on a monthly basis, instead of a quarterly basis. Each Annual Reconciliation Statement also shall indicate the amount of any overpayment or underpayment of Participation Rent for such Lease Year resulting from the accounting firm audit. Each Annual Reconciliation Statement shall be in reasonable detail sufficient for such accounting firm to issue an auditor's statement that such Annual Reconciliation Statement and supplementary schedules fairly and accurately reflect the terms and provisions of this Lease, which auditor's statement shall be provided to Landlord in writing with the Annual Reconciliation Statement. Tenant shall accompany the Annual Reconciliation Statement with the full amount of any underpayment of Participation Rent, together with interest thereon at the Default Rate from the date such underpaid Participation Rent was due and payable hereunder. At Landlord's option, any overpayments of Participation Rent may be either refunded to Tenant, applied to any other amounts then due and unpaid, or applied to Base Rent due at the first opportunity during the new Lease Year after Landlord's receipt and review of the Annual Reconciliation Statement. An Annual Reconciliation Statement shall be deemed accurate and complete if not challenged within three (3) years following the date of its delivery to Landlord. Tenant's obligations under this Section 2.3(c) are in addition to Landlord's audit rights under Section 37.18.

2.4 Manner of Payment.

Tenant shall pay all Rent to Landlord, in lawful money of the United States of America, to the Treasurer of the City or his or her designee as provided herein at the address for notices to Landlord specified in this Lease, or to such other person or at such other place as Landlord may from time to time designate by notice to Tenant. Rent shall be payable at the times specified in this Lease without prior notice or demand; provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Rent shall be due thirty (30) business days following the giving by Landlord of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable. If this Lease terminates as a result of Tenant's default, including Tenants' insolvency, any Rent or other amounts due hereunder shall be immediately due and payable upon termination.

2.5 No Abatement or Setoff.

Tenant shall pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, deduction, or counterclaim, except as otherwise expressly provided in Article 15 or elsewhere in this Lease. Notwithstanding the preceding sentence or any other provision herein to the contrary, in the event that Tenant has submitted to City an application for a building permit for the Initial Improvements and such application has been deemed complete by City, and if City thereafter takes longer than sixty (60) days to complete its plan check and processing and to issue such building permit based upon such complete application, Base Rent hereunder with respect to such portion of the Premises containing such Initial Improvements shall be abated for the period between the expiration of such sixty (60)-day period and the date

upon which such building permit is issued by City. [NOTE: THE FOLLOWING IS APPLICABLE ONLY IF LEASE COMMENCEMENT DATE IS PRIOR TO APRIL 16, 2015; Tenant has previously provided compensation to CalTrans in order to secure CalTrans' early vacation of its right to occupy a portion of the Premises pursuant to that certain temporary construction easement recorded in the Official Records of Alameda County on February 13, 2002, as Instrument No. 2002-72862 (the "CalTrans Construction Easement") which otherwise expires on April 16, 2015. City has previously received compensation from CalTrans for the loss of use of the portion of the Premises subsumed within the CalTrans Construction Easement for the period between the Commencement Date and April 16, 2015, which amount is in excess of the Base Rent that would otherwise be due from Tenant under this Lease during such period. Therefore, Tenant shall be entitled to a full abatement of Base Rent under this Lease for the period between the Commencement Date and April 16, 2015; provided, however, that this abatement of Base Rent shall not prevent, modify or otherwise affect the timing or any other aspect of the adjustments to Base Rent set forth in Sections 2.2(a)(ii) and (iii) and 2.2(b) or Tenant's obligation to pay Participation Rent pursuant to Section 2.3.]

2.6 Interest on Delinquent Rent.

If any Base Rent or Participation Rent is not paid within ten (10) days following the date it is due, or if any Additional Rent is not paid within thirty (30) days following written demand for payment of such Additional Rent, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the "Default Rate") equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar law. Payment of interest shall not excuse or cure any default by Tenant.

2.7 Late Charges.

Tenant acknowledges and agrees that late payment by Tenant to Landlord of Rent will cause Landlord increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of Landlord's rights or remedies hereunder and regardless of whether such late payment results in an Event of Default, Tenant shall pay a late charge (the "Late Charge") equal to one and one-half percent (1-1/2%) of all Rent or any portion thereof which remains unpaid more than ten (10) days after Landlord's notice to Tenant of such failure to pay Rent when due, provided, however, that if Tenant fails to pay Rent when due on more than two (2) occurrences in any Lease Year, the Late Charge will be assessed as to any subsequent payments in such Lease Year remaining unpaid more than ten (10) days after they are due, without the requirement that Landlord give any notice of such payment failure. Tenant shall also pay reasonable Attorneys' Fees and Costs incurred by Landlord by reason of Tenant's failure to pay any Rent within the time periods described above. The Parties agree that such Late Charge represents a fair and reasonable estimate of the cost which Landlord will incur by reason of a late payment by Tenant.

2.8 Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and Tenant's obligations of every kind and nature relating to the Premises that may arise or become due under this Lease, whether foreseen or unforeseen, which are payable by Tenant to Landlord pursuant to this Lease, shall be deemed Additional Rent. Landlord shall have the same rights, powers and remedies, whether provided by law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Rent.

2.9 Net Lease.

It is the purpose of this Lease and intent of Landlord and Tenant that, except as specifically stated to the contrary in Section 2.5, all Rent shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, except as may be otherwise expressly provided in this Lease, Landlord shall not be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, except as otherwise expressly provided in Sections 4.1(b) and 4.1(c). Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Landlord would otherwise be or become liable by reason of Landlord's estate or interests in the Premises and any Improvements, any rights or interests of Landlord in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. Except as may be specifically and expressly stated to the contrary in Section 2.5, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

2.10 Security Deposit.

(a) Cash Deposit or Letter of Credit. On or before the Commencement Date, Tenant shall cause to be deposited with Landlord, in cash, or, at the election of Tenant, a Letter of Credit from a Bona Fide Institutional Lender with such term and in form and substance reasonably satisfactory to Landlord, and in any case for the sole benefit of Landlord, in the amount of \$ _____, which amount the Parties agree is equal to three (3) months Initial Base Rent (the "Security Deposit"), which shall secure and guaranty the full and faithful performance and observance by Tenant at all times during the Term of all the covenants, terms and conditions herein contained to be performed, suffered or observed by Tenant under this Lease, including, without limitation, the payment of Rent and any other amounts due to Landlord hereunder, reasonable amounts necessary to remedy any default by Tenant hereunder, to comply

with Tenant's surrender obligations under Article 30 at the end of the Term, or to reimburse Landlord for the actual costs incurred by Landlord in connection with exercising its rights hereunder (collectively, for purposes of this Section 2.10, "Tenant's Lease Obligations"). Landlord shall not be required to keep the Security Deposit separate or segregated from its general funds or in any interest bearing account or investment, and Tenant shall not be entitled to any interest on the Security Deposit.

(b) Renewal of Letter of Credit. Subject to the provisions of Section 2.10(a), if the Security Deposit is in the form of a Letter of Credit and such Letter of Credit is for a term less than the entire Term of this Lease, Tenant shall cause such Letter of Credit to be renewed, re-issued, amended or replaced at least ninety (90) days prior to its expiration in order to assure that there is no lapse in the effectiveness of the Letter of Credit or the Security Deposit. If Tenant shall fail to comply with its obligations under the preceding sentence, then Landlord may draw upon the whole of the then-posted Letter of Credit and hold the proceeds of the Letter of Credit as and for the Security Deposit

(c) Application and Replenishment. If Tenant is in default in respect to any of Tenant's Lease Obligations, Landlord may (but shall not be required to) use, apply, draw upon, or retain the whole or any part of the Security Deposit to the extent required for the payment of any Rent or other amounts owed Landlord under this Lease, or the reimbursement of the actual costs reasonably incurred by the Landlord in connection with exercising its rights under this Lease. It is agreed that the sums represented by the Security Deposit shall be deposited or posted for the sole benefit of Landlord as an advance guaranty payment of the Rent and other sums and Tenant's Lease Obligations due by Tenant hereunder, but does not in any way represent a measure of Landlord's damages and, except as otherwise expressly provided in Section 2.10(d), in no event shall Tenant be entitled to a refund or particular application of the Security Deposit or to cancel or terminate a Letter of Credit posted as the Security Deposit. Neither the application by Landlord of all or any portion of the Security Deposit, nor Landlord's demand for or acceptance of money to restore the Security Deposit, shall result in any waiver of Landlord's right under this Lease and applicable Law to declare Tenant in default of this Lease or to terminate or declare a forfeiture of this Lease. Tenant's payment of the Security Deposit shall not limit Tenant's liability to Landlord for the payment of amounts due to Landlord by Tenant in excess of the amount of the Security Deposit. Whenever and as often as Landlord draws upon the Security Deposit, Tenant shall, within ten (10) Business Days after Landlord's request therefor, restore the Security Deposit to its original amount.

(d) Refund of Balance. Subject to any deductions made by Landlord in accordance with this Lease (or a good faith estimate of such amounts), Landlord shall refund the balance of the Security Deposit, if any, or release and exonerate such corresponding portion of the Letter of Credit, as applicable, to Tenant at its last address known to Landlord within sixty (60) calendar days of the later of the expiration or earlier termination of the Term.

(e) Waiver. The Parties agree that the Security Deposit can be held and applied against future damages, including, without limitation, future Rent damages, and Tenant waives application of the provisions of California Civil Code §1950.7, or any similar, related, or successor provision of law, for all purposes with respect to this Lease, including, without

limitation, with respect to the time periods by which the Security Deposit must be returned to Tenant.

ARTICLE 3. USES

3.1 Uses within Premises.

Subject to the provisions of this Lease, Tenant shall develop, use and operate the Premises solely in accordance with the Project parameters set forth in Section 6.1 and the Scope of Development attached hereto as Exhibit and otherwise solely in accordance with this Article 3 (collectively, the "Permitted Uses"). Tenant shall not make any use of the Premises other than the Permitted Uses without the prior written consent of Landlord in its sole and absolute discretion. Notwithstanding the preceding sentence, Landlord shall not unreasonably withhold, delay or condition its consent to such other use provided Tenant shall have first secured, at no cost or expense to Landlord, (a) approval of such other use by the City Council by means of an appropriate amendment to the Master Plan, Development Agreement and/or PUD; and (b) all other Regulatory Approvals for such other use.

3.2 Advertising and Signs.

Subject to this Section 3.2, Tenant shall have the right to install signs and advertising that are consistent with the standards established in the Master Plan or that are located within the interior of any buildings located on the Premises; provided, however, that no advertising promoting the sale or use of alcohol, guns/tirearms or tobacco shall be allowed in any instance in the interior or exterior of the Premises. Subject to the requirements for and of any applicable Regulatory Approvals, any proposed signs or advertisements on the exterior of any building or structure on the Premises, including without limitation, on any awnings, canopies, flags, banners, LED or other electronic display devices, sails or vessels, shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. It shall be reasonable for the Landlord to prohibit general advertising (i.e. signs not directly advertising the person or business located at or on the Premises), or any signs that would violate Tenant's limitations on use as set forth in Section 3.3 hereof. All signs shall comply with applicable Laws regulating signs and advertising. Neither Tenant or any Tenant Affiliate shall have any right to install or use any billboard advertising except as may be provided in the Billboard Agreement.

3.3 Limitations on Uses by Tenant.

(a) Prohibited Activities. Tenant shall not conduct or permit on the Premises any of the following activities:

(i) any activity that creates waste of the Premises or a public or private nuisance, but without limitation on any right given to Tenant to make use of the Premises in accordance with the Permitted Uses and this Lease;

(ii) any activity that is not within the Permitted Use or previously approved by the Landlord in writing;

1. any activity that constitutes waste or nuisance to owners or occupants of adjacent properties. Such prohibited activities do not include activities that are necessary and integral to the operation the Project, but otherwise include, without limitation, adult entertainment on a commercial basis, medical cannabis, illegal drug distribution, the preparation, manufacture or mixing of anything that might emit any objectionable odors other than ordinary cooking odors, noises or lights onto adjacent properties with such intensity as to constitute a nuisance, or the use of amplified music, sound or light apparatus with such intensity as to constitute a nuisance;

(iii) any activity that will in any way unlawfully injure, obstruct or interfere with the rights of other tenants, owners or occupants of adjacent properties, including rights of ingress and egress; and

(iv) any auction, distress, tire, bankruptcy or going out of business sale on the Premises without the prior written consent of Landlord; and

The nuisance provisions of clauses (i) and (iii) above shall be assessed in the context of the nature of the uses included within the Permitted Uses. Without limiting the preceding sentence, this Section 3.3 shall not be construed to limit any right given to Tenant under Article 6 or elsewhere in this Lease with respect to the construction, installation, modification, repair, or Restoration of Improvements in accordance with all applicable Laws and Regulatory Approvals.

(b) Land Use Restrictions. Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Landlord's reversionary interest in the Premises, or obtain changes in applicable land use laws or conditional use authorizations or other permits for any uses not provided for hereunder, in each instance without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion, and subject to the provisions of Article 6. Notwithstanding the foregoing, nothing in this Lease shall prohibit Tenant from obtaining final condominium map approval and a final Subdivision Public Report from the California Department of Real Estate or filing a condominium plan with the City of Oakland; provided, however, that Developer acknowledges it may not actually convert the Premises to condominiums without first obtaining all necessary governmental approvals and the consent, in their sole and absolute discretion, of the City under this Agreement.

3.4 Premises Must Be Used.

Subject to Tenant's obligations to construct the Initial Improvements pursuant to Article 6, Tenant shall use all portions of the the Premises containing completed Initial Improvements continuously during the Term in accordance with the Scope of Development, the Regulatory Approvals, and the Permitted Uses and shall not allow any such portions of the Premises or any part thereof to remain unoccupied or unused (subject to the provisions of Section 6.1) and customary vacancies, re-tenanting, and periodic repairs and maintenance, casualty damage or condemnation) without the prior written consent of Landlord, which consent

may be withheld in Landlord's discretion. Notwithstanding the foregoing, Tenant will not be in violation of this Section 3.4 so long as Tenant is using commercially reasonable best efforts to lease, at then-current market rental rates, vacant space in all portions of the Premises containing completed Initial Improvements or, if a Subtenant has vacated a portion of the Premises but the Sublease remains in effect, if Tenant is diligently pursuing legal remedies Tenant has under such Sublease, or, if a retail subtenant that is continuing to pay rent ceases operations in the Premises with the right to do so under its sublease.

ARTICLE 4. TAXES AND OTHER IMPOSITIONS

4.1 Payment of Possessory Interest, Taxes and Other Impositions.

(a) Possessory Interest Taxes. Tenant shall pay or cause to be paid, prior to delinquency, all Impositions comprised of possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or Tenant's leasehold estate (but excluding any such taxes separately assessed, levied or imposed on any Subtenant), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)). Subject to the provisions of Section 4.3, all such taxes shall be paid directly to the City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 4.3.

Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the applicable governmental Assessor. Tenant further acknowledges that any Sublease or Transfer permitted under this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a transfer tax and reassessment of any possessory interest created hereunder in accordance with applicable Law.

Notwithstanding the preceding provisions of this Section 4.1(a) or any other provision in this Lease to the contrary, City shall pay or waive any City transfer tax payable with respect to the Parties' initial entry into this Lease.

(b) Other Impositions. Without limiting the provisions of Section 4.1(a), Tenant shall pay or cause to be paid all other Impositions, to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)), which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately

assessed, levied or imposed on any Subtenant). Subject to the provisions of Article 5, Tenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. The foregoing or any other provision in this Lease notwithstanding, Tenant shall not be responsible for any Impositions arising from or related to, Landlord's fee ownership interest in the Property or premises (including, without limitation, any real property taxes or assessments), the Landlord's interest as landlord under this Lease or any transfer thereof, including but not limited to, Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Landlord's fee interest or a transfer thereof

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which the Termination Date occurs shall be apportioned and prorated between Tenant and Landlord on a daily basis.

(d) Proof of Compliance. Within a reasonable time following Landlord's written request which Landlord may give at any time and give from time to time, Tenant shall deliver to Landlord copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Landlord, evidencing the timely payment of such Impositions.

4.2 Landlord's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 4.3, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency, Landlord, at its sole and absolute option, may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, Landlord shall give Tenant written notice specifying a date at least ten (10) business days following the date such notice is given after which Landlord intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify Landlord that it is contesting such Imposition pursuant to Section 4.3, then Landlord may thereafter pay such Imposition, and the amount so paid by Landlord (including any interest and penalties thereon paid by Landlord), together with interest at the Default Rate computed from the date Landlord makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to Landlord within ten (10) business days following demand.

4.3 Right of Tenant to Contest Impositions and Liens.

Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other Person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Landlord. Tenant shall give notice to Landlord within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition

as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to Landlord in any instance where Landlord's interest in the Premises may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Landlord is a necessary party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by or in the name of Landlord or any owner of the Premises, Landlord, at the request of Tenant and at no cost to Landlord, with counsel selected and engaged by Tenant, subject to Landlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Landlord, at its own expense and at its sole and absolute option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by or in the name of Landlord or any owner of the Premises. Except as provided in the preceding sentence, Landlord shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Article 13 hereof, Tenant shall Indemnify Landlord for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, which Landlord may be legally obligated to pay.

4.4 Landlord's Right to Contest Impositions.

At its own cost and after notice to Tenant of its intention to do so, Landlord may but in no event shall be obligated to contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require Landlord to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. Landlord shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest.

ARTICLE 5. COMPLIANCE WITH LAWS

During the Term, Tenant and its use and operation of the Premises shall comply, at no cost to Landlord, (i) with all applicable Laws (including Regulatory Approvals), and (ii) with the requirements of all policies of insurance required to be maintained pursuant to Article 14 of this Lease. The foregoing sentence shall not be deemed to limit Landlord's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to Landlord, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises. This Section 5.1 shall not apply to compliance with Laws (including Regulatory Approvals) which relate to Hazardous Materials, such

compliance being governed exclusively by Article 15 hereof, or to contests of any Imposition or other lien, such contests being exclusively governed by Section 4.3 hereof. Notwithstanding anything to the contrary herein, Tenant shall not be in default hereunder for failure to comply with any Laws or insurance requirements if Tenant is contesting the applicability of such Laws (including Regulatory Approvals) to Tenant or this Lease, or insurance requirements diligently and in good faith by appropriate proceedings and at no cost to Landlord, provided that any such contest shall not relieve or release Tenant from its obligation to pay all or any portion of Rent hereunder, that Tenant shall indemnify Landlord against and hold Landlord harmless from any Losses resulting from such contest, and that such contest shall not result in the loss or suspension of the insurance coverage required to be maintained by Tenant hereunder.

(a) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section 5.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises or the Improvements, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Landlord, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. Except as provided in Articles 9 or 10, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Landlord. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Landlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation, except to the extent provided in Article 10, or Sections 17.1 or 17.2.

(b) Proof of Compliance. Upon request by Landlord, Tenant shall promptly provide Landlord with evidence of its compliance with any of the obligations required under this Section.

5.2 Regulatory Approvals.

(a) City Approvals. Tenant acknowledges and agrees that Landlord is entering into this Lease in its proprietary capacity as the holder of fee title to the Property, and not in its capacity as a governmental regulatory agency and that the status, rights and obligations of Landlord, in such proprietary capacity, are separate and independent from the status, functions, powers, rights and obligations of the City in such governmental regulatory capacity, and that nothing in this Lease shall be deemed to limit or restrict City in the exercise of its governmental regulatory powers and authority with respect to Tenant, the Premises or otherwise, or to render Landlord obligated or liable under this Lease for any acts of omissions of the City in connection with the exercise of its independent governmental regulatory powers and authority. Without limiting the preceding sentence, Tenant acknowledges that the Permitted Uses under Section 3.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses,

including but not limited to, the Master Plan, PUD or building permits, nor do such uses limit Landlord's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. Tenant understands that the entry by the Landlord into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including the Landlord itself in its regulatory capacity. By entering into this Lease, the Landlord is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein. Subject to the preceding provisions of this Section 5.2, nothing herein shall be deemed to limit the rights and obligations of Developer or City under the Master Plan, PUD or Development Agreement as they pertain to the Permitted Uses, the Scope of Development and the review and approval of planned Improvements.

(b) Approval of Other Agencies; Conditions. [Note: To be made consistent with applicable cooperation language in LDDA.] Tenant understands that the Project and Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any construction or alterations of Improvements, may require that approvals, authorizations or permits be obtained from governmental agencies with jurisdiction. Tenant shall be solely responsible for obtaining Regulatory Approvals as further provided in this Section. In any instance where Landlord will be required to act as a co-permittee, and in instances where modifications are sought from any other agencies in connection with Tenant's obligations under Article 15, or where Tenant proposes Additional Construction which requires Landlord's approval under Article 6, Tenant shall not apply for any Regulatory Approvals (other than a building permit from the Landlord) without first obtaining the approval of Landlord, which approval will not be unreasonably withheld, conditioned or delayed. Throughout the permit process for any Regulatory Approval, Tenant shall consult and coordinate with Landlord in Tenant's efforts to obtain such Regulatory Approval, and Landlord shall cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approval, provided that Landlord shall have no obligation to make expenditures or incur expenses other than reasonable administrative expenses. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any regulatory agency other than Landlord, if Landlord is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of Landlord whether on or off the Premises, unless in each instance Landlord has previously approved such conditions in writing in Landlord's sole and absolute discretion. No such approval by Landlord shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, Landlord shall join, where required, in any application by Tenant for a required Regulatory Approval, and in executing such permit, provided that Landlord shall have no obligation to join in any such application or execute the permit if the Landlord does not approve the conditions imposed by the regulatory agency under such permit as provided herein. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be responsible for complying, at no cost to Landlord or the City, with any and all conditions imposed by any regulatory agency as part of a Regulatory Approval. With the consent of Landlord (which shall not be unreasonably withheld or delayed), Tenant shall have the right to appeal or contest in any manner permitted by law any condition imposed upon any such Regulatory Approval. Tenant shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of

any Regulatory Approval and Landlord shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Article 13, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which Landlord may be liable in connection with Tenant's failure to comply with any Regulatory Approval.

ARTICLE 6. IMPROVEMENTS

6.1 Minimum Project. NOTE: SUBJECT TO FURTHER REVIEW!

The parties agree that Landlord has an interest in ensuring that the Initial Improvements for the Premises are constructed within a specified period of time. Therefore, the parties have agreed that Tenant shall be required to have Commenced Construction (defined below) of a certain portion of the Initial Improvements and completed the same pursuant to the schedule set forth in this Section 6.1 (the "Minimum Project"). As used in this Section 6.1, the term "Commence," "Commenced" or "Commenced Construction" shall mean that a building permit has been obtained, a foundation/slab has been installed or the initial wharf repair has been commenced and the Initial Improvements are subject to active and on-going construction for the applicable Initial Improvement.

(a) Required Schedule. All of the dates and time periods included in this Section 6.1(a) are subject to extension pursuant to the provisions of Section 16 (Force Majeure). Tenant shall have Commenced Construction of the Initial Improvements or have caused the Commencement of Construction of the Initial Improvements pursuant to the following schedule:

(i) Initial Milestone Date. Commenced Construction of a ship-to-rail terminal designed for the export of non-containerized bulk goods and import of oversized or overweight cargo ("Bulk Oversized Terminal") prior to the date that is six (6) months after the Commencement Date (the "Initial Milestone Date").

(ii) Second Construction Milestone Date. Completed the construction of an operating Bulk Oversized Terminal with tenant improvements, equipment, wharf repairs and rail improvements which are (A) consistent with the Master Plan and (B) capable of servicing one or more lines of export products prior to the date that is two (2) years after the date of the issuance of the building permit for the Bulk Oversized Terminal (the "Second Milestone Date").

The Initial Milestone Date and the Second Milestone Date are collectively referred to herein as the "Milestone Dates."

(b) Exclusive Remedy for Tenant's Default Related to the Minimum Project. Notwithstanding any term or provision of this Agreement to the contrary, this Section 6.1(e) sets forth Landlord's sole and exclusive remedy with respect to Tenant's default related to the Minimum Project obligations included in this Section 6.1. If Tenant fails to meet any one of the Milestone Dates, (i) Tenant shall pay the Minimum Project Liquidated Damages (defined below) to Landlord within thirty (30) calendar days after the applicable Milestone Date and (ii) Landlord shall have the right, but not the obligation, to terminate this Agreement only with respect to the

portion of the Premises on which Tenant has not Commenced Construction of an Initial Improvement (including buildings, parking lots, landscaping and other improvements) (the "Unimproved Premises") by delivery of written notice to Tenant within sixty (60) days after the applicable Milestone Date (the "Partial Termination Notice").

Landlord may elect, in its sole and absolute discretion, to receive payment of the Minimum Project Liquidated Damages without exercising its right to terminate this Agreement with respect to the Unimproved Premises. If Landlord elects to receive payment of the Minimum Project Liquidated Damages without terminating this Agreement with respect to the Unimproved Premises and confirms such election in writing, Tenant shall have no further obligation with respect to the Minimum Project under this Agreement. If Landlord elects to terminate this Agreement with respect to the Unimproved Premises, (I) Tenant shall execute and record a quitclaim deed or other instrument necessary to remove the Memorandum of Lease from title to the Unimproved Premises within ten (10) business days after receipt of the Termination Notice; and (II) except for those obligations which expressly survive the termination of this Agreement, all of Tenant's obligations under this Agreement with respect to the Unimproved Premises shall terminate.

The "Minimum Project Liquidated Damages" shall be equal a percentage (calculated to the third decimal point) of \$ _____ [Note: \$5mm prorated by the amount of acreage included in the Premises in relation to the total amount of acreage in the East, Central and West Gateways.], which percentage shall be equal to the amount calculated by dividing the acreage of the Unimproved Premises by the acreage of the Premises.

6.2 Other Requirements for Initial Improvements. In addition to the requirements in Section 6.1, Tenant shall construct or cause to be constructed the Initial Improvements in accordance with the requirements set forth in this Section 6.2. To the extent the subject matter of any of the requirements set forth in this Section 6.2 are specifically addressed in the Master Plan, Development Agreement and/or PUD, then in the event of any conflict between the provisions of this Section 6.2 and the provisions of such Regulatory Approvals, the provisions of such Regulatory Approvals shall control, **INOTE: CITY ADMINISTRATOR SHALL HAVE THE RIGHT TO SUBSTITUTE IN FOR ALL OR ANY OF THE FOLLOWING PROVISION OF SECTION 6.2, ANY APPLICABLE PROVISIONS FROM THE MASTER PLAN, DEVELOPMENT AGREEMENT AND/OR PUD THAT SPECIFICALLY ADDRESS THE SUBJECT MATTER OF THE FOLLOWING PROVISIONS OF SECTION 6.2.**

(a) Construction Documents.

Tenant shall prepare and submit to Landlord, for review and written approval hereunder, reasonably detailed Schematic Drawings, and following Landlord's approval of such Schematic Drawings, Preliminary and Final Construction Documents which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings, Preliminary and Final Construction Documents are referred to as "Construction Documents"). Landlord may waive the submittal requirement of Schematic Drawings for a particular Initial Improvement if it determines in its discretion that the scope of such Initial Improvement does not warrant such initial review. Construction Documents shall be prepared by a qualified architect

or structural engineer duly licensed in California. Landlord shall approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval shall state in writing the reasons for disapproval. If Landlord deems the Construction Documents incomplete, Landlord shall notify Tenant of such fact within twenty-one (21) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If Landlord notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If Landlord disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of this Section 6.2(a), Landlord shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in Landlord's previous notice of rejection, and Landlord shall approve or disapprove the revisions to the Construction Documents within fifteen (15) days after resubmission. If Landlord fails to approve or disapprove Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 6.2(a), such failure shall not constitute an Event of Default under this Lease on the part of Landlord, but such Construction Documents shall be deemed approved by the Landlord in its proprietary capacity, provided that Tenant first provides Landlord with at least ten (10) days prior written notice that Tenant intends to deem said Construction Documents so approved.

(b) Progress Meetings; Coordination. From time to time at the request of either Party during the preparation of Construction Documents, Landlord and Tenant shall hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. Landlord and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to Landlord can receive prompt and speedy consideration.

(c) Landlord Approval of Construction Documents.

Upon receipt by Tenant of a disapproval of Construction Documents from Landlord, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses Landlord's written objections. Tenant shall resubmit such revised portions to Landlord as soon as possible after receipt of the notice of disapproval. Landlord shall approve or disapprove such revised portions in the same manner as provided in Section 6.2(a) for approval of Construction Documents (and any proposed changes therein) initially submitted to Landlord. If Tenant desires to make any substantial change in the Final Construction Documents after Landlord has approved them, then Tenant shall submit the proposed change to Landlord for its reasonable approval. Landlord shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to Landlord. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period.

(d) Construction Permits. Tenant, at its cost, shall be responsible for applying for and diligently pursuing the issuance of, and thereafter compliance with, all permits and other Regulatory Approvals, including any required environmental certification, allowing construction and development of the Initial Improvements (the "Construction Permits"). Upon request by Landlord, Tenant shall provide to Landlord copies of all Construction Permits.

(e) Constmction Schedule and Reports. All constmction with respect to the Project shall be accomplished expeditiously, diligently, and within the timeframes set forth within the Scope and Schedule of Performance. During periods of constmction, Tenant shall submit to Landlord written progress reports when and as reasonably requested by Landlord.

(f) Conditions to Commencement of Constmction. Notwithstanding any provision herein to the contrary, Tenant shall not commence construction of any Initial Improvements until all of the following conditions have been satisfied or waived by Landlord:

(i) Landlord shall have approved the Final Constmction Documents;

(ii) Tenant shall have obtained all Constmction Permits;

(iii) Tenant shall have entered into the Initial Improvements Constmction Contract;

(iv) Tenant shall have delivered the Completion Guaranty, executed by CCIG with respect to such Initial Improvements and such Completion Guaranty shall be in full force and effect; and

(v) If requested by Landlord, Tenant shall have submitted to Landlord the following bonds (or equivalent security, which may include a letter of credit, acceptable to Landlord in its sole and absolute discretion) issued by a licensed surety, naming the City as co-obligee or assignee, and in a form reasonably satisfactory to City (the "Constmction Bonds"):

(A) A performance bond in an amount not less than one hundred percent (100%) of the cost of construction of the Initial Improvements, based upon the Initial Improvements Constmction Contract, as security for the faithful performance of such constmction; and

(B) A labor and material payment bond in an amount not less than one hundred percent (100%) of the cost of construction of the Project pursuant to the Constmction Contract, as security for payment to persons performing labor and furnishing materials in connection with such constmction.

(g) Constmction Standards. All constmction of the Initial Improvements shall be accomplished in accordance with the Constmction Documents and good constmction and engineering practices and applicable Laws.

(h) Safety Matters. Tenant shall undertake commercially reasonable measures in accordance with good constmction practices (consistent with the requirements of the Community Benetits) to minimize the risk of injury, damage, dismption or inconvenience to the Premises and Improvements and surrounding property, or the risk of injury to members of the public, caused by or resulting from such constmction. Tenant shall make adequate provision for the safety and convenience of all persons affected by such constmction, including erecting constmction barricades substantially enclosing the area of such constmction and maintaining them until constmction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous constmction conditions.

(i) Costs of Constmction. As between Landlord and Tenant, Tenant shall bear and pay all costs and expenses of constmction of the Initial Improvements, whether onsite or offsite, including, without limitation, the cost of connections to existing utility lines in adjacent rights-of-way, and any and all cost overruns. Without limiting the preceding provisions, Tenant shall be responsible for performing all site preparation work necessary for construction of the Initial Improvements. Such preparation shall include, without limitation, all Remediation and Handling of Hazardous Materials (subject to the terms of Article 15, disabled access, tenant improvements, demolition of existing structures, grading and all structure and substructure work, public access improvements, and tenant improvements.

(j) Rights of Access. During any period of construction, Landlord and its Agents shall have the right to enter areas in which construction is being performed, on reasonable prior notice during customary construction hours, subject to the rights of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Landlord to conduct such inspections or any liability in connection therewith.

(k) As-Built Plans and Specifications. Tenant shall furnish to Landlord one set of as-built plans and specifications with respect to the Initial Improvements within one hundred twenty (120) days following completion. If Tenant fails to provide such as-built plans and specifications to Landlord within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from Landlord, Landlord will thereafter have the right to cause an architect or surveyor selected by Landlord to prepare as-built plans and specifications showing such Additional Constmction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to Landlord as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Additional Construction under applicable regulations adopted by Landlord in its regulatory capacity.

6.3 Landlord's Right to Approve Additional Constmction.

(a) Constmction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform Additional Constmction in accordance with the provisions of this Section 6.3, provided that Tenant shall not, without Landlord's prior written approval (which approval shall not be unreasonably withheld or delayed) do any of the following:

(i) Constmct additional buildings or other additional structures, other than to replace or restore those previously existing;

(ii) Increase the bulk or height of any Improvements beyond the bulk or height approved for the then-existing Improvement (other than changes in the bulk or height of equipment penthouses);

(iii) Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law);

(iv) Decrease the Gross Building Area or the Leasable Area of the Premises after Completion by more than five percent (5%);

(v) Materially increase [NOTE: provide parameter of "material increase"?] the Gross Building Area of the Premises; or

(vi) Perform Additional Construction involving replacement or reconstruction that materially alters the exterior architectural design of any Improvements for any replacement construction. In connection with any replacement or restoration, Tenant shall use materials of at least equal quality, durability, and appearance to the materials originally installed, as reasonably determined by Landlord.

The parties acknowledge that, without limiting what constitutes the Landlord's reasonable approval under this Section 8.2(a), it shall be reasonable for Landlord to withhold its consent under this Paragraph 9.1(a) if the proposed Additional Construction would (i) violate any Regulatory Approvals or applicable Laws or (ii) upon completion of the Additional Construction, result in a change of use of Project which would materially adversely impact the Project or payment to Landlord or City of any amounts hereunder.

(b) Notice by Tenant. At least thirty (30) days before commencing any Additional Construction which in Tenant's good faith judgment, requires Landlord's approval, Tenant shall notify Landlord of such proposed Additional Construction. Such notice shall be accompanied by Final Construction Documents for such Additional Construction. Within twenty (20) days after receipt of such notice from Tenant, Landlord shall have the right to object to any such Additional Construction, to the extent that such Additional Construction requires Landlord's approval.

(c) Permits. Tenant acknowledges that Landlord's approval of Additional Construction (or the fact that Tenant is not required to obtain Landlord's approval) does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from the Landlord itself in its regulatory capacity, including, without limitation, building permits.

(d) Other Requirements. The requirements set forth in Sections 6.1(a)-(f) also shall apply to any and all Additional Construction requiring Landlord's approval, subject to the following modifications:

(i) Construction Schedule. All Additional Construction shall be accomplished expeditiously and diligently, subject to Force Majeure;

(ii) Conditions to Commencement of Construction. Tenant shall have submitted to Landlord in writing its good faith estimate of the anticipated total construction costs of the Additional Construction. If such good faith estimate exceeds One Million and No/100 Dollars (\$1,000,000), Tenant shall also submit evidence reasonably satisfactory to Landlord of Tenant's ability to pay such costs as and when due.

(iii) As-Built Plans and Specifications. Tenant shall only be required to furnish to Landlord as-built plans and specifications with respect to Additional Constmction costing One Hundred Thousand Dollars (\$100,000) as Indexed, or more.

6.4 Minor Alterations.

Landlord's approval hereunder shall not be required for (a) the installation, repair or replacement of furnishings, fixtures, equipment or decorative Improvements or repair or replacement of worn out or obsolete components of the Improvements which do not materially affect the structural integrity of the Improvements unless otherwise required under Section 6.2(a)(i)-(vi), (b) recarpeting, repainting the interior or exterior of the Premises, groundskeeping, or similar alterations, or (c) any other Additional Constmction which does not require a building permit (collectively, "Minor Alterations").

6.5 Tenant Improvements.

Landlord's approval hereunder shall not be required for the installation of tenant improvements and finishes (excluding retail storefronts or facades) to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing shall not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a building permit from the City, acting in its regulatory capacity.

6.6 Title to Improvements.

During the Term of this Lease, Tenant shall own all of the Improvements, including all Additional Constmction and all appurtenant fixtures, machinery and equipment installed therein (except for trade tixtures and other personal property of Subtenants). During the Term, for federal income tax purposes, Tenant shall be the "tax owner" of the Improvements, including all Additional Constmction, and all appurtenant fixtures, machinery and equipment installed therein (except for trade tixtures and other personal property of Subtenants) and shall be entitled to depreciation deductions and any tax credits with respect to the Improvement, including all Additional Constmction and all appurtenant tixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and other personal property of Tenant and its Subtenants other than Landlord), will vest in Landlord without further action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to Landlord.

ARTICLE 7. MANAGEMENT; REPAIR AND MAINTENANCE

7.1 Management and Operating Covenants.

Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with this Lease and the standards for the maintenance and

operation of other comparable break bulk marine terminal (as applicable) or urban logistics and R&D projects located in military base reuse and port areas elsewhere in the State of California, subject to the provisions of Articles 9 and 10. Tenant shall be exclusively responsible, at no cost to Landlord, for the management and operation of the Improvements.

7.2 Tenant's Duty to Maintain.

Except as otherwise provided in this Article 7, and Articles 9 and 10 hereof, throughout the Term of this Lease, Tenant shall maintain and repair, at no cost to Landlord, the Premises, in the condition and repair required under Section 7.1, and in compliance with all applicable Laws and the requirements of this Lease. Tenant shall promptly make (or cause others to make) all necessary repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen. Tenant shall make such repairs with materials, apparatus and facilities as originally installed and approved by Landlord under the LDDA or this Lease, or, if not originally subject to Landlord approval or not commercially available, with materials, apparatus and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Tenant shall be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Initial Improvements. Except as otherwise provided in the Master Plan, Development Agreement or PUD or elsewhere in this Lease, and subject to the provisions of Article 4, Tenant shall not be obligated to maintain any public utilities or public infrastructure located in any dedicated public rights of way.

7.3 Costs of Repairs, Etc.

(a) No Obligation of Landlord; Waiver of Rights. As between Landlord and Tenant, and except as otherwise expressly provided in Article 15, Tenant shall be solely responsible for the condition, operation, repair, maintenance and management of the Premises, including any and all Improvements, from and after the Commencement Date. Landlord shall have no obligation to make repairs or replacements of any kind or maintain the Premises, any Improvements or any portion thereof. Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or replacements at Landlord's expense, or (except as provided in Section 13) abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Landlord's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

(b) Notice. Tenant shall deliver to Landlord, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority (other than Landlord) having responsibility for the enforcement of any applicable Laws (including Disabled Access Laws or Hazardous Materials Laws), asserting that the Project is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Article 14, asserting that the requirements of such insurance policy or policies are not being met.

ARTICLE 8. UTILITY SERVICES

8.1 Utility Services.

Landlord, in its proprietary capacity as owner of the Property and landlord under this Lease, shall not be required to provide any utility services to the Premises or any portion of the Premises. Tenant and its Subtenants shall be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which the Premises are put (it being acknowledged that City is the sole and exclusive provider to the Premises of certain public utility services). Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Landlord under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Landlord relating to this Lease, any Losses arising from or in connection with City's provision of (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

ARTICLE 9. DAMAGE OR DESTRUCTION [NOTE: SUBJECT TO FURTHER REVIEW]

9.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Article 9.

(b) Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen (a "Casualty Event"), and such Casualty Event (i) could materially impair use or operation of any material portion of the Improvements for their intended purposes for a period of thirty (30) days or longer, or (ii) exceeds in an individual instance the amount of Two Hundred and Fifty Thousand And No/100 Dollars (\$250,000) or aggregate amount, together with any other Casualty Event occurring during the preceding 5-Year Period, of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000), then Tenant shall promptly, but not more than ten (10) days after the occurrence of the Casualty Event, give written notice thereof to Landlord describing with as much specificity as is reasonable, given the

ten-day time constraint, the nature and extent of such damage or destruction; provided, however, that Tenant shall provide Landlord with a supplemental and more detailed written report describing such matters with specificity within ninety (90) days after the occurrence of the damage or destruction. The provisions of this Section 9.1(b) are in addition to, and not in lieu of, the incident management provisions of Section 38.17.

(c) Waiver. The Parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, Landlord and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, as such Sections may from time to time be amended, replaced, or restated.

9.2 Rent after Damage or Destruction.

If there is any damage to or destruction of the Premises, including the Improvements thereon, this Lease shall not terminate except as otherwise specifically provided in Section 11.4. In the event of any damage or destruction to the improvements that does not result in a termination of this Lease, and at all times before completion of Restoration, Tenant shall pay to Landlord all Rent at the times and in the manner described in this Lease.

9.3 Tenant's Obligation to Restore.

Except at the option of Tenant during the last five (5) years of the Term as set forth below [or as permitted under Section 9.7 below], if all or any portion of the Improvements are damaged or destroyed, then Tenant shall, subject to Section 9.4 hereof, within a reasonable period of time (allowing for securing necessary Regulatory Approvals), commence and diligently, subject to Force Majeure, Restore the Improvements to the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then applicable Laws (including, but not limited to, any required code upgrades), without regard to the amount or availability of insurance proceeds. All Restoration performed by Tenant shall be in accordance with the procedures set forth in Section 6 relating to Additional Construction and shall be at Tenant's sole expense. If insurance proceeds are available for such Restoration, then Tenant shall deposit all insurance proceeds received by Tenant in connection with a casualty event with a Depositary to Restore the Premises, which Depositary shall be authorized to make disbursement therefrom in accordance with Section 10.5; provided, however, that if at any time the estimated or actual cost to Restore ("Casualty Cost") exceeds the net insurance proceeds actually deposited with the Depositary, then Tenant shall either (i) also deposit with the Depositary such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds ("Additional Casualty Cash"), or (ii) obtain payment or performance bonds in the full amount of the Additional Casualty Cash to cover the payment and performance of the Restoration and naming Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees and in form reasonably satisfactory to Landlord (such bonds, together with such net insurance proceeds and any interest earned thereon, and the Additional Casualty Cash, the "Casualty Restoration Funds"). In the event Tenant shall elect not to Restore the Premises during the last 5 years of the Term, Tenant shall have the right to terminate this Lease with respect to that portion of the Premises containing the Improvements so damaged or destroyed upon written notice to Landlord which shall be delivered if at all within sixty (60) days of written notice of the Casualty Event to Landlord, in which event, the Tenant may use all

available insurance proceeds to raze those improvements on the Premises designated by Landlord and shall then cause the Depository to turn over the balance of any available insurance proceeds to Landlord. If Tenant obtains payment or performance bonds related to a Restoration (which Tenant may or may not obtain in its discretion), Tenant shall name Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to Landlord promptly upon obtaining them.

9.4 Rights of Landlord. In addition to the other remedies available to Landlord that are set forth elsewhere in this Lease, the following remedies shall be available to Landlord in the event of a Casualty Event:

(a) Expiration or Termination of Lease Prior to Completion of Any Restoration. In any case where this Lease shall expire or be terminated prior to the completion of the Restoration, Tenant shall (i) promptly account to Landlord for all amounts spent in connection with any Restoration which was undertaken, (ii) immediately pay over or cause the Depository to pay over to Landlord the remainder, if any, of the Casualty Restoration Funds received by Tenant or held by the Depository prior to such termination or cancellation, (iii) pay over or cause the Depository to pay over to Landlord, within five (5) business days after receipt thereof, any Casualty Restoration Funds received by Tenant or the Depository subsequent to such termination or cancellation, and (iv) immediately pay over to Landlord any outstanding Additional Casualty Cash that Tenant should have deposited with the Depository prior to such termination or cancellation. Upon completion of and payment for the Restoration, Landlord shall return to Tenant any unused portion of the Casualty Restoration Funds.

(b) Failure to Restore Following a Casualty Event.

(i) If, in the event of a Casualty Event, (A) Tenant fails or neglects to commence the diligent Restoration of the Premises or the portion thereof so damaged or destroyed, or (B) having so commenced such Restoration, Tenant fails to diligently complete the same in accordance with the terms of this Lease, then Landlord may, by giving sixty (60) calendar days' prior notice to Tenant, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease and the Term shall immediately become forfeited and void.

(ii) If, in the event of a Casualty Event, (A) Tenant fails or neglects to commence the diligent Restoration of the Premises or the portion thereof so damaged or destroyed, (B) having so commenced such Restoration, Tenant fails to diligently complete the same in accordance with the terms of this Lease, or (C) prior to the completion of any such Restoration by Tenant, this Lease shall expire or be terminated in accordance with the terms of this Lease, then Landlord may, but shall not be required to, complete such Restoration at Tenant's expense and shall be entitled to be paid out of the Casualty Restoration Funds for the relevant Restoration costs incurred by Landlord. Upon completion of and payment for the Restoration, Landlord shall return to Tenant any unused portion of the Casualty Restoration Funds. Tenant's obligations under this Section 9.4 shall survive the expiration or termination of this Lease.

9.5 Payment of Casualty Restoration Funds to Tenant. Subject to the satisfaction by Tenant of all of the terms and conditions of this Article 9, the Depositary shall pay to Tenant from time-to-time any Casualty Restoration Funds it holds, but not more than the amount actually collected by the Depositary upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as Landlord, to the extent, if any, of the reasonable expenses paid or incurred by the Depositary and Landlord in the collection of such monies, to be utilized by Tenant solely for the Restoration, such payments to be made as follows:

(a) prior to commencing any Restoration, Tenant shall furnish to Landlord for its approval the estimated cost, estimated schedule and detailed construction and design plan for the completion of the Restoration, each prepared by an architect, engineer and general contractor;

(b) the Casualty Restoration Funds held by the Depositary shall be paid to Tenant in installments as the Restoration progresses, subject to Section 9.5(c), based upon requisitions to be submitted by Tenant to the Depositary and Landlord in compliance with Section 9.6, showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by Tenant; provided, however, that if any Encumbrance is filed against the Premises or any part thereof in connection with the Restoration, Tenant shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged in accordance with this Lease; provided further that notwithstanding the foregoing, but subject to the provisions of Section 9.5(c), the existence of any such Encumbrance shall not preclude Tenant from receiving any installment of Casualty Restoration Funds held by the Depositary so long as (i) such Encumbrance will be discharged with funds from such installment and at the time Tenant receives such installment Tenant delivers to Landlord and the Depositary a release of such Encumbrance executed by the lienor and in recordable form, or (ii) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord;

(c) the amount of each installment to be paid to Tenant shall be the aggregate amount of Casualty Costs theretofor incurred by Tenant minus the aggregate amount of Casualty Restoration Funds theretofor paid to Tenant in connection therewith; provided, however, that all disbursements to Tenant shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depositary is sufficient to complete the Restoration; and

(d) except as provided in Section 9.4, upon completion of and payment for the Restoration by Tenant, subject to the rights of any Mortgagee, the Depositary shall pay the balance of the Casualty Restoration Funds it holds, if any, to Tenant; provided, however, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), Tenant shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 9.3.

9.6 Conditions of Payment. The following shall be conditions precedent to each payment made to Tenant as provided in Section 9.5:

(a) Tenant shall have furnished Landlord with estimates of costs and schedule and a detailed construction plan for the completion of the Restoration, as provided for in Section 9.5(a);

(b) at the time of making such payment, no Event of Default exists; and

(c) the Restoration shall be carried out in accordance with Article 9, and there shall be submitted to the Depository and Landlord the certificate of the applicable architect or engineer stating that (i) the materials and other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 15.3(c)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's lien or other Encumbrances have been claimed, except for any mechanic's lien for claims that (A) will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (provided that a release of such Encumbrance is delivered to the Depository in accordance with Section 9.5(b)), or (B) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord, (ii) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (iii) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Casualty Restoration Funds or has been made out of the Casualty Restoration Funds received by Tenant, (iv) the sum then requested does not exceed the value of the services and materials described in the certificate, (v) the work relating to such requisition has been performed in accordance with this Lease, (vi) the balance of the Casualty Restoration Funds held by the Depository or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion, and (vii) in the case of the final payment to Tenant, the Restoration has been completed in accordance with this Lease.

9.7 Tenant's Election to Restore or Terminate.

(a) Uninsured Casualty or Major Damage or Destruction. If an event of Major Damage or Destruction occurs during the last ten (10) years of the Term, or if an event of Uninsured Casualty occurs at any time during the Term, then at the time Tenant provides Landlord with the ninety (90) day report described in Section 9.1(b) above, Tenant shall also provide Landlord with written notice (the "Casualty Notice") either (1) electing to commence and complete Restoration of the Improvements, or (2) electing to terminate this Lease (subject to the conditions of Section 11.4(b)). For purposes hereof, "Uninsured Casualty" will mean an event of damage or destruction for which the costs of Restoration (including the cost of any required code upgrades) exceeds One Million and No/100 Dollars (\$1,000,000), as Indexed, (or Three Million and No/100 Dollars (\$3,000,000)) as Indexed for mold damage if Tenant does not obtain property insurance covering mold damage plus, in all cases, the amount of any applicable policy deductible (except in the case of damage or destruction caused by earthquake, if Tenant is obligated to carry earthquake insurance pursuant to Section 14.1(a)(ii), the amount of the policy

deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake damage under Tenant's property insurance policy maintained under Section 14.1(a)(ii) hereof as of the date of casualty, or the actual amount of the policy deductible) and which is not covered by available insurance proceeds payable under the policies of insurance that Tenant is required to carry under Section 14 hereof (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder). Proceeds of insurance shall not be deemed "available" for purposes of this Article 9 to the extent that a Mortgagee, pursuant to the terms of its Mortgage if approved by Landlord under Section 34.8, retains or requires the application of such proceeds for purposes other than Restoration. Tenant shall provide Landlord with the Casualty Notice no later than ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Tenant elects to Restore the Improvements, all of the provisions of Section 9 that are applicable to Additional Construction of the Improvements shall apply to such Restoration of the Improvements to the condition they were in prior to such Major Damage or Destruction as if such Restoration were Additional Construction.

(b) Other Circumstances Allowing Termination. Notwithstanding the foregoing or subsequent provisions of this Article 9, Tenant shall not be required to Restore the Improvements and may elect to terminate this Lease in accordance with this Article 9 if (A) the Laws then existing would not allow Tenant to Restore the Improvements; (B) all necessary governmental approvals required for the Restoration of the Improvements cannot be obtained, within eighteen months (18) from the date of the damage or destruction; provided that Tenant is proceeding as promptly as reasonably practicable and is using all commercially reasonable efforts to obtain such approvals within such time; or (C) in the case of Major Damage and Destruction occurring prior to the last ten (10) years of the Term, if Tenant reasonably anticipates, based upon a schedule of performance for such Restoration prepared with due diligence by Tenant in consultation with a licensed general contractor experienced in similar construction projects in Oakland and approved by Landlord, that at the time of completion of the Restoration, less than ten (10) years would remain in the Term.

(c) Conditions to Termination. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 9.4(a) above, Tenant shall do all of the following:

(i) Tenant in its election to terminate described in Section 9.4(a) shall provide Landlord with a statement of the cost of Restoration, and the amount by which the cost of Restoration plus the amount of any applicable policy deductible (subject to the limitations on the policy deductible for damage or destruction caused by earthquake or flood as set forth in Section 9.4(a)(i) above) exceeds insurance proceeds payable (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder), accompanied by supporting evidence reasonably acceptable to Landlord, such as at least two (2) bids from experienced general contractors, and supporting documentation from Tenant's insurer as to the amount of the policy deductible, and the coverage available for the event of damage and destruction; and

(ii) Tenant shall pay or cause to be paid the following amounts from casualty insurance proceeds upon the later of making the election to terminate or promptly following receipt of such proceeds in the following order of priority:

(A) first, to Landlord (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the actual costs incurred for any work required to alleviate any threat to the public safety and welfare or damage to the environment, including without limitation, any demolition or hauling of rubble or debris;

(B) second, to each Non-Affiliate Mortgagee demanding payment thereof in accordance with its Non-Affiliate Mortgage and applicable Law (in order of lien priority and not pro rata), that portion of the remaining casualty insurance proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction in an amount not to exceed the aggregate amounts then owed to the Non-Affiliate Mortgagee and secured by all Non-Affiliate Mortgages under the loan documents therefor;

(C) third, to Landlord and Tenant in equal amounts until the outstanding balance of the Total Repayment Amount has been paid in full; and

(D) all remaining insurance proceeds to Landlord.

(d) Upon Termination. Tenant shall deliver possession of the Premises to Landlord and quitclaim to Landlord all right, title and interest in the Premises and any remaining Improvements.

(e) Landlord's Election Upon Notice of Termination. Notwithstanding the foregoing, if Tenant elects to terminate this Lease solely due to an Uninsured Casualty under circumstances permitted by Section 9.4(a) then Landlord may, upon such occurrence during the Term, by notice in writing given to Tenant within sixty (60) days after Tenant's Casualty Notice, elect any of the following: (i) terminate the Lease and accept the surrender of the Premises in their then-existing condition, or (ii) in the event of an Uninsured Casualty, continue the Lease in effect, and pay the amount by which the cost of Restoration (including the cost of any required code upgrades) will exceed the net available proceeds of any insurance payable under the policies of insurance that Tenant is required to carry under Article 14 hereof (or which would have been payable but for Tenant's default in its obligation to maintain such insurance) by more than One Million and No/100 Dollars (\$1,000,000), as Indexed annually plus the amount of any applicable policy deductible (except that in the case of damage or destruction caused by earthquake, the amount of the policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake damage under Tenant's property insurance policy maintained under Section 14.1(a)(ii) hereof as of the date of casualty, or the actual amount of the policy deductible) and require Tenant to Restore the Premises in accordance with Section 11.4(b). During the last ten (10) years of the Term, Landlord will not have the right to elect to pay the incremental cost and cause Tenant to Restore unless Tenant agrees to do so, in its sole discretion.

9.8 Effect of Termination.

If Tenant elects to terminate the Lease under Section 9.4(a) above, and Landlord elects not to continue the Lease in effect if allowed under Section 9.4(d), then, on the date that Tenant shall have fully complied with all other provisions of Section 9.4(b) to the satisfaction of Landlord, this Lease shall terminate (except that, for purposes of payment of Rent, the effective date of termination shall be the date of the event of damage or destruction). Upon such termination, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination, subject to payment to Landlord of accrued and unpaid Rent (i.e. Rent payable on dates occurring on or prior to the date of termination), through the date of the event of damage or destruction; provided, however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination. In addition, termination of this Lease under this Article 9 shall not limit the right of a Mortgagee to a New Lease under Article 34 unless such Mortgagee has agreed otherwise. The rights of any Mortgagee hereunder, and any rights of Tenant or Landlord to receive insurance proceeds in accordance with the provisions of this Lease will survive the termination of this Lease. At Landlord's request following any termination, Tenant shall deliver to Landlord a duly executed and acknowledged quitclaim deed suitable for recordation and in form and content satisfactory to Landlord.

9.9 Distribution Upon Lease Termination. If Tenant is obligated to and fails to Restore the Improvements as provided herein and this Lease is terminated, all insurance proceeds held by Landlord, Tenant and, subject to Article 34, any Mortgagee, or not yet collected, shall be paid to and retained by Landlord; subject to the rights of any Mortgagee under a Mortgage to such insurance proceeds if approved by Landlord under Section 34.8.

9.10 Use of Insurance Proceeds.

(a) Restoration. Except in the event of termination of this Lease, all all-risk coverage insurance proceeds, earthquake and flood proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Landlord or Tenant by reason of damage to or destruction of any Improvements, if any (other than business or rental interruption insurance), must be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the contrary in this Section 9, and subject to the rights of any Mortgagee.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this Article 9, and if Tenant Restores the Improvements and there is a Mortgage encumbering the Lease, then any insurer paying compensation in excess of One Million and No/100 Dollars (\$1,000,000), as Indexed (or any lesser amount if required by any Mortgagee), under any all-risk or earthquake insurance policy required to be carried hereunder shall pay such proceeds to the Mortgagee that is the holder of any Mortgage which is the most senior lien against the Improvements or an insurance trustee reasonably acceptable to Landlord designated by such Mortgagee, for purposes of Restoration only. If there is no Mortgage encumbering the Lease, then the insurance proceeds shall be paid to a trustee (which shall be a bank or trust company) designated by Landlord within twenty (20) days after written request by Tenant, having an office in Oakland. Unless agreed otherwise by the Parties, and subject to the requirements of any Mortgagee, the insurer shall pay insurance proceeds of One Million and

No/100 Dollars (\$1,000,000) as Indexed or less directly to Tenant for purposes of Restoration in accordance with this Lease. If the funds are paid to a trustee in accordance herewith, the trustee shall hold all insurance proceeds in an interest-bearing federally insured account (with interest added to the proceeds). However, such trustee or Mortgagee shall pay to Tenant, from time to time as the work of rebuilding, Restoration and repair shall progress, in amounts designated by certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such repairs, rebuilding and Restoration. If there is no Mortgage encumbering the Lease and a trustee is holding the proceeds, the Landlord shall instruct the trustee to pay Tenant the cost of any emergency repairs necessitated by the event of damage or destruction in advance of the actual Restoration within thirty (30) days of such request. The trustee or Mortgagee, as the case may be, shall be required to make such payments upon satisfaction that the amount necessary to provide for Restoration or repair of any buildings and other Improvements destroyed or damaged, which may exceed the amount received upon such policies, has been provided by the insured for such purposes and its application for such purposes is assured. Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptly in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. Provided that no uncured Event of Default (or unmatured Event of Default) that has not been waived by Landlord shall exist on the date such damage is repaired, the Improvements shall have been Restored in accordance with the provisions of this Section 9 and all sums due under this Lease shall have then been paid in full, any excess of monies received from insurance remaining with the trustee or Mortgagee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant.

9.11 No Release of Tenant's Obligations. No damage to or destruction of the Premises or Improvements or any part thereof for fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided herein.

9.12 Benefit of Landlord. The requirements of this Article 9 are for the benefit only of Landlord, and no other Person shall have or acquire any claim against Landlord as a result of any failure of Landlord actually to undertake or complete any Restoration as provided in this Article 9 or to obtain the evidence, certifications and other documentation provided for herein.

9.13 Cooperation. Landlord shall cooperate with Tenant and act in a reasonable and expedited manner in connection with any Restoration by Tenant in connection with a Casualty Event, including, without limitation, an expedited review and response to all documents and requests submitted by Tenant in connection with the Restoration. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to Tenant's Restoration.

ARTICLE 10. CONDEMNATION [NOTE: SUBJECT TO FURTHER REVIEW]

10.1 Obligations of Tenant. If all or any part of any of the Premises shall be Condemned by any governmental authority, other than Landlord: (a) each Party shall give the other Party notice thereof promptly after such Party receives actual notice of such Condemnation; (b) Tenant shall, at its sole cost and expense, whether or not condemnation or other similar proceeds, if any, shall be available to pay for the estimated or actual cost of repairs, alterations, restorations,

replacement and rebuilding (the "Taking Cost"), proceed diligently to Restore the portions of the Premises that were not subject to a Condemnation in accordance with Article 10; and (c) Tenant shall deposit with a Depository such portion of the condemnation or other similar proceeds received by Tenant in connection with such Condemnation necessary to Restore the Premises; provided, however, that if at any time the Taking Cost exceeds the condemnation or similar proceeds actually deposited with the Depository, then Tenant shall either (i) also deposit with the Depository such cash as is sufficient to cover the difference between the Taking Cost and the condemnation or similar proceeds ("Additional Taking Cash"), or (ii) obtain payment or performance bonds in the full amount of the Additional Taking Cash to cover the payment and performance of the Restoration and naming Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees and in form reasonably satisfactory to Landlord (such bonds, together with such condemnation or similar proceeds and any interest earned thereon, and the Additional Taking Cash, the "Taking Restoration Funds"). Tenant shall be entitled to claim, prove and receive in any condemnation proceedings such awards or other compensation for any loss or diminution in or of Tenant Interest and other loses it incurs as a result of such Condemnation and Tenant's trade fixtures and equipment located on the Premises, as may be allowed by the governmental authority effectuating such Condemnation; provided, however, that if the governmental authority effectuating a Condemnation is not Landlord, then Tenant's claim may not frustrate or adversely impact Landlord's separate claims for compensation in connection with such Condemnation. If multiple claims with respect to such Condemnation are barred under applicable Law, the Parties shall reasonably cooperate in consolidating their separate claims.

10.2 Effect of a Condemnation on This Lease. In the event that the entire Premises are taken or so transferred, this Lease and all of Tenant's right, title and interest thereunder shall cease on the date title to such property so taken or transferred vests in the governmental authority effectuating the Condemnation. In the event of a Condemnation where only a portion of the Premises is taken or so transferred, on the earlier of the date title to the portion of the Premises vests in such governmental authority, or the date on which such governmental authority takes possession of the portion of the Premises, (a) this Lease shall terminate with respect to Landlord's and Tenant's future obligations hereunder with respect to the portion of the Premises so taken, and (b) the monthly Rent due hereunder from Tenant to Landlord for the remainder of the Term shall be equitably reduced from and after such Condemnation to the extent Tenant does not have full use of the Premises as a result of such Condemnation. Notwithstanding anything to the contrary herein, unless Landlord is the governmental authority effectuating a Condemnation, Landlord shall have no responsibility to pay to Tenant, and shall not be liable for, any condemnation or other similar proceeds claimed or sought by Tenant in connection with any Condemnation.

10.3 Rights of Landlord. In addition to the other remedies available to Landlord that are set forth elsewhere in this Lease, the following remedies shall be available to Landlord in the event of a Condemnation, unless Landlord is the governmental authority effectuating a Condemnation:

(a) Expiration or Termination of Lease Prior to Completion of Any Restoration. In any case where this Lease shall expire or be terminated prior to the completion of the Restoration, Tenant shall (i) promptly account to Landlord for all amounts spent in

connection with any Restoration which was undertaken, (ii) immediately pay over or cause the Depository to pay over to Landlord the remainder, if any, of the Taking Restoration Funds received by Tenant or held by the Depository prior to such termination or cancellation, (iii) pay over or cause the Depository to pay over to Landlord, within five (5) Business Days after receipt thereof, any Taking Restoration Funds received by Tenant or the Depository subsequent to such termination or cancellation, and (iv) immediately pay over to Landlord any outstanding Additional Taking Cash that Tenant should have deposited with the Depository prior to such expiration or termination; and Substantial Condemnation. In the event of a Substantial Condemnation, Landlord may, by giving sixty (60) calendar days' prior notice to Tenant, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease, the Term shall immediately become forfeited and void. If Landlord does not exercise its termination rights pursuant to this Section 10.3(b), Tenant shall continue to use the remaining Premises in a manner consistent with the use immediately prior to the Substantial Condemnation or any other Permitted Use. For purposes of this Lease, the term "Substantial Condemnation" shall mean a Condemnation that directly affects seventy percent (70%) or more of the Premises.

Landlord's rights under this Section 10.3 shall survive the expiration or termination of this Lease.

10.4 Rights of Tenant. In addition to the other remedies available to Tenant that are set forth elsewhere in this Lease, the following remedies shall be available to Tenant in the event of a Condemnation:

(a) Condemnation Adversely Affecting the Premises. In the event of a Condemnation affecting only a portion of the Premises, leaving the remainder of the Premises in such location or in such form, shape or reduced size so as not to be effectively and practicably usable for its intended purpose in the good faith opinion of a third party expert reasonably satisfactory to Landlord and Tenant, Tenant may, by giving notice to Landlord within sixty (60) calendar days after the occurrence of such Condemnation, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease, the Term shall immediately become forfeited and void. Nothing herein shall be deemed to affect Tenant's right to seek an award in condemnation proceeding as provided in Section 10.1;

(b) Substantial Condemnation. In the event of a Substantial Condemnation, Tenant may, by giving sixty (60) calendar days' prior notice to Landlord, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease, the Term shall immediately become forfeited and void. Nothing herein shall be deemed to affect Tenant's right to seek and award in any applicable condemnation proceeding as provided in Section 10.1;

Landlord's and Tenant's rights under this Section 10.4 shall survive the expiration or termination of this Lease.

10.5 Payment of Taking Restoration Funds to Tenant. Subject to the satisfaction by Tenant of all of the terms and conditions of this Article 10, the Depository shall pay to Tenant

from time-to-time any Taking Restoration Funds, but not more than the amount actually collected by the Depository upon the Condemnation, together with any interest earned thereon, after reimbursing itself therefrom, as well as Landlord, to the extent, if any, of the reasonable expenses paid or incurred by the Depository and Landlord in the collection of such monies, to be utilized by Tenant solely for the Restoration, such payments to be made as follows:

(a) prior to commencing any Restoration, Tenant shall furnish to Landlord for its approval the estimated cost, estimated schedule and detailed plan for the completion of the Restoration, each prepared by an architect, engineer and contractor;

(b) the Taking Restoration Funds shall be paid to Tenant in installments as the Restoration progresses, subject to Section 10.5(c), based upon requisitions to be submitted by Tenant to the Depository and Landlord in compliance with Section 10.6, showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by Tenant; provided, however, that if any Encumbrance is tiled against the Premises or any part thereof in connection with the Restoration, Tenant shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged; provided further that notwithstanding the foregoing, but subject to the provisions of Section 10.5(c), the existence of any such Encumbrance shall not preclude Tenant from receiving any installment of Taking Restoration Funds so long as (i) such Encumbrance will be discharged with funds from such installment and at the time Tenant receives such installment Tenant delivers to Landlord and the Depository a release of such Encumbrance executed by the lienor and in recordable form, or (ii) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord;

(c) the amount of each installment to be paid to Tenant shall be the aggregate amount of Taking Costs theretofor incurred by Tenant minus the aggregate amount of Taking Restoration Funds theretofor paid to Tenant in connection therewith; provided, however, that all disbursements to Tenant shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depository is sufficient to complete the Restoration; and

(d) except as provided in Section 10.3, upon completion of and payment for the Restoration by Tenant, subject to the rights of any Mortgagee, the Depository shall pay the balance of the Taking Restoration Funds, if any, to Tenant; provided, however, that if the condemnation or other similar proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), Tenant shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 10.1(c).

10.6 Conditions of Payment. The following shall be conditions precedent to each payment made to Tenant as provided in Section 15.5:

(a) Tenant shall have furnished Landlord with estimates of costs and schedule and a detailed plan for the completion of the Restoration, as provided for in Section 10.5(a);

(b) at the time of making such payment, no Event of Default exists; and

(c) the Restoration shall be carried out in accordance with Article 10, and there shall be submitted to the Depository and Landlord the certificate of the applicable architect or engineer stating that (i) the materials and other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 10.5(c)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's lien or other Encumbrances have been claimed, except for any mechanic's lien for claims that (A) will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (provided that a release of such Encumbrance is delivered to the Depository in accordance with Section 10.5(b)), or (B) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord, (ii) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (iii) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Taking Restoration Funds or has been made out of the Taking Restoration Funds received by Tenant, (iv) the sum then requested does not exceed the value of the services and materials described in the certificate, (v) the work relating to such requisition has been performed in accordance with this Lease, (vi) the balance of the Taking Restoration Funds held by the Depository or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion, and (vii) in the case of the final payment to Tenant, the Restoration has been completed in accordance with this Lease.

10.7 Payment and Performance Bonds. If Tenant obtains payment or performance bonds related to a Restoration (which Tenant may or may not obtain in its discretion), Tenant shall name Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to Landlord promptly upon obtaining them.

10.8 Benefit of Landlord. The requirements of this Article 10 are for the benefit only of Landlord, and no other Person shall have or acquire any claim against Landlord as a result of any failure of Landlord actually to undertake or complete any Restoration as provided in this Article 10 or to obtain the evidence, certifications and other documentation provided for herein.

10.9 Cooperation. Landlord shall cooperate with Tenant and act in a reasonable and expedited manner in connection with any Restoration by Tenant in connection with a Condemnation, including, without limitation, an expedited review and response to all Documents and requests submitted by Tenant in connection with the Restoration. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to Tenant's Restoration and any restoration that may be occurring in other Landlord areas.

10.10 Waiver. Except as otherwise provided in this Article 10, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a

Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this Article 10, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such Section may from time to time be amended, replaced or restated.

10.11 Landlord's Power of Eminent Domain. Tenant acknowledges Landlord's power upon payment of just compensation to exercise its power of eminent domain as to the leasehold estate created hereunder; provided, however, that the foregoing acknowledgment shall not be deemed or construed to prejudice or waive any rights of Tenant to challenge or object to any attempt by Landlord so to exercise such power or to recover any damages as may be permitted by law resulting from the exercise of such power.

ARTICLE 11. LIENS

11.1 Liens.

Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to Landlord, any lien, security interest, or encumbrance on the Premises or Tenant's leasehold estate, other than (i) this Lease, other permitted Subleases and Permitted Title Exceptions, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants), except only for Impositions being contested as permitted by Section 4, (iii) Mortgages permitted under Section 34, (iv) Mortgages encumbering the subleasehold interests of Subtenants, provided no such Mortgage encumbers Tenant's leasehold estate unless such Mortgage is permitted under Section 34, (v) liens created by or on behalf of Landlord during the Term, and (vi) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Article 4. The provisions of this Section do not apply to liens created by Tenant on its Personal Property.

11.2 Mechanics' Liens.

Nothing in this Lease shall be deemed or construed in any way as constituting the request of Landlord, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant will take such action as may be required to prevent the enforcement of any mechanic's or similar liens against the Premises, Tenant's leasehold interest, or Landlord's fee interest in the Premises for or on the account of labor, services or materials furnished to Tenant, or at Tenant's request. Tenant shall provide such advance written notice of any Additional Construction such as shall allow Landlord from time to time to post a notice of non-responsibility on the Premises. If Tenant does not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record, it shall be a material default under this Lease, and Landlord shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Landlord for such purpose and all reasonable expenses incurred by

Landlord in connection therewith shall be payable to Landlord by Tenant within thirty (30) days following written demand by Landlord. Notwithstanding the foregoing, Tenant shall have the right to contest any such lien in good faith, if, within sixty (60) days following the imposition of such lien, Tenant, at no cost to Landlord, posts a bond in the statutory amount sufficient to remove such lien from record, or posts other security reasonably acceptable to Landlord.

ARTICLE 12. ASSIGNMENT AND SUBLETTING

12.1 Assignment and Transfer.

(a) Consent of Landlord. Except as otherwise expressly permitted in this Article 12, Tenant, its successors and permitted assigns shall not (i) suffer or permit any Significant Change to occur, or (ii) assign, sell, lien, encumber, sublease, or otherwise transfer all or any part of Tenant's interest in and to this Lease or leasehold either voluntarily or by operation of law (either or both (i) and (ii) above, a "Transfer"), without the prior written consent of Landlord as set forth herein and the satisfaction, or written waiver thereof by Landlord in its sole and absolute discretion, of all conditions precedent set forth in this Article 12. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no Transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Landlord of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of the Improvements that Landlord would have had, had there been no such Transfer. Without limiting the preceding provisions of this Section 12.1(a), it shall in any instance be reasonable for Landlord to withhold its consent to any Transfer proposed by Tenant (each, a "Proposed Transfer") to the extent that any such Proposed Transfer would serve to so deprive or limit Landlord with respect to its rights under this Lease.

(b) Total Transfer. Tenant shall not effect any Transfer of the entire Lease or leasehold (each an "Total Transfer"), including any Total Transfer by means of a Significant Change, without Landlord's prior written consent, which may be withheld, delayed or conditioned in Landlord's sole and absolute discretion. Notwithstanding the preceding sentence, Landlord shall not unreasonably withhold, delay or condition its consent to a Total Transfer if such Total Transfer is to a CCIG Entity and all conditions precedent set forth in Section 12.1(c) are satisfied or waived in writing by Landlord in its sole and absolute discretion.

(c) Partial Transfers. Tenant shall not effect any Transfer of less than the entire Lease or leasehold (each a "Partial Transfer"), including any Partial Transfer by means of a Significant Change, without Landlord's prior written consent, which shall not be unreasonably withheld, delayed or conditioned by Landlord if all conditions precedent set forth in Section 12.1(d) are satisfied or waived in writing by Landlord in its sole and absolute discretion.

(d) Conditions. Notwithstanding any provision herein to the contrary, any Transfer is subject to the satisfaction in full of all of the following conditions precedent and covenants of Tenant, or the written waiver thereof by Landlord in its sole and absolute discretion, each of which is hereby agreed to be reasonable as of the Commencement Date and the date of any Proposed Transfer:

(i) Tenant provides Landlord with at least sixty (60) days prior written notice of the Proposed Transfer;

(ii) Landlord determines, in its reasonable judgment, that the proposed transferee (A) has the financial capacity to own the Project and operate, use and maintain the Premises in accordance with the Lease and otherwise to perform all of Tenant's obligations under this Lease that are applicable to the interest in the Lease or leasehold that is the subject of the Transfer; (B) has a good reputation; and (C) has sufficient experience in the operation, use and maintenance of projects of a type and size comparable to the Project. In the case of a Partial Transfer, such qualifications of the proposed transferee shall be assessed with respect the portion of the Premises and applicable obligations under the Lease subsumed within the proposed Partial Transfer;

(iii) any proposed transferee, by instrument in writing (which may, at the election of Landlord in its sole and absolute discretion, constitute or include a separate lease agreement directly between Landlord and such proposed transferee), for itself and its successors and assigns, and expressly for the benefit of Landlord, must expressly assume all of the obligations of Tenant under this Lease and any other agreements or documents entered into by and between Landlord and Tenant relating to the Project, or the portion of the Premises that will be subsumed within the Proposed Transfer, and must agree to be subject to all of the covenants, conditions and restrictions to which Tenant is subject under such documents with respect to the Premises or portion thereof that will be subsumed within the Proposed Transfer;

(iv) all instruments and other legal documents involved in effecting the Transfer shall have been submitted by Tenant to Landlord for review, including the agreement and instruments of sale, assignment, transfer, or equivalent, any Regulatory Approvals (including, but not limited to, any necessary Regulatory Approvals under, or exemptions from, the Subdivision Map Act), and Landlord shall have approved such documents which approval shall not be unreasonably withheld, delayed or conditioned;

(v) Tenant shall comply with the provisions of Section 12.1(e) and, to the extent applicable in the event of a Partial Transfer to a Non-Affiliate Transferee, Section 12.1(f);

(vi) there shall be no uncured Event of Default or Unmatured Event of Default on the part of Tenant under this Lease uncured or any of the other documents or obligations to be assigned to the proposed transferee, or if uncured, Tenant or the proposed transferee have made provisions to cure the Event of Default, which provisions are satisfactory to Landlord in its sole and absolute discretion;

(vii) the proposed transferee has demonstrated to Landlord's reasonable satisfaction that the proposed transferee is subject to the jurisdiction of the courts of the State of California;

(viii) the Proposed Transfer is not in connection with any transaction for purposes of syndicating the Lease, such as a security, bond or certificates of participation

financing as determined by Landlord in its sole and absolute discretion but expressly excluding the public trading of shares on the open market;

(ix) in the event of a Proposed Transfer that is proposed by Tenant to include any Subdivision of the Property or the Premises, with respect to such portion of the Premises subsumed within such Partial Assignment, Tenant, at its sole cost, shall have obtained all Regulatory Approvals required for such Subdivision, and such Subdivision also shall meet all of the following requirements:

(A) each legal parcel created by such Subdivision, and any remainder parcel, will be of sufficient size and configuration to adequately support and accommodate the Permitted Uses thereon in accordance with all applicable Laws and the Initial Improvements to be constructed thereon, including any and all related parking, landscaping, utilities and infrastructure;

(B) each legal parcel created by such Subdivision, and any remainder parcel, will retain legal and commercially sufficient access to an adjacent public street, utilities and all other infrastructure necessary or reasonably appropriate to service the Permitted Uses thereon;

(C) each legal parcel created by such Subdivision, and any remainder parcel, will be served by its own independent utilities and related metering devices; and

(D) each legal parcel created by such Subdivision, and any remainder parcel, will be made subject to such recorded cross-easements or conditions, covenants and restrictions (collectively, "CC&Rs") as may be reasonably necessary to assure the orderly development, use and operation of the Property and the Premises in accordance with this Lease and as are approved in advance in writing by Landlord, which approval shall not be unreasonably withheld, delayed or conditioned if such CC&Rs are consistent with the Subdivision and this Lease.

(x) Tenant deposits sufficient funds to reimburse Landlord for its reasonable legal expenses to review the Proposed Transfer pursuant to Section 12.1 (I); and

(xi) Tenant has delivered to Landlord such other information and documents relating to the proposed transferee's business, experience and finances as Landlord may reasonably request

(e) Delivery of Executed Assignment. No assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to Landlord, within thirty (30) days after Tenant entered into such assignment, an executed counterpart of such assignment containing an agreement, in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on the assignor's part to be performed under this Lease and the other assigned documents to and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such transferee from such obligations or

limit Landlord's rights or remedies under this Lease or under applicable Law). The form of such instrument of assignment shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, delayed or conditioned.

(f) No Release of Tenant's Liability or Waiver by Virtue of Consent. The consent by Landlord to any Transfer and any Transfer hereunder shall not, nor shall such consent or Transfer in any way be construed to, (i) relieve or release Tenant from any liability or obligation arising at any time out of or with regard to the performance of any covenants or obligations to be performed by Tenant at any time hereunder (except as set forth below in this Section 12.1(f)) or under the LDDA, or (ii) relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Landlord to any further Transfer.

In the event of a voluntary Partial Transfer of Tenant's interest in and to this Lease or leasehold (excluding any Partial Transfer by means of a Significant Change) to a Non-Affiliate Transferee, where such Partial Transfer has been approved by Landlord pursuant to Section 12.1(c) (and subject to Section 12.1(d)), Tenant shall be released from any obligation under this Lease first accruing after the date of such approved Partial Transfer, subject to the satisfaction in full of all of the following additional conditions precedent and covenants of Tenant (in addition to, and not in lieu of, those set forth in Section 12.1(d)), or the written waiver thereof by Landlord in its sole and absolute discretion, each of which is hereby agreed to be reasonable as of the Commencement Date and the date of any such proposed Partial Transfer:

(i) The construction of all Initial Improvements on the portion of the Premises to be subsumed within such Partial Transfer have been completed in accordance with Article 6 and a Certificate of Completion issued for such Initial Improvements;

(ii) The Permitted Use of the Premises by the Non-Affiliate Transferee will include the employment by the Non-Affiliate Transferee of employees at the Premises at a rate of more than one (1) full-time equivalent employee for every 750 square feet of Gross Building Area included within the portion of the Premises to be subsumed within such Partial Transfer;

(iii) The net worth of the Non-Affiliate Transfer shall be not less than _____ Dollars (\$ _____), as Indexed on each Anniversary Date of the Commencement Date; and

(iv) Tenant shall pay to Landlord an amount equal to five percent (5%) of the gross purchase price or other consideration paid or payable to Tenant by or on behalf of such Non-Affiliate Transferee in connection with such Partial Transfer.

(g) Notice of Significant Changes; Reports to Landlord. Tenant must promptly notify Landlord of any and all Significant Changes. At such time or times as Landlord may reasonably request, Tenant must furnish Landlord with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective interests in Tenant, and in the event any other Persons have a beneficial interest in Tenant, their names and the extent of such interest.

(h) Determination of Whether Consent is Required. At any time Tenant may submit a request to Landlord for the approval of the terms of proposed Transfer or for a decision by Landlord as to whether in its opinion a Proposed Transfer requires Landlord consent under the provisions of this Article 12. Within thirty (30) days after Tenant has made such a request and furnished to Landlord all documents and instruments with respect thereto as shall be reasonably requested by Landlord, Landlord shall notify Tenant in writing of Landlord's approval or disapproval of the Proposed Transfer or of Landlord's determination that the Proposed Transfer does not require Landlord's consent. If Landlord disapproves the Proposed Transfer, or determines that it requires the consent of Landlord, as applicable, it must specify in writing the grounds for its disapproval, its reason that consent is required, or both, as applicable.

(i) Scope of Prohibitions on Assignment. The prohibitions provided in this Section 12.(i) will not be deemed to prevent (i) the granting of Subleases so long as such subletting is done in accordance with Section 14.4, (ii) the granting of any Mortgage expressly permitted by this Lease subject to compliance with Article 34 and other applicable terms of this Lease; or (iii) any Permitted Transfer, as defined in Section 12.3.

(j) Prohibition on Involuntary Transfers. Neither this Lease nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against Tenant, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of Law, and possession of the whole or any part of the Premises shall not be divested from Tenant in such proceedings or by any process of Law, without the prior written consent of Landlord. Tenant hereby expressly agrees that the validity of Tenant's liabilities as a principal hereunder shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against any transferee of any of the rights or remedies reserved to Landlord pursuant to this Lease or by relief of any Transferee from any of the Transferee's obligations under this Lease or otherwise by (a) the release or discharge of any Transferee in any creditors' proceedings, receivership, bankruptcy or other proceedings, (b) the impairment, limitation or modification of the liability of any Transferee, or the estate of any Transferee, in bankruptcy, or of any remedy for the enforcement of any assignee's liability under this Lease, resulting from the operation of any present or future provision of the National Bankruptcy Act or other statute or from the decision in any court; or (c) the rejection or disaffirmance of this Lease in any such proceedings.

(k) Effect of Prohibited Transfer. Any Transfer made in violation of the provisions of this Article 12 shall be null and void ab initio and of no force and effect. Notwithstanding anything herein to the contrary, if a Transfer occurs with or without Landlord's consent, Landlord may collect from such assignee, subtenant, occupant or reconstituted Tenant, any Rent under this Lease and apply the amount collected to the Rent, but such collection by Landlord shall not be deemed a waiver of the provisions of this Lease, nor an acceptance of such assignee, subtenant, occupant or reconstituted Tenant, as Tenant of the Premises.

(l) Processing Fee. Tenant agrees that as a condition to Landlord's consideration of any request by Tenant for approval of a Proposed Transfer (other than a Sublease under Section 14.4) that Tenant shall deliver to Landlord a nonrefundable processing fee in an amount that Landlord in its discretion determines is necessary to cover the anticipated

Landlord administrative costs and expenses, including labor, in processing, reviewing, investigating, and granting any approval of Tenant's request (including, but not limited, to any related Tenant request for Landlord's review of any related Subdivision); provided such fee shall not exceed \$ _____ as Indexed on each Anniversary Date of the Commencement Date, and further provided that in no event shall the adjusted fee be less than the theretofore existing fees.. Tenant agrees that unless and until said fee, and any request for such additional fee, is delivered to Landlord, Tenant shall be deemed to have made no request to Landlord to Transfer.

(m) Tenant as Party is Material Consideration to Lease. Tenant and Landlord acknowledge and agree that the rights retained by and granted to Landlord pursuant to this Article constitute a material part of the consideration for entering into this Lease and constitute a material and substantial inducement to Landlord to enter into this Lease at the rental, for the terms, and upon the other covenants and conditions contained in this Lease, and that the acceptability of Tenant, and of any Transferee of any right or interest in this Lease, involves the exercise of broad discretion by Landlord in promoting the development, leasing, occupancy and operation of the Premises and other purposes of this Lease. Therefore, Tenant agrees that Landlord may condition its consent, if required hereunder, to a Proposed Transfer or other assignment, subject to such provisions as are reasonable to protect the rights and interest of Landlord hereunder and to assure promotion of the purposes of this Lease. Tenant agrees that its personal business skills and philosophy were an important inducement to Landlord for entering into this Lease and that Landlord may reasonably object to the Transfer to a proposed Transferee, as applicable, whose proposed use, while permitted under Article 3, would involve a different quality, manner or type of business skills than that of Tenant, or which would result in the imposition upon Landlord of any new or additional requirements under the provisions of any Law, including any Law regarding disabled or handicapped persons, such as the Americans With Disabilities Act of 1990.

(n) Subleasing. Tenant shall have the right to Sublease the Premises in accordance with Section 12.4.

(o) Mortgaging of Leasehold. Tenant shall have the right to assign, encumber or transfer its interest in this Lease, with respect to such portion of the Premises containing such completed Initial Improvements, to a Mortgagee or other purchaser at a foreclosure sale under the provisions of a Mortgage, subject to the provisions of Article 34.

12.2 Assignment of Rents.

Tenant hereby assigns to Landlord all rents and other payments of any kind, due or to become due from any or present or future Subtenant as security for Tenant's obligation to pay Rent hereunder; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Article 34 until such time as Landlord has terminated this Lease (subject to Landlord's agreement to enter into a New Lease with Mortgagee and all other express provisions of this Lease protecting Mortgagee's interest in this Lease), at which time the rights of Landlord in all rents and other payments assigned pursuant to this Section 12.2 shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, Landlord shall, upon the request of each Mortgagee, execute a subordination agreement in form and substance reasonably satisfactory to

such Mortgagee and to Landlord. Notwithstanding the foregoing, if this Lease terminates by reason of an Event of Default, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor shall promptly remit to Landlord the rents so collected (less the actual cost of collection) to the extent necessary to pay Landlord any Rent, including any and all Additional Rent, through the date of termination of this Lease. Such assignment shall be subject to the right of Tenant to collect such rents until the date of the happening of any Event of Default under the provisions of this Lease. Landlord shall apply any net amount collected by it from such Subtenants to the payment of Rent due under this Lease.

12.3 Permitted Transfers.

Notwithstanding the preceding provisions of this Article 12 or any other provision to the contrary in this Lease, and provided that the Transfer is done for a legitimate business purpose and not to deprive or compromise any rights of Landlord under this Lease, the following Transfers shall be permitted at any time hereunder without Landlord's consent (each, a "Permitted Transfer"):

- (A) Any Transfer to a CCIG Entity;
- (B) Transfers of partnership or membership interests in Tenant between Partners in Tenant, provided that such Transfers do not result in a Significant Change and further provided that so long as a CCIG Entity retains a Controlling interest in Tenant);
- (C) Any Transfer solely and directly resulting from the death or incapacity of an individual, and any Transfer for purposes of estate planning so long as the transferor remains in complete legal control of the transferred property;
- (D) Any Transfer that results in a mere change in identity or form rather than in ownership (for example, the Transfer by the partners of a general partnership to a limited liability company where the members hold all of the interests of the limited liability company in the same proportion as they previously held in the general partnership); or
- (E) Any Transfer of a limited partnership interest in Tenant.

Notwithstanding the preceding provisions of this Section 12.3, any Permitted Transfer shall comply with and remain subject to the provisions and requirements of Sections 12.1(d)(i), (iii), (v), (vi), (vii) and (viii) Section 14.1(e) and Sections 12.1(e), (f) and (g).

12.4 Subletting by Tenant.

(a) Subject to this Section 12.4, Tenant has the right to sublet all or any portion of the Premises to one or more Subtenants by written subleases from time to time without Landlord's consent. Notwithstanding the foregoing, if Tenant proposes a Sublease (other than a Sublease to an Affiliate) that is not pursuant to a bona fide arms-length transaction as reasonably determined by Landlord based upon information reasonably requested and obtained by Landlord (a "Restricted Sublease"), then such Restricted Sublease shall be subject to the Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, provided,

however, that, without limitation, it shall be reasonable for Landlord to withhold its consent in any such event if such Restricted Sublease fails to meet any of the requirements set forth in this Section 12.4. Without limiting the preceding provisions of this paragraph, any Sublease shall:

(i) provide that it is subject to and subordinate in all respects to this Lease and the rights of Landlord hereunder, and that Subtenant shall comply with all obligations of Tenant under this Lease with respect to the Subleased Premises, including but not limited to the Community Benefits Program with respect thereto;

(ii) require Subtenant to use the portion of the Premises subject to the Sublease (the "Subleased Premises") only for the uses permitted under Article 3;

(iii) include a term that does not extend beyond the term of this Lease, unless Landlord approves such longer Sublease term in Landlord's sole and absolute discretion;

(iv) require Subtenant to indemnify Landlord for any loss or damage arising from Subtenant's use or occupancy of the Subleased Premises, which indemnity shall be in form reasonably acceptable to Landlord;

(v) require Subtenant to name Landlord as an additional insured on any liability insurance required to be carried under the Sublease, which liability insurance shall be in an amount not less than the amount of liability insurance required to be carried by Tenant under this Lease; and

(vi) if requested by Landlord, a provision subject to the prior rights of any Mortgagee, satisfactory to Landlord, requiring Subtenant at Landlord's option to attorn to Landlord if Tenant defaults under this Lease and if the Subtenant is notified of Tenant's default and instructed to make Subtenant's rental payments to Landlord.

Tenant shall provide Landlord with copies of any and all Subleases within ten (10) days after Landlord's request; provided, however, that the rental dollar amounts on such copies may be redacted by Tenant unless such copies are required to be provided by Tenant pursuant to Section 38.18 or 38.19.

12.5 Non-Disturbance of Subtenants, Attornment, Sublease Provisions.

(a) Conditions for Non-Disturbance Agreements. From time to time upon the request of Tenant, Landlord shall enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, Landlord will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between Landlord and such Subtenant ("Non-Disturbance Agreements"). All Non-Disturbance Agreements shall comply with the provisions of this Section 12.5(a) and of Section 12.5(b). Landlord shall provide a Non-Disturbance Agreement to a Subtenant if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease; (ii) the Sublease satisfies all the requirements set forth in Section 12.4; (iii) the Sublease contains provisions whereby the Subtenant agrees to comply with all provisions of this Lease applicable to the Sublease, the

subleased Premises and Subtenant's use and occupancy thereof;(iv) the Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant shall attorn to Landlord (provided Landlord agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease), and the Sublease shall be deemed a direct lease or license agreement between the Subtenant and Landlord, except that Landlord shall not be liable to the Subtenant for any security deposit or prepaid rent or license fees previously paid by such Subtenant to Tenant unless such deposits are transferred to Landlord, except for rent or license fees for the current month, if previously paid; (v), if Tenant is then in default of any of its obligations under this Lease, Landlord may condition its agreement to provide a Non Disturbance Agreement on the cure of such defaults as Landlord may specify either in a notice of default given under Section 18.1 or in a notice conditionally approving Tenant's request for such Non Disturbance Agreement (and if an Event of Default or Unmatured Event of Default on the part of Tenant then exists, then Landlord may withhold or condition the giving of a Non Disturbance Agreement), and (vi) the Subtenant shall have delivered to Landlord an executed estoppel certificate, in form and substance reasonably satisfactory to Landlord, certifying: (A) that the Sublease, including all amendments, is attached thereto and is unmodified, except for such attached amendments, and is in full force and effect, as so amended, or if such Sublease is not in full force and effect, so stating, (B) the dates, if any, to which any rent and other sums payable thereunder have been paid, (C) that the Subtenant is not aware of any defaults which have not been cured, except as to defaults specified in said certificate, and (D) such other matters as Landlord may reasonably request. Landlord shall not be required to enter into a Non Disturbance Agreement with respect to any period beyond the scheduled expiration of the Term, unless Landlord approves such longer period in its sole and absolute discretion. Landlord shall respond to any request for a Non Disturbance Agreement within twenty (20) days after receipt of a true and complete copy of the relevant Sublease in the form to be executed, and all relevant information requested by Landlord. Such relevant information shall include reasonable financial information establishing the ability of the proposed Subtenant to perform its contemplated obligations under such Sublease, and relevant information concerning the business character and reputation of the proposed Subtenant. Landlord agrees to cooperate, to the extent it is legally permitted to do so, in protecting the confidentiality of personal or financial information relating to any Subtenant. Nothing in this Section 12.5 shall preclude Landlord in its sole and absolute discretion from granting non-disturbance to other Subtenants.

(b) Form of Non-Disturbance Agreement. Each Non Disturbance Agreement shall be in form and substance reasonably satisfactory to Landlord. With each request for a Non Disturbance Agreement, Tenant shall submit a copy of the form, showing any requested interlineations or deletions, and Landlord shall approve or disapprove of the requested changes within twenty (20) days after receipt of such changes (such approval not to be unreasonably withheld or conditioned). Any disapproval by Landlord shall be in writing, and shall set forth the specific reasons for Landlord's disapproval. Failure by Landlord to approve or disapprove of specific interlineations, deletions or other modifications requested by a Subtenant within such twenty (20) day period shall be deemed to be approval of the requested changes (subject to Section 43.1).

ARTICLE 13. INDEMNIFICATION OF LANDLORD

13.1 Indemnification of Landlord.

Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or Landlord's interest therein, in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to or death of Persons or loss or damage to property occurring immediately adjacent to the Premises which is caused directly or indirectly by Tenant or its Agents; (iii) any use, possession, occupation, operation, maintenance, or management of the Premises or any part thereof by Tenant or any of its Agents, Invitees, or Subtenants; (iv) any use, possession, occupation, operation, maintenance, management or condition of property immediately adjacent to the Premises by Tenant or any of its Agents; (v) any latent, design, construction or structural defect relating to the Initial Improvements located on the Premises and any Additional Improvements constructed by or on behalf of Tenant, and any other matters relating to the condition of the Premises caused by Tenant or any of its Agents, Invitees, or Subtenants; (vi) any failure on the part of Tenant or its Agents or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, rules or regulations, or permits in connection with use or occupancy of the Premises, including but not limited to Article 15; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents, Invitees or Subtenants; and (viii) any other legal actions or suits initiated by any user or occupant of the Premises. If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

13.2 Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 13.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter and provided further that, in the event it is later determined that the claim made falls outside the scope of the indemnity provisions of this Agreement, Landlord shall reimburse Tenant for Tenant's reasonable attorneys fees and other costs incurred in defending such claim.

13.3 Not Limited by Insurance.

The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under Section 13.1 or any other indemnification provision of this Lease.

13.4 Survival.

Tenant's obligations under this Article 13 and any other indemnity in this Lease shall survive the expiration or sooner termination of this Lease as to occurrences prior to such termination.

13.5 Other Obligations.

The agreements to Indemnify set forth in Article 13 and elsewhere in this Lease are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to Landlord in this Lease, at common law or otherwise.

13.6 Defense.

Tenant shall be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases in which any Indemnified Party has been named as a defendant, Landlord shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, however, in Landlord's reasonable judgment, within a reasonable time (but not less than fifteen (15) days following notice from Landlord alleging such failure) to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, Landlord shall have the right promptly to use the Oakland City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise, or settlement, which reasonable expense shall be due and payable to Landlord ten (10) business days after receipt by Tenant of an invoice therefor.

13.7 Release of Claims Against Landlord.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the Premises for any cause arising at any time, including, without limitation, all claims arising from the joint or concurrent negligence of Landlord or the other Indemnified Parties, but excluding any gross negligence or willful misconduct of the Indemnified Parties and further excluding any claims for which Landlord has otherwise agreed to indemnify Tenant under the LLDA.

ARTICLE 14. INSURANCE.[NOTE: CONFORM FOR CONSISTENCY WITH LLDA INSURANCE REQUIREMENTS AND CONFIRMATION WITH CITY RISK MANAGEMENT]

14.1 Property and Liability Coverage.

(a) Required Types and Amounts of Insurance. Tenant shall, at no cost to Landlord, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this Section 14.1(a)), the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times prior to Completion of the Initial Improvements, and during any period of Additional Construction, Tenant shall maintain, on a form reasonably approved by Landlord, builders' risk insurance in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, against all risk, "special form," or "difference in conditions" hazards including earthquake (subject to the provisions of Section 17.1(b)(iii)), but excluding flood coverage including as additional insureds Landlord, Tenant and Tenant's contractors and subcontractors with any deductible not to exceed One Hundred Thousand and No/100 Dollars (\$100,000) (except as to earthquake insurance); provided, however, that as to earthquake insurance a separate sublimit of the insurance required under this Section 14.1(a)(i) and the insurance required under Section 17.1(a)(vii) may be required in order to comply with the requirements of Section 17.1(b)(iii).

(ii) Property Insurance; Earthquake and Mold Insurance. Upon Substantial Completion of the Initial Improvements, and upon Substantial Completion of Additional Construction of any Additional Improvements, Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 ("Causes of Loss - Special Form" (or its replacement), in an amount not less than one hundred percent (100%) of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, pilings, excavations and footings on that portion of the Premises) with any deductible not to exceed One Hundred Thousand and No/100 Dollars (\$100,000). Notwithstanding the foregoing, Tenant shall only be required to carry earthquake insurance if required by the senior Mortgagee and, if so required, in such amounts and with such deductibles and on such other terms as are required by such Mortgagee. Further notwithstanding the foregoing, Tenant shall only be required to carry mold insurance to the extent and with such deductible amount as is available at commercially reasonable rates. In addition to the foregoing, Tenant may insure its Personal Property in such amounts as Tenant deems appropriate; and Landlord shall have no interest in the proceeds of such Personal Property insurance, and the proceeds of such insurance shall not be subject to the provisions of Section 11.7.

(iii) Commercial General Liability Insurance. Tenant shall maintain "Commercial General Liability" insurance policies with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto located on the Premises or any part of the Premises, such insurance to afford protection in an amount not less than Ten Million Dollars (\$10,000,000) per occurrence and annual aggregate covering bodily injury and broad form property damage including contractual liability (which includes coverage for the benefit of Landlord as additional insured against claims described in Section 16.1(i)), independent contractors, explosion, collapse, underground (XCU), and products and completed operations coverage. Products and completed operations coverage may be subject to a limited term of not less than ten (10) years following completion of the products or operations covered thereby.

(iv) Workers' Compensation Insurance. Only if Tenant has any employees, Worker's Compensation insurance as required by the laws of the State of California to insure employers against liability for compensation under the California Workers' Compensation Law, or any law thereafter enacted as a amendment or supplement thereto or in lieu thereof, such workers' compensation to cover all persons employed by Tenant in connection with the Premises and the Improvements thereon and to cover full liability for compensation under any such law aforesaid, based upon the death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Premises, Improvements thereon, or the operation of the Project.

(v) Boiler and Machinery Insurance. Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment or such other coverage as Landlord may approve, which approval shall not unreasonably be withheld.

(vi) Business Automobile Insurance. Tenant shall maintain policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used by Tenant and its agents in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than Two Million And No/100 Dollars (\$2,000,000) per accident.

(vii) Business Intermption Insurance. After Completion of the Initial Improvements, Tenant shall maintain business intermption or rental value insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Sections 17.1(a), (ii) and (v). The amount of the insurance shall be not less than the aggregate of all reasonably calculated fixed operating expenses, debt service, and projected Rent. Such insurance is on an Actual Loss Sustained Basis, with a 365 day extended period of indemnity beyond the time reasonably necessary to repair or rebuild the Improvements. The amount of such insurance shall be calculated from the date of Completion and shall be adjusted from time to time thereafter.

(viii) Other Insurance. Tenant shall obtain such other insurance, excluding any professional liability (errors or omissions) or environmental insurance, as is reasonably requested by City's Risk Manager and is customary with respect to projects similar in nature and scope to the Project.

(b) General Requirements. All insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best B+:XIV or better (or a comparable successor rating) and legally authorized to sell such insurance within the State of California; provided that insurance provided through a blanket program managed by an

institutional investor may include layers of coverage provided by less qualified insurers if doing so would be in conformance with prudent management practices.

(ii) As to property insurance shall name the Landlord as loss payee as its interest may appear, and as to both property and liability insurance shall name as additional insureds the following: "THE CITY OF OAKLAND, AND ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."

(iii) Shall be evaluated by Landlord and Tenant for adequacy not less frequently than every five (5) years from the date of Completion of the Initial Improvements. Following consultation with Tenant, Landlord may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice for comparable properties in the San Francisco-San Jose- Oakland area or in other large urban cities or counties around the country to carry insurance for facilities similar to the Premises in amounts substantially greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises. Upon application by Tenant, if the City's Risk Manager determines that insurance limits required under this Section may be decreased in light of such commercial practice and the risks associated with use of the Premises, Landlord shall notify Tenant of such determination, and Tenant shall have the right to decrease the insurance coverage required under this Lease accordingly. In such event, Tenant shall promptly deliver to Landlord a certificate evidencing such new insurance amounts.

(iv) Shall provide that no cancellation, modification, termination or nonrenewal of such insurance for any reason shall be effective until at least thirty (30) days after mailing or otherwise sending written notice of such cancellation, modification or termination to Landlord (or not less than ten (10) days after such notice in the event of nonpayment of premiums);

(v) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to any additional insured, with respect to claims insured by such policy, and that insurance applies separately to each insured against whom claim is made or suit is brought;

(vi) May be carried as part of a blanket policy maintained by Tenant or an Affiliate of Tenant or any of Tenant's constituent members or Affiliates of such members subject to Landlord's approval of the amount of coverage, which approval shall not unreasonably be withheld;

(vii) Shall be subject to the approval of Landlord, which approval shall be limited to whether or not such insurance meets the terms of this Lease;

(viii) If any of the insurance required hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously without lapse for a period of two (2) years; and

(ix) Shall for property insurance only, provide (if an endorsement to such effect is available at a commercially reasonable cost) that all losses payable under all such

policies that are payable to Landlord shall be payable notwithstanding any act or negligence of Tenant in compliance with the terms of the insurance policy.

(c) Certificates of Insurance; Right of Landlord to Maintain Insurance. Tenant shall furnish Landlord certificates with respect to the policies required under this Section, and provide evidence of payment of premiums, within thirty (30) days after the Commencement Date. If at any time Tenant fails to maintain the insurance required pursuant to Section 17.1, or fails to deliver certificates as required pursuant to this Section, then, upon five (5) business days' written notice to Tenant, Landlord may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Landlord. Within ten (10) business days following demand, Tenant shall reimburse Landlord for all amounts so paid by Landlord, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) Insurance of Others. If Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies include Tenant and Landlord as additional insureds, as their respective interests may appear.

14.2 Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 17.1(a)(i), (ii) or (y) to the extent that such loss is reimbursed by an insurer. Notwithstanding anything to the contrary contained herein, to the extent of insurance proceeds received with respect to the loss, Tenant and Landlord each hereby waives any right of recovery against the other Party for any loss or damage to the Improvements, the Premises, the contents of same or any operation therein, whether or not such loss is caused by the fault or negligence of such other Party. With the exception of workers' compensation insurance, Landlord and Tenant shall each obtain from their respective insurers under all policies of fire, theft, commercial general liability, builder's risk and other insurance maintained by either of them at any time during the Term insuring or covering the Improvements, the Premises or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of one Party might have against the other Party. Tenant acknowledges that Landlord is currently self-insured so Landlord, for itself, waives any rights of recovery that would have been waived pursuant to this paragraph had Landlord been fully insured.

ARTICLE 15. HAZARDOUS MATERIALS.

15.1 Hazardous Materials Compliance.

(a) Compliance with Hazardous Materials Laws.

[NOTE: HAZARDOUS MATERIALS COMPLIANCE PROVISIONS IN GROUND LEASE STILL UNDER REVIEW BY PARTIES AND MUST BE CONFORMED FOR CONSISTENCY WITH FINAL AGREED-UPON VERSION IN CONNECTICUT WITH LDDA.]

Tenant shall comply and cause (i) its Agents, (ii) all Persons under any Sublease, (iii) to the extent reasonably controllable by Tenant, all Invitees or other Persons entering upon the Premises, and (iv) the Premises and the Improvements, to comply with all applicable Hazardous Materials Laws, including, without limitation, any deed restrictions, deed notices, soils management plans or certification reports required in connection with the Remedial Action Plan or the Risk Management Plan, including any modifications or amendments to either the Remedial Action Plan or the Risk Management Plan. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Landlord, which may be given or withheld in Landlord's sole and absolute discretion, Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, except for (A) standard building materials and equipment, including, without limitation construction, landscaping and maintenance materials and equipment, that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials the Handling of which do not require a permit or license from, or that need not be reported to, a governmental agency, and which are used in compliance with all applicable laws, (D) janitorial or office supplies or materials in such limited amounts as are customarily used for general maintenance or office purposes so long as such Handling is at all times in full compliance with all Environmental Laws, and (E) pre-existing Hazardous Materials that are required by applicable Law, the Remedial Action Plan or the Risk Management Plan to be Handled for Remediation purposes. Tenant shall have no obligation to remediate or manage Hazardous Materials subsurface conditions that existed as of issuance of the Certificate of Completion for Hazardous Materials Remediation for the Premises or that may migrate onto the Premises following issuance of such Certificate of Completion, provided, however, Tenant shall be required to comply and cause (i) its Agents, (ii) all Persons under any Sublease, (iii) to the extent reasonably controllable by Tenant, all Invitees or other Persons entering upon the Premises, and (iv) the Premise and Improvements to comply with: (A) the Remediation Action Plan; (B) the Risk Management Plan, including, without limitation the following requirements: (1) long-term groundwater monitoring to monitor the concentrations of volatile organic compounds in groundwater; (2) post-construction maintenance activities to be completed in a manner consistent with the Risk Management Plan; (3) restriction of groundwater for all uses including but not limited to, drinking, irrigation, and industrial uses; and (4) written disclosure of environmental conditions on the Premises to potential lessees in accordance with the deed restriction for the Premises and (C) the PPA.

(b) Notice. Except for Hazardous Materials permitted by Subsection 17.1(a) above, Tenant shall advise Landlord in writing promptly (but in any event within five (5) business days) upon learning or receiving notice of (i) the presence of any newly discovered Hazardous Materials on, under or about the Premises during or after implementation of the Remedial Action Plan or the Risk Management Plan ("new subsurface environmental condition"), (ii) any action taken by Tenant in response to any (A) new subsurface environmental condition or (B) Hazardous Materials Claims, (iii) any Release of Hazardous Materials at the Premises caused by Hazardous Materials Handling activities at the Premises ("new Release"), and (iv) Tenant's discovery of the presence of new Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform Landlord orally as soon as possible of any emergency or non-emergency regarding any new subsurface environmental condition or new Release. In addition, Tenant shall provide Landlord with copies of all communications with

federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communication, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Section 15) and all communication with any Person relating to Hazardous Materials Claims (other than privileged communications); provided, however, such non-disclosure of such privileged communication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including without limitation, this Section 15).

(c) Landlord's Approval of Remediation. Except as required by law or to cost-effectively contain and clean up a new Release or to respond to an emergency, Tenant shall not undertake any subsurface Remediation in response to any new subsurface environmental condition or new Release unless Tenant follows the cleanup protocols for such subsurface conditions set forth in the approved Remedial Action Plan or Risk Management Plan. If Tenant proposes modifications to the Remedial Action Plan or Risk Management Plan to remediate the new subsurface environmental condition or the new Release, Tenant shall have first submitted to Landlord for Landlord's approval, which approval shall not be unreasonably withheld or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. Landlord shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, but in any event within thirty (30) days after receipt thereof. If Landlord disapproves of any such Hazardous Materials Remediation plan, Landlord shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (x) in compliance with all applicable Hazardous Materials Laws, (y) to cleanup levels set forth in the approved Remedial Action Plan and/or Risk Management Plan, and (z) in accordance with any applicable orders and directives of the RWQCB and the Alameda County Department of Public Health or any other regulatory agency that asserts jurisdiction over the Premises.

15.2 Hazardous Materials Indemnity.

Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to (A) any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, whether by Tenant, its Agents, Invitees or any Subtenants (other than Landlord and its Agents and Invitees); (B) any failure by Tenant, its Agents, Invitees or Subtenants (other than Landlord and its Agents and Invitees) to comply with applicable Hazardous Materials Laws, or with the Mitigation Measures; or (C) any failure by Tenant to comply with the obligations contained in Section 17.1. Notwithstanding the foregoing, in no event shall Tenant have any indemnity obligations hereunder with respect to Losses arising from or related in any way to any use, Handling, production, transportation, disposal, storage or Release of Hazardous Materials located in, on or under the Premises as of the Commencement Date of this Lease (and any increase in the concentrations thereof which may occur after the Commencement Date) except to the extent Handling or Remediation of such pre-existing Hazardous Materials is required by the approved Remedial Action Plan and/or Risk Management Plan, as the same may be amended from time to

time. Further notwithstanding the foregoing, the foregoing indemnity shall not apply to any and all Losses to the extent arising out of the negligence or willful misconduct of Landlord, City or their respective agents or employees. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to Landlord hereunder and shall be due and payable from time to time immediately upon Landlord's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (a) discovery of any such Hazardous Materials on, under or about the Premises, or (b) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

ARTICLE 16. DELAY DUE TO FORCE MAJEURE

16.1 Delay Due to Force Majeure.

For all purposes of this Lease, a Party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure shall not be considered in breach of or in default in its obligations hereunder to the extent of any delay resulting from Force Majeure, provided, however, that the provisions of this Section 16.1 shall not apply to Tenant's obligation to pay Rent, including Additional Rent. A Party seeking an extension of time pursuant to the provisions of this Section 16.1 shall give notice to the other Party describing with reasonable particularity (to the extent known) the facts and circumstances constituting Force Majeure within (a) a reasonable time (but not more than thirty (30) days unless the other Party's rights are not prejudiced by such delinquent notice) after knowledge of the beginning of such enforced delay or (b) promptly after the other Party's demand for performance.

ARTICLE 17. LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

17.1 Landlord May Perform in Emergency.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an imminent danger to public health or safety, as reasonably determined by Landlord, Landlord may at its sole and absolute option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, Landlord first gives Tenant such notice and opportunity to take corrective action as is reasonable under the circumstances. Nothing in this Section shall be deemed to limit Landlord's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of Landlord constitutes a Condemnation or an impairment of Tenant's contract with Landlord.

17.2 Landlord May Perform Following Tenant's Failure to Perform.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Landlord (other than any Imposition, with respect to which the provisions of

Section 4.3 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following written notice from Landlord for a period of thirty (30) days (or, if Section 16.1(c) is applicable, which failure continues for five (5) business days after written notice from Landlord), and is not the subject of a contest under Section 4.3, then, Landlord may, at its sole and absolute option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant. Notwithstanding the foregoing, however, if within such period Tenant gives notice to Landlord that such failure is due to delay caused by Force Majeure, or is the subject of a contest under Section 4.3, or that cure of such failure cannot reasonably be completed within such period, then Landlord will not pay such sum or perform such obligation during the continuation of such contest or such Force Majeure delay or extended cure period, as the case may be, for so long thereafter as Tenant continues diligently to prosecute such contest or cure or the resolution of such event of Force Majeure.

17.3 Tenant's Obligation to Reimburse Landlord.

If pursuant to the provisions of Sections 16.1(c), 21.1, or 21.2, Landlord pays any sum or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Landlord within ten (10) business days following demand, as Additional Rent, the sum so paid, or the reasonable expense incurred by Landlord in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of Landlord's demand until payment is made. Landlord's rights under this Article 17 shall be in addition to its rights under any other provision of this Lease or under applicable laws.

ARTICLE 18. EVENTS OF DEFAULT; TERMINATION

18.1 Events of Default.

The occurrence of any one or more of the following events shall constitute an "Event of Default" under the terms of this Lease; provided, however, that an Event of Default solely with respect to any Partial Transferred Premises shall not, taken alone, be deemed an Event of Default with respect to any other portion of the Premises:

(a) Tenant fails to pay any Rent to Landlord when due, which failure continues for ten (10) days following written notice from Landlord (it being understood and agreed that the notice required to be given by Landlord under this Section 18.1(a) shall also constitute the notice required under Section 1161 of the California Code of Civil Procedures or its successor, and shall satisfy the requirements that notice be given pursuant to such Section) provided, however, Landlord shall not be required to give such notice on more than three occasions during any Lease year, and failure to pay any Rent for the remainder of such Lease Year when due shall be an immediate Event of Default for the remainder of such Lease Year without need for further notice;

(b) An Event of Default (as defined in the LDDA) on the part of Tenant as Developer, occurs under the LDDA (so long as it is in effect) with respect to Developer's development, construction, use or occupancy of the Premises, but such Event of Default under

this Lease shall be deemed cured if the Event of Default as defined in the LDDA is cured pursuant thereto;

(c) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred twenty (120) days;

(d) A writ of execution is levied on the leasehold estate which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred twenty (120) days;

(e) Tenant makes a general assignment for the benefit of its creditors;

(f) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from Landlord;

(g) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from Landlord, or, if such cure cannot be reasonably completed within such five (5) business day period, if Tenant does not within such five (5) business day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(h) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation Measures) at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Landlord specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(i) Tenant suffers or permits an assignment of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease or sublets all or any portion of the Premises or Improvements in violation of this Lease; or

18.2 Special Provisions Concerning Mortgagees and Events of Default.

Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage shall not, in and of itself, constitute a default under this Lease.

18.3 Special Cure Rights.

In the case of any notice of default given by the Landlord to Tenant, Landlord shall deliver to all Investors (as "Investor" is defined below) a copy thereof concurrently with delivery to Tenant, and Investors shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary so long as Investor commences cure within such thirty (30) day period and diligently proceeds to completion) after the later to occur of (i) the expiration of such cure period or (ii) the date that Landlord has served such notice of default on Tenant, and Landlord shall accept such performance by or at the instance of the Investor as if the same had been made by Tenant. For purposes hereof, "Investor" shall mean any entity which is not an Affiliate of a Partner in Developer who acquires a limited partnership interest in Tenant or a membership interest or partnership interest in a Partner of Tenant, and whose name and address for notices is delivered by Tenant to Landlord thirty (30) days prior to the occurrence of the Event of Default. Landlord's failure to give such notice to an Investor shall not be deemed to constitute a default on the part of Landlord under this Lease, but no such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been given to all Investors.

ARTICLE 19. REMEDIES

19.1 Landlord's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of Landlord following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by law or the terms of this Lease), Landlord shall have all rights and remedies provided in this Lease or available at law or equity. All of Landlord's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable law, the exercise of any one or more rights shall not preclude the exercise of any others. In the instance of an Event of Default solely with respect to any Partial Transferred Premises, Landlord's remedies hereunder shall apply solely with respect to such Partial Transferred Premises.

19.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, Landlord may continue this Lease in full force and effect, as permitted by California Civil Code Section 1951.4 (or any successor provisions). Specifically, Landlord has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). In the event Landlord elects this remedy, Landlord shall have the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Landlord's rights, including the right to collect Rent, including any and all Additional Rent, when and as such sums become due, even though Tenant has breached this Lease and is no longer in possession of the Premises or actively managing or operating the Premises. If Tenant abandons the Premises in violation of

this Lease, Landlord may (i) enter the Premises and relet the Premises, or any part thereof, to third Persons for Tenant's account without notice to Tenant, Tenant hereby waiving rights, if any, to any such notice under any applicable Law, and (ii) alter, install or modify the Improvements or any portion thereof. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of Restoration and of repairing, securing, servicing, maintaining and preserving the Premises or the Improvements, or any portion thereof. Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease, provided Tenant's obligations shall in no event extend beyond the Term.

(b) No Termination. No act by Landlord allowed by this Section 19.2, nor any appointment of a receiver upon Landlord's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If Landlord elects to relet the Premises as provided hereinabove in Section 21.2(a), the rent that Landlord receives from reletting shall be applied to the payment of

(i) First, all costs incurred by Landlord in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of repairing, securing and maintaining the Premises or any portion thereof;

(ii) Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to Landlord, in addition to or other than Rent due from Tenant;

(iii) Third, Rent, including any and all Additional Rent, due and unpaid under this Lease;

(iv) After deducting the payments referred to in this Section 21.2(c), any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied to monthly installments of Rent as such amounts become due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance which Landlord incurred in reletting, remain after applying the rent received from the reletting as

provided in Section 21.2(c)(ii), Tenant shall pay to Landlord, upon demand, in addition to the remaining Rent or other amounts due, all such costs.

(d) Payment of Rent. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the rent Landlord has received from any reletting which exceeds all costs and expenses of Landlord incurred in connection with Tenant's default and the reletting of all or any portion of the Premises.

19.3 Right to Terminate Lease.

(a) Damages. Landlord may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Landlord's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by Landlord other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, Landlord shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following:

(i) The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease;

(ii) The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom; and

(v) "The worth at the time of the award", as used in Section 21.3(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of the award", as used in Section 21.3(a)(iii), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event Landlord terminates Tenant's right to possession of the Premises pursuant to this Section 19.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to

which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Assign or Sublet. Upon the occurrence of an Event of Default, notwithstanding Article 12, Tenant shall have no right to sublet or assign its interest in the Premises or this Lease without Landlord's written consent, which may be given or withheld in Landlord's sole and absolute discretion, subject to the rights of Mortgagees as set forth in Article 34.

19.4 Continuation of Subleases and Other Agreements.

Subject to the terms of any Non-Disturbance Agreements entered into by Landlord in accordance with Section 11.4 hereof, Landlord shall have the right, at its sole and absolute option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises. Tenant hereby further covenants that, upon request of Landlord following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to Landlord such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in Landlord the then existing Subleases and other agreements then in force, as above specified.

ARTICLE 20. EQUITABLE RELIEF

20.1 Landlord's Equitable Relief

In addition to the other remedies provided in this Lease, Landlord shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Landlord shall be entitled to any other equitable relief that may be appropriate to the circumstances of such Event of Default.

20.2 Tenant's Equitable Relief

In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after a default or threatened default by Landlord to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Tenant shall be entitled to any other equitable relief (excepting termination of this Lease) that may be appropriate to the circumstances of such Event of Default.

ARTICLE 21. NO WAIVER

21.1 No Waiver by Landlord or Tenant.

No failure by Landlord or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the

respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

21.2 No Accord or Satisfaction.

No submission by Tenant or acceptance by Landlord of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of Landlord's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Landlord had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Landlord. Landlord may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Landlord to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

ARTICLE 22. DEFAULT BY LANDLORD; TENANT'S REMEDIES

22.1 Default by Landlord; Tenant's Exclusive Remedies.

Landlord shall be deemed to be in default hereunder only if Landlord shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, (iii) if such default cannot reasonably be cured within such thirty (30)-day period, Landlord shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default. Upon the occurrence of default by Landlord described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder, Tenant shall have the exclusive right (a) to offset or deduct only from the Rent becoming due hereunder, the amount of all actual damages incurred by Tenant as a direct result of Landlord's default, but only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease (provided that, at any time after the Total Repayment Amount has been fully paid, Tenant may bring an action for damages subject to the limitations set forth in Sections 25.1 and 25.2), or except for a default under Section 38.15, (b) to seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Landlord or its Agents in excess of that permitted pursuant to Section 25.1 or in violation of Section 25.2; provided, however, (i) in no event shall Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder or to otherwise recover or obtain from Landlord or its Agents any damages (including, without limitation, any consequential, incidental, punitive or other damages

proximately arising out of a default by Landlord hereunder) or Losses other than Tenant's actual damages as described in the foregoing clause (a); (ii) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a default by Landlord hereunder; and (iii) Tenant shall have no remedy of self-help.

ARTICLE 23. TENANT'S RECOURSE AGAINST LANDLORD

23.1 No Recourse Beyond Value of Property Except as Specified.

Tenant agrees that, except for offsets against Rent set forth in Section 24 and except as otherwise specified in this Section 23.1 and except for a default under Section 38.15, Tenant's recourse against Landlord and Landlord's liability with respect to any monetary obligation of Landlord under this Lease, or any monetary claim based upon this Lease, shall not exceed an amount equal to the fair market value of Landlord's fee interest in the Premises (as encumbered by this Lease) at the time such claim is made. By Tenant's execution and delivery hereof and as part of the consideration for Landlord's obligations hereunder, Tenant expressly waives all such monetary liability in excess of the aforementioned amounts.

23.2 No Recourse Against Specified Persons.

No commissioner, officer or employee of Landlord or City will be personally liable to Tenant, or any successor in interest, for any Event of Default by Landlord, and Tenant agrees that it will have no recourse with respect to any obligation of Landlord under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

ARTICLE 24. LIMITATIONS ON LIABILITY

24.1 Waiver of Consequential Damages.

As a material part of the consideration for this Lease, and notwithstanding any provision herein to the contrary, neither party shall be liable for, and each party hereby waives any claims against the other for any consequential damages arising out of any such party's default hereunder.

24.2 Limitation on Liability Upon Transfer.

In the event of any Transfer of Landlord's or Tenant's interest in and to the Premises, Landlord or Tenant, as the case may be, subject to the provisions hereof, (and in case of any subsequent transfers, the then transferor) will automatically be relieved from and after the date of such Transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Landlord or Tenant, as the case may be (or such transferor, as the case may be), but not from liability incurred by Landlord or Tenant, as the case may be (or such transferor, as the case may be) on account of covenants or obligations to be performed by Landlord or Tenant, as the case may be (or such transferor, as the case may be) hereunder before the date of such Transfer; provided, however, that Landlord or Tenant, as the case may be (or such subsequent transferor) has transferred to the transferee any

frauds in Landlord's or Tenant's possession (or in the possession of such subsequent transferor) in which Landlord or Tenant (or such subsequent transferor) has an interest, in trust, for application pursuant to the provisions hereof, and such transferee has assumed all liability for all such funds so received by such transferee from Landlord or Tenant as the case may be (or such subsequent transferor).

24.3 No Recourse Against Specified Persons.

No shareholder, board member, officer, employee, limited partner or member of Tenant or of any partner or member of Tenant will be personally liable to Landlord or any successor in interest of Landlord for any Event of Default of Tenant, and Landlord agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due to Landlord or any successor or for any obligation or claim based upon this Lease, against any such Person.

24.4 No Landlord Liability. Except to the extent of the gross negligence or willful misconduct of Landlord, or Landlord's Representatives, and subject to Tenant's indemnification obligations, Landlord shall not be liable or responsible in any way for:

(a) Any loss or damage whatsoever to any property belonging to Tenant or to its representatives or to any other person who may be in or upon the Premises; or

(b) Any loss, damage or injury, whether direct or indirect, to persons or property resulting from any failure, however caused, in the supply of utilities, services or facilities provided or repairs made to the Premises under any of the provisions of this Lease or otherwise.

24.5 No Liability for Actions of ORA. Neither Landlord nor Landlord's Representatives shall have any liability or responsibility for any actions taken at any time by ORA or for any losses whatsoever, whether direct or indirect, resulting from the passage, implementation or enforcement of AB 26 by any governmental agency or official.

ARTICLE 25. ESTOPPEL CERTIFICATES BY TENANT

25.1 Estoppel Certificate by Tenant.

Tenant shall execute, acknowledge and deliver to Landlord (or at Landlord's request, to a prospective purchaser or mortgagee of Landlord's interest in the Property), within fifteen (15) business days after a request, a certificate stating to the best of Tenant's knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Landlord. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true,

correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by any Landlord, any successor agency, and any prospective purchaser or mortgagee of the Premises or any part of Landlord's interest therein. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into each retail Sublease) to cause retail Subtenants under retail Subleases to execute, acknowledge and deliver to Landlord, within ten (10) business days after request, an estoppel certificate covering the matters described in clauses (a), (b), (c) and (d) above with respect to such retail Sublease.

ARTICLE 26. ESTOPPEL CERTIFICATES BY LANDLORD

26.1 Estoppel Certificate by Landlord.

Landlord shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective transferee of Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate stating to the best of Landlord's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of Landlord, there are then existing any defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to Landlord, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, Landlord shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Landlord that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant, any successor, and any prospective subtenant, mortgagee or transferee of Tenant's interest in this Lease.

ARTICLE 27. APPROVALS BY LANDLORD

27.1 Approvals by Landlord.

Landlord represents to Tenant that the Landlord's City Administrator or his or her designee, is authorized to execute on behalf of Landlord any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Landlord hereunder, if the City Administrator determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in Landlord's best interests. The Landlord City Administrator's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by Landlord of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Landlord, the City Administrator, or his or her designee, shall be authorized to execute such instrument on behalf of Landlord, except as otherwise provided by applicable law, including the City's Charter, or the express language of this Lease.

27.2 Fees for Review.

Within thirty (30) days after Landlord's written request, Tenant shall pay Landlord, as Additional Rent, Landlord's reasonable costs, including, without limitation, Attorneys' Fees and Costs (and including fees and reasonable costs of the City Attorney) incurred in connection with the review, investigation, processing, documentation and/or approval of any Proposed Transfer or Sublease, Mortgage, estoppel certificate, Non-disturbance Agreement and Additional Constmction. Tenant shall pay such reasonable costs regardless of whether or not Landlord consents to such proposal, except only in any instance where Landlord has wrongfully withheld, delayed or conditioned its consent in violation of this Lease.

ARTICLE 28. NO MERGER OF TITLE

28.1 No Merger of Titie.

There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the leasehold estate or any interest in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all Persons having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instmment effecting such merger.

ARTICLE 29. QUIET ENJOYMENT

29.1 Quiet Enjoyment.

Subject to the Permitted Title Exceptions, the terms and conditions of this Lease and applicable Laws, Landlord agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under Landlord. Notwithstanding the foregoing, Landlord shall have no liability to Tenant in the event any defect exists in the title of Landlord as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to Landlord's willful misconduct) and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect shall be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

ARTICLE 30. SURRENDER OF PREMISES

30.1 End of Lease Term.

(a) Condition of Premises. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender to Landlord the Premises in good order and condition, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder and subject to Articles 7, 9 and 10. The Premises shall be surrendered with ail Improvements, repairs, alterations, additions, substitutions and replacements thereto subject to Section 30.1(c) and in compliance

with Section 30.1(d). Tenant hereby agrees to execute all documents as Landlord may deem necessary to evidence or confirm any such other termination.

(b) Subleases. Upon any termination of this Lease, Landlord shall have the right to terminate all Subleases hereunder except for those Subleases with respect to which Landlord has entered into Non-Disturbance Agreements as provided in Section 14.4, or which Landlord has agreed to assume pursuant to Section 21.4.

(c) Personal Property. Upon expiration or termination of this Lease, Tenant and all Subtenants shall have the right to remove their respective trade fixtures and other personal property. At Landlord's request, Tenant shall remove, at no cost to Landlord, any Personal Property belonging to Tenant which then remains on the Premises (excluding any personal property owned by Subtenants or other Persons). If the removal of such Personal Property causes damage to the Premises, Tenant shall repair such damage, at no cost to Landlord.

(d) Compliance with Laws. Subject to Articles 9 and 10, Tenant shall surrender the Premises in compliance with all Laws, and free of all Encumbrances created, incurred, assumed or suffered to exist by Tenant or any Person claiming through it (including any Subtenant) other than Permitted Title Exceptions and other Encumbrances approved by Landlord in writing, and in at least a condition which is sufficient to support the following (collectively, the "Minimum Condition"):

(i) Operational capability to handle the same types of services which have been provided within the Premises for the prior 5 Lease Years.

(ii) The following criteria shall be taken into account and considered relevant in determining whether the Minimum Condition has been met at the time of the surrender: (1) the main civil and structural works shall not exhibit any excessive signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification when originally installed, however, Landlord acknowledges that normal wear and tear of such improvements according to their age shall be permissible; (2) limited life and "wear and tear" components of the Improvements have been replaced by Tenant prior to the surrender date in accordance with good industry practice as and when they failed, wore out, or reached their design life or customary replacement frequency, as part of ongoing maintenance activities, however, Landlord acknowledges that such Improvements, may otherwise be turned over with normal wear and tear; and (3) major electrical and mechanical components or equipment shall be in good operating condition, normal wear and tear excepted.

(e) Quitclaim of Regulatory Approvals. Upon the expiration or termination of this Lease, Tenant shall quitclaim and assign to Landlord or Landlord's designee, in such form and substance reasonably satisfactory to Landlord, all of Tenant's rights, title and interest in and to the Regulatory Approvals and all applications and supporting materials relating to such Regulatory Approvals, subject to any rights, title and interest therein of third parties that are Non-Affiliates of Tenant.

ARTICLE 31. HOLD OVER

31.1 No Right to Hold Over.

Tenant shall have no right to remain in possession of all or any part of the Premises after the Termination Date of this Lease. Tenant shall have no right to holdover and no tenancy shall be created by implication or law. However, if Tenant fails to vacate and surrender possession of the Premises on or prior to the Termination Date, Tenant shall pay Landlord two hundred percent (200%) of the higher of monthly rent immediately theretofore payable plus other rents prevailing at the date of such holding over for each month after the Termination Date or then comparable monthly rents for similar projects from the date of hold-over, in any case, always subject to all rents being increased at the sole discretion of Landlord at any time during the holding over period and upon notice to Tenant. Landlord's receipt and acceptance of such monthly Rent as adjusted in this Section 31.1 shall not be construed as Landlord's consent to any holding over by Tenant. Tenant hereby agrees to indemnify and hold harmless Landlord from and against any and all Claims incurred by Landlord as a result of Tenant remaining in possession of all or any part of the Premises after the Termination Date. Tenant shall not interpose any counterclaim in any summary or other proceeding based on holding over by Tenant. Except as provided in this Section 31.1, all other terms and conditions of this Lease shall apply during any period of holding over by Tenant without Landlord's express written consent, in its sole and absolute discretion.

31.2 No Right to Relocation Assistance. It is understood and agreed that nothing contained in this Lease shall give Tenant any right to relocation assistance or payment from Landlord upon expiration or termination of the Term or upon the termination of any holdover tenancy by any means whatsoever. Tenant acknowledges and agrees that upon such expiration or termination, it shall not be entitled to, and expressly hereby waives, any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) or any other applicable Law with respect to any relocation of its business or activities.

31.3 Transition. During the last Lease Year of the Term, Tenant shall, without compensation, cooperate with Landlord and any proposed subsequent master lessee, tenant, assignee, licensee or the like to the Premises identified by Landlord to ensure the orderly transition of the Premises upon the Termination Date, including, without limitation, providing tours to, participating in transition meetings with, and providing relevant non-confidential information to Landlord or such subsequent party upon the reasonable request of Landlord.

ARTICLE 32. NOTICES

32.1 Notices.

All notices, demands, consents, and requests that may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on the date that is three

days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Landlord: City of Oakland
City Hall
1 Frank H. Ogawa Plaza, 3rd. Fl.
Oakland, CA 94612
Attention: City Administrator
Reference: Oakland Army Base
Facsimile: _____
Telephone: _____
Email: _____

with a copy to: Office of the City Attomey.
Attn: _____
City Hall
One Frank H. Ogawa Plaza-6th Fl.
Oakland, CA 94612
Reference: Oakland Army Base
Facsimile: _____
Telephone: _____
Email: _____

To Tenant: [CCIG ENTITY]

Attn: _____
Facsimile: _____
Telephone: _____
Email: _____

with a copy to:

Attn: _____
Facsimile: _____
Telephone: _____
Email: _____

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by telefacsimile to the facsimile number set forth above or such other number as may be provided from time to time by notice

given in the manner required hereunder; however, neither Party may give official or binding notice by telefacsimile.

32.2 Form and Effect of Notice.

Every notice given to a Party or other Person under this Section must state (or shall be accompanied by a cover letter that states):

(a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto; and

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 32.2.

ARTICLE 33. INSPECTION OF PREMISES BY LANDLORD

33.1 Entry.

Subject to the rights of Subtenants, Tenant shall permit Landlord and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that Landlord may have a right to perform under Article 17 and/or (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as Landlord reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions. Nothing herein shall imply any duty upon the part of Landlord to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Landlord any obligation, or liability, for the care, supervision or repair of the Premises, provided, however, Landlord shall use reasonable efforts to minimize interference with the activities and tenancies of Tenant, Subtenants and their respective Invitees. If Landlord elects to perform work on the Premises pursuant to Section 19, Landlord shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except to the extent caused solely by the gross negligence or willful misconduct of Landlord, its agents or employees, provided Landlord uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.

33.2 Exhibit for Lease.

Subject to the rights of Subtenants, Tenant shall permit Landlord and its Agents to enter the Premises during regular business hours upon reasonable prior notice (i) to exhibit the same in a reasonable manner in connection with any sale, transfer or other conveyance of Landlord's interest in the Premises, and (ii) provided that Tenant has not exercised its right of first offer pursuant to Article 40, during the last eighteen (18) months of the Term, for the purpose of leasing the Premises.

33.3 Notice, Right to Accompany.

Landlord agrees to give Tenant reasonable prior notice of Landlord's entering on the Premises except in an emergency for the purposes set forth in Sections 37.1 and 37.2. Such notice shall be not less than twenty-four (24) hours oral notice. Tenant shall have the right to have a representative of Tenant accompany Landlord or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice shall be required for Landlord's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in Sections 34.1 and 34.2.

33.4 Rights of Subtenants.

Tenant agrees to use commercially reasonable efforts (including efforts to obtain the agreement of each Subtenant (other than Landlord) to the inclusion of a provision similar to this Section 33.4 in its Sublease) to require each Subtenant to permit Landlord to enter its premises for the purposes specified in this Section 33. If Tenant is unable to obtain such agreement after commercially reasonable efforts, Tenant shall use commercially reasonable efforts to include a right of entry for Landlord upon terms customary for comparable leases in the Central District Redevelopment Project Area.

ARTICLE 34. MORTGAGES

34.1 No Mortgage Except as Set Forth Herein.

(a) Restrictions on Financing. Except as expressly permitted in this Section 34, Tenant shall not:

(i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease; or

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrances other than as permitted by Section 13.1.

(b) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Land in connection with any financing permitted hereunder, or otherwise.

Landlord shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Mortgagee of Tenant.

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this Section 34 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

34.2 Leasehold Liens.

(a) Tenant's Right to Mortgage Leasehold. Subject to the terms and conditions of Article 34, at any time during the Term following Completion of Initial Improvements, and provided that no Event of Default or Unmatured Event of Default then exists, Tenant shall have the right to assign, mortgage or encumber Tenant's leasehold estate created by this Lease, solely with respect to such portion of the Premises containing such completed Initial Improvements, by way of leasehold mortgages, deeds of trust or other security instruments of any kind to the extent permitted hereby.

(b) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder.

(c) Limitation of Number of Leasehold Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees (other than notice rights, which shall apply to all Mortgagees that have given Landlord the notice required under Section 34.9(b)) shall only apply to the most senior Mortgagee, unless such Mortgagee elects not to exercise its rights thereunder in which event such rights will apply to the next most senior Mortgagee.

34.3 Notice of Liens.

Tenant shall notify Landlord promptly of any lien or encumbrance other than the Permitted Title Exceptions of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

34.4 Limitation of Mortgages. In addition to the limitations set forth elsewhere in this Article 34, the limitations set forth in this Section 34.4 shall apply to all Mortgages.

(a) Limitations. A Mortgage may be made only for the purpose of financing the construction of the Initial Improvements, refinancing completed Initial Improvements, any permanent take-out financing (subject to the limitations herein with respect to construction financing for the Initial Improvements), acquisition financing by a transferee of Tenant's interest in this Lease (subject to the provisions of Article 12), and the refinancing of permitted Mortgages. With respect to any issuance of corporate debt or other securitized financings, Tenant shall not be permitted to create any structure that would create an obligation or security

of Landlord. In addition, Tenant's right to enter into a Mortgage shall be subject to the following limitations:

(i) The total amount of the debt encumbering Tenant's interest with respect to any financing for the construction of the Initial Improvements shall not exceed the actual costs of such construction;

(ii) The total amount of the debt encumbering Tenant's leasehold shall not exceed ninety percent (90%) of the sum of the appraised value of such leasehold plus the value of any additional security, guaranty or credit enhancement provided by Tenant, as determined by the proposed Leasehold Mortgagee;

(iii) The interest rate under such Mortgage shall not exceed the then-prevailing market rate for similar mortgages;

(iv) With respect to any financing for the construction of the Initial Improvements, such financing shall not permit Tenant to draw or receive any advances or proceeds of such financing for any purpose other than payment of legitimate third party costs for such construction (including design costs) and any interest or tax reserves mandated by the Mortgagee as a condition to such financing, and Tenant shall not use any such advances or proceeds for any other purpose whatsoever;

(v) Tenant has received the prior written confirmation from Landlord that each such Mortgage is in compliance with this Section 34.4;

(vi) a Mortgage may not cover any property of, or secure any debt issued or guaranteed by, any Person other than Tenant for the purpose described in Section 34.4(a);

(vii) no Person other than a Bona Fide Institutional Lender shall be entitled to the benefits and protections accorded to a Mortgagee in this Lease;

(viii) no Mortgage or other instrument purporting to mortgage, pledge, encumber or create an Encumbrance on or against any or all of the interest of Tenant shall extend to or affect the fee simple interest in the Premises, Landlord's interest hereunder or its reversionary interest and estate in and to the Premises or any part thereof, or adversely affect the rights or increase the liabilities or obligations of Landlord except to the extent set forth in this Lease;

(ix) Landlord shall have no liability whatsoever for payment of the principal sum secured by any Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder;

(x) Landlord shall have no obligation to any Mortgagee except as expressly as set forth in this Lease and only with respect to such Mortgagee that has provided Landlord with written notice of its Mortgage;

(xi) each Mortgage shall provide that if an event of default under the Mortgage has occurred and is continuing and the Mortgagee gives notice of such event of default to Tenant, then the Mortgagee shall give concurrent notice of such default to Landlord;

(xii) subject to the terms of this Lease and except as specified herein, all rights acquired by a Mortgagee under any Mortgage shall be subject and subordinate to all of the provisions of this Lease and to all of the rights of Landlord hereunder;

(xiii) notwithstanding any enforcement of the security of any Mortgage, Tenant shall remain liable to Landlord for the payment of all sums owing to Landlord under this Lease and the performance and observance of all of Tenant's covenants and obligations under this Lease;

(xiv) a Mortgagee shall not, by virtue of its Mortgage, acquire any greater rights or interest in or to the Premises than Tenant has at any applicable time under this Lease, other than such rights or interest as may be granted or acquired in accordance with this Article 34; and

(xv) prior to the effective date of a Mortgage, each Mortgagee, Landlord and Tenant shall enter into a consent agreement in a form acceptable to all parties if required by Mortgagees, whereby all parties consent to the assignment of such Mortgage by the Mortgagees to an agent for the Mortgagees in connection with the financing of the Mortgage; provided that such consent agreement shall be in a customary form, include the exact rights and protections provided to the Mortgagees in this Lease, acknowledge that Tenant shall remain liable to Landlord for the payment of all sums owing to Landlord under this Lease and the performance and observance of all of Tenant's covenants and obligations under this Lease and provide that the Mortgagees shall promptly cause to be recorded in the County Recorder's Office of Alameda County a reconveyance and release of the Mortgage upon the end of its term.

(b) Statement. Landlord agrees within thirty (30) days after request by Tenant to give to any holder or proposed holder of a Mortgage a statement in recordable form as to whether such Mortgage is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Landlord from asserting, against either Tenant or such prospective Mortgagee, that such Mortgage (if done in the way described in the statement) is not permitted hereunder, but shall create no liability on Landlord, and shall conclusively establish that such Mortgage is permitted hereunder and does not constitute a default by Tenant. In making a request for such statement, Tenant shall furnish Landlord true, accurate and complete copies of such of the financing documents as are required reasonably by Landlord to permit Landlord to make the determination whether such Mortgage is permitted hereby. In no event, however, shall any failure by Tenant or other party to comply with the terms of any Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

34.5 Interest Covered by Mortgage.

A Mortgage may attach to any or all of the following interests in the Premises: (i) Tenant's leasehold interest in the Premises created hereby and Tenant's interest in the Improvements or some portion thereof granted hereunder, (ii) Tenant's interest in any permitted Subleases thereon, (iii) any Personal Property of Tenant, (iv) rents, products and proceeds of the foregoing, and (v) any other rights and interests of Tenant arising under this Lease. As provided in Section 34.1(b) no Mortgage may encumber Landlord's interest in or under this Lease or Landlord's fee simple interest in the Property or Landlord's personal and other property in, on or around the Property.

34.6 Qualified Lender.

A Mortgage may be given only to (i) a Bona Fide Institutional Lender or (ii) any other lender that shall have been approved in advance by Landlord in writing in Landlord's sole and absolute discretion, subject to Landlord's receipt of substantial and adequate evidence providing Landlord with information on the structure, financial capacity, and experience of such other lender. In any instances in which Landlord's consent is so required, Landlord shall be deemed to have approved such other lender if the written notice from Tenant of the identity of such other lender specifies that no notification of disapproval within sixty (60) days after the receipt of such written notice constitutes approval, and Landlord sends no notification of disapproval within ten (10) days after written notice from Tenant to Landlord, notifying Landlord of the expiration of such 60 day period..

34.7 Rights Subject to Lease.

(a) Subject to Lease. Except as otherwise expressly provided herein, all rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder. None of such covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Mortgage, except as expressly provided in this Lease or otherwise specifically waived by Landlord in writing.

(b) Construction and Restoration Obligations. Notwithstanding any provision of this Lease to the contrary, no Mortgagee (including any such Mortgagee who obtains title to the leasehold or any part thereof as a result of foreclosure proceedings or action in lieu thereof) shall be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements unless expressly assuming such obligation under Section 34.10(c). Any other Person who thereafter obtains title to the leasehold or any interest therein from or through such Mortgagee, or any other purchaser at foreclosure sale (other than a Mortgagee), shall be required to Restore in accordance with the requirements of this Lease. Whether or not a Mortgagee elects to Restore, nothing in this Lease shall be construed to permit any such Mortgagee to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or authorized herein. If Mortgagee obtains title to the leasehold and chooses not to complete or Restore the Improvements, it shall so notify Landlord in writing of its election within ninety (90) days following its acquisition of the tenancy interest in this Lease and shall use commercially reasonable efforts sell its tenancy interest to a

purchaser that shall be obligated to Restore the Improvements to the extent this Lease obligates the Tenant to so Restore. Mortgagee shall use good faith efforts to cause such sale to occur within six (6) months following the Mortgagee's written notice to Landlord of its election not to Restore, provided that any such purchaser shall be subject to Landlord's reasonable prior written approval, which approval shall not be unreasonably withheld so long as such purchaser provides evidence satisfactory to Landlord in its reasonable discretion showing that such purchaser possesses the qualifications, experience and financial capacity to Restore in accordance with the requirements of this Lease. In the event Mortgagee agrees to Restore the Improvements, all such work shall be performed in accordance with all the requirements set forth in this Lease, and Mortgagee must submit evidence reasonably satisfactory to Landlord that it has the qualifications, experience and financial responsibility necessary to perform such obligations.

34.8 Required Provisions of any Mortgage.

Tenant agrees to have any Mortgage provide: (a) that the Mortgagee shall by registered or certified mail give written notice to Landlord of the occurrence of any event of default as defined under the Mortgage; (b) that Landlord shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be consistent with the provisions of this Lease, unless Landlord may agree otherwise in its sole and absolute discretion.

34.9 Notices to Mortgagee.

(a) Copies of Notices. Landlord shall give a copy of each notice Landlord gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of Landlord's consent to an assignment of any interest in this Lease or to a Significant Change, to any Mortgagee that has given to Landlord written notice substantially in the form provided in Subsection (b). Copies of such notices shall be given to Mortgagees at the same time as notices are given to Tenant by Landlord, addressed to such Mortgagee at the address last furnished to Landlord. Landlord shall acknowledge in writing its receipt of the name and address of a Mortgagee so delivered to Landlord. Landlord's failure to give such notice to a Mortgagee shall not be deemed to constitute a default by Landlord under this Lease, but no such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Any such notices to Mortgagee shall be given in the same manner as provided in Section 32.1.

(b) Notice From Mortgagee to Landlord. The Mortgagee under any Mortgage shall be entitled to receive notices from time to time given to Tenant by Landlord under this Lease in accordance with Subsection (a) above provided such Mortgagee shall have delivered a notice to Landlord in substantially the following form:

"The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City of Oakland, as Landlord, and _____ as Tenant (the "Lease"), of Tenant's interest in the Lease demising the parcels, a legal description of which is attached hereto as Exhibit ___ and made a part hereof by

this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to Tenant by Landlord be sent to the undersigned at the following address:

_____."

34.10 Mortgagee's Right to Cure.

If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. Each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay the Rents due hereunder, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease; provided, however, that no such action shall constitute an assumption by such Mortgagee of the obligations of Tenant under this Lease. Each Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Tenant. In the case of any notice of default given by Landlord to Tenant, the Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary so long as Mortgagee commences cure within such thirty (30) day period and diligently proceeds to completion) after the later to occur of (i) the expiration of such cure period, or (ii) the date that Landlord has served such notice of default upon Mortgagee, and Landlord shall accept such performance by or at the instance of the Mortgagee as if the same had been made by Tenant. The time in which Mortgagee may cure is herein called the "Mortgagee Cure Period."

(b) Foreclosure. Anything contained in this Lease to the contrary notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, Landlord shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to each Mortgagee, a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver if Mortgagee deems it advisable), or (y) notified Landlord of its intention to institute foreclosure proceedings (or to commence actions to obtain possession of the Premises through appointment of a receiver or otherwise) or otherwise acquire Tenant's interest under the Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings or Force Majeure. The period from the date Mortgagee so notifies Landlord until a Mortgagee acquires and succeeds to the interest of Tenant under this Lease or some other party acquires such interest through Foreclosure is herein called the "Foreclosure Period." A Mortgagee, upon acquiring Tenant's interest under this

Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee to the extent not cured prior to Foreclosure. The foregoing provisions of this Subsection (b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue Foreclosure after the defaults or Events of Default hereunder referred to shall have been cured (and the Landlord shall accept such cure or performance of such obligation by any party, including Tenant); (ii) nothing herein contained shall preclude Landlord, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) such Mortgagee shall agree with Landlord in writing to comply during the Foreclosure Period with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such Mortgagee (except to the extent related to Hazardous Materials or Restoration), including but not limited to the payment of all sums due and owing hereunder (except for monetary obligations related to Hazardous Materials or Restoration) and the use restrictions set forth in Section 3.1. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (iii) of the preceding sentence, Mortgagee shall have the right at any time to notify Landlord that it has relinquished possession of the Premises or that it will not institute Foreclosure or, if such Foreclosure has commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Landlord, and, thereupon, Landlord shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease unless such Event of Default has been cured. Upon any such termination, the provisions of this Section 34.10(b) shall apply. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (i) have fully cured any Event of Default due to a default in the payment of money, except for monetary obligations related to Restoration or Hazardous Materials (ii) continue to pay currently such monetary obligations as and when the same become due, and (iii) perform all other obligations of Tenant under this Lease to the extent that they are susceptible of being performed by Mortgagee.

(c) Construction.

(i) Subject to Section 34.7(b), if a default of Tenant occurs following any damage or destruction but prior to Restoration of the Improvements, Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Mortgagee expressly assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to Restore, in the manner provided in this Lease, the Improvements on the Premises or the part thereof to which the lien or title of such Mortgagee relates, and submitted evidence satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligation.

(ii) Upon assuming Tenant's obligations to Restore in accordance with Subsection (c)(i) above, Mortgagee or any transferee of Mortgagee shall not be required to

adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date of Tenant stopped work on the Restoration to the date of such assumption plus an additional one hundred twenty (120) days.

(d) New Lease. In the event of the termination of this Lease before the expiration of the Term, including, without limitation, the termination of this Lease by the Landlord on account of an Event of Default or the rejection of this Lease by a trustee of Tenant in bankruptcy or by Tenant as a debtor-in-possession, except (i) by Total Condemnation, or (ii) as the result of damage or destruction as provided in Section 12, Landlord shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The Mortgagee shall thereupon have the option to obtain a new Lease and in the event the LDDA is still in effect, the assignment of Tenant's rights and obligations thereunder, in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, Landlord shall enter into a new lease of the Premises with the most senior Mortgagee giving notice within such period or its designee, provided that the Mortgagee assumes Tenant's obligations as Sublandlord under any Subleases then in effect (unless Landlord entered into such Sublease in violation of (f) below) to the extent such assumption is necessary in order to continue such Subleases in effect; and

(ii) Such new Lease, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (except for any requirements or conditions which Tenant has satisfied prior to the termination). Such new lease shall have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. Such new Lease shall require the Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease that would, at the time of the execution of the new lease, be due under this Lease if this Lease had not been terminated and to perform as soon as reasonably practicable and any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee other than obligations of Tenant with respect to construction of the Initial Improvements, which obligations shall be performed by Mortgagee in accordance with Section, or with respect to Restoration, shall be performed by Mortgagee in accordance with Section 34.10(c). Upon the execution of such new Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable Attorneys' Fees and Costs incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such new Lease. The provisions of this Section 34.10(d) shall survive any termination of this Lease (except as otherwise expressly set out in the first sentence of Section 34.10(d)), and shall constitute a separate agreement by the Landlord for the benefit of and enforceable by the Mortgagee.

(iii) Simultaneously with the execution and delivery of the new lease, the Landlord shall confirm and acknowledge that Mortgagee has title to the Improvements for the term of the new lease by such means as is customary or may be reasonably required by a reputable title insurance company to insure the leasehold estate created by the new lease; provided, however, that Landlord shall have no responsibility for exceptions to title or title defects that affected title to the Improvements on or after the Commencement Date of this Lease except to the extent created by the actions of City or Landlord.

(e) Nominee. Any rights of a Mortgagee under this Section 34.10 may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee; provided, however, that a Mortgagee may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of Mortgagee.

(f) Subleases. Effective upon the commencement of the term of any new Lease executed pursuant to Subsection 36.10(d), any Sublease then in effect shall be assigned and transferred without recourse by Landlord to Mortgagee and all monies collected by or for the benefit of Landlord from the Sublessees shall be paid to Mortgagee, or at Mortgagee's option, shall offset Rent. Between the date of termination of this Lease and commencement of the term of the new Lease, Landlord shall not (1) enter into any new subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee if Mortgagee enters into a new Lease, (2) cancel or materially modify any of the existing subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor or any other agreements affecting the Premises, or (3) accept any cancellation, termination or surrender of any of the above without the written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed. Effective upon the commencement of the term of the new Lease, Landlord shall also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, all Personal Property.

(g) Limited to Permitted Mortgagees. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of Bona Fide Institutional Lenders that are the holders of the Mortgages permitted hereunder

(h) Consent of Mortgagee. No material amendment, termination or cancellation of this Lease shall be effective as against a Mortgagee unless a copy of the same shall have been delivered to such Mortgagee and such Mortgagee shall have approved the material amendment, termination or cancellation in writing. No merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Mortgagee.

(i) Limitation on Liability of Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Mortgagee, or its designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes the owner of the leasehold estate created hereby, and then only for so long as it remains the owner of the leasehold estate and only with respect to the obligations arising during such period of ownership. In no event will Mortgagee have personal liability under this Lease or a new lease under Section 34.10(d) greater than Mortgagee's interest in this Lease or such new lease under Section

34.10(d), and the Landlord will have no recourse against Mortgagee's assets other than its interest herein or therein.

34.11 Assignment by Mortgagee.

Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, or any Transfer of this Lease by Mortgagee after acquisition of the leasehold estate through foreclosure or deed in lieu thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Landlord shall recognize the Mortgagee or other transferee in connection therewith as the Tenant hereunder. The right of such transferee or the right of the transferee of such Mortgagee (but not the right of the Mortgagee) thereafter to assign or transfer this Lease or such new Lease shall be subject to the restrictions of Section 14. After acquisition of the Premises by foreclosure or transfer in lieu of foreclosure, all accrued and unpaid Rent shall be payable by such transferee as provided and subject to the limitations set forth in this Lease. In the event Mortgagee subsequently assigns or transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new lease obtained pursuant to Section 38.10(d), and in connection with any such assignment or transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such assignment or transfer, then such mortgage or deed of trust shall be considered a permitted Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Section 33 and any other provisions of this Lease intended for the benefit of a permitted Mortgagee who holds a permitted Mortgage.

34.12 Transfer of Mortgage.

Landlord hereby consents to a transfer or encumbrance by Mortgagee, absolutely or as collateral security for performance of its obligations, of its Mortgage or any interest therein, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such transfer the new holder or pledgee of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

34.13 Appointment of Receiver.

In the event of any default under a Mortgage, the holder of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Mortgagee accelerates the maturity of all indebtedness secured by its Mortgage.

ARTICLE 35. NO JOINT VENTURE

35.1 No Joint Venture.

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other Person, or cause

Landlord to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

ARTICLE 36. REPRESENTATIONS AND WARRANTIES

36.1 Representations and Warranties of Tenant.

Tenant represents, warrants and covenants to Landlord as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence; Good Standing. Tenant is a limited liability company duly organized and validly existing under the laws of the State of California, and duly registered and authorized to conduct business in the State of California. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State California.

(b) Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to Landlord in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by Landlord and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant or its business, or (C) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to Landlord in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not tiled a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder, and (iv) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been tiled under any chapter of the U.S. Bankruptcy Code.

The representations and warranties herein shall survive any termination of this Lease to the extent specified in this Lease.

36.2 Landlord Warranties.

Landlord warrants that it is duly authorized and existing under the laws of the State of California as a municipal corporation, that Landlord, upon approval of its City Council, has full right, power and authority to enter into this Lease and to carry out the actions contemplated by this Lease. Upon Tenant's request, Landlord will give Tenant a copy of a resolution or ordinance adopted by City authorizing Landlord to enter into this Lease.

ARTICLE 37. SPECIAL PROVISIONS

37.1 Non-Discrimination.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts entered into by Tenant relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of Subsection (a) above.

37.2 Mitigation Measures.

In order to mitigate the significant environmental impacts of this Lease and operation of the Premises, Tenant agrees that the operation of the Project shall be in accordance with the Mitigation Measures attached to this Lease as Exhibit, which are to be performed on the part of the project sponsor. As appropriate, Tenant shall incorporate such Mitigation Measures and Improvement into any contract for the operation of the improvements.

37.3 Alcohol, Firearms, Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no advertising of alcohol, firearms, cigarettes or tobacco products shall be allowed on the Premises, except only as incidental to an allowed retail use such as advertising in markets or stores that sell such products if allowed by law. The foregoing prohibition shall include the placement of the name of a company producing, selling or distributing alcohol, firearms, cigarettes or tobacco products or the name of any alcohol, firearms, or cigarette or tobacco product in any promotion of any event or product or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of drinking, using firearms, or using cigarettes and tobacco products or to encourage people not to drink, use firearms, or smoke or to stop smoking.

37.4 Waiver of Relocation Assistance Rights.

If Tenant holds over in possession of the Premises following the expiration of this Lease under Section 31.1, Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as provided in Section 11 relating to Condemnation, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

37.5 Campaign Contributions Limits.

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires City Council approval. The City of Oakland Campaign Reform Act prohibits developers that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either one hundred eighty (180) days after completion of, or termination of, contract negotiations.

Tenant must sign and date an Acknowledgement of Campaign Contributions Limits Form attached hereto as Exhibit ___ and incorporated herein.

37.6 Community Benefits. The City and Developer have previously negotiated and agreed upon a plan of Community Benefits related to the Project and Tenant's performance of this Lease. As additional consideration for this Lease, Tenant hereby agrees to perform all of its obligations set forth in Exhibit ___ attached to this Lease and incorporated herein in full by this reference.

37.7 Other Requirements.

Tenant shall operate and maintain the Premises in accordance with: (1) all applicable federal, state and local requirements for access for disabled persons; (2) the City's Equal Benefits Ordinance; and (3) environmental sustainability measures to the extent that such

features are equivalent or lower in cost than comparable non-sustainable alternatives, when measured over their respective life-cycles.

ARTICLE 38. GENERAL

38.1 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., Oakland, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next working day.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to the provisions of Section 20 relating to Force Majeure.

38.2 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and Sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

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

(e) Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof

38.3 Successors and Assigns.

This Lease is binding upon and will inure to the benefit of the successors and assigns of Landlord, Tenant and any Mortgagee. Where the term "Tenant," "Landlord" or "Mortgagee" is used in this Lease, it means and includes their respective successors and assigns, including, as to any Mortgagee, any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Landlord as a Party or the holder of the right or obligation to give approvals or consents, if Landlord or a comparable public body which has succeeded to Landlord's rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Landlord for purposes of this Lease.

38.4 No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in Article 34 with regard to Mortgagees.

38.5 Real Estate Commissions.

Landlord is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease. Tenant and Landlord each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to Indemnify the other Party from any Losses arising out of such claim.

38.6 Counterparts.

This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

38.7 Entire Agreement.

This Lease (including the Exhibits), and the LDDA for so long as such agreements are in effect, constitute the entire agreement between the Parties with respect to the subject matter set forth therein, and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Lease.

38.8 Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties.

38.9 Governing Law; Selection of Fomm.

This Lease shall be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for Landlord's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of Landlord, be litigated in courts having situs within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

38.10 Recordation.

This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as Exhibit. Promptly upon Landlord's request following the expiration of the Term or any other termination of this Lease, Tenant shall deliver to Landlord a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to Landlord and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. Landlord may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

38.11 Extensions by Landlord.

Upon the request of Tenant, Landlord may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of Landlord's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

38.12 Further Assurances.

The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease. The City Administrator of the Landlord is authorized to execute on behalf of the Landlord any closing or similar documents and any contracts, agreements, memoranda or similar documents with Tenant, State, regional and local entities or enter into any tolling agreement with any Person that are necessary or proper to achieve the

purposes and objectives of this Lease, if the City Administrator determines that the document or agreement is necessary or proper and is in the Landlord's best interests.

38.13 Attorneys' Fees.

If either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of Oakland in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

If Tenant utilizes services of in-house counsel, then, for purposes of this Lease, the reasonable fees of such in-house counsel shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the in-house counsel services were rendered and practiced in the City of San Francisco and full-service law firms.

38.14 Lease Effectiveness.

Notwithstanding any provision herein to the contrary, this Lease shall only become effective on the date the Parties duly execute and deliver this Lease upon Close of Escrow in accordance with the LDDA. Such date will be inserted by Landlord as the Commencement Date on the cover page and on page 1 hereof, provided, however, that Landlord's failure to insert the Commencement Date shall not invalidate this Lease. Where used in this Lease or in any of its exhibits, references to "the effective date of this Lease," "the date of this Lease," the "reference date of this Lease" or "Lease Date" will mean the Commencement Date determined as set forth above and shown on the first page hereof

38.15 Severability; Survival.

If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other Person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes

of this Lease. Except as otherwise set forth herein, the rights and obligations of the Tenant, the Landlord and the City under this Lease shall survive any termination of the LDDA.

38.16 Cooperation in the Event of Legal Challenge. In the event of any Legal Challenge, Landlord and Tenant shall cooperate and coordinate with one another in the defense against such Legal Challenge.

38.17 Incident Management, Notifications and Reports. Tenant shall immediately notify Landlord of all emergencies, and promptly notify Landlord of all material accidents and incidents occurring on or at the Premises, and of all material claims made by or against Tenant, or potential material claims that Tenant reasonably expects to make against, or to be made against it by, third parties in connection with its use and occupancy of the Premises. In addition, within 30 calendar days following the end of each calendar quarter of each Lease Year, Tenant shall deliver to Landlord a quarterly report of all such occurrences, including the following details in a format specified by Landlord: (a) type of incident (e.g., bodily injury, death or property damage) and summary of each such incident; (b) classification of incident (e.g., machinery, right-of-way or other); (c) number of incidents by type and classification; (d) costs to correct incidents by type and classification; (e) claims made by Tenant and revenue received by type and classification; and (f) claims made against Tenant and losses incurred or losses claimed by type and classification.

38.18 Books and Records and Inspection.

(a) Books and Records. Tenant shall keep all Tenant's Books and Records according to GAAP. Tenant shall maintain a separate set of accounts, including bank accounts limited to the Premises, to allow a determination of expenses incurred and revenues generated directly from the Premises. If Tenant operates all or any portion of the Premises through a Subtenant or Agent, Tenant shall cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

(b) Inspection. Tenant agrees to make all of Tenant's Books and Records available to Landlord, or to any Landlord or City auditor, or to any auditor or representative designated by Landlord (hereinafter collectively referred to as "Landlord Representative"), for the purpose of examining Tenant's Books and Records, to determine the accuracy of Tenant's Participation Rent Statements and other required reports, statements and accounting under this Lease (collectively, "Tenant Accounting"), for a period of three (3) years after such Tenant Accounting was delivered to the Landlord. If Landlord wishes to audit Tenant's Books and Records, Landlord shall give Tenant thirty (30) days' written notice of its intention to audit. Landlord shall complete its audit as soon as reasonably possible. Tenant shall cooperate with the Landlord representative during the course of any audit. Any audit by Landlord shall be at Landlord's own expense, except as hereinafter provided. Tenant shall keep such Books and Records for seven (7) years and maintain them and/or make them available in Oakland to Landlord's representative. All Tenant's financial reports, statements and accounting provided by Tenant to Landlord hereunder, shall be deemed conclusively approved by Landlord after the expiration of the three (3) year period following delivery of Tenant's accounting, unless an audit is made within said three (3)-year period and Landlord claims that errors or omissions have occurred. In such event, Tenant shall retain the Books and Records and make them available

until those matters are resolved. If Tenant operates the Premises through a Subtenant or Agent, Tenant shall require such Subtenant or Agent to provide the Landlord with the foregoing audit right with respect to the books and records of such Subtenant or Agent. If any such audit reveals that Tenant has misstated any amount shown in any Tenant accounting, and such misstatement has resulted in any underpayment of Rent by Tenant, Tenant shall pay Landlord, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to Landlord and as further subject to interest as set forth in Section 2.5. In addition, if such misstatement results in an underpayment of Rent in any audit period of three percent (3%) or more, Tenant shall pay the cost of the audit. At Landlord's option, any overpayments revealed by an audit may be either refunded to Tenant, applied to any other amounts then due and unpaid, or applied to Base Rent due subsequent to the audit.

38.19 Public Disclosure.

Tenant acknowledges that under the California Public Records Act and the City's Sunshine Ordinance both as they may be amended or modified, or any similar public records disclosure law hereinafter enacted that by its terms applies to this Agreement (collectively, the "Disclosure Laws"), all Tenant's Books and Records and documents maintained by Tenant (or maintained for Tenant by Tenant's Agents) relating to the operation of the Premises and delivered or required to be delivered by Tenant to Landlord may be considered public records and, to the extent required by the Disclosure Laws, will be made available to the public upon request. Landlord shall not in any way be liable or responsible for the disclosure of any such information, books or records or portions thereof if the disclosure is made pursuant to a request under the Disclosure Laws.

ARTICLE 39. RIGHT OF FIRST REFUSAL

In the event: (i) Landlord is compelled by applicable Law to sell or transfer to a third party Landlord's title to all or any portion of the Premises (the "Offered Interest"); (ii) Landlord receives and intends to accept a bona fide offer from such a third party to purchase or acquire the Offered Interest (the "Offer"); and (iii) applicable Law does not prohibit or prevent the implementation of this Article 39, then Tenant shall have a one-time right of first refusal to meet the Offer and purchase the Offered Interest pursuant to the provisions of this Article 39. Landlord shall promptly provide written notice of the Offer to Tenant ("Landlord's Notice"), which shall include a true and complete copy of the Offer. Tenant shall have forty-five (45) days after receipt of Landlord's Notice in which to provide written notice to Landlord of Tenant's election to purchase the Offered Interest ("Tenant's Notice"). If Tenant provides Tenant's Notice within such forty-five (45)-day period, Landlord and Tenant shall proceed with the purchase and sale of the Offered Interest pursuant to the provisions hereof at the same purchase price and upon substantially the same other terms and conditions of the Offer, as may be amended by agreement of Landlord and Tenant. Notwithstanding any provision to the contrary in the Offer, the closing date for Tenant's purchase of the Offered Interest shall not be sooner than forty-five (45) days after the date of Tenant's Notice. Unless otherwise agreed in writing by the Parties, the purchase by Tenant of an Offered Interest hereunder, and the ownership, use and occupancy of the Premises thereafter, shall be and remain subject to the provisions of this Lease. If Tenant does not provide Tenant's Notice within the forty-five (45)-day period as provided above, Landlord may sell the Offered Interest to such third party in accordance with the terms

and conditions of the Offer, free and clear of Tenant's right of first refusal hereunder. If the Offered Interest sold at any time during the Term by Landlord to Tenant or to a third party includes less than the entire Premises, Tenant's one-time right of first refusal hereunder shall remain effective as to the remaining unsold portion of in the Premises. Tenant's right of first refusal hereunder shall expire on the expiration or termination of the Term.

ARTICLE 40. DEFINITION OF CERTAIN TERMS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them below in this Section.

AB 26 means the provisions of California Assembly Bill 26 adopted into law June 28, 2011, and any successor statute thereto, as may be amended from time to time.

Additional Constmction means the construction, installation, reconstmction, replacement, addition, expansion, Restoration, alteration or modification of any Additional Improvements.

Additional Improvements means any and all buildings, stmctures, fixtures, and other improvements, including but not limited to any work of improvement as defined in California Civil Code Section 3106, constmcted, installed, erected, built, placed or performed (or to be so done) upon or within the Premises at any time by or on behalf of Tenant in accordance with this Lease, excluding the Inifial Improvements.

Additional Rent means any and all sums, other than Base Rent, that may become due or be payable by Tenant at any time pursuant to this Lease.

Affiliate means any Person directly or indirectly Controlling, Controlled by or under Common Control with another Person.

Agency means the former Redevelopment Agency of the City of Oakland.

Agents means, when used with reference to either Party to this Lease, the members, officers, directors, commissioners, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

Anniversary Date means each anniversary of the start of a Lease Year (starting with the Commencement Date) or, for purposes of Section 2.2(a)(ii), each anniversary of the start of a Lease Year or a Pre-Lease Year, as applicable.

Annual Gross Tariff Revenues [NOTE: SUBJECT TO FURTHER REVIEW] means, for any Lease Year or portion thereof during the Term, the following items determined on a cash basis: all commodity tariffs, dockage or wharfage fees, and any and all other fees, charges, revenues and other consideration paid or payable to Tenant or Tenant Affiliate (in their capacity as a private port or otherwise) by a commodities shipper or other third party (whether pursuant to private contract between Tenant or Tenant Affiliate and such shipper or other third party, published tariffs or otherwise) for or in connection with the importing, exporting, shipping, transporting, berthing, or handling of commodities to, at or from the Premises. Annual Gross

Tariff Revenues shall not include rental income paid or payable to Tenant under any Sublease of the Premises, excepting (i) rental income under any such Sublease that includes a provision for the sharing by the Subtenant in any or all Annual Gross Tariff Revenues, and/or (ii) rental income under any such Sublease to the extent such rental income is in lieu of, or in substitution for, the payment by Subtenant to Tenant of any or all Annual Gross Tariff Revenues.

Annual Reconciliation Statement as defined in Section 2.3(b)(ii).

Arbiter as defined in Section 25.3.

Attorneys' Fees and Costs means reasonable attorneys' fees (including fees from attorneys in the Office of the City Attorney of Oakland), costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Award means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

Billboard Agreement means that certain Billboard Franchise and Lease Agreement, dated _____, 2012, between City and Developer, regarding the installation and use of advertising billboards on or adjacent to the Premises.

Bona Fide Institutional Lender means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for one or more Persons none of which need be Bona Fide Institutional Lenders and who is not an Affiliate of Tenant: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, a religious, educational or charitable institution, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other Person or group of Persons which, at the time of a Mortgage is recorded in favor of such Person or Persons, has (or is Specially Controlled by a Person having) assets of at least Five Hundred Million and No/100 Dollars (\$500,000,000) in the aggregate (or the equivalent in foreign currency), as Indexed, and in the case of any Person or group of Persons none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged in the financial services business, or (ii) any special account, managed fund, department, agency or Special Affiliate of any of the foregoing, or (iii) any person acting in a fiduciary capacity for any of the foregoing. For purposes hereof, (1) acting in a "fiduciary capacity" shall be deemed to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document, (2) a lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if promptly after such loan is consummated the note(s) or other evidence of indebtedness or the collateral securing the same are assigned to one or more persons then qualifying as a Bona Fide Institutional Lender, and (3) "Special Affiliate" means

any Person directly or indirectly Specially Controlling, Specially Controlled by, or under common Special Control, through one or more other persons, with the person in question.

Business Day means any day that is neither a Saturday, a Sunday, nor a day observed as a holiday by either the City or the State of California or the United States government.

Casualty Event as defined in Section 11.1(b).

Casualty Notice as defined in Section 11.4(a)(i).

CC&Rs as defined in Section 12.1(d)(ix).

CCIG means CCIG Oakland Global, LLC, a _____ limited liability company, qualified to transact business in California

CCIG Entity means CCIG, or any entity controlled by or under Common Control with CCIG (excluding Tenant or any other Affiliate of Tenant).

Certificate of Completion means a certificate of occupancy or equivalent certificate of completion issued by City with respect to the Completion of Initial Improvements.

City means the City of Oakland, a municipal corporation.

City Administrator means the City Administrator of City or his or her designee.

City Council means the City Council of City.

Closing Date as defined in the LDDA.

Commencement Date as defined in Section 1.2(a), subject to the provisions of Section 38.14.

Commercial General Liability Insurance as defined in Section 16.(a)(iii).

Community Benefits or Community Benefits Program means those benefits to the community required to be provided by Developer and the Project with respect to this Lease pursuant to City's community jobs policy and other City policies and programs, as set forth in Exhibit attached to this Lease.

Completion of Initial Improvements means completion of construction and installation of all Initial Improvements on all or any portion of the Premises in accordance with the terms of this Lease. The fact of Completion of Initial Improvements shall be conclusively evidenced by the issuance by City of a certificate of occupancy or equivalent certificate of completion with respect to such Initial Improvements.

Completion Date means the date of Completion of Initial Improvements.

Completion Guaranty means the Completion Guaranty to be given by CCIG to Landlord to guaranty completion of the Initial Improvements, substantially in accordance with the form

attached as Exhibit ___ to this Lease and otherwise in form and substance acceptable to Landlord.

Condemnation means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

Condemnation Date means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

Condemned Land Value as defined in Section 12.4(b).

Construction Bonds as defined in Section 8.1(f).

Construction Documents as defined in Section 10.4.

Control means: (1) the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the profits or capital of another Person; or (2) the power to direct the affairs or management of another Person, whether by contract or operation of Law or otherwise, and Controlled and Controlling have correlative meanings. Common Control means that two Persons are both Controlled by the same other Person.

CPI means the Consumer Price Index for All Urban Consumers, All Items for the San Francisco-Oakland-San Jose CMSA (Base year 1982-84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made in the revised CPI which would produce results equivalent, as nearly as possible, to those which would be obtained hereunder if the CPI were not so revised. If the 1982-84 average shall no longer be used as an index of 100, such change shall constitute a substantial revision. If the CPI becomes unavailable to the public because publication is discontinued, or otherwise, Landlord shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by a governmental agency, major bank, other financial institution, university or recognized financial publisher.

Default Rate as defined in Section 2.5.

Depository means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as a Bona Fide Institutional Lender, designated by Tenant and approved by Landlord to serve as depository pursuant to this Lease, provided that such Depository shall have an office, branch, agency or representative located in the State of California.

Development Agreement means a development agreement with respect to all or any portion of the Project as may be finally approved by City at any time pursuant to California Government Code sections 65864 *et seq.* and applicable provisions of City's Municipal Code or ordinances pertaining to development agreements and executed by City and Developer, and as may be amended from time to time during the Term in accordance with the provisions thereof

Disabled Access Laws means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. Section 12101 *et seq.* and disabled access laws under the Landlord's building code.

Encumbrance means any mortgage, deed of trust, claim, levy, lien, judgment, execution, pledge, charge, security interest, restriction, covenant, condition, reservation, rights of way, liens, encumbrances, certificate of pending litigation, judgment or certificate of any court, and other matters of any nature whatsoever, whether arising by operation of Law or otherwise created, affecting the Premises.

Event of Default as defined in Section 20.1.

Excess Coverage as defined in Section 16.1(a)(iv).

Exercise Notice as defined in Section 1.2(b)(ii).

Exhibit as defined in Section 38.2(a).

Existing Improvements mean any and all grading, infrastructure and other improvements existing upon the Property as of the Commencement Date.

Final Construction Documents means plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws.

Force Majeure means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, fires, floods, earthquakes, tidal waves, terrorist acts, strikes, freight embargoes, delays of subcontractors and unusually severe weather and, in the case of Tenant, any delay resulting from a defect in Landlord's title to the Premises. Force Majeure does not include failure to obtain financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, to Restore if appropriate, and to complete performance of the hindered act.

Foreclosure means a foreclosure of a Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to court order or pursuant to a power of sale contained in the Mortgage), deed or voluntary assignment or other conveyance in lieu thereof

Foreclosure Period as defined in Section 35.10(b).

GAAP means generally accepted accounting principles consistently applied.

Gross Building Area means the total floor areas of the buildings on the Premises, including basements, mezzanines, and penthouses included within the principal outside faces of the exterior walls and excluding architectural setbacks or projections and unenclosed areas.

Handle when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material ("Handling" will have a correlative meaning).

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under CERCLA or under Section 25281 or Section 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of a structure, or are naturally occurring substances on, in or about the Premises and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

Hazardous Material Claims means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Material Laws, together with any and all Losses made or threatened by any third party against City or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any structures or other Improvements, the loss or restriction of the use of all or any portion of the Premises, and attorneys' fees and consultants' fees and experts' fees and costs.

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions.

Impositions means all taxes, assessments, liens, levies, charges, fees, or expenses of every description, levied, assessed, confirmed or imposed on or with respect to the Premises, any of the Improvements or Personal Property located on or within the Premises, this Lease, Tenant's leasehold estate, any Sublease, any subleasehold estate, any Transfer, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments (including but not limited to any taxes or assessments for a Special District encompassing all or any portion of the Premises), liens, levies, charges, fees, or expenses, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied, assessed, confirmed or imposed in lieu of or in substitution of any of the foregoing of every character.

Improvements means, collectively, the Initial Improvements and Additional Improvements.

Indemnified Parties means Landlord, City, including, but not limited to, all of their boards, commissions, departments, agencies and other subdivisions, including, without limitation; all of the Agents of Landlord or the City, and all of their respective heirs, legal representatives, successors and assigns, and each of them.

Indemnify means indemnify, protect and hold harmless.

Indexed means the product of the number to be Indexed multiplied by the percentage increase, if any, in the CPI from the first day of the month in which the Commencement Date, or such other date specified in this Lease as the start of a particular period, occurred to the first day of the most recent month for which the CPI is available at any given time.

Initial Improvements means the site and vertical improvements to the Property as set forth in the Scope of Development on Exhibit to this Lease, to be constructed and installed by or on behalf of Developer in accordance with this Lease.

Initial Improvements Construction Contract means one or more contracts entered into between Developer and one or more contractors for the construction and installation of the Initial Improvements in accordance with this Lease.

Investigate or Investigation when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

Invitees when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

Landlord means the City of Oakland.

Landlord Representative as defined in Section 2.2(h).

Late Charge as defined in Section 2.6.

Law or Laws means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, including, without limitation, Hazardous Materials Laws and mandatory prevailing wage laws, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, regional, county and municipal governments, the

departments, bureaus, agencies, courts or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon.

LDDA as defined in Recital C.

Leasable Square Feet means those portions of the Premises designed for occupancy and exclusive use of Tenant and its Subtenants, including storage areas, that produces rental income, and expressly excluding stairs, escalators, elevator shafts, flues, pipe shafts, vertical ducts, balconies, mechanical rooms, public access areas, and other areas set aside for the provision of facilities or services to the floor or building where such facilities are not for the exclusive use of occupiers of the floor or building.

Lease means this Ground Lease, as it may be amended from time to time in accordance herewith.

Lease Year means a period of twelve (12) consecutive months during the Term, commencing on the Commencement Date and continuing for each twelve (12) consecutive calendar months thereafter.

Leasehold estate means Tenant's leasehold estate created by this Lease.

Legal Challenge means any action or proceeding before any court, tribunal, arbitration or other judicial, adjudicative or legislation-making body, including any administrative appeal, brought by a third party, who is not an Affiliate or related to Developer, which (i) seeks to challenge the validity of any action taken by the City in connection with the Project, including the City's approval, execution and delivery of this Agreement, the Ground Lease, and its performance thereunder, including any challenge under the California Environmental Quality Act, the performance of any action required or permitted to be performed by the City hereunder, or any findings upon which any of the foregoing are predicated, or (ii) seeks to challenge the validity of any other Regulatory Approval.

Letter of Credit means a letter of credit issued by a Bona Fide Institutional Lender for or on behalf of Tenant and in favor of Landlord to secure any or all obligations of Tenant to Landlord under this Lease, in each instance in such amount, form and substance satisfactory to Landlord.

Loss or Losses when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Major Damage or Destruction means damage to or destruction of all or any portion of the Improvements on the Premises to the extent that the hard costs of Restoration will exceed

seventy five percent (75%) of the hard costs to replace such Improvements on the Premises in their entirety, except that during the last five years of the Term, the percentage figure shall be: (1) in the fifth remaining year of the Term- twenty five percent (25%); (2) in the fourth through second years of the Term- ten percent (10%), and (3) in the final year of the Term- five percent (5%). The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

Master Plan means that certain Oakland Army Base Master Plan Design Set, dated April 2, 2012, prepared by Architectural Dimensions Master Design Team, approved by City on _____ by _____, and as may be amended from time to time during the Term in accordance with the provisions thereof

Memorandum of Lease means the Memorandum of this Lease, between Landlord and Tenant, recorded in the Official Records.

Minor Alterations as defined in Section 9.2.

MMRP or Mitigation Measures as defined in the LDDA.

Mortgage means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of Tenant's leasehold interest under this Lease that is recorded in the Official Records.

Mortgagee means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

Mortgagee Cure Period as defined in Section 36.10(a).

Net Awards and Payments as defined in Section 11.4.

Non-Affiliate means any Person who is not an Affiliate of another Person.

Non-Affiliate Mortgage means a Mortgage that is held by a Non-Affiliate Mortgagee.

Non-Affiliate Mortgagee means the holder of a Mortgage, which holder (A) is not an Affiliate of Tenant, or (B) is a Bona Fide Institutional Lender.

Non-Affiliate Transfer means any Transfer to a transferee that is not an Affiliate of Tenant.

Non-Affiliate Transferee means the transferee of a Non-Affiliate Transfer.

Non-Disturbance Agreements as defined in Section 14.4(a).

North Gateway means the ___± acres of real property, comprising a portion of the former Oakland Army Base and located in the vicinity of the West Gateway, commonly referred to as the North Gateway and depicted on Exhibit ___ attached to this Lease.

Official Records means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the County of Alameda.

ORA or Agency means the former Redevelopment Agency of the City of Oakland.

Outside Lease Date means January 1, 2016.

Partial Condemnation as defined in Section 13.1(b), 13.3.

Partial Transferred Premises means all or any portion of the Premises subsumed within any Partial Transfer allowed or permitted pursuant to Article 12.

Partner shall mean [CCIG constituent partners in Developer]

Party means City, Landlord or Tenant, as a party to this Lease; Parties means City, Landlord and Tenant, as Parties to this Lease.

Permitted Title Exceptions as defined in Section 1.1(b).

Permitted Transfers as defined in Section 14.3.

Permitted Uses as defined in Section 3.1.

Person means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof

Personal Property means all tixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

Phase as defined in Recital C.

Port means the Port of Oakland.

Pre-Completion Period means the period between the Effective Date of the LDDA and the Certificate of Completion for the Project.

Pre-Lease Year means, in the event that the Commencement Date of this Lease is after the Outside Lease Date, each 12-month period (or part thereof) between the Outside Lease Year and the Commencement Date.

Premises as defined in Section 1.1.

Project as defined in Recital C. [NOTE: only for the particular Phase covered by the particular Lease]

Property as defined in Section 1.1.

Proposed Transfer as defined in Section 14.1(h).

PUD means a planned unit development with respect to all or any portion of the Project as may be finally approved by City at any time pursuant to applicable provisions of City's Municipal Code or ordinances pertaining to planned unit developments, and as may be amended from time to time during the Term in accordance with the provisions thereof

Refinancing as defined in Section 36.14(a)

Regulatory Approval means any authorization, approval or permit required or granted by any governmental agency having jurisdiction over the Premises, including, but not limited to, the City, BCDC, the RWQCB, DTSC, or Alameda County Department of Public Health.

Release when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Lease or the LDDA by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof

Remedial Action Plan or RAP as defined in the LDDA.

Remediate or Remediation when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, transport, dispose, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

Rent means, collectively, Base Rent and Additional Rent. For purposes of this Lease, Rent includes all unpaid sums that are payable as Rent, but that are unpaid when earned and/or accrue for payment at a later time in accordance with the provisions of this Lease.

Restoration means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable; provided that Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the Restoration so long as the Improvements, as Restored, constitute a first-class Project. In connection with any Restoration, the Project and the other Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Project as so redesigned is a first-class Project similar to the original Project, subject to the provisions of Section 11 relating to Additional Construction. All Restoration shall

be conducted in accordance with the provisions of Section 9. ("Restore" and "Restored" shall have correlative meanings.)

Risk Management Plan or RMP as defined in the LDDA.

RWQCB shall mean the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

Schedule of Performance as defined in the LDDA.

Schematic Drawings means conceptual drawings in sufficient detail to describe a development proposal.

Scope of Development means the scope and schedule of work for the Initial Improvements as set forth on Exhibit attached to this Lease.

Significant Change means (a) any dissolution, merger, consolidation or other reorganization, or any issuance or transfer of beneficial interests in Tenant, directly or indirectly, in one or more transactions, that results in a change in the identity of the Persons Controlling Tenant, or (b) the sale of fifty percent (50%) or more of Tenant's assets, capital or profits, or the assets, capital or profits of any Person Controlling Tenant other than a sale to an Affiliate, provided that a Significant Change will not include any change in the identity of Persons Controlling Tenant or sale of fifty percent (50%) or more of assets, capital or profits in a Person Controlling Tenant as a result of (i) the sale or transfer of shares of a publicly traded company; or (ii) the merger, consolidation or other reorganization of a Person Controlling Tenant or the sale of all or substantially all of the assets of a Person Controlling Tenant in a transaction where the surviving entity in any such merger, consolidation or other reorganization or the purchaser of the assets of such Person has a net worth, calculated in accordance with GAAP, following such transaction, that is at least one hundred fifty percent (150%) of the net worth of the Person Controlling Tenant prior to such transaction.

Special Control means the power to direct the affairs or management of another Person, whether by contract, operation of Law or otherwise (and Specially Controlling and Specially Controlled shall have correlative meanings).

Special District means any community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code Sections 53311 et seq.) or otherwise, special assessment district, facilities assessment district, landscaping and lighting district, and any other infrastructure financing or infrastructure maintenance financing district or device established at any time upon the approval of City with respect to all or any portion of the Project.

State means the State of California.

Subdivision means any subdivision of the Property or the Premises as such term is defined in, and subject to and in accordance with, the provisions of the Subdivision Map Act.

Subdivision Map Act means the provisions of California Government Code Sections 66410 et seq., or any successor provisions thereof, as the same may be amended from time to time in accordance therewith.

Sublease means any lease, sublease, license, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

Substantial Condemnation as defined in Section 12.3(a).

Subtenant means any Person leasing, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

Tax Fiscal Year means the fiscal year for real property taxes, which is currently July 1 to June 30. Liens for secured property taxes attach on January 1st preceding the Tax Fiscal Year for which taxes are levied. Secured property taxes are levied on the first business day of September and are payable in two equal installments: the first is due on November 1st and delinquent with penalties after December 10th; the second is due February 1st and delinquent with penalties after April 10th.

Tenant means _____ [Developer to identify JV party], a _____, and its permitted successors and assigns.

Tenant's Accounting as defined in Section 2.12(b).

Tenant's Books and Records means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises.

Term as defined in Section 1.2.

Termination Date means _____, 20__ [INSERT DATE THAT IS 66 YEARS AFTER LEASE COMMENCEMENT DATE] or such earlier date upon which this Lease is terminated or such later date to which this Lease is extended pursuant to subsequent mutual written agreement of the Parties.

Total Condemnation as defined in Section 12.2.

Transfer as defined in Section 14.1.

Truck Operations Site means that certain real property owned by City, located in the vicinity of the Property, and more particularly described and generally depicted on Exhibits _____ and _____, respectively.

Uninsured Casualty as defined in Section 11.4(a)(i).

Unmatured Event of Default means a circumstance which, with notice or the passage of time would constitute an Event of Default.

Work as defined in Sections 10.7, 10.8.

Worth at the Time of the Award as defined in Section 23.3(a)(v).

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

TENANT:

CCIG OAKLAND GLOBAL, LLC,
a _____ limited liability company
qualified to transact business in California

By: _____
[NAME]
[TITLE]

LANDLORD:

CITY OF OAKLAND,
a municipal corporation

By: _____
City Administrator

APPROVED AS TO FORM:

BARBARA PARKER, City Attorney

By: _____
Dianne M. Millner
Deputy City Attorney

Landlord Resolution No. _____

City Resolution No. _____

LIST OF LEASE EXHIBITS [SUBJECT TO MODIFICATION BASED ON FINAL LEASE TERMS]

<u>Exhibit</u>	<u>Description</u>
EXHIBIT __	Description of Premises
EXHIBIT __	Site Plan
EXHIBIT __	List of Permitted Exceptions
EXHIBIT __	Scope of Development
EXHIBIT __	List of Mitigation Measures
EXHIBIT __	Community Benefits Program
EXHIBIT __	Acknowledgement of Campaign Contributions Limits Forms
EXHIBIT __	Form of Memorandum of Lease
EXHIBIT __	_____

s

EXHIBIT _____

TO

GROUND LEASE FOR WEST GATEWAY

DESCRIPTION OF PREMISES

[See Attached]

EXHIBIT ____
TO
GROUND LEASE FOR WEST GATEWAY
SITE PLAN
[See Attached]

EXHIBIT ____
TO
GROUND LEASE FOR WEST GATEWAY
LIST OF PERMITTED EXCEPTIONS

[See Attached]

EXHIBIT _____
TO
GROUND LEASE FOR WEST GATEWAY
SCOPE OF DEVELOPMENT
↳ **[To Follow]**

EXHIBIT ____
TO
GROUND LEASE FOR WEST GATEWAY
LIST OF MITIGATION MEASURES
[See Attached]

EXHIBIT ____
TO
GROUND LEASE FOR WEST GATEWAY
COMMUNITY BENEFITS PROGRAM
[See Attached]

EXHIBIT _____

TO

GROUND LEASE FOR WEST GATEWAY

ACKNOWLEDGEMENT OF CAMPAIGN CONTRIBUTIONS LIMITS FORMS

[See Attached]

EXHIBIT ____
TO
GROUND LEASE FOR WEST GATEWAY

[See Attached]

**SUPPLEMENTAL
ATTACHMENT A-3**

**ARMY BASE GATEWAY REDEVELOPMENT PROJECT
GROUND LEASE
FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]**

between

THE CITY OF OAKLAND

"City" or "Landlord"

and

**[PROLOGIS CCIG OAKLAND GLOBAL, LLC OR OTHER ENTITY APPROVED BY
CITY PURSUANT TO LDDA]**

"Developer" or "Tenant"

Dated as of _____, 20____

**GROUND LEASE
FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]**

THIS GROUND LEASE (this "Lease") is entered into on _____, 2012 by and between the CITY OF OAKLAND, a municipal corporation and successor agency to the former Redevelopment Agency of the City of Oakland (the "City" or "Landlord"), and PROLOGIS CCIG OAKLAND GLOBAL, LLC, a _____ limited liability company qualified to transact business in California OR OTHER ENTITY APPROVED BY CITY PURSUANT TO LDDA] (the "Developer" or "Tenant") (each individually referred to as a "Party" and collectively referred to as the "Parties").

RECITALS

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

- A. These Recitals refer to and use certain capitalized terms that are defined in Article 40 of this Lease.
- B. The City is the owner of that certain real property located in a portion of the former Oakland Army Base, comprised of approximately _____ acres [42.6± for Central Gateway; 29.6± for East Gateway] of land, improvements, and appurtenances, and commonly referred to by the Parties as [the Central Gateway or East Gateway, as applicable].
- C. The City and Developer (or an Affiliate of Developer) have executed that certain Lease Disposition and Development for the Army Base Gateway Redevelopment Project, dated _____, 2012 (the "LDDA"), which provides, among other things, for the execution and delivery by the Parties, upon satisfaction of conditions precedent set forth therein, of a ground lease by City to Developer (or an Affiliate of Developer) of [the Central Gateway or East Gateway, as applicable] (the "Phase"), and the development thereon of certain improvements consistent with the Scope of Development attached hereto as Exhibit ___ and the provisions of this Lease (the "Project").
- D. All conditions precedent to the execution and delivery of this Lease, as set forth in the LDDA, have been satisfied or waived by the Parties in accordance with the LDDA.
- E. This Lease is being made in conformance with and pursuant to the authority given to the City in the City Charter. The conveyance by ground lease of the [Central Gateway or East Gateway, as applicable] to the Developer was authorized by Council Ordinance No. _____ C.M.S.

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

ARTICLE 1. PREMISES; TERM

1.1 Premises.

(a) Lease of Premises; Description. For the Rent and subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the real property in the City of Oakland, California, located in the [Central Gateway or East Gateway, as applicable], as more particularly described on Exhibit attached hereto ([for Central Gateway Lease, if goes into effect before West Gateway Lease] the "Central Gateway Property" [or, for East Gateway Lease] the "Property" [FOR CENTRAL GATEWAY LEASE, IF IT GOES INTO EFFECT BEFORE WEST GATEWAY LEASE, ADD FOLLOWING: and in the North Gateway and adjacent real property, as more particularly described on Exhibit attached hereto (the "Railroad R/O/W Property," and, together with the Central Gateway Property, the "Property")]. The Property includes the land and all Existing Improvements, together with all rights, privileges and licenses appurtenant to the Property and owned by Landlord. The Property is depicted on the Site Plan attached hereto as Exhibit. The Property, all Existing Improvements, and any and all other Improvements hereafter located on the Property are collectively referred to in this Lease as the "Premises." [FOR CENTRAL GATEWAY LEASE, IF GOES INTO EFFECT BEFORE WEST GATEWAY LEASE, ADD FOLLOWING: Notwithstanding the preceding provisions, from and following the effective date of the West Gateway Lease, and provided that the West Gateway Lease includes the Railroad R/O/W Property, the Railroad R/O/W Property, without the necessity of any further action by the Parties, shall be deemed excluded from the Property and the Premises under this Lease and Tenant shall have no further obligation hereunder to pay Base Rent with respect to the Railroad R/O/W Property, but the provisions of Section 1.5(a) and all other provisions of this Lease shall continue to apply with respect to any use of the Railroad R/O/W Property by Tenant.] Notwithstanding any provision herein to the contrary, the Property and the Premises do not include any dedicated public rights of way within the Phase.

(b) Permitted Title Exceptions. The leasehold interest granted by Landlord to Tenant pursuant to Subsection 1.1(a) is subject to (i) the matters reflected in Exhibit (the "Permitted Title Exceptions"); (ii) any deed restrictions required by the LDDA or applicable Law to be recorded against the Property ; (iii) any Regulatory Approvals required by applicable Law to be recorded against the Property as a result of the development and activities permitted by the LDDA and this Lease; and (iv) other matters as Tenant shall cause or suffer to arise subject to the terms and conditions of this Lease. Upon Tenant's request prior to the construction of the Initial Improvements, and at Tenant's sole expense, Landlord shall reasonably cooperate with Tenant in Tenant's efforts to secure the relocation of any easements, of record as of the Commencement Date and in favor of public utilities or other third parties, that Tenant has established to Landlord's reasonable satisfaction will unreasonably interfere with Tenant's Permitted Uses of the Premises; provided that such cooperation shall under no circumstances include the institution, prosecution or joinder in any claims or litigation against the holder of any such easement. With respect to any title matters with respect to the Property caused or permitted by Landlord to first arise following the Commencement Date, and that materially interfere with Tenant's use of the Premises hereunder (in any case, specifically excluding theretfrom any title matters included within items (i), (ii), (iii) and/or (iv) in the foregoing sentence), Landlord agrees

to reasonably cooperate with Tenant, upon Tenant's written request and at no cost, expense or liability to Landlord, in Tenant's efforts to remove or modify such title matters.

(c) "AS IS WITH ALL FAULTS". TENANT AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ARTICLE 15, THE PREMISES ARE BEING LEASED BY LANDLORD, AND ARE HEREBY ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, "AS IS, WITH ALL FAULTS." TENANT ACKNOWLEDGES AND AGREES THAT NEITHER LANDLORD, CITY, NOR ANY OF THE OTHER INDEMNIFIED PARTIES, NOR ANY AGENT OF ANY OF THEM, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE OR OPERATION OF THE PROJECT, THE COMPLIANCE OF THE PREMISES OR THE PROJECT WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR, EXCEPT AS MAY BE SPECIFICALLY PROVIDED IN THIS LEASE OR THE LDDA, WITH RESPECT TO ANY OTHER MATTER PERTAINING TO THE PREMISES OR THE PROJECT.

As part of its agreement to accept the Premises in its "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge, the Landlord and its Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Tenant may now have or that may arise in any way be connected with (i) the physical, geotechnical or environmental condition of the Premises, including, without limitation, any Hazardous Materials in, on, under, or above, or about the Premises, except as otherwise expressly set forth in Article 15, and (ii) any Laws applicable to such conditions, including without limitation, Hazardous Material Laws, except as otherwise expressly set forth in Article 14.

In connection with the foregoing release, the Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Tenant agrees that the release contemplated by this Section includes unknown claims. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

DEVELOPER:

PROLOGIS CCIG OAKLAND GLOBAL, LLC,
a _____ limited liability company
qualified to transact business in California

By: _____

By: _____

By: _____

[NAME]

[TITLE]

CITY:

CITY OF OAKLAND,
a municipal corporation

By _____
City Administrator

(d) No Subdivision of Property. Except as otherwise expressly provided in Section 12.1(d)(ix), Developer shall have no right to subdivide the Property or the Premises without Landlord's prior written consent in its sole and absolute discretion.

1.2 Term of Lease.

Subject to the Parties' execution of this Lease, the effectiveness of this Lease shall commence on the date written on the first page of this Lease (the "Commencement Date") and Landlord shall deliver to Tenant possession of the Premises on the Commencement Date. The Lease shall expire on the date that is sixty-six (66) years thereafter, unless earlier terminated by subsequent mutual written agreement of the Parties or otherwise in accordance with this Lease. The period from the Commencement Date until the expiration or any such earlier termination, of this Lease is referred to herein as the "Term."

1.3 Definifions.

All inifially capitalized terms used herein are defined in Article 40 or have the meanings given them when first defined.

1.4 Relationship of Lease to LDDA.

This Lease establishes the rights and obligations of Tenant and Landlord hereunder during the Term, but does not serve to relieve or release the Parties from any of their respective rights, obligations and liabilities arising at any time under the LDDA. In the event of any conflict or inconsistency between this Lease and the LDDA with respect to the Premises or the lease, development, use or occupancy thereof, the provisions of this Lease shall control over any such inconsistent or conflicting provisions of the LDDA.

1.5 Grant of Railroad Access and Other Ancillary Rights.

Landlord hereby grants to Tenant, for the Term of this Lease, the following rights:

(a) **[FOR CENTRAL GATEWAY LEASE, ADD FOLLOWING: Rail Access.** Subject to and in accordance with the terms and conditions of the Amended and Restated Cost Sharing Agreement and the West Gateway Lease with respect to the Railroad R/O/W, Tenant shall have the right to access and use the Railroad R/O/W Property for rail access to and from the Premises in connection with the Permitted Uses; and subject to and in accordance with the terms and conditions of the Amended OHIT Baseline Agreement and the Rail Service Agreement, Tenant shall have the right to access and use the Port Rail Terminal.]

(b) **Easement for Improvements.** Landlord hereby grants to Tenant an easement in Landlord's property located underneath all portions of the Premises for the purpose of installation, repair and maintenance of foundation systems, elevator pits, sump pits, utilities, sub-base materials, pavement and other materials or structures which are part of or reasonably required by Tenant in order to complete and service the Improvements to be constructed by Tenant on the Premises and otherwise reasonably necessary for Tenant to comply with its obligations under Article 15 and other provisions of this Lease. Such easement shall be appurtenant to and run with the Premises and this Lease, and shall terminate upon expiration or earlier termination of this Lease.

1.6 **Reserved Easements.**

(a) Subject to the provisions of Section 1.1(b) and other applicable provisions of this Lease, Landlord reserves to itself the following rights (which shall not be deemed obligations):

(i) The right to grant to others in the future, easements, licenses, and permits for construction, maintenance, repair, replacement, relocation, and reconstruction, and related temporary access easements, and other easements, in each case, necessary for any utility facilities over, under, through, across, or on the Premises.

(ii) The right to construct, install, operate, maintain repair and replace any drainage facilities and any other infrastructure improvements and facilities located within or serving the Phase;

(iii) The right, including the right to grant others, to enter upon the Premises and perform such work as may reasonably be necessary to operate, maintain, repair, improve or access any of the reserved easement areas, to exercise any of Landlord's other rights under this Lease, or in the event of an emergency or as otherwise provided in this Lease.

(b) Prior to exercising any of its rights under Section 1.6(a), Landlord shall give reasonable notice thereof to Tenant (except in the event of an emergency in the opinion of Landlord acting reasonably). Subject to Tenant's reasonable cooperation with Landlord, the easements reserved for the benefit of Landlord (or its licensees or permittees) in this Section 1.6 shall not unreasonably interfere with Tenant's Permitted Uses of the Premises.

(c) In connection with exercising its reserved easements in this Section 1.6, Landlord shall repair, at no cost to Tenant or its Subtenants, any damage directly caused by work performed by Landlord in connection with the reserved easement, or its licensee's or permittee's (but excluding the repair of any damage caused or exacerbated by Tenant's or its Subtenant's

acts or omissions) within thirty (30) calendar days after Landlord's receipt of notice of such damage, provided that if such repair reasonably cannot be completed within thirty (30) calendar days, such period shall be extended as reasonably necessary so long as Landlord diligently completes such repairs.

ARTICLE 2. RENT

2.1 Tenant's Covenant to Pay Rent.

During the Term of this Lease, Tenant shall pay, in advance, Rent for the Premises to Landlord in the amounts, at the times and in the manner provided in this Article 2 and elsewhere in this Lease.

2.2 Base Rent.

(a) Amount and Time of Payment. Not later than thirty (30) days after the commencement of each quarter of each Lease Year, Tenant shall pay to Landlord, in advance for such quarter, the following amounts ("Base Rent"):

(i) Lease Years 1-10. For each of the first ten (10) Lease Years, Tenant shall pay an amount ("Initial Base Rent") equal to the product of \$0.0267 per square foot per month multiplied by the total square footage of the Premises, as such total square footage may be adjusted pursuant to Section 1.1(a). **[FOR CENTRAL GATEWAY LEASE, IF GOES INTO EFFECT BEFORE WEST GATEWAY LEASE, REPLACE PREVIOUS SENTENCE WITH FOLLOWING:]** For each of the first ten (10) Lease Years, Tenant shall pay an amount ("Initial Base Rent") equal to the sum of (A) the product of \$0.0267 per square foot per month multiplied by the total square footage of that portion of the Premises containing the Central Gateway Property; plus (B) the product of \$0.03 per square foot per month multiplied by the total square footage of that portion of the Premises containing the Railroad R/O/W Property.] The Parties acknowledge and agree that, for the purpose of calculating Initial Base Rent hereunder, the total square footage of the Premises is _____ square feet and the Initial Base Rent is \$ _____. **[FOR CENTRAL GATEWAY LEASE, IF GOES INTO EFFECT BEFORE WEST GATEWAY LEASE, REPLACE PREVIOUS SENTENCE WITH FOLLOWING:]** The Parties acknowledge and agree that, for the purpose of calculating Initial Base Rent hereunder: (1) the total square footage of that portion of the Premises containing the Central Gateway Property is _____ square feet and the Initial Base Rent attributable to such portion of the Premises is \$ _____; (2) the total square footage of that portion of the Premises containing the Railroad R/O/W Property is _____ square feet and the Initial Base Rent attributable to that portion of the Premises is \$ _____; and (3) the total Initial Base Rent is \$ _____.]

(ii) Lease Years 11-15. For each of the eleventh (11th) through the fifteenth (15th) Lease Years, Tenant shall pay an amount (the "First Adjusted Base Rent") equal to the Initial Base Rent as increased pursuant to this paragraph. To calculate the First Adjusted Base Rent, the Initial Base Rent shall be increased by the cumulative and annually compounded percentage increase in the CPI during each of the first ten (10) Lease Years (disregarding any decrease in the CPI during such period), based upon an Indexed comparison of the last CPI

published prior to each Anniversary Date during the first ten (10) Lease Years (in each such instance, a "New CPI") to the CPI published one year prior to the New CPI; provided, however, that, (A) in the event that the Commencement Date of this Lease is after the Outside Lease Date, the Initial Base Rent shall be increased by the cumulative and annually compounded percentage increase in the CPI during each Pre-Lease Year and each of the first ten (10) Lease Years (disregarding any decrease in the CPI during such period), based upon an Indexed comparison of the last CPI published prior to each Anniversary Date during such period (in each such instance, a "New CPI") to the CPI published one year prior to the New CPI; and (B) subject to such cumulative and annually compounded increase, the calculated annual percentage increase in the Base Rent for any such Lease Year or Pre-Lease Year, as applicable, shall be not less than two percent (2%) greater nor more than three percent (3%) greater than the calculated Base Rent for the immediately preceding Lease Year or Pre-Lease Year, as applicable. By way of example, but not in modification or limitation, of the foregoing, an example calculation of First Adjusted Base Rent is set forth on Schedule 2.2(a)(ii).

(iii) Remaining Term. During each Lease Year following the First Adjustment Period (the "Remaining Term"), , Tenant shall pay an amount (the "Remaining Term Base Rent") equal to the First Adjusted Base Rent, subject to increase every five (5) Lease Years during the Remaining Term (each a "5-Year Period") pursuant to this subparagraph (iii) (except as otherwise provided in Section 2.2(b)(i)(C)). Effective upon the start of each successive 5-Year Period, the Remaining Term Base Rent shall be increased by the cumulative and annually compounded percentage increase in the CPI during each of the immediately preceding five (5) Lease Years (disregarding any decrease in the CPI during such period), based upon an Indexed comparison of the last CPI published prior to each Anniversary Date during the preceding 5-Year Period (in each such instance, a "New CPI") to the CPI published one (1) year prior to the New CPI; provided, however, that, subject to such cumulative and annually compounded increase, the calculated annual percentage increase in the Remaining Term Base Rent for any such Lease Year shall be not less than two percent (2%) greater nor more than three percent (3%) greater than the calculated Remaining Term Base Rent for the immediately preceding Lease Year. By way of example, but not in modification or limitation, of the foregoing, an example calculation of adjusted Remaining Term Base Rent is set forth on Schedule 2.2(a)(iii).

(b) Fair Market Rent Adjustment

(i) Timing and Amount. In addition to the adjustments to Base Rent set forth in Section 2.2(a), the Base Rent shall be adjusted as set forth in this Section 2.2(h). Effective as of the first day of the twentieth (20th) Lease Year and as of the first day of the fortieth (40th) Lease Year (each, the "FMR Adjustment Date"), the Base Rent then in effect (each, the "Pre-FMR Adjustment Base Rent") shall be adjusted to an amount (the "FMR Adjusted Base Rent") equal to ninety-five percent (95%) of the Fair Market Rent (as defined in and determined in accordance with Section 2.2(b)(ii) of the Property as of the applicable FMR Adjustment Date. Notwithstanding the preceding provisions of this Section 2.2(b)(i) or any other provision of this Lease to the contrary,

(A) in no event shall the FMR Adjusted Base Rent under this Section 2.2(h) be less than the Pre-FMR Adjustment Base Rent in effect immediately prior to the applicable FMR Adjustment Date;

(B) in no event shall the FMR Adjusted Base Rent under this Section 2.2(b) be greater than an amount equal to the Initial Base Rent as increased each Lease Year, on a cumulative and annually compounded basis, at the rate of four and a half percent (4.5%) for each Lease Year prior to the FMR Adjustment Date. **[FOR CENTRAL GATEWAY LEASE, IF GOES INTO EFFECT BEFORE WEST GATEWAY LEASE, REPLACE PREVIOUS SENTENCE WITH FOLLOWING:** in no event shall the FMR Adjusted Base Rent under this Section 2.2(b) be greater than the sum of: (A) an amount equal to the Initial Base Rent for that portion of the Premises containing the Central Gateway as increased each Lease Year, on a cumulative and annually compounded basis, at the rate of four and a half percent (4.5%) for each Lease Year prior to the FMR Adjustment Date; **plus** (B) an amount equal to the Initial Base Rent for that portion of the Premises containing the Railroad R/O/W Property as increased each Lease Year, on a cumulative and annually compounded basis, at the rate of four and a half percent (4.5%) for each Lease Year prior to the FMR Adjustment Date.]

(C) in the event that the FMR Adjusted Base Rent as of the applicable FMR Adjustment Date, determined in accordance with this Section 2.2(b), is less than the Pre-FMR Adjustment Base Rent in effect immediately prior to the applicable FMR Adjustment Date, then the Base Rent for the 5-Year Period commencing on the applicable FMR Adjustment Date shall remain equal to the Pre-FMR Adjustment Base Rent in effect immediately prior to the applicable FMR Adjustment Date, without giving effect to any CPI adjustment under Section 2.2(a)(iii) during such 5-Year Period. The Parties agree that, following application of the provisions of this Section 2.2(b)(i)(C), the adjustment to Base Rent set forth in Section 2.2(a)(iii) shall recommence for the balance of the Remaining Term.

(ii) Agreement on Fair Market Rent. The Fair Market Rent shall be determined in the manner specified in this Section 2.2(b)(ii) and, as and to the extent applicable, Section 2.2(b)(iii). The process for determining the Fair Market Rent shall begin one (1) year prior to the applicable FMR Adjustment Date (each, the "FMR Determination Initiation Date"). Upon the applicable FMR Determination Initiation Date, Landlord and Tenant shall attempt in good faith to agree upon Fair Market Rent for the Property. Landlord and Tenant shall have ninety (90) days from the applicable FMR Determination Initiation Date to agree on the Fair Market Rent ("Negotiation Period") as of the applicable FMR Adjustment Date. As used herein, "Fair Market Rent" means the annual fair market rental value of the Property, which shall be calculated by (i) determining the value of the fee interest in the Property in accordance with the provisions of this Section as of the applicable FMR Adjustment Date, taking into account the permitted uses of the Property as specified in Article 3 of this Lease (the "Fair Market Value"), and (ii) applying an appropriate rate of return to the Fair Market Value, taking into account in determining such rate of return the effect, if any, of the remaining Term of this Lease. If the Parties reach an agreement as to the Fair Market Rent, they shall promptly execute a written instrument to evidence such agreement, and such written instrument shall constitute a conclusive determination of Fair Market Rent for the applicable FMR Adjustment Date.

(iii) Appraisal. If the Parties have not agreed on the Fair Market Rent during the Negotiation Period, the Fair Market Rent shall be determined by the appraisal procedure set forth below.

(A) Appointment of Appraisers: Appraisal Instructions. Each Party shall appoint one (1) appraiser within thirty (30) days after the end of the Negotiation Period. Upon selecting its appraiser, each Party shall promptly notify the other Party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in Alameda County, disinterested and independent, and shall be a member in good standing of the Appraisal Institute (MAI), or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding professional designations. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing commercial real estate development sites in Alameda County. If either Party fails to appoint its appraiser within such 30 day period, the appraiser appointed by the other Party shall individually determine the Fair Market Rent in accordance with the provisions hereof. Each appraiser shall make an independent determination of the Fair Market Rent. The Tenant shall provide to each appraiser a current inventory of buildings and vacant space in the Project, lease abstracts for each Sub-Tenant, a current income statement detailing all income and expense data for the Project, and other Project information as may be necessary to make a determination of Fair Market Rent. Each appraiser shall share with the other the indicators of value that will be used to determine Fair Market Rent including but not necessarily limited to land value data, rental rates, capitalization rates, and rates of return on ground leases, but each appraiser shall independently determine the appropriate assumptions to make based on the provisions of this Section of this Lease and each appraiser's own assessment of the market. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this subparagraph (A). Neither Party shall communicate with the appraiser appointed by the other Party regarding the instructions contained in this subparagraph (A) before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this subparagraph (A) or the interpretation of this Lease, such appraiser shall use its own professional judgment and shall make clear all assumptions upon which its professional conclusions are based, including any supplemental instructions or interpretative guidance received from the Party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this subparagraph (A). Each appraiser shall complete, sign and submit its written appraisal setting forth the Fair Market Rent to the Parties within sixty (60) days after the appointment of the last of such appraisers. If the higher appraised Fair Market Rent is not more than one hundred ten percent (110%) of the lower appraised Fair Market Rent, then the Fair Market Rent shall be the average of such two (2) Fair Market Rent figures.

(B) Third Appraiser. If the higher appraised Fair Market Rent determined pursuant subparagraph (A) is more than one hundred ten percent (110%) of the lower appraised Fair Market Rent determined pursuant to subparagraph (A), then the Parties shall agree upon and appoint a third independent appraiser within thirty (30) days after both of the first two (2) appraisals have been submitted to the Parties. The third appraiser shall have the minimum qualifications as required of an appraiser pursuant to subparagraph (A) above. If the Parties do not appoint such appraiser within such 30-day period, then either Party may apply to the Superior Court of the State of California in and for the County of Alameda for appointment of an appraiser meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance

with the rules and procedures of such organization of an independent arbitrator meeting the foregoing qualifications. The third appraiser shall make an independent determination of the Fair Market Rent in accordance with the same standards and criteria set forth in subparagraph (A) above; provided, however, that (1) upon the third appraiser's request, the Parties shall submit (or cause to be submitted) to the third appraiser, and the third appraiser may consider, the appraisals prepared pursuant to subparagraph (A) above and any data and other information relied upon by the respective appraisers in preparing such appraisals, (2) the third appraiser may discuss such appraisals, data and other information with the other appraisers either individually or together, and (3) in no event shall the third appraiser's determination of Fair Market Rent be lower or higher, respectively, than the lower or the higher, respectively, of the two appraisals of Fair Market Rent determined pursuant to subparagraph (A). Neither Party shall communicate with the third appraiser regarding the instructions contained in this subparagraph (B) before the appraiser completes its appraisal. If the third appraiser has questions regarding the instructions in this subparagraph (B) or the interpretation of this Lease, the appraiser shall use its own professional judgment and shall make clear all assumptions upon which its professional conclusions are based, including any joint supplemental instructions or interpretative guidance received from the Parties together. There shall not be any arbitration or adjudication of the instructions to the third appraiser contained in this subparagraph (B). The third appraiser shall complete, sign and submit its written appraisal setting forth the Fair Market Rent to the Parties, concurrently, within sixty (60) days after the appointment of such appraiser, and such appraised Fair Market Rent shall be the Fair Market Rent for the applicable Lease Year under this Section 2.2(b). The final determination of the third appraiser shall be conclusive, final and binding upon the Parties.

(C) Fees and Cost: Waiver. Each Party shall bear the fees, costs and expenses of the appraiser it selects under Subsection (b)(iii)(A) and of any experts and consultants used by the appraiser. The fees, costs and expenses of the third appraiser under Subsection (b)(iii)(B) shall be shared equally by Landlord and Tenant. Each Party waives any claims against the appraiser appointed by the other Party, and against the third appraiser, for negligence, malpractice or similar claims in the performance of the appraisals contemplated by this Section.

2.3 Manner of Payment.

Tenant shall pay all Rent to Landlord, in lawful money of the United States of America, to the Treasurer of the City or his or her designee as provided herein at the address for notices to Landlord specified in this Lease, or to such other person or at such other place as Landlord may from time to time designate by notice to Tenant. Rent shall be payable at the times specified in this Lease without prior notice or demand; provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Rent shall be due thirty (30) business days following the giving by Landlord of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable. If this Lease terminates as a result of Tenant's default, including Tenants' insolvency, any Rent or other amounts due hereunder shall be immediately due and payable upon termination.

2.4 No Abatement or Setoff

Tenant shall pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, deduction, or counterclaim, except as otherwise expressly provided in Article 15 or elsewhere in this Lease. Notwithstanding the preceding sentence or any other provision herein to the contrary, in the event that Tenant has submitted to City an application for a building permit for the Initial Improvements and such application has been deemed complete by City, and if City thereafter takes longer than sixty (60) days to complete its plan check and processing and to issue such building permit based upon such complete application, Base Rent hereunder with respect to such portion of the Premises containing such Initial Improvements shall be abated for the period between the expiration of such sixty (60)-day period and the date upon which such building permit is issued by City.

2.5 Interest on Delinquent Rent.

If any Base Rent or is not paid within ten (10) days following the date it is due, or if any Additional Rent is not paid within thirty (30) days following written demand for payment of such Additional Rent, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the "Default Rate") equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar law. Payment of interest shall not excuse or cure any default by Tenant.

2.6 Late Charges.

Tenant acknowledges and agrees that late payment by Tenant to Landlord of Rent will cause Landlord increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of Landlord's rights or remedies hereunder and regardless of whether such late payment results in an Event of Default, Tenant shall pay a late charge (the "Late Charge") equal to one and one-half percent (1-1/2%) of all Rent or any portion thereof which remains unpaid more than ten (10) days after Landlord's notice to Tenant of such failure to pay Rent when due, provided, however, that if Tenant fails to pay Rent when due on more than two (2) occurrences in any Lease Year, the Late Charge will be assessed as to any subsequent payments in such Lease Year remaining unpaid more than ten (10) days after they are due, without the requirement that Landlord give any notice of such payment failure. Tenant shall also pay reasonable Attorneys' Fees and Costs incurred by Landlord by reason of Tenant's failure to pay any Rent within the time periods described above. The Parties agree that such Late Charge represents a fair and reasonable estimate of the cost which Landlord will incur by reason of a late payment by Tenant.

2.7 Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and Tenant's obligations of every kind and nature relating to the Premises that

may arise or become due under this Lease, whether foreseen or unforeseen, which are payable by Tenant to Landlord pursuant to this Lease, shall be deemed Additional Rent. Landlord shall have the same rights, powers and remedies, whether provided by law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Rent.

2.8 Net Lease.

It is the purpose of this Lease and intent of Landlord and Tenant that, except as specifically stated to the contrary in Section 2.4, all Rent shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, except as may be otherwise expressly provided in this Lease, Landlord shall not be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, except as otherwise expressly provided in Sections 4.1(b) and 4.1(c). Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Landlord would otherwise be or become liable by reason of Landlord's estate or interests in the Premises and any Improvements, any rights or interests of Landlord in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. Except as may be specifically and expressly stated to the contrary in Section 2.4, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

2.9 Security Deposit.

(a) Cash Deposit or Letter of Credit. On or before the Commencement Date, Tenant shall cause to be deposited with Landlord, in cash, or, at the election of Tenant, a Letter of Credit from a Bona Fide Institutional Lender with such term and in form and substance reasonably satisfactory to Landlord, and in any case for the sole benefit of Landlord, in the amount of \$ _____, which amount the Parties agree is equal to three (3) months Initial Base Rent (the "Security Deposit"), which shall secure and guaranty the full and faithful performance and observance by Tenant at all times during the Term of all the covenants, terms and conditions herein contained to be performed, suffered or observed by Tenant under this Lease, including, without limitation, the payment of Rent and any other amounts due to Landlord hereunder, reasonable amounts necessary to remedy any default by Tenant hereunder, to comply with Tenant's surrender obligations under Article 30 at the end of the Term, or to reimburse Landlord for the actual costs incurred by Landlord in connection with exercising its rights hereunder (collectively, for purposes of this Section 2.9, "Tenant's Lease Obligations"). **[NOTE: FOR CENTRAL GATEWAY LEASE, INCLUDE FOLLOWING:** Subject to the provisions

of Section 1.1(a), upon the exclusion of the **Railroad R/O/W Property** from the **Premises**, the Security Deposit shall be reduced to exclude therefrom such portion of the Security Deposit allocable to the **Railroad R/O/W Property**.] Landlord shall not be required to keep the Security Deposit separate or segregated from its general funds or in any-interest bearing account or investment, and Tenant shall not be entitled to any interest on the Security Deposit.

(b) Renewal of Letter of Credit. Subject to the provisions of Section 2.10(a), if the Security Deposit is in the form of a Letter of Credit and such Letter of Credit is for a term less than the entire Term of this Lease, Tenant shall cause such Letter of Credit to be renewed, re-issued, amended or replaced at least ninety (90) days prior to its expiration in order to assure that there is no lapse in the effectiveness of the Letter of Credit or the Security Deposit. If Tenant shall fail to comply with its obligations under the preceding sentence, then Landlord may draw upon the whole of the then-posted Letter of Credit and hold the proceeds of the Letter of Credit as and for the Security Deposit.

(c) Application and Replenishment. If Tenant is in default in respect to any of Tenant's Lease Obligations, Landlord may (but shall not be required to) use, apply, draw upon, or retain the whole or any part of the Security Deposit to the extent required for the payment of any Rent or other amounts owed Landlord under this Lease, or the reimbursement of the actual costs reasonably incurred by the Landlord in connection with exercising its rights under this Lease. It is agreed that the sums represented by the Security Deposit shall be deposited or posted for the sole benefit of Landlord as an advance guaranty payment of the Rent and other sums and Tenant's Lease Obligations due by Tenant hereunder, but does not in any way represent a measure of Landlord's damages and, except as otherwise expressly provided in Section 2.9(d), in no event shall Tenant be entitled to a refund or particular application of the Security Deposit or to cancel or terminate a Letter of Credit posted as the Security Deposit. Neither the application by Landlord of all or any portion of the Security Deposit, nor Landlord's demand for or acceptance of money to restore the Security Deposit, shall result in any waiver of Landlord's right under this Lease and applicable Law to declare Tenant in default of this Lease or to terminate or declare a forfeiture of this Lease. Tenant's payment of the Security Deposit shall not limit Tenant's liability to Landlord for the payment of amounts due to Landlord by Tenant in excess of the amount of the Security Deposit. Whenever and as often as Landlord draws upon the Security Deposit, Tenant shall, within ten (10) Business Days after Landlord's request therefor, restore the Security Deposit to its original amount.

(d) Refund of Balance. Subject to any deductions made by Landlord in accordance with this Lease (or a good faith estimate of such amounts), Landlord shall refund the balance of the Security Deposit, if any, or release and exonerate such corresponding portion of the Letter of Credit, as applicable, to Tenant at its last address known to Landlord within sixty (60) calendar days of the later of the expiration or earlier termination of the Term.

(e) Waiver. The Parties agree that the Security Deposit can be held and applied against future damages, including, without limitation, future Rent damages, and Tenant waives application of the provisions of California Civil Code §1950.7, or any similar, related, or successor provision of law, for all purposes with respect to this Lease, including, without limitation, with respect to the time periods by which the Security Deposit must be returned to Tenant.

ARTICLE 3. USES

3.1 Uses within Premises.

Subject to the provisions of this Lease, Tenant shall develop, use and operate the Premises solely in accordance with the Project parameters set forth in Section 6.1 and the Scope of Development attached hereto as Exhibit and otherwise solely in accordance with this Article 3 (collectively, the "Permitted Uses"). Tenant shall not make any use of the Premises other than the Permitted Uses without the prior written consent of Landlord in its sole and absolute discretion. Notwithstanding the preceding sentence, Landlord shall not unreasonably withhold, delay or condition its consent to such other use provided Tenant shall have first secured, at no cost or expense to Landlord, (a) approval of such other use by the City Council by means of an appropriate amendment to the Master Plan, Development Agreement and/or PUD; and (b) all other Regulatory Approvals for such other use.

3.2 Advertising and Signs.

Subject to this Section 3.2, Tenant shall have the right to install signs and advertising that are consistent with the standards established in the Master Plan or that are located within the interior of any buildings located on the Premises; provided, however, that no advertising promoting the sale or use of alcohol, guns/firearms or tobacco shall be allowed in any instance in the interior or exterior of the Premises. Subject to the requirements for and of any applicable Regulatory Approvals, any proposed signs or advertisements on the exterior of any building or structure on the Premises, including without limitation, on any awnings, canopies, flags, banners, LED or other electronic display devices, sails or vessels, shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. It shall be reasonable for the Landlord to prohibit general advertising (i.e. signs not directly advertising the person or business located at or on the Premises), or any signs that would violate Tenant's limitations on use as set forth in Section 3.3 hereof. All signs shall comply with applicable Laws regulating signs and advertising. Neither Tenant or any Tenant Affiliate shall have any right to install or use any billboard advertising except as may be provided in the Billboard Agreement.

3.3 Liimitations on Uses by Tenant.

(a) Prohibited Activities. Tenant shall not conduct or permit on the Premises any of the following activities:

(i) any activity that creates waste of the Premises or a public or private nuisance, but without limitation on any right given to Tenant to make use of the Premises in accordance with the Permitted Uses and this Lease;

(ii) any activity that is not within the Permitted Use or previously approved by the Landlord in writing;

(iii) any activity that constitutes waste or nuisance to owners or occupants of adjacent properties. Such prohibited activities do not include activities that are necessary and integral to the operation the Project, but otherwise include, without limitation, adult entertainment on a commercial basis, medical cannabis, illegal drug distribution, the

preparation, manufacture or mixing of anything that might emit any objectionable odors other than ordinary cooking odors, noises or lights onto adjacent properties with such intensity as to constitute a nuisance, or the use of amplified music, sound or light apparatus with such intensity as to constitute a nuisance;

(iv) any activity that will in any way unlawfully injure, obstruct or interfere with the rights of other tenants, owners or occupants of adjacent properties, including rights of ingress and egress; and

(v) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Landlord; and

The nuisance provisions of clauses (i) and (iii) above shall be assessed in the context of the nature of the uses included within the Permitted Uses. Without limiting the preceding sentence, this Section 3.3 shall not be construed to limit any right given to Tenant under Article 6 or elsewhere in this Lease with respect to the construction, installation, modification, repair, or Restoration of Improvements in accordance with all applicable Laws and Regulatory Approvals.

(b) Land Use Restrictions. Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Landlord's reversionary interest in the Premises, or obtain changes in applicable land use laws or conditional use authorizations or other permits for any uses not provided for hereunder, in each instance without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion, and subject to the provisions of Article 6. Notwithstanding the foregoing, nothing in this Lease shall prohibit Tenant from obtaining final condominium map approval and a final Subdivision Public Report from the California Department of Real Estate or filing a condominium plan with the City of Oakland; provided, however, that Developer acknowledges it may not actually convert the Premises to condominiums without first obtaining all necessary governmental approvals and the consent, in their sole and absolute discretion, of the City under this Agreement.

3.4 Premises Must Be Used.

Subject to Tenant's obligations to construct the Initial Improvements pursuant to Article 6, Tenant shall use all portions of the the Premises containing completed Initial Improvements continuously during the Term in accordance with the Scope of Development, the Regulatory Approvals, and the Permitted Uses and shall not allow any such portions of the Premises or any part thereof to remain unoccupied or unused (subject to the provisions of Section 6.1) and customary vacancies, re-tenanting, and periodic repairs and maintenance, casualty damage or condemnation) without the prior written consent of Landlord, which consent may be withheld in Landlord's discretion. Notwithstanding the foregoing, Tenant will not be in violation of this Section 3.4 so long as Tenant is using commercially reasonable best efforts to lease, at then-current market rental rates, vacant space in all portions of the Premises containing completed Initial Improvements or, if a Subtenant has vacated a portion of the Premises but the Sublease remains in effect, if Tenant is diligently pursuing legal remedies Tenant has under such Sublease, or, if a retail subtenant that is continuing to pay rent ceases operations in the Premises with the right to do so under its sublease.

ARTICLE 4. TAXES AND OTHER IMPOSITIONS

4.1 Payment of Possessory Interest, Taxes and Other Impositions.

(a) Possessory Interest Taxes. Tenant shall pay or cause to be paid, prior to delinquency, all Impositions comprised of possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or Tenant's leasehold estate (but excluding any such taxes separately assessed, levied or imposed on any Subtenant), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)). Subject to the provisions of Section 4.3, all such taxes shall be paid directly to the City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 4.3.

Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the applicable governmental Assessor. Tenant further acknowledges that any Sublease or Transfer permitted under this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a transfer tax and reassessment of any possessory interest created hereunder in accordance with applicable Law.

Notwithstanding the preceding provisions of this Section 4.1(a) or any other provision in this Lease to the contrary, City shall pay or waive any City transfer tax payable with respect to the Parties' initial entry into this Lease.

(b) Other Impositions. Without limiting the provisions of Section 4.1(a), Tenant shall pay or cause to be paid all other Impositions, to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)), which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any Subtenant). Subject to the provisions of Article 5, Tenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. The foregoing or any other provision in this Lease notwithstanding, Tenant shall not be responsible for any Impositions arising from or related to, Landlord's fee ownership interest in the Property or premises (including, without limitation, any real property taxes or assessments), the Landlord's interest as landlord under this

Lease or any transfer thereof, including but not limited to, Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Landlord's fee interest or a transfer thereof

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which the Termination Date occurs shall be apportioned and prorated between Tenant and Landlord on a daily basis.

(d) Proof of Compliance. Within a reasonable time following Landlord's written request which Landlord may give at any time and give from time to time, Tenant shall deliver to Landlord copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Landlord, evidencing the timely payment of such Impositions.

4.2 Landlord's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 4.3, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency, Landlord, at its sole and absolute option, may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, Landlord shall give Tenant written notice specifying a date at least ten (10) business days following the date such notice is given after which Landlord intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify Landlord that it is contesting such Imposition pursuant to Section 4.3, then Landlord may thereafter pay such Imposition, and the amount so paid by Landlord (including any interest and penalties thereon paid by Landlord), together with interest at the Default Rate computed from the date Landlord makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to Landlord within ten (10) business days following demand.

4.3 Right of Tenant to Contest Impositions and Liens.

Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other Person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Landlord. Tenant shall give notice to Landlord within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to Landlord in any instance

where Landlord's interest in the Premises may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Landlord is a necessary party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by or in the name of Landlord or any owner of the Premises, Landlord, at the request of Tenant and at no cost to Landlord, with counsel selected and engaged by Tenant, subject to Landlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Landlord, at its own expense and at its sole and absolute option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by or in the name of Landlord or any owner of the Premises. Except as provided in the preceding sentence, Landlord shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Article 13 hereof, Tenant shall Indemnify Landlord for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, which Landlord may be legally obligated to pay.

4.4 Landlord's Right to Contest Impositions.

At its own cost and after notice to Tenant of its intention to do so, Landlord may but in no event shall be obligated to contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require Landlord to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. Landlord shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest.

ARTICLE 5. COMPLIANCE WITH LAWS

5.1 Compliance with Laws and Other Requirements.

During the Term, Tenant and its use and operation of the Premises shall comply, at no cost to Landlord, (i) with all applicable Laws (including Regulatory Approvals), and (ii) with the requirements of all policies of insurance required to be maintained pursuant to Article 14 of this Lease. The foregoing sentence shall not be deemed to limit Landlord's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to Landlord, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises. This Section 5.1 shall not apply to compliance with Laws (including Regulatory Approvals) which relate to Hazardous Materials, such compliance being governed exclusively by Article 15 hereof, or to contests of any Imposition or other lien, such contests being exclusively governed by Section 4.3 hereof. Notwithstanding anything to the contrary herein, Tenant shall not be in default hereunder for failure to comply with any Laws or insurance requirements if Tenant is contesting the applicability of such Laws (including Regulatory Approvals) to Tenant or this Lease, or insurance requirements diligently and in good faith by appropriate proceedings and at no cost to Landlord, provided that any such

contest shall not relieve or release Tenant from its obligation to pay all or any portion of Rent hereunder, that Tenant shall indemnify Landlord against and hold Landlord harmless from any Losses resulting from such contest, and that such contest shall not result in the loss or suspension of the insurance coverage required to be maintained by Tenant hereunder.

(a) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section 5.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises or the Improvements, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Landlord, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. Except as provided in Articles 9 or 10, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Landlord. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Landlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation, except to the extent provided in Article 10, or Sections 17.1 or 17.2.

(b) Proof of Compliance. Upon request by Landlord, Tenant shall promptly provide Landlord with evidence of its compliance with any of the obligations required under this Section.

5.2 Regulatory Approvals.

(a) City Approvals. Tenant acknowledges and agrees that Landlord is entering into this Lease in its proprietary capacity as the holder of fee title to the Property, and not in its capacity as a governmental regulatory agency and that the status, rights and obligations of Landlord, in such proprietary capacity, are separate and independent from the status, functions, powers, rights and obligations of the City in such governmental regulatory capacity, and that nothing in this Lease shall be deemed to limit or restrict City in the exercise of its governmental regulatory powers and authority with respect to Tenant, the Premises or otherwise, or to render Landlord obligated or liable under this Lease for any acts of omissions of the City in connection with the exercise of its independent governmental regulatory powers and authority. Without limiting the preceding sentence, Tenant acknowledges that the Permitted Uses under Section 3.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including but not limited to, the Master Plan, PUD or building permits, nor do such uses limit Landlord's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. Tenant understands that the entry by the Landlord into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including the Landlord itself in its regulatory capacity. By

entering into this Lease, the Landlord is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein. Subject to the preceding provisions of this Section 5.2, nothing herein shall be deemed to limit the rights and obligations of Developer or City under the Master Plan, PUD or Development Agreement as they pertain to the Permitted Uses, the Scope of Development and the review and approval of planned Improvements.

(b) Approval of Other Agencies; Conditions. [Note: To be made consistent with applicable cooperation language in LDDA.] Tenant understands that the Project and Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any construction or alterations of Improvements, may require that approvals, authorizations or permits be obtained from governmental agencies with jurisdiction. Tenant shall be solely responsible for obtaining Regulatory Approvals as further provided in this Section. In any instance where Landlord will be required to act as a co-permittee, and in instances where modifications are sought from any other agencies in connection with Tenant's obligations under Article 15, or where Tenant proposes Additional Construction which requires Landlord's approval under Article 6, Tenant shall not apply for any Regulatory Approvals (other than a building permit from the Landlord) without first obtaining the approval of Landlord, which approval will not be unreasonably withheld, conditioned or delayed. Throughout the permit process for any Regulatory Approval, Tenant shall consult and coordinate with Landlord in Tenant's efforts to obtain such Regulatory Approval, and Landlord shall cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approval, provided that Landlord shall have no obligation to make expenditures or incur expenses other than reasonable administrative expenses. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any regulatory agency other than Landlord, if Landlord is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of Landlord whether on or off the Premises, unless in each instance Landlord has previously approved such conditions in writing in Landlord's sole and absolute discretion. No such approval by Landlord shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, Landlord shall join, where required, in any application by Tenant for a required Regulatory Approval, and in executing such permit, provided that Landlord shall have no obligation to join in any such application or execute the permit if the Landlord does not approve the conditions imposed by the regulatory agency under such permit as provided herein. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be responsible for complying, at no cost to Landlord or the City, with any and all conditions imposed by any regulatory agency as part of a Regulatory Approval. With the consent of Landlord (which shall not be unreasonably withheld or delayed), Tenant shall have the right to appeal or contest in any manner permitted by law any condition imposed upon any such Regulatory Approval. Tenant shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval and Landlord shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Article 13, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which Landlord may be liable in connection with Tenant's failure to comply with any Regulatory Approval.

ARTICLE 6. IMPROVEMENTS

6.1 Scope and Timing of Initial Improvements (Minimum Project). **[NOTE: SUBJECT TO FURTHER REVIEW]**

The parties agree that Landlord has an interest in ensuring that the Initial Improvements for the Premises and the initial improvements ("Other Gateway Improvements") to be constructed pursuant to the [Central Gateway Lease or East Gateway Lease, as applicable (whichever is not within this Lease)] (the "Other Gateway Lease") are constructed within a specified period of time. Therefore, the parties have agreed that Tenant shall be required to have Commenced Construction (defined below) of a certain portion of the Initial Improvements pursuant to the schedule set forth in this Section 6.1 (the "Minimum Project"). As used in this Section 6.1, the term "Commence," "Commenced" or "Commenced Construction" shall mean that a building permit has been obtained for the applicable Initial Improvements, a foundation/slab has been installed and such Initial Improvements are subject to active and on-going construction.

(a) Required Schedule. All of the dates and time periods included in this Section 6.1(a) are subject to extension pursuant to the provisions of Article 16 (Force Majeure). Tenant shall have Commenced Construction of the initial Improvements or have caused the Commencement of Construction of the Initial Improvements pursuant to the following schedule:

(i) Initial Milestone Date. Commenced Construction of at least 150,000 square feet of Initial Improvements with a Floor Area Ratio (defined below) of at least 0.29 (the "Initial Threshold Amount") prior to the date that is twelve (12) months after the Commencement Date (the "Initial Milestone Date"). As used in this Section, the term "Floor Area Ratio" shall mean the product of the following calculation: (A) the square footage of the covered area on all floors of all Initial Improvements located on the Premises divided by (B) the square footage of the area of the Premises that has been improved with Initial Improvements (including building, parking lots, landscaping and other improvements).

(ii) Second Construction Milestone Date. Commenced Construction of at least 250,000 [Note: 300,000 for the Central Gateway.] square feet of Initial Improvements with a Floor Area Ratio of at least 0.29 (the "Second Threshold Amount") prior to the date that is four (4) years after the date of the issuance of the first building permit for an Initial Improvement at the Premises (the "Second Milestone Date").

(iii) Third Milestone Date. Commenced Construction of at least 325,000 [Note: 375,000 for the Central Gateway.] square feet of Initial Improvements (the "Third Threshold Amount") prior to the date that is six (6) years after the date of the issuance of the first building permit for an Initial Improvement at the Premises (the "Third Milestone Date").

(iv) Fourth Milestone Date. Commenced Construction of at least 442,560 [Note: 537,000 for the Central Gateway.] square feet of Initial Improvements (the "Fourth Threshold Amount") prior to the date that is eight (8) years after the date of the issuance of the first building permit for an Initial Improvement at the Premises (the "Fourth Milestone Date").

The Initial Milestone Date, Second Milestone Date, Third Milestone Date and Fourth Milestone Date are collectively referred to herein as the “Milestone Dates.” The Initial Threshold Amount, Second Threshold Amount, Third Threshold Amount and Fourth Threshold Amount are collectively referred to herein as the “Threshold Amounts.”

(b) Credit for Excess Other Gateway Improvements. The parties acknowledge that the Other Gateway Lease includes a similar provision for a minimum project under the Other Gateway Lease that establishes corresponding milestone dates and threshold amounts for the construction of the Other Gateway Improvements (the “Other Gateway Milestone Dates” and the “Other Gateway Threshold Amounts”). For the purpose of calculating the Threshold Amounts under this Lease, if the tenant under the Other Gateway Lease has Commenced Construction of Other Gateway Improvements in excess of the corresponding Other Gateway Threshold Amounts by the applicable Milestone Date set forth in this Lease, such excess square footage shall be credited to the calculation of the corresponding Threshold Amount under this Lease. An example of how the credit is applied is included in Schedule 6.1.

(c) Adjustment to the Fourth Threshold Amount. If Tenant and the tenant under the Other Gateway Lease are Affiliates, they shall have the right to reallocate a portion of the permissible square footage of uses between the Premises and the Other Gateway Premises pursuant to the Scope of Development, (i) the Fourth Threshold Amount shall automatically be increased or decreased, as applicable, to reflect such reallocation and (ii) no adjustment shall be made to the other Threshold Amounts as a result of such reallocation. Further, if Tenant obtains the Regulatory Approvals necessary to increase the maximum amount of square footage of uses that may be developed on the Premises without requiring a corresponding reduction in the maximum square footage for the Other Gateway Lease, no adjustments shall be made to any of the Threshold Amounts. An example of how the adjustment is applied is included in Schedule 6.1.

(d) Calculation of Square Footages. The square footages of Gross Building Areas included in the construction drawings approved by the City’s Department of Planning, Building & Neighborhood Preservation (or successor department that is responsible for approving plans and issuing building permits) shall be conclusive in determining the square footages required under this Section 6.1.

(e) Exclusive Remedy for Tenant’s Default Related to the Minimum Project. Notwithstanding any term or provision of this Agreement to the contrary, this Section 6.1(e) sets forth Landlord’s sole and exclusive remedy with respect to Tenant’s default related to the Minimum Project obligations included in this Section 6.1. If Tenant fails to meet any one of the Threshold Amounts by the corresponding Milestone Date, (i) Tenant shall pay the Minimum Project Liquidated Damages (defined below) to Landlord within thirty (30) calendar days after the applicable Milestone Date and (ii) Landlord shall have the right, but not the obligation, to terminate this Agreement only with respect to the portion of the Premises on which Tenant has not Commenced Construction of an Initial Improvement (including buildings, parking lots, landscaping and other improvements) (the “Unimproved Premises”) by delivery of written notice to Tenant within sixty (60) days after the applicable Milestone Date (the “Partial Termination Notice”).

The Landlord may elect, in its sole and absolute discretion, to receive payment of the Minimum Project Liquidated Damages without exercising its right to terminate this Agreement with respect to the Unimproved Premises. If Landlord elects to receive payment of the Minimum Project Liquidated Damages without terminating this Agreement with respect to the Unimproved Premises and confirms such election in writing, Tenant shall have no further obligation with respect to the Minimum Project under this Agreement. If Landlord elects to terminate this Agreement with respect to the Unimproved Premises, (I) Tenant shall execute and record a quitclaim deed or other instrument necessary to remove the Memorandum of Lease from title to the Unimproved Premises within ten (10) business days after receipt of the Termination Notice; and (II) except for those obligations which expressly survive the termination of this Agreement, all of Tenant's obligations under this Agreement with respect to the Unimproved Premises shall terminate.

The "Minimum Project Liquidated Damages" shall be equal a percentage (calculated to the third decimal point) of \$_____ [Note: \$5mm prorated by the amount of acreage included in the Premises in relation to the total amount of acreage in the East, Central and West Gateways.], which percentage shall be equal to the lesser of the amount (A) calculated by dividing the acreage of the Unimproved Premises by the acreage of the Premises or (B) calculated by dividing the difference of (the Fourth Threshold Amount less the total square footage of Commenced Initial Improvements) by the Fourth Threshold Amount. An example of how the Minimum Project Liquidated Damages are calculated and the partial termination of this Agreement is implemented is included in Attachment 6.1.

(f) No Cross-Default. The references to the Other Gateway Lease under this Section 6.1 are merely to establish the basis for the square footage credit(s) that may be applied pursuant to Section 6.1(b). There shall be no cross-default between the provisions of this Section 6.1 and the corresponding minimum project provisions of the Other Gateway Lease.

6.2 Other Requirements for Initial Improvements. In addition to the requirements in Section 6.1, Tenant shall construct or cause to be constructed the Initial Improvements in accordance with the requirements set forth in this Section 6.2. To the extent the subject matter of any of the requirements set forth in this Section 6.2 are specifically addressed in the Master Plan, Development Agreement and/or PUD, then in the event of any conflict between the provisions of this Section 6.2 and the provisions of such Regulatory Approvals, the provisions of such Regulatory Approvals shall control, **[NOTE: CITY ADMINISTRATOR SHALL HAVE THE RIGHT TO SUBSTITUTE IN FOR ALL OR ANY OF THE FOLLOWING PROVISION OF SECTION 6.2, ANY APPLICABLE PROVISIONS FROM THE MASTER PLAN, DEVELOPMENT AGREEMENT AND/OR PUD THAT SPECIFICALLY ADDRESS THE SUBJECT MATTER OF THE FOLLOWING PROVISIONS OF SECTION 6.2]**

(a) Construction Documents.

Tenant shall prepare and submit to Landlord, for review and written approval hereunder, reasonably detailed Schematic Drawings, and following Landlord's approval of such Schematic Drawings, Preliminary and Final Construction Documents which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings,

Preliminary and Final Construction Documents are referred to as "Construction Documents"). Landlord may waive the submittal requirement of Schematic Drawings for a particular Initial Improvement if it determines in its discretion that the scope of such Initial Improvement does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. Landlord shall approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval shall state in writing the reasons for disapproval. If Landlord deems the Construction Documents incomplete, Landlord shall notify Tenant of such fact within twenty-one (21) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If Landlord notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If Landlord disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of this Section 6.2(a), Landlord shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in Landlord's previous notice of rejection, and Landlord shall approve or disapprove the revisions to the Construction Documents within fifteen (15) days after resubmission. If Landlord fails to approve or disapprove Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 6.2(a), such failure shall not constitute an Event of Default under this Lease on the part of Landlord, but such Construction Documents shall be deemed approved by the Landlord in its proprietary capacity, provided that Tenant first provides Landlord with at least ten (10) days prior written notice that Tenant intends to deem said Construction Documents so approved.

(b) Progress Meetings; Coordination. From time to time at the request of either Party during the preparation of Construction Documents, Landlord and Tenant shall hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. Landlord and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to Landlord can receive prompt and speedy consideration.

(c) Landlord Approval of Construction Documents.

Upon receipt by Tenant of a disapproval of Construction Documents from Landlord, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses Landlord's written objections. Tenant shall resubmit such revised portions to Landlord as soon as possible after receipt of the notice of disapproval. Landlord shall approve or disapprove such revised portions in the same manner as provided in Section 6.2(a) for approval of Construction Documents (and any proposed changes therein) initially submitted to Landlord. If Tenant desires to make any substantial change in the Final Construction Documents after Landlord has approved them, then Tenant shall submit the proposed change to Landlord for its reasonable approval. Landlord shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to Landlord. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period.

(d) Construction Permits. Tenant, at its cost, shall be responsible for applying for and diligently pursuing the issuance of, and thereafter compliance with, all permits and other Regulatory Approvals, including any required environmental certification, allowing construction and development of the Initial Improvements (the "Construction Permits"). Upon request by Landlord, Tenant shall provide to Landlord copies of all Construction Permits.

(e) Construction Schedule and Reports. All construction with respect to the Project shall be accomplished expeditiously, diligently, and within the timeframes set forth within the Scope and Schedule of Performance. During periods of construction, Tenant shall submit to Landlord written progress reports when and as reasonably requested by Landlord.

(f) Conditions to Commencement of Construction. Notwithstanding any provision herein to the contrary, Tenant shall not commence construction of any Initial Improvements until all of the following conditions have been satisfied or waived by Landlord:

(i) Landlord shall have approved the Final Construction Documents;

(ii) Tenant shall have obtained all Construction Permits;

(iii) Tenant shall have entered into the Initial Improvements Construction Contract;

(iv) **Tenant shall have delivered the Completion Guaranty, executed by Prologis, Inc., with respect to such Initial Improvements and such Completion Guaranty shall be in full force and effect; and**

(v) If requested by Landlord, Tenant shall have submitted to Landlord the following bonds (or equivalent security, which may include a letter of credit, acceptable to Landlord in its sole and absolute discretion) issued by a licensed surety, naming the City as co-obligee or assignee, and in a form reasonably satisfactory to City (the "Construction Bonds"):

(A) A performance bond in an amount not less than one hundred percent (100%) of the cost of construction of the Initial Improvements, based upon the Initial Improvements Construction Contract, as security for the faithful performance of such construction; and

(B) A labor and material payment bond in an amount not less than one hundred percent (100%) of the cost of construction of the Project pursuant to the Construction Contract, as security for payment to persons performing labor and furnishing materials in connection with such construction.

(g) Construction Standards. All construction of the Initial Improvements shall be accomplished in accordance with the Construction Documents and good construction and engineering practices and applicable Laws.

(h) Safety Matters. Tenant shall undertake commercially reasonable measures in accordance with good construction practices (consistent with the requirements of the Community Benefits) to minimize the risk of injury, damage, disruption or inconvenience to the

Premises and Improvements and surrounding property, or the risk of injury to members of the public, caused by or resulting from such construction. Tenant shall make adequate provision for the safety and convenience of all persons affected by such construction, including erecting construction barricades substantially enclosing the area of such construction and maintaining them until construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(i) Costs of Construction. As between Landlord and Tenant, Tenant shall bear and pay all costs and expenses of construction of the Initial Improvements, whether onsite or offsite, including, without limitation, the cost of connections to existing utility lines in adjacent rights-of-way, and any and all cost overruns. Without limiting the preceding provisions, Tenant shall be responsible for performing all site preparation work necessary for construction of the Initial Improvements. Such preparation shall include, without limitation, all Remediation and Handling of Hazardous Materials (subject to the terms of Article 15, disabled access, tenant improvements, demolition of existing structures, grading and all structure and substructure work, public access improvements, and tenant improvements.

(j) Rights of Access. During any period of construction, Landlord and its Agents shall have the right to enter areas in which construction is being performed, on reasonable prior notice during customary construction hours, subject to the rights of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Landlord to conduct such inspections or any liability in connection therewith.

(k) As-Built Plans and Specifications. Tenant shall furnish to Landlord one set of as-built plans and specifications with respect to the Initial Improvements within one hundred twenty (120) days following completion. If Tenant fails to provide such as-built plans and specifications to Landlord within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from Landlord, Landlord will thereafter have the right to cause an architect or surveyor selected by Landlord to prepare as-built plans and specifications showing such Additional Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to Landlord as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Additional Construction under applicable regulations adopted by Landlord in its regulatory capacity.

6.3 Landlord's Right to Approve Additional Construction.

(a) Construction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform Additional Construction in accordance with the provisions of this Section 6.3, provided that Tenant shall not, without Landlord's prior written approval (which approval shall not be unreasonably withheld or delayed) do any of the following:

(i) Construct additional buildings or other additional structures, other than to replace or restore those previously existing;

(ii) Increase the bulk or height of any Improvements beyond the bulk or height approved for the then-existing Improvement (other than changes in the bulk or height of equipment penthouses);

(iii) Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law);

(iv) Decrease the Gross Building Area or the Leasable Area of the Premises after Completion by more than five percent (5%);

(v) Materially increase [NOTE: provide parameter of "material increase"?] the Gross Building Area of the Premises; or

(vi) Perform Additional Construction involving replacement or reconstruction that materially alters the exterior architectural design of any Improvements for any replacement construction. In connection with any replacement or restoration, Tenant shall use materials of at least equal quality, durability, and appearance to the materials originally installed, as reasonably determined by Landlord.

The parties acknowledge that, without limiting what constitutes the Landlord's reasonable approval under this Section 8.2(a), it shall be reasonable for Landlord to withhold its consent under this Paragraph 9.1(a) if the proposed Additional Construction would (i) violate any Regulatory Approvals or applicable Laws or (ii) upon completion of the Additional Construction, result in a change of use of Project which would materially adversely impact the Project or payment to Landlord or City of any amounts hereunder.

(b) Notice by Tenant. At least thirty (30) days before commencing any Additional Construction which in Tenant's good faith judgment, requires Landlord's approval, Tenant shall notify Landlord of such proposed Additional Construction. Such notice shall be accompanied by Final Construction Documents for such Additional Construction. Within twenty (20) days after receipt of such notice from Tenant, Landlord shall have the right to object to any such Additional Construction, to the extent that such Additional Construction requires Landlord's approval.

(c) Permits. Tenant acknowledges that Landlord's approval of Additional Construction (or the fact that Tenant is not required to obtain Landlord's approval) does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from the Landlord itself in its regulatory capacity, including, without limitation, building permits.

(d) Other Requirements. The requirements set forth in Sections 6.1(a)-(f) also shall apply to any and all Additional Construction requiring Landlord's approval, subject to the following modifications:

(i) Construction Schedule. All Additional Construction shall be accomplished expeditiously and diligently, subject to Force Majeure;

(ii) Conditions to Commencement of Constmction. Tenant shall have submitted to Landlord in writing its good faith estimate of the anticipated total constmction costs of the Additional Constmction. If such good faith estimate exceeds One Million and No/100 Dollars (\$1,000,000), Tenant shall also submit evidence reasonably satisfactory to Landlord of Tenant's ability to pay such costs as and when due.

(iii) As-Built Plans and Specifications. Tenant shall only be required to furnish to Landlord as-built plans and specifications with respect to Additional Constmction costing One Hundred Thousand Dollars (\$100,000) as Indexed, or more.

6.4 Minor Alterations.

Landlord's approval hereunder shall not be required for (a) the installation, repair or replacement of timishings, tixtures, equipment or decorative Improvements or repair or replacement of wom out or obsolete components of the Improvements which do not materially affect the strctural integrity of the Improvements unless otherwise required under Section 6.2(a)(i)-(vi), (b) recarpeting, repainting the interior or exterior of the Premises, groundskeeping, or similar alterations, or (c) any other Additional Construction which does not require a building permit (collectively, "Minor Alterations").

6.5 Tenant Improvements.

Landlord's approval hereunder shall not be required for the installation of tenant improvements and finishes (excluding retail storefronts or facades) to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing shall not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a building permit from the City, acting in its regulatory capacity.

6.6 Title to Improvements.

During the Term of this Lease, Tenant shall own all of the Improvements, including all Additional Constmction and all appurtenant tixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants). During the Term, for federal income tax purposes, Tenant shall be the "tax owner" of the Improvements, including all Additional Constmction, and all appurtenant tixtures, machinery and equipment installed therein (except for trade tixtures and other personal property of Subtenants) and shall be entitled to depreciation deductions and any tax credits with respect to the Improvement, including all Additional Constmction and all appurtenant tixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and other personal property of Tenant and its Subtenants other than Landlord), will vest in Landlord without further action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to Landlord.

ARTICLE 7. MANAGEMENT; REPAIR AND MAINTENANCE

7.1 Management and Operating Covenants.

Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with this Lease and the standards for the maintenance and operation of other comparable urban logistics and R&D projects located in military base reuse and port areas elsewhere in the State of California, subject to the provisions of Articles 9 and 10. Tenant shall be exclusively responsible, at no cost to Landlord, for the management and operation of the Improvements.

7.2 Tenant's Duty to Maintain.

Except as otherwise provided in this Article 7, and Articles 9 and 10 hereof, throughout the Term of this Lease, Tenant shall maintain and repair, at no cost to Landlord, the Premises, in the condition and repair required under Section 7.1, and in compliance with all applicable Laws and the requirements of this Lease. Tenant shall promptly make (or cause others to make) all necessary repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen. Tenant shall make such repairs with materials, apparatus and facilities as originally installed and approved by Landlord under the LDDA or this Lease, or, if not originally subject to Landlord approval or not commercially available, with materials, apparatus and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Tenant shall be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Initial Improvements. Except as otherwise provided in the Master Plan, Development Agreement or PUD or elsewhere in this Lease, and subject to the provisions of Article 4, Tenant shall not be obligated to maintain any public utilities or public infrastructure located in any dedicated public rights of way.

7.3 Costs of Repairs, Etc.

(a) No Obligation of Landlord; Waiver of Rights. As between Landlord and Tenant, and except as otherwise expressly provided in Article 15, Tenant shall be solely responsible for the condition, operation, repair, maintenance and management of the Premises, including any and all Improvements, from and after the Commencement Date. Landlord shall have no obligation to make repairs or replacements of any kind or maintain the Premises, any Improvements or any portion thereof. Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or replacements at Landlord's expense, or (except as provided in Section 13) abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Landlord's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

(b) Notice. Tenant shall deliver to Landlord, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority (other than Landlord) having responsibility for the enforcement of any applicable Laws

(including Disabled Access Laws or Hazardous Materials Laws), asserting that the Project is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Article 14, asserting that the requirements of such insurance policy or policies are not being met.

ARTICLE 8. UTILITY SERVICES

8.1 Utility Services.

Landlord, in its proprietary capacity as owner of the Property and landlord under this Lease, shall not be required to provide any utility services to the Premises or any portion of the Premises. Tenant and its Subtenants shall be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which the Premises are put (it being acknowledged that City is the sole and exclusive provider to the Premises of certain public utility services). Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Landlord under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Landlord relating to this Lease, any Losses arising from or in connection with City's provision of (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

ARTICLE 9. DAMAGE OR DESTRUCTION [NOTE: SUBJECT TO FURTHER REVIEW]

9.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Article 9.

(b) Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen (a "Casualty Event"), and such Casualty Event (i) could materially impair use or operation of any material portion of the Improvements for their intended purposes for a period of thirty (30) days or longer, or (ii) exceeds in an individual

instance the amount of Two Hundred and Fifty Thousand And No/100 Dollars (\$250,000) or aggregate amount, together with any other Casualty Event occurring during the preceding 5-Year Period, of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000).then Tenant shall promptly, but not more than ten (10) days after the occurrence of the Casualty Event, give written notice thereof to Landlord describing with as much specificity as is reasonable, given the ten-day time constraint, the nature and extent of such damage or destmction; provided, however, that Tenant shall provide Landlord with a supplemental and more detailed written report describing such matters with specificity within ninety (90) days after the occurrence of the damage or destmction. The provisions of this Section 9.1(b) are in addition to, and not in lieu of, the incident management provisions of Section 38.17.

(c) Waiver. The Parties intend that this Lease tully govern all of their rights and obligations in the event of any damage or destmction of the Premises. Accordingly, Landlord and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, as such Sections may from time to time be amended, replaced, or restated.

9.2 Rent after Damage or Destmction.

If there is any damage to or destmction of the Premises, including the Improvements thereon, this Lease shall not terminate except as otherwise specitically provided in Section 11.4. In the event of any damage or destmction to the Improvements that does not result in a termination of this Lease, and at all times before completion of Restoration, Tenant shall pay to Landlord all Rent at the times and in the manner described in this Lease.

9.3 Tenant's Obligation to Restore.

Except at the option of Tenant during the last tive (5) years of the Term as set forth below [or as permitted under Section 9.7 below], if all or any portion of the Improvements are damaged or destroyed , then Tenant shall, subject to Section 9.4 hereof, within a reasonable period of time (allowing for securing necessary Regulatory Approvals), commence and diligently, subject to Force Majeure, Restore the Improvements to the condition they were in immediately before such damage or destmction, to the extent possible in accordance with then applicable Laws (including, but not limited to, any required code upgrades), without regard to the amount or availability of insurance proceeds. All Restoration performed by Tenant shall be in accordance with the procedures set forth in Section 6 relating to Additional Constmction and shall be at Tenant's sole expense. If insurance proceeds are available for such Restoration, then Tenant shall deposit all insurance proceeds received by Tenant in connection with a casualty event with a Depositary to Restore the Premises, which Depositary shall be authorized to make disbursement therefrom in accordance with Section 10.5; provided, however, that if at any time the estimated or actual cost to Restore ("Casualty Cost") exceeds the net insurance proceeds actually deposited with the Depositary, then Tenant shall either (i) also deposit with the Depositary such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds ("Additional Casualty Cash"), or (ii) obtain payment or performance bonds in the full amount of the Additional Casualty Cash to cover the payment and performance of the Restoration and naming Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees and in form reasonably satisfactory to Landlord (such bonds, together with such net insurance proceeds and any interest earned thereon, and the Additional

Casualty Cash, the "Casualty Restoration Funds"). In the event Tenant shall elect not to Restore the Premises during the last 5 years of the Term, Tenant shall have the right to terminate this Lease with respect to that portion of the Premises containing the Improvements so damaged or destroyed upon written notice to Landlord which shall be delivered if at all within sixty (60) days of written notice of the Casualty Event to Landlord, in which event, the Tenant may use all available insurance proceeds to raze those improvements on the Premises designated by Landlord and shall then cause the Depository to turn over the balance of any available insurance proceeds to Landlord. If Tenant obtains payment or performance bonds related to a Restoration (which Tenant may or may not obtain in its discretion), Tenant shall name Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to Landlord promptly upon obtaining them.

9.4 Rights of Landlord. In addition to the other remedies available to Landlord that are set forth elsewhere in this Lease, the following remedies shall be available to Landlord in the event of a Casualty Event:

(a) Expiration or Termination of Lease Prior to Completion of Any Restoration. In any case where this Lease shall expire or be terminated prior to the completion of the Restoration, Tenant shall (i) promptly account to Landlord for all amounts spent in connection with any Restoration which was undertaken, (ii) immediately pay over or cause the Depository to pay over to Landlord the remainder, if any, of the Casualty Restoration Funds received by Tenant or held by the Depository prior to such termination or cancellation, (iii) pay over or cause the Depository to pay over to Landlord, within five (5) business days after receipt thereof, any Casualty Restoration Funds received by Tenant or the Depository subsequent to such termination or cancellation, and (iv) immediately pay over to Landlord any outstanding Additional Casualty Cash that Tenant should have deposited with the Depository prior to such termination or cancellation. Upon completion of and payment for the Restoration, Landlord shall return to Tenant any unused portion of the Casualty Restoration Funds.

(b) Failure to Restore Following a Casualty Event.

(i) If, in the event of a Casualty Event, (A) Tenant fails or neglects to commence the diligent Restoration of the Premises or the portion thereof so damaged or destroyed, or (B) having so commenced such Restoration, Tenant fails to diligently complete the same in accordance with the terms of this Lease, then Landlord may, by giving sixty (60) calendar days' prior notice to Tenant, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease and the Term shall immediately become forfeited and void.

(ii) If, in the event of a Casualty Event, (A) Tenant fails or neglects to commence the diligent Restoration of the Premises or the portion thereof so damaged or destroyed, (B) having so commenced such Restoration, Tenant fails to diligently complete the same in accordance with the terms of this Lease, or (C) prior to the completion of any such Restoration by Tenant, this Lease shall expire or be terminated in accordance with the terms of this Lease, then Landlord may, but shall not be required to, complete such Restoration at Tenant's expense and shall be entitled to be paid out of the Casualty Restoration Funds for the relevant Restoration costs incurred by Landlord. Upon completion of and payment for the

Restoration, Landlord shall return to Tenant any unused portion of the Casualty Restoration Funds. Tenant's obligations under this Section 9.4 shall survive the expiration or termination of this Lease.

9.5 Payment of Casualty Restoration Funds to Tenant. Subject to the satisfaction by Tenant of all of the terms and conditions of this Article 9, the Depository shall pay to Tenant from time-to-time any Casualty Restoration Funds it holds, but not more than the amount actually collected by the Depository upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as Landlord, to the extent, if any, of the reasonable expenses paid or incurred by the Depository and Landlord in the collection of such monies, to be utilized by Tenant solely for the Restoration, such payments to be made as follows:

(a) prior to commencing any Restoration, Tenant shall furnish to Landlord for its approval the estimated cost, estimated schedule and detailed construction and design plan for the completion of the Restoration, each prepared by an architect, engineer and general contractor;

(b) the Casualty Restoration Funds held by the Depository shall be paid to Tenant in installments as the Restoration progresses, subject to Section 9.5(c), based upon requisitions to be submitted by Tenant to the Depository and Landlord in compliance with Section 9.6, showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by Tenant; provided, however, that if any Encumbrance is tiled against the Premises or any part thereof in connection with the Restoration, Tenant shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged in accordance with this Lease; provided further that notwithstanding the foregoing, but subject to the provisions of Section 9.5(c), the existence of any such Encumbrance shall not preclude Tenant from receiving any installment of Casualty Restoration Funds held by the Depository so long as (i) such Encumbrance will be discharged with funds from such installment and at the time Tenant receives such installment Tenant delivers to Landlord and the Depository a release of such Encumbrance executed by the lienor and in recordable form, or (ii) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord;

(c) the amount of each installment to be paid to Tenant shall be the aggregate amount of Casualty Costs theretofor incurred by Tenant minus the aggregate amount of Casualty Restoration Funds theretofor paid to Tenant in connection therewith; provided, however, that all disbursements to Tenant shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depository is sufficient to complete the Restoration; and

(d) except as provided in Section 9.4, upon completion of and payment for the Restoration by Tenant, subject to the rights of any Mortgagee, the Depository shall pay the balance of the Casualty Restoration Funds it holds, if any, to Tenant; provided, however, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no

insurance proceeds), Tenant shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 9.3.

9.6 Conditions of Payment. The following shall be conditions precedent to each payment made to Tenant as provided in Section 9.5:

(a) Tenant shall have furnished Landlord with estimates of costs and schedule and a detailed construction plan for the completion of the Restoration, as provided for in Section 9.5(a);

(b) at the time of making such payment, no Event of Default exists; and

(c) the Restoration shall be carried out in accordance with Article 9, and there shall be submitted to the Depository and Landlord the certificate of the applicable architect or engineer stating that (i) the materials and other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 15.3(c)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's lien or other Encumbrances have been claimed, except for any mechanic's lien for claims that (A) will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (provided that a release of such Encumbrance is delivered to the Depository in accordance with Section 9.5(b)), or (B) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord, (ii) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (iii) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Casualty Restoration Funds or has been made out of the Casualty Restoration Funds received by Tenant, (iv) the sum then requested does not exceed the value of the services and materials described in the certificate, (v) the work relating to such requisition has been performed in accordance with this Lease, (vi) the balance of the Casualty Restoration Funds held by the Depository or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion, and (vii) in the case of the final payment to Tenant, the Restoration has been completed in accordance with this Lease.

9.7 Tenant's Election to Restore or Terminate.

(a) Uninsured Casualty or Major Damage or Destruction. If an event of Major Damage or Destruction occurs during the last ten (10) years of the Term, or if an event of Uninsured Casualty occurs at any time during the Term, then at the time Tenant provides Landlord with the ninety (90) day report described in Section 9.1(b) above, Tenant shall also provide Landlord with written notice (the "Casualty Notice") either (1) electing to commence and complete Restoration of the Improvements, or (2) electing to terminate this Lease (subject to the conditions of Section 11.4(b)). For purposes hereof, "Uninsured Casualty" will mean an

event of damage or destruction for which the costs of Restoration (including the cost of any required code upgrades) exceeds One Million and No/100 Dollars (\$1,000,000), as Indexed, (or Three Million and No/100 Dollars (\$3,000,000)) as Indexed for mold damage if Tenant does not obtain property insurance covering mold damage plus, in all cases, the amount of any applicable policy deductible (except in the case of damage or destruction caused by earthquake, if Tenant is obligated to carry earthquake insurance pursuant to Section 14.1(a)(ii), the amount of the policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake damage under Tenant's property insurance policy maintained under Section 14.1(a)(ii) hereof as of the date of casualty, or the actual amount of the policy deductible) and which is not covered by available insurance proceeds payable under the policies of insurance that Tenant is required to carry under Section 14 hereof (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder). Proceeds of insurance shall not be deemed "available" for purposes of this Article 9 to the extent that a Mortgagee, pursuant to the terms of its Mortgage if approved by Landlord under Section 34.8, retains or requires the application of such proceeds for purposes other than Restoration. Tenant shall provide Landlord with the Casualty Notice no later than ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Tenant elects to Restore the Improvements, all of the provisions of Section 9 that are applicable to Additional Construction of the Improvements shall apply to such Restoration of the Improvements to the condition they were in prior to such Major Damage or Destruction as if such Restoration were Additional Construction.

(b) Other Circumstances Allowing Termination. Notwithstanding the foregoing or subsequent provisions of this Article 9, Tenant shall not be required to Restore the Improvements and may elect to terminate this Lease in accordance with this Article 9 if (A) the Laws then existing would not allow Tenant to Restore the Improvements; (B) all necessary governmental approvals required for the Restoration of the Improvements cannot be obtained, within eighteen months (18) from the date of the damage or destruction; provided that Tenant is proceeding as promptly as reasonably practicable and is using all commercially reasonable efforts to obtain such approvals within such time; or (C) in the case of Major Damage and Destruction occurring prior to the last ten (10) years of the Term, if Tenant reasonably anticipates, based upon a schedule of performance for such Restoration prepared with due diligence by Tenant in consultation with a licensed general contractor experienced in similar construction projects in Oakland and approved by Landlord, that at the time of completion of the Restoration, less than ten (10) years would remain in the Term.

(c) Conditions to Termination. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 9.4(a) above, Tenant shall do all of the following:

(i) Tenant in its election to terminate described in Section 9.4(a) shall provide Landlord with a statement of the cost of Restoration, and the amount by which the cost of Restoration plus the amount of any applicable policy deductible (subject to the limitations on the policy deductible for damage or destruction caused by earthquake or flood as set forth in Section 9.4(a)(i) above) exceeds insurance proceeds payable (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder), accompanied by supporting evidence reasonably acceptable to

Landlord, such as at least two (2) bids from experienced general contractors, and supporting documentation from Tenant's insurer as to the amount of the policy deductible, and the coverage available for the event of damage and destruction; and

(ii) Tenant shall pay or cause to be paid the following amounts from casualty insurance proceeds upon the later of making the election to terminate or promptly following receipt of such proceeds in the following order of priority:

(A) first, to Landlord (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the actual costs incurred for any work required to alleviate any threat to the public safety and welfare or damage to the environment, including without limitation, any demolition or hauling of rubble or debris;

(B) second, to each Non-Affiliate Mortgagee demanding payment thereof in accordance with its Non-Affiliate Mortgage and applicable Law (in order of lien priority and not pro rata), that portion of the remaining casualty insurance proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction in an amount not to exceed the aggregate amounts then owed to the Non-Affiliate Mortgagee and secured by all Non-Affiliate Mortgages under the loan documents therefor;

(C) third, to Landlord and Tenant in equal amounts until the outstanding balance of the Total Repayment Amount has been paid in full; and

(D) all remaining insurance proceeds to Landlord.

(d) Upon Termination. Tenant shall deliver possession of the Premises to Landlord and quitclaim to Landlord all right, title and interest in the Premises and any remaining Improvements.

(e) Landlord's Election Upon Notice of Termination. Notwithstanding the foregoing, if Tenant elects to terminate this Lease solely due to an Uninsured Casualty under circumstances permitted by Section 9.4(a) then Landlord may, upon such occurrence during the Term, by notice in writing given to Tenant within sixty (60) days after Tenant's Casualty Notice, elect any of the following: (i) terminate the Lease and accept the surrender of the Premises in their then-existing condition, or (ii) in the event of an Uninsured Casualty, continue the Lease in effect, and pay the amount by which the cost of Restoration (including the cost of any required code upgrades) will exceed the net available proceeds of any insurance payable under the policies of insurance that Tenant is required to carry under Article 14 hereof (or which would have been payable but for Tenant's default in its obligation to maintain such insurance) by more than One Million and No/100 Dollars (\$1,000,000), as Indexed annually plus the amount of any applicable policy deductible (except that in the case of damage or destruction caused by earthquake, the amount of the policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake damage under Tenant's property insurance policy maintained under Section 14.1(a)(ii) hereof as of the date of casualty, or the actual amount of the policy deductible) and require Tenant to Restore the Premises in accordance with Section 11.4(b). During the last ten (10) years of the Term, Landlord will not have the right to elect to

pay the incremental cost and cause Tenant to Restore unless Tenant agrees to do so, in its sole discretion.

9.8 Effect of Termination.

If Tenant elects to terminate the Lease under Section 9.4(a) above, and Landlord elects not to continue the Lease in effect if allowed under Section 9.4(d), then, on the date that Tenant shall have fully complied with all other provisions of Section 9.4(b) to the satisfaction of Landlord, this Lease shall terminate (except that, for purposes of payment of Rent, the effective date of termination shall be the date of the event of damage or destruction). Upon such termination, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination, subject to payment to Landlord of accrued and unpaid Rent (i.e. Rent payable on dates occurring on or prior to the date of termination), through the date of the event of damage or destruction; provided, however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination. In addition, termination of this Lease under this Article 9 shall not limit the right of a Mortgagee to a New Lease under Article 34 unless such Mortgagee has agreed otherwise. The rights of any Mortgagee hereunder, and any rights of Tenant or Landlord to receive insurance proceeds in accordance with the provisions of this Lease will survive the termination of this Lease. At Landlord's request following any termination, Tenant shall deliver to Landlord a duly executed and acknowledged quitclaim deed suitable for recordation and in form and content satisfactory to Landlord.

9.9 Distribution Upon Lease Termination. If Tenant is obligated to and fails to Restore the Improvements as provided herein and this Lease is terminated, all insurance proceeds held by Landlord, Tenant and, subject to Article 34, any Mortgagee, or not yet collected, shall be paid to and retained by Landlord; subject to the rights of any Mortgagee under a Mortgage to such insurance proceeds if approved by Landlord under Section 34.8.

9.10 Use of Insurance Proceeds.

(a) Restoration. Except in the event of termination of this Lease, all all-risk coverage insurance proceeds, earthquake and flood proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Landlord or Tenant by reason of damage to or destruction of any Improvements, if any (other than business or rental interruption insurance), must be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the contrary in this Section 9, and subject to the rights of any Mortgagee.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this Article 9, and if Tenant Restores the Improvements and there is a Mortgage encumbering the Lease, then any insurer paying compensation in excess of One Million and No/100 Dollars (\$1,000,000), as Indexed (or any lesser amount if required by any Mortgagee), under any all-risk or earthquake insurance policy required to be carried hereunder shall pay such proceeds to the Mortgagee that is the holder of any Mortgage which is the most senior lien against the Improvements or an insurance trustee reasonably acceptable to Landlord designated by such Mortgagee, for purposes of Restoration only. If there is no Mortgage encumbering the Lease, then the insurance proceeds shall be paid to a trustee (which shall be a bank or trust

company) designated by Landlord within twenty (20) days after written request by Tenant, having an office in Oakland. Unless agreed otherwise by the Parties, and subject to the requirements of any Mortgagee, the insurer shall pay insurance proceeds of One Million and No/100 Dollars (\$1,000,000) as Indexed or less directly to Tenant for purposes of Restoration in accordance with this Lease. If the funds are paid to a trustee in accordance herewith, the trustee shall hold all insurance proceeds in an interest-bearing federally insured account (with interest added to the proceeds). However, such trustee or Mortgagee shall pay to Tenant, from time to time as the work of rebuilding, Restoration and repair shall progress, in amounts designated by certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such repairs, rebuilding and Restoration. If there is no Mortgage encumbering the Lease and a trustee is holding the proceeds, the Landlord shall instruct the trustee to pay Tenant the cost of any emergency repairs necessitated by the event of damage or destruction in advance of the actual Restoration within thirty (30) days of such request. The trustee or Mortgagee, as the case may be, shall be required to make such payments upon satisfaction that the amount necessary to provide for Restoration or repair of any buildings and other Improvements destroyed or damaged, which may exceed the amount received upon such policies, has been provided by the insured for such purposes and its application for such purposes is assured. Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptly in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. Provided that no uncured Event of Default (or unmatured Event of Default) that has not been waived by Landlord shall exist on the date such damage is repaired, the Improvements shall have been Restored in accordance with the provisions of this Section 9 and all sums due under this Lease shall have then been paid in full, any excess of monies received from insurance remaining with the trustee or Mortgagee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant.

9.11 No Release of Tenant's Obligations. No damage to or destruction of the Premises or Improvements or any part thereof for fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided herein.

9.12 Benefit of Landlord. The requirements of this Article 9 are for the benefit only of Landlord, and no other Person shall have or acquire any claim against Landlord as a result of any failure of Landlord actually to undertake or complete any Restoration as provided in this Article 9 or to obtain the evidence, certifications and other documentation provided for herein.

9.13 Cooperation. Landlord shall cooperate with Tenant and act in a reasonable and expedited manner in connection with any Restoration by Tenant in connection with a Casualty Event, including, without limitation, an expedited review and response to all documents and requests submitted by Tenant in connection with the Restoration. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to Tenant's Restoration.

ARTICLE 10. CONDEMNATION [NOTE: SUBJECT TO FURTHER REVIEW]

10.1 Obligations of Tenant. If all or any part of any of the Premises shall be Condemned

by any governmental authority, other than Landlord: (a) each Party shall give the other Party notice thereof promptly after such Party receives actual notice of such Condemnation; (b) Tenant shall, at its sole cost and expense, whether or not condemnation or other similar proceeds, if any, shall be available to pay for the estimated or actual cost of repairs, alterations, restorations, replacement and rebuilding (the "Taking Cost"), proceed diligently to Restore the portions of the Premises that were not subject to a Condemnation in accordance with Article 10; and (c) Tenant shall deposit with a Depository such portion of the condemnation or other similar proceeds received by Tenant in connection with such Condemnation necessary to Restore the Premises; provided, however, that if at any time the Taking Cost exceeds the condemnation or similar proceeds actually deposited with the Depository, then Tenant shall either (i) also deposit with the Depository such cash as is sufficient to cover the difference between the Taking Cost and the condemnation or similar proceeds ("Additional Taking Cash"), or (ii) obtain payment or performance bonds in the full amount of the Additional Taking Cash to cover the payment and performance of the Restoration and naming Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees and in form reasonably satisfactory to Landlord (such bonds, together with such condemnation or similar proceeds and any interest earned thereon, and the Additional Taking Cash, the "Taking Restoration Funds"). Tenant shall be entitled to claim, prove and receive in any condemnation proceedings such awards or other compensation for any loss or diminution in or of Tenant Interest and other losses it incurs as a result of such Condemnation and Tenant's trade fixtures and equipment located on the Premises, as may be allowed by the governmental authority effectuating such Condemnation; provided, however, that if the governmental authority effectuating a Condemnation is not Landlord, then Tenant's claim may not frustrate or adversely impact Landlord's separate claims for compensation in connection with such Condemnation. If multiple claims with respect to such Condemnation are barred under applicable Law, the Parties shall reasonably cooperate in consolidating their separate claims.

10.2 Effect of a Condemnation on This Lease. In the event that the entire Premises are taken or so transferred, this Lease and all of Tenant's right, title and interest thereunder shall cease on the date title to such property so taken or transferred vests in the governmental authority effectuating the Condemnation. In the event of a Condemnation where only a portion of the Premises is taken or so transferred, on the earlier of the date title to the portion of the Premises vests in such governmental authority, or the date on which such governmental authority takes possession of the portion of the Premises, (a) this Lease shall terminate with respect to Landlord's and Tenant's future obligations hereunder with respect to the portion of the Premises so taken, and (b) the monthly Rent due hereunder from Tenant to Landlord for the remainder of the Term shall be equitably reduced from and after such Condemnation to the extent Tenant does not have full use of the Premises as a result of such Condemnation. Notwithstanding anything to the contrary herein, unless Landlord is the governmental authority effectuating a Condemnation, Landlord shall have no responsibility to pay to Tenant, and shall not be liable for, any condemnation or other similar proceeds claimed or sought by Tenant in connection with any Condemnation.

10.3 Rights of Landlord. In addition to the other remedies available to Landlord that are set forth elsewhere in this Lease, the following remedies shall be available to Landlord in the event of a Condemnation, unless Landlord is the governmental authority effectuating a Condemnation:

(a) Expiration or Termination of Lease Prior to Completion of Any Restoration. In any case where this Lease shall expire or be terminated prior to the completion of the Restoration, Tenant shall (i) promptly account to Landlord for all amounts spent in connection with any Restoration which was undertaken, (ii) immediately pay over or cause the Depository to pay over to Landlord the remainder, if any, of the Taking Restoration Funds received by Tenant or held by the Depository prior to such termination or cancellation, (iii) pay over or cause the Depository to pay over to Landlord, within five (5) Business Days after receipt thereof, any Taking Restoration Funds received by Tenant or the Depository subsequent to such termination or cancellation, and (iv) immediately pay over to Landlord any outstanding Additional Taking Cash that Tenant should have deposited with the Depository prior to such expiration or termination; and Substantial Condemnation. In the event of a Substantial Condemnation, Landlord may, by giving sixty (60) calendar days' prior notice to Tenant, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease, the Term shall immediately become forfeited and void. If Landlord does not exercise its termination rights pursuant to this Section 10.3(b), Tenant shall continue to use the remaining Premises in a manner consistent with the use immediately prior to the Substantial Condemnation or any other Permitted Use. For purposes of this Lease, the term "Substantial Condemnation" shall mean a Condemnation that directly affects seventy percent (70%) or more of the Premises.

Landlord's rights under this Section 10.3 shall survive the expiration or termination of this Lease.

10.4 Rights of Tenant. In addition to the other remedies available to Tenant that are set forth elsewhere in this Lease, the following remedies shall be available to Tenant in the event of a Condemnation:

(a) Condemnation Adversely Affecting the Premises. In the event of a Condemnation affecting only a portion of the Premises, leaving the remainder of the Premises in such location or in such form, shape or reduced size so as not to be effectively and practicably usable for its intended purpose in the good faith opinion of a third party expert reasonably satisfactory to Landlord and Tenant, Tenant may, by giving notice to Landlord within sixty (60) calendar days after the occurrence of such Condemnation, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease, the Term shall immediately become forfeited and void. Nothing herein shall be deemed to affect Tenant's right to seek an award in condemnation proceeding as provided in Section 10.1;

(b) Substantial Condemnation. In the event of a Substantial Condemnation, Tenant may, by giving sixty (60) calendar days' prior notice to Landlord, subject to the rights of the Mortgagee pursuant to Article 34 and the provisions set forth in Article 30, terminate this Lease. Upon such termination, this Lease shall cease, the Term shall immediately become forfeited and void. Nothing herein shall be deemed to affect Tenant's right to seek and award in any applicable condemnation proceeding as provided in Section 10.1;

Landlord's and Tenant's rights under this Section 10.4 shall survive the expiration or termination of this Lease.

10.5 Payment of Taking Restoration Funds to Tenant. Subject to the satisfaction by Tenant of all of the terms and conditions of this Article 10, the Depository shall pay to Tenant from time-to-time any Taking Restoration Funds, but not more than the amount actually collected by the Depository upon the Condemnation, together with any interest earned thereon, after reimbursing itself therefrom, as well as Landlord, to the extent, if any, of the reasonable expenses paid or incurred by the Depository and Landlord in the collection of such monies, to be utilized by Tenant solely for the Restoration, such payments to be made as follows:

(a) prior to commencing any Restoration, Tenant shall furnish to Landlord for its approval the estimated cost, estimated schedule and detailed plan for the completion of the Restoration, each prepared by an architect, engineer and contractor;

(b) the Taking Restoration Funds shall be paid to Tenant in installments as the Restoration progresses, subject to Section 10.5(c), based upon requisitions to be submitted by Tenant to the Depository and Landlord in compliance with Section 10.6, showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by Tenant; provided, however, that if any Encumbrance is tiled against the Premises or any part thereof in connection with the Restoration, Tenant shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged; provided further that notwithstanding the foregoing, but subject to the provisions of Section 10.5(c), the existence of any such Encumbrance shall not preclude Tenant from receiving any installment of Taking Restoration Funds so long as (i) such Encumbrance will be discharged with funds from such installment and at the time Tenant receives such installment Tenant delivers to Landlord and the Depository a release of such Encumbrance executed by the lienor and in recordable form, or (ii) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord;

(c) the amount of each installment to be paid to Tenant shall be the aggregate amount of Taking Costs theretofor incurred by Tenant minus the aggregate amount of Taking Restoration Funds theretofor paid to Tenant in connection therewith; provided, however, that all disbursements to Tenant shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depository is sufficient to complete the Restoration; and

(d) except as provided in Section 10.3, upon completion of and payment for the Restoration by Tenant, subject to the rights of any Mortgagee, the Depository shall pay the balance of the Taking Restoration Funds, if any, to Tenant; provided, however, that if the condemnation or other similar proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), Tenant shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 10.1(c).

10.6 Conditions of Payment. The following shall be conditions precedent to each payment made to Tenant as provided in Section 15.5:

(a) Tenant shall have furnished Landlord with estimates of costs and schedule and a detailed plan for the completion of the Restoration, as provided for in Section 10.5(a);

(b) at the time of making such payment, no Event of Default exists; and

(c) the Restoration shall be carried out in accordance with Article 10, and there shall be submitted to the Depository and Landlord the certificate of the applicable architect or engineer stating that (i) the materials and other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 10.5(c)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's lien or other Encumbrances have been claimed, except for any mechanic's lien for claims that (A) will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (provided that a release of such Encumbrance is delivered to the Depository in accordance with Section 10.5(b)), or (B) Tenant in good faith contests the Encumbrance and has provided the security reasonably adequate to Landlord, (ii) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (iii) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Taking Restoration Funds or has been made out of the Taking Restoration Funds received by Tenant, (iv) the sum then requested does not exceed the value of the services and materials described in the certificate, (v) the work relating to such requisition has been performed in accordance with this Lease, (vi) the balance of the Taking Restoration Funds held by the Depository or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion, and (vii) in the case of the final payment to Tenant, the Restoration has been completed in accordance with this Lease.

10.7 Payment and Performance Bonds. If Tenant obtains payment or performance bonds related to a Restoration (which Tenant may or may not obtain in its discretion), Tenant shall name Landlord, Tenant and the Mortgagee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to Landlord promptly upon obtaining them.

10.8 Benefit of Landlord. The requirements of this Article 10 are for the benefit only of Landlord, and no other Person shall have or acquire any claim against Landlord as a result of any failure of Landlord actually to undertake or complete any Restoration as provided in this Article 10 or to obtain the evidence, certifications and other documentation provided for herein.

10.9 Cooperation. Landlord shall cooperate with Tenant and act in a reasonable and expedited manner in connection with any Restoration by Tenant in connection with a Condemnation, including, without limitation, an expedited review and response to all Documents

and requests submitted by Tenant in connection with the Restoration. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to Tenant's Restoration and any restoration that may be occurring in other Landlord areas.

10.10 Waiver. Except as otherwise provided in this Article 10, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this Article 10, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such Section may from time to time be amended, replaced or restated.

10.11 Landlord's Power of Eminent Domain. Tenant acknowledges Landlord's power upon payment of just compensation to exercise its power of eminent domain as to the leasehold estate created hereunder; provided, however, that the foregoing acknowledgment shall not be deemed or construed to prejudice or waive any rights of Tenant to challenge or object to any attempt by Landlord so to exercise such power or to recover any damages as may be permitted by law resulting from the exercise of such power.

ARTICLE 11. LIENS

11.1 Liens.

Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge (or cause to be removed of record by the posting of a bond in the amount required by Law) at no cost to Landlord, any lien, security interest, or encumbrance on the Premises or Tenant's leasehold estate, other than (i) this Lease, other permitted Subleases and Permitted Title Exceptions, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants), except only for Impositions being contested as permitted by Section 4, (iii) Mortgages permitted under Section 34, (iv) Mortgages encumbering the subleasehold interests of Subtenants, provided no such Mortgage encumbers Tenant's leasehold estate unless such Mortgage is permitted under Section 34, (v) liens created by or on behalf of Landlord during the Term, and (vi) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Article 4. The provisions of this Section do not apply to liens created by Tenant on its Personal Property.

11.2 Mechanics' Liens.

Nothing in this Lease shall be deemed or construed in any way as constituting the request of Landlord, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant will take such action as may be required to prevent the enforcement of any mechanic's or similar liens against the Premises, Tenant's leasehold interest, or Landlord's fee interest in the Premises for or on the account of labor, services or materials furnished to Tenant, or at Tenant's request. Tenant shall provide such advance written notice of any Additional Construction such as shall allow Landlord from time to time to post a notice of

non-responsibility on the Premises. If Tenant does not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record, it shall be a material default under this Lease, and Landlord shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Landlord for such purpose and all reasonable expenses incurred by Landlord in connection therewith shall be payable to Landlord by Tenant within thirty (30) days following written demand by Landlord. Notwithstanding the foregoing, Tenant shall have the right to contest any such lien in good faith, if, within sixty (60) days following the imposition of such lien, Tenant, at no cost to Landlord, posts a bond in the statutory amount sufficient to remove such lien from record, or posts other security reasonably acceptable to Landlord.

ARTICLE 12. ASSIGNMENT AND SUBLETTING

12.1 Assignment and Transfer.

(a) Consent of Landlord. Except as otherwise expressly permitted in this Article 12, Tenant, its successors and permitted assigns shall not (i) suffer or permit any Significant Change to occur, or (ii) assign, sell, lien, encumber, sublease, or otherwise transfer all or any part of Tenant's interest in and to this Lease or leasehold either voluntarily or by operation of law (either or both (i) and (ii) above, a "Transfer"), without the prior written consent of Landlord as set forth herein and the satisfaction, or written waiver thereof by Landlord in its sole and absolute discretion, of all conditions precedent set forth in this Article 12. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no Transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Landlord of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of the Improvements that Landlord would have had, had there been no such Transfer. Without limiting the preceding provisions of this Section 12.1(a), it shall in any instance be reasonable for Landlord to withhold its consent to any Transfer proposed by Tenant (each, a "Proposed Transfer") to the extent that any such Proposed Transfer would serve to so deprive or limit Landlord with respect to its rights under this Lease.

(b) Total Transfer. Tenant shall not effect any Transfer of the entire Lease or leasehold (each an "Total Transfer"), including any Total Transfer by means of a Significant Change, without Landlord's prior written consent, which may be withheld, delayed or conditioned in Landlord's sole and absolute discretion. Notwithstanding the preceding sentence, Landlord shall not unreasonably withhold, delay or condition its consent to a Total Transfer if such Total Transfer is to a Prologis Entity and all conditions precedent set forth in Section 12.1(c) are satisfied or waived in writing by Landlord in its sole and absolute discretion.

(c) Partial Transfers. Tenant shall not effect any Transfer of less than the entire Lease or leasehold (each a "Partial Transfer"), including any Partial Transfer by means of a Significant Change, without Landlord's prior written consent, which shall not be unreasonably withheld, delayed or conditioned by Landlord if all conditions precedent set forth in Section 12.1(d) are satisfied or waived in writing by Landlord in its sole and absolute discretion.

(d) Conditions. Notwithstanding any provision herein to the contrary, any Transfer is subject to the satisfaction in full of all of the following conditions precedent and covenants of Tenant, or the written waiver thereof by Landlord in its sole and absolute discretion, each of which is hereby agreed to be reasonable as of the Commencement Date and the date of any Proposed Transfer:

(i) Tenant provides Landlord with at least sixty (60) days prior written notice of the Proposed Transfer;

(ii) Landlord determines, in its reasonable judgment, that the proposed transferee (A) has the financial capacity to own the Project and operate, use and maintain the Premises in accordance with the Lease and otherwise to perform all of Tenant's obligations under this Lease that are applicable to the interest in the Lease or leasehold that is the subject of the Transfer; (B) has a good reputation; and (C) has sufficient experience in the operation, use and maintenance of projects of a type and size comparable to the Project. In the case of a Partial Transfer, such qualifications of the proposed transferee shall be assessed with respect the portion of the Premises and applicable obligations under the Lease subsumed within the proposed Partial Transfer;

(iii) any proposed transferee; by instrument in writing (which may, at the election of Landlord in its sole and absolute discretion, constitute or include a separate lease agreement directly between Landlord and such proposed transferee), for itself and its successors and assigns, and expressly for the benefit of Landlord, must expressly assume all of the obligations of Tenant under this Lease and any other agreements or documents entered into by and between Landlord and Tenant relating to the Project, or the portion of the Premises that will be subsumed within the Proposed Transfer, and must agree to be subject to all of the covenants, conditions and restrictions to which Tenant is subject under such documents with respect to the Premises or portion thereof that will be subsumed within the Proposed Transfer;

(iv) all instruments and other legal documents involved in effecting the Transfer shall have been submitted by Tenant to Landlord for review, including the agreement and instruments of sale, assignment, transfer, or equivalent, any Regulatory Approvals(including, but not limited to, any necessary Regulatory Approvals under, or exemptions from, the Subdivision Map Act), and Landlord shall have approved such documents which approval shall not be unreasonably withheld, delayed or conditioned;

(v) Tenant shall comply with the provisions of Section 12.1(e) and, to the extent applicable in the event of a Partial Transfer to a Non-Affiliate Transferee, Section 12.1(f);

(vi) there shall be no uncured Event of Default or Unmatured Event of Default on the part of Tenant under this Lease uncured or any of the other documents or obligations to be assigned to the proposed transferee, or if uncured, Tenant or the proposed transferee have made provisions to cure the Event of Default, which provisions are satisfactory to Landlord in its sole and absolute discretion;

(vii) the proposed transferee has demonstrated to Landlord's reasonable satisfaction that the proposed transferee is subject to the jurisdiction of the courts of the State of California;

(viii) the Proposed Transfer is not in connection with any transaction for purposes of syndicating the Lease, such as a security, bond or certificates of participation financing as determined by Landlord in its sole and absolute discretion but expressly excluding the public trading of shares on the open market;

(ix) in the event of a Proposed Transfer that is proposed by Tenant to include any Subdivision of the Property or the Premises, with respect to such portion of the Premises subsumed within such Partial Assignment, Tenant, at its sole cost, shall have obtained all Regulatory Approvals required for such Subdivision, and such Subdivision also shall meet all of the following requirements:

(A) each legal parcel created by such Subdivision, and any remainder parcel, will be of sufficient size and configuration to adequately support and accommodate the Permitted Uses thereon in accordance with all applicable Laws and the Initial Improvements to be constructed thereon, including any and all related parking, landscaping, utilities and infrastructure;

(B) each legal parcel created by such Subdivision, and any remainder parcel, will retain legal and commercially sufficient access to an adjacent public street, utilities and all other infrastructure necessary or reasonably appropriate to service the Permitted Uses thereon;

(C) each legal parcel created by such Subdivision, and any remainder parcel, will be served by its own independent utilities and related metering devices; and

(D) each legal parcel created by such Subdivision, and any remainder parcel, will be made subject to such recorded cross-easements or conditions, covenants and restrictions (collectively, "CC&Rs") as may be reasonably necessary to assure the orderly development, use and operation of the Property and the Premises in accordance with this Lease and as are approved in advance in writing by Landlord, which approval shall not be unreasonably withheld, delayed or conditioned if such CC&Rs are consistent with the Subdivision and this Lease.

(x) Tenant deposits sufficient funds to reimburse Landlord for its reasonable legal expenses to review the Proposed Transfer pursuant to Section 12.1 (I); and

(xi) Tenant has delivered to Landlord such other information and documents relating to the proposed transferee's business, experience and finances as Landlord may reasonably request

(e) Delivery of Executed Assignment. No assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to Landlord, within thirty (30) days after Tenant entered into

such assignment, an executed counterpart of such assignment containing an agreement, in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on the assignor's part to be performed under this Lease and the other assigned documents to and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such transferee from such obligations or limit Landlord's rights or remedies under this Lease or under applicable Law). The form of such instrument of assignment shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, delayed or conditioned.

(f) No Release of Tenant's Liability or Waiver by Virtue of Consent. The consent by Landlord to any Transfer and any Transfer hereunder shall not, nor shall such consent or Transfer in any way be construed to, (i) relieve or release Tenant from any liability or obligation arising at any time out of or with regard to the performance of any covenants or obligations to be performed by Tenant at any time hereunder (except as set forth below in this Section 12.1(f)) or under the LDDA, or (ii) relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Landlord to any further Transfer.

In the event of a voluntary Partial Transfer of Tenant's interest in and to this Lease or leasehold (excluding any Partial Transfer by means of a Significant Change) to a Non-Affiliate Transferee, where such Partial Transfer has been approved by Landlord pursuant to Section 12.1(c) (and subject to Section 12.1(d)), Tenant shall be released from any obligation under this Lease first accruing after the date of such approved Partial Transfer, subject to the satisfaction in full of all of the following additional conditions precedent and covenants of Tenant (in addition to, and not in lieu of, those set forth in Section 12.1(d)), or the written waiver thereof by Landlord in its sole and absolute discretion, each of which is hereby agreed to be reasonable as of the Commencement Date and the date of any such proposed Partial Transfer:

(i) The construction of all Initial Improvements on the portion of the Premises to be subsumed within such Partial Transfer have been completed in accordance with Article 6 and a Certificate of Completion issued for such Initial Improvements;

(ii) The Permitted Use of the Premises by the Non-Affiliate Transferee will include the employment by the Non-Affiliate Transferee of employees at the Premises at a rate of more than one (1) full-time equivalent employee for every 750 square feet of Gross Building Area included within the portion of the Premises to be subsumed within such Partial Transfer;

(iii) The net worth of the Non-Affiliate Transfer shall be not less than _____ Dollars (\$ _____), as Indexed on each Anniversary Date of the Commencement Date; and

(iv) Tenant shall pay to Landlord an amount equal to five percent (5%) of the gross purchase price or other consideration paid or payable to Tenant by or on behalf of such Non-Affiliate Transferee in connection with such Partial Transfer.

(g) Notice of Significant Changes; Reports to Landlord. Tenant must promptly notify Landlord of any and all Significant Changes. At such time or times as Landlord may reasonably request, Tenant must furnish Landlord with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective interests in Tenant, and in the event any other Persons have a beneficial interest in Tenant, their names and the extent of such interest.

(h) Determination of Whether Consent is Required. At any time Tenant may submit a request to Landlord for the approval of the terms of proposed Transfer or for a decision by Landlord as to whether in its opinion a Proposed Transfer requires Landlord consent under the provisions of this Article 12. Within thirty (30) days after Tenant has made such a request and furnished to Landlord all documents and instruments with respect thereto as shall be reasonably requested by Landlord, Landlord shall notify Tenant in writing of Landlord's approval or disapproval of the Proposed Transfer or of Landlord's determination that the Proposed Transfer does not require Landlord's consent. If Landlord disapproves the Proposed Transfer, or determines that it requires the consent of Landlord, as applicable, it must specify in writing the grounds for its disapproval, its reason that consent is required, or both, as applicable.

(i) Scope of Prohibitions on Assignment. The prohibitions provided in this Section 12.1 will not be deemed to prevent (i) the granting of Subleases so long as such subletting is done in accordance with Section 14.4, (ii) the granting of any Mortgage expressly permitted by this Lease subject to compliance with Article 34 and other applicable terms of this Lease; or (iii) any Permitted Transfer, as defined in Section 12.3.

(j) Prohibition on Involuntary Transfers. Neither this Lease nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against Tenant, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of Law, and possession of the whole or any part of the Premises shall not be divested from Tenant in such proceedings or by any process of Law, without the prior written consent of Landlord. Tenant hereby expressly agrees that the validity of Tenant's liabilities as a principal hereunder shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against any transferee of any of the rights or remedies reserved to Landlord pursuant to this Lease or by relief of any Transferee from any of the Transferee's obligations under this Lease or otherwise by (a) the release or discharge of any Transferee in any creditors' proceedings, receivership, bankruptcy or other proceedings, (b) the impairment, limitation or modification of the liability of any Transferee, or the estate of any Transferee, in bankruptcy, or of any remedy for the enforcement of any assignee's liability under this Lease, resulting from the operation of any present or future provision of the National Bankruptcy Act or other statute or from the decision in any court; or (c) the rejection or disaffirmance of this Lease in any such proceedings.

(k) Effect of Prohibited Transfer. Any Transfer made in violation of the provisions of this Article 12 shall be null and void ab initio and of no force and effect. Notwithstanding anything herein to the contrary, if a Transfer occurs with or without Landlord's consent, Landlord may collect from such assignee, subtenant, occupant or reconstituted Tenant, any Rent under this Lease and apply the amount collected to the Rent, but such collection by

Landlord shall not be deemed a waiver of the provisions of this Lease, nor an acceptance of such assignee, subtenant, occupant or reconstituted Tenant, as Tenant of the Premises.

(l) Processing Fee. Tenant agrees that as a condition to Landlord's consideration of any request by Tenant for approval of a Proposed Transfer (other than a Sublease under Section 14.4) that Tenant shall deliver to Landlord a nonrefundable processing fee in an amount that Landlord in its discretion determines is necessary to cover the anticipated Landlord administrative costs and expenses, including labor, in processing, reviewing, investigating, and granting any approval of Tenant's request (including, but not limited, to any related Tenant request for Landlord's review of any related Subdivision); provided such fee shall not exceed \$ _____ as Indexed on each Anniversary Date of the Commencement Date, and further provided that in no event shall the adjusted fee be less than the theretofore existing fees.. Tenant agrees that unless and until said fee, and any request for such additional fee, is delivered to Landlord, Tenant shall be deemed to have made no request to Landlord to Transfer.

(m) Tenant as Party is Material Consideration to Lease. Tenant and Landlord acknowledge and agree that the rights retained by and granted to Landlord pursuant to this Article constitute a material part of the consideration for entering into this Lease and constitute a material and substantial inducement to Landlord to enter into this Lease at the rental, for the terms, and upon the other covenants and conditions contained in this Lease, and that the acceptability of Tenant, and of any Transferee of any right or interest in this Lease, involves the exercise of broad discretion by Landlord in promoting the development, leasing, occupancy and operation of the Premises and other purposes of this Lease. Therefore, Tenant agrees that Landlord may condition its consent, if required hereunder, to a Proposed Transfer or other assignment, subject to such provisions as are reasonable to protect the rights and interest of Landlord hereunder and to assure promotion of the purposes of this Lease. Tenant agrees that its personal business skills and philosophy were an important inducement to Landlord for entering into this Lease and that Landlord may reasonably object to the Transfer to a proposed Transferee, as applicable, whose proposed use, while permitted under Article 3, would involve a different quality, manner or type of business skills than that of Tenant, or which would result in the imposition upon Landlord of any new or additional requirements under the provisions of any Law, including any Law regarding disabled or handicapped persons, such as the Americans With Disabilities Act of 1990.

(n) Subleasing. Tenant shall have the right to Sublease the Premises in accordance with Section 12.4.

(o) Mortgaging of Leasehold. Tenant shall have the right to assign, encumber or transfer its interest in this Lease, with respect to such portion of the Premises containing such completed Initial Improvements, to a Mortgagee or other purchaser at a foreclosure sale under the provisions of a Mortgage, subject to the provisions of Article 34.

12.2 Assignment of Rents.

Tenant hereby assigns to Landlord all rents and other payments of any kind, due or to become due from any or present or future Subtenant as security for Tenant's obligation to pay Rent hereunder; provided, however, the foregoing assignment shall be subject and subordinate to

any assignment made to a Mortgagee under Article 34 until such time as Landlord has terminated this Lease (subject to Landlord's agreement to enter into a New Lease with Mortgagee and all other express provisions of this Lease protecting Mortgagee's interest in this Lease), at which time the rights of Landlord in all rents and other payments assigned pursuant to this Section 12.2 shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, Landlord shall, upon the request of each Mortgagee, execute a subordination agreement in form and substance reasonably satisfactory to such Mortgagee and to Landlord. Notwithstanding the foregoing, if this Lease terminates by reason of an Event of Default, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor shall promptly remit to Landlord the rents so collected (less the actual cost of collection) to the extent necessary to pay Landlord any Rent, including any and all Additional Rent, through the date of termination of this Lease. Such assignment shall be subject to the right of Tenant to collect such rents until the date of the happening of any Event of Default under the provisions of this Lease. Landlord shall apply any net amount collected by it from such Subtenants to the payment of Rent due under this Lease.

12.3 Permitted Transfers.

Notwithstanding the preceding provisions of this Article 12 or any other provision to the contrary in this Lease, and provided that the Transfer is done for a legitimate business purpose and not to deprive or compromise any rights of Landlord under this Lease, the following Transfers shall be permitted at any time hereunder without Landlord's consent (each, a "Permitted Transfer"):

- (A) Any Transfer to a Prologis Entity;
- (B) Transfers of partnership or membership interests in Tenant between Partners in Tenant, provided that such Transfers do not result in a Significant Change and further provided that so long as a Prologis Entity retains a Controlling interest in Tenant);
- (C) Any Transfer solely and directly resulting from the death or incapacity of an individual, and any Transfer for purposes of estate planning so long as the transferor remains in complete legal control of the transferred property;
- (D) Any Transfer that results in a mere change in identity or form rather than in ownership (for example, the Transfer by the partners of a general partnership to a limited liability company where the members hold all of the interests of the limited liability company in the same proportion as they previously held in the general partnership); or
- (E) Any Transfer of a limited partnership interest in Tenant.

Notwithstanding the preceding provisions of this Section 12.3, any Permitted Transfer shall comply with and remain subject to the provisions and requirements of Sections 12.1(d)(i), (iii), (v), (vi), (vii) and (viii) Section 14.1(e) and Sections 12.1(e), (f) and (g).

12.4 Subletting by Tenant.

(a) Subject to this Section 12.4, Tenant has the right to sublet all or any portion of the Premises to one or more Subtenants by written subleases from time to time without Landlord's consent. Notwithstanding the foregoing, if Tenant proposes a Sublease (other than a Sublease to an Affiliate) that is not pursuant to a bona fide arms-length transaction as reasonably determined by Landlord based upon information reasonably requested and obtained by Landlord (a "Restricted Sublease"), then such Restricted Sublease shall be subject to the Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, provided, however, that, without limitation, it shall be reasonable for Landlord to withhold its consent in any such event if such Restricted Sublease fails to meet any of the requirements set forth in this Section 12.4. Without limiting the preceding provisions of this paragraph, any Sublease shall:

(i) provide that it is subject to and subordinate in all respects to this Lease and the rights of Landlord hereunder, and that Subtenant shall comply with all obligations of Tenant under this Lease with respect to the Subleased Premises, including but not limited to the Community Benefits Program with respect thereto;

(ii) require Subtenant to use the portion of the Premises subject to the Sublease (the "Subleased Premises") only for the uses permitted under Article 3;

(iii) include a term that does not extend beyond the term of this Lease, unless Landlord approves such longer Sublease term in Landlord's sole and absolute discretion;

(iv) require Subtenant to indemnify Landlord for any loss or damage arising from Subtenant's use or occupancy of the Subleased Premises, which indemnity shall be in form reasonably acceptable to Landlord;

(v) require Subtenant to name Landlord as an additional insured on any liability insurance required to be carried under the Sublease, which liability insurance shall be in an amount not less than the amount of liability insurance required to be carried by Tenant under this Lease; and

(vi) if requested by Landlord, a provision subject to the prior rights of any Mortgagee, satisfactory to Landlord, requiring Subtenant at Landlord's option to attorn to Landlord if Tenant defaults under this Lease and if the Subtenant is notified of Tenant's default and instructed to make Subtenant's rental payments to Landlord.

Tenant shall provide Landlord with copies of any and all Subleases within ten (10) days after Landlord's request; provided, however, that the rental dollar amounts on such copies may be redacted by Tenant unless such copies are required to be provided by Tenant pursuant to Section 38.18 or 38.19.

12.5 Non-Disturbance of Subtenants, Attornment, Sublease Provisions.

(a) Conditions for Non-Disturbance Agreements. From time to time upon the request of Tenant, Landlord shall enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, Landlord will

not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between Landlord and such Subtenant ("Non-Disturbance Agreements"). All Non-Disturbance Agreements shall comply with the provisions of this Section 12.5(a) and of Section 12.5(b). Landlord shall provide a Non-Disturbance Agreement to a Subtenant if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease; (ii) the Sublease satisfies all the requirements set forth in Section 12.4; (iii) the Sublease contains provisions whereby the Subtenant agrees to comply with all provisions of this Lease applicable to the Sublease, the subleased Premises and Subtenant's use and occupancy thereof; (iv) the Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant shall attorn to Landlord (provided Landlord agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease), and the Sublease shall be deemed a direct lease or license agreement between the Subtenant and Landlord, except that Landlord shall not be liable to the Subtenant for any security deposit or prepaid rent or license fees previously paid by such Subtenant to Tenant unless such deposits are transferred to Landlord, except for rent or license fees for the current month, if previously paid; (v), if Tenant is then in default of any of its obligations under this Lease, Landlord may condition its agreement to provide a Non Disturbance Agreement on the cure of such defaults as Landlord may specify either in a notice of default given under Section 18.1 or in a notice conditionally approving Tenant's request for such Non Disturbance Agreement (and if an Event of Default or Unmatured Event of Default on the part of Tenant then exists, then Landlord may withhold or condition the giving of a Non Disturbance Agreement), and (vi) the Subtenant shall have delivered to Landlord an executed estoppel certificate, in form and substance reasonably satisfactory to Landlord, certifying: (A) that the Sublease, including all amendments, is attached thereto and is unmodified, except for such attached amendments, and is in full force and effect, as so amended, or if such Sublease is not in full force and effect, so stating, (B) the dates, if any, to which any rent and other sums payable thereunder have been paid, (C) that the Subtenant is not aware of any defaults which have not been cured, except as to defaults specified in said certificate, and (D) such other matters as Landlord may reasonably request. Landlord shall not be required to enter into a Non Disturbance Agreement with respect to any period beyond the scheduled expiration of the Term, unless Landlord approves such longer period in its sole and absolute discretion. Landlord shall respond to any request for a Non Disturbance Agreement within twenty (20) days after receipt of a true and complete copy of the relevant Sublease in the form to be executed, and all relevant information requested by Landlord. Such relevant information shall include reasonable financial information establishing the ability of the proposed Subtenant to perform its contemplated obligations under such Sublease, and relevant information concerning the business character and reputation of the proposed Subtenant. Landlord agrees to cooperate, to the extent it is legally permitted to do so, in protecting the confidentiality of personal or financial information relating to any Subtenant. Nothing in this Section 12.5 shall preclude Landlord in its sole and absolute discretion from granting non-disturbance to other Subtenants.

(b) Form of Non-Disturbance Agreement. Each Non Disturbance Agreement shall be in form and substance reasonably satisfactory to Landlord. With each request for a Non Disturbance Agreement, Tenant shall submit a copy of the form, showing any requested interlineations or deletions, and Landlord shall approve or disapprove of the requested changes

within twenty (20) days after receipt of such changes (such approval not to be unreasonably withheld or conditioned). Any disapproval by Landlord shall be in writing, and shall set forth the specific reasons for Landlord's disapproval. Failure by Landlord to approve or disapprove of specific interlineations, deletions or other modifications requested by a Subtenant within such twenty (20) day period shall be deemed to be approval of the requested changes (subject to Section 43.1).

ARTICLE 13. INDEMNIFICATION OF LANDLORD

13.1 Indemnification of Landlord.

Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or Landlord's interest therein, in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to or death of Persons or loss or damage to property occurring immediately adjacent to the Premises which is caused directly or indirectly by Tenant or its Agents; (iii) any use, possession, occupation, operation, maintenance, or management of the Premises or any part thereof by Tenant or any of its Agents, Invitees, or Subtenants; (iv) any use, possession, occupation, operation, maintenance, management or condition of property immediately adjacent to the Premises by Tenant or any of its Agents; (v) any latent, design, construction or structural defect relating to the Initial Improvements located on the Premises and any Additional Improvements constructed by or on behalf of Tenant, and any other matters relating to the condition of the Premises caused by Tenant or any of its Agents, Invitees, or Subtenants; (vi) any failure on the part of Tenant or its Agents or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, rules or regulations, or permits in connection with use or occupancy of the Premises, including but not limited to Article 15; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents, Invitees or Subtenants; and (viii) any other legal actions or suits initiated by any user or occupant of the Premises. If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

13.2 Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 13.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter and provided further that, in the event it is later determined that the claim made falls

outside the scope of the indemnity provisions of this Agreement, Landlord shall reimburse Tenant for Tenant's reasonable attorneys fees and other costs incurred in defending such claim.

13.3 Not Limited by Insurance.

The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under Section 13.1 or any other indemnification provision of this Lease.

13.4 Survival.

Tenant's obligations under this Article 13 and any other indemnity in this Lease shall survive the expiration or sooner termination of this Lease as to occurrences prior to such termination.

13.5 Other Obligations.

The agreements to Indemnify set forth in Article 13 and elsewhere in this Lease are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to Landlord in this Lease, at common law or otherwise.

13.6 Defense.

Tenant shall be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases in which any Indemnified Party has been named as a defendant, Landlord shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, however, in Landlord's reasonable judgment, within a reasonable time (but not less than fifteen (15) days following notice from Landlord alleging such failure) to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, Landlord shall have the right promptly to use the Oakland City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise, or settlement, which reasonable expense shall be due and payable to Landlord ten (10) business days after receipt by Tenant of an invoice therefor.

13.7 Release of Claims Against Landlord.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the Premises for any cause arising at any time, including, without limitation, all claims arising from the joint or concurrent negligence of Landlord or the other Indemnified Parties, but excluding any gross negligence or willful misconduct of the Indemnified Parties and further excluding any claims for which Landlord has otherwise agreed to indemnify Tenant under the LDDA.

**ARTICLE 14. INSURANCE.[NOTE: CONFORM FOR CONSISTENCY
WITH LLDA INSURANCE REQUIREMENTS AND CONFIRMATION
WITH CITY AND DEVELOPER RISK MANAGEMENT]**

14.1 Property and Liability Coverage.

(a) Required Types and Amounts of Insurance. Tenant shall, at no cost to Landlord, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this Section 14.1(a)), the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times prior to Completion of the Initial Improvements, and during any period of Additional Construction, Tenant shall maintain, on a form reasonably approved by Landlord, builders' risk insurance in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, against all risk, "special form," or "difference in conditions" hazards including earthquake (subject to the provisions of Section 17.1(b)(ii)), but excluding flood coverage including as additional insureds Landlord, Tenant and Tenant's contractors and subcontractors with any deductible not to exceed One Hundred Thousand and No/100 Dollars (\$100,000) (except as to earthquake insurance); provided, however, that as to earthquake insurance a separate sublimit of the insurance required under this Section 14.1(a)(i) and the insurance required under Section 17.1(a)(vii) may be required in order to comply with the requirements of Section 17.1(b)(iii).

(ii) Property Insurance; Earthquake and Mold Insurance. Upon Substantial Completion of the Initial Improvements, and upon Substantial Completion of Additional Construction of any Additional Improvements, Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 ("Causes of Loss - Special Form" (or its replacement), in an amount not less than one hundred percent (100%) of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, pilings, excavations and footings on that portion of the Premises) with any deductible not to exceed One Hundred Thousand and No/100 Dollars (\$100,000). Notwithstanding the foregoing, Tenant shall only be required to carry earthquake insurance if required by the senior Mortgagee and, if so required, in such amounts and with such deductibles and on such other terms as are required by such Mortgagee. Further notwithstanding the foregoing, Tenant shall only be required to carry mold insurance to the extent and with such deductible amount as is available at commercially reasonable rates. In addition to the foregoing, Tenant may insure its Personal Property in such amounts as Tenant deems appropriate; and Landlord shall have no interest in the proceeds of such Personal Property insurance, and the proceeds of such insurance shall not be subject to the provisions of Section 11.7.

(iii) Commercial General Liability Insurance. Tenant shall maintain "Commercial General Liability" insurance policies with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily

injury (including death), property damage, personal injury and advertising injury occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto located on the Premises or any part of the Premises, such insurance to afford protection in an amount not less than Ten Million Dollars (\$10,000,000) per occurrence and annual aggregate covering bodily injury and broad form property damage including contractual liability (which includes coverage for the benefit of Landlord as additional insured against claims described in Section 16.1(i)), independent contractors, explosion, collapse, underground (XCU), and products and completed operations coverage. Products and completed operations coverage may be subject to a limited term of not less than ten (10) years following completion of the products or operations covered thereby.

(iv) Workers' Compensation Insurance. Only if Tenant has any employees, Worker's Compensation insurance as required by the laws of the State of California to insure employers against liability for compensation under the California Workers' Compensation Law, or any law thereafter enacted as a amendment or supplement thereto or in lieu thereof, such workers' compensation to cover all persons employed by Tenant in connection with the Premises and the improvements thereon and to cover full liability for compensation under any such law aforesaid, based upon the death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Premises, Improvements thereon, or the operation of the Project.

(v) Boiler and Machinery Insurance. Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment or such other coverage as Landlord may approve, which approval shall not unreasonably be withheld.

(vi) Business Automobile Insurance. Tenant shall maintain policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used by Tenant and its agents in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than Two Million And No/100 Dollars (\$2,000,000) per accident.

(vii) Business Interruption Insurance. After Completion of the Initial Improvements, Tenant shall maintain business interruption or rental value insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Sections 17.1(a), (ii) and (y). The amount of the insurance shall be not less than the aggregate of all reasonably calculated fixed operating expenses, debt service, and projected Rent. Such insurance is on an Actual Loss Sustained Basis, with a 365 day extended period of indemnity beyond the time reasonably necessary to repair or rebuild the Improvements. The amount of such insurance shall be calculated from the date of Completion and shall be adjusted from time to time thereafter.

(viii) Other Insurance. Tenant shall obtain such other insurance, excluding any professional liability (errors or omissions) or environmental insurance, as is

reasonably requested by City's Risk Manager and is customary with respect to projects similar in nature and scope to the Project.

(b) General Requirements. All insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best B+XIV or better (or a comparable successor rating) and legally authorized to sell such insurance within the State of California; provided that insurance provided through a blanket program managed by an institutional investor may include layers of coverage provided by less qualified insurers if doing so would be in conformance with prudent management practices.

(ii) As to property insurance shall name the Landlord as loss payee as its interest may appear, and as to both property and liability insurance shall name as additional insureds the following: "THE CITY OF OAKLAND, AND ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."

(iii) Shall be evaluated by Landlord and Tenant for adequacy not less frequently than every five (5) years from the date of Completion of the Initial Improvements. Following consultation with Tenant, Landlord may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice for comparable properties in the San Francisco-San Jose- Oakland area or in other large urban cities or counties around the country to carry insurance for facilities similar to the Premises in amounts substantially greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises. Upon application by Tenant, if the City's Risk Manager determines that insurance limits required under this Section may be decreased in light of such commercial practice and the risks associated with use of the Premises, Landlord shall notify Tenant of such determination, and Tenant shall have the right to decrease the insurance coverage required under this Lease accordingly. In such event, Tenant shall promptly deliver to Landlord a certificate evidencing such new insurance amounts.

(iv) Shall provide that no cancellation, modification, termination or nonrenewal of such insurance for any reason shall be effective until at least thirty (30) days after mailing or otherwise sending written notice of such cancellation, modification or termination to Landlord (or not less than ten (10) days after such notice in the event of nonpayment of premiums);

(v) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to any additional insured, with respect to claims insured by such policy, and that insurance applies separately to each insured against whom claim is made or suit is brought;

(vi) May be carried as part of a blanket policy maintained by Tenant or an Affiliate of Tenant or any of Tenant's constituent members or Affiliates of such members

subject to Landlord's approval of the amount of coverage, which approval shall not unreasonably be withheld;

(vii) Shall be subject to the approval of Landlord, which approval shall be limited to whether or not such insurance meets the terms of this Lease;

(viii) If any of the insurance required hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously without lapse for a period of two (2) years; and

(ix) Shall for property insurance only, provide (if an endorsement to such effect is available at a commercially reasonable cost) that all losses payable under all such policies that are payable to Landlord shall be payable notwithstanding any act or negligence of Tenant in compliance with the terms of the insurance policy.

(c) Certificates of Insurance; Right of Landlord to Maintain Insurance. Tenant shall furnish Landlord certificates with respect to the policies required under this Section, and provide evidence of payment of premiums, within thirty (30) days after the Commencement Date. If at any time Tenant fails to maintain the insurance required pursuant to Section 17.1, or fails to deliver certificates as required pursuant to this Section, then, upon five (5) business days' written notice to Tenant, Landlord may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Landlord. Within ten (10) business days following demand, Tenant shall reimburse Landlord for all amounts so paid by Landlord, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) Insurance of Others. If Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies include Tenant and Landlord as additional insureds, as their respective interests may appear.

14.2 Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 17.1(a)(i), (ii) or (y) to the extent that such loss is reimbursed by an insurer. Notwithstanding anything to the contrary contained herein, to the extent of insurance proceeds received with respect to the loss, Tenant and Landlord each hereby waives any right of recovery against the other Party for any loss or damage to the Improvements, the Premises, the contents of same or any operation therein, whether or not such loss is caused by the fault or negligence of such other Party. With the exception of workers' compensation insurance, Landlord and Tenant shall each obtain from their respective insurers under all policies of fire, theft, commercial general liability, builder's risk and other insurance maintained by either of them at any time during the Term insuring or covering the Improvements, the Premises or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of one Party might have against the other Party. Tenant acknowledges that Landlord is currently self-insured so

Landlord, for itself, waives any rights of recovery that would have been waived pursuant to this paragraph had Landlord been fully insured.

ARTICLE 15. HAZARDOUS MATERIALS.

15.1 Hazardous Materials Compliance.

(a) Compliance with Hazardous Materials Laws.

[NOTE: HAZARDOUS MATERIALS COMPLIANCE PROVISIONS IN GROUND LEASE STILL UNDER REVIEW BY PARTIES AND MUST BE CONFORMED FOR CONSISTENCY WITH FINAL AGREED-UPON VERSION IN CONNECTON WITH LDDA.]

Tenant shall comply and cause (i) its Agents, (ii) all Persons under any Sublease, (iii) to the extent reasonably controllable by Tenant, all Invitees or other Persons entering upon the Premises, and (iv) the Premises and the Improvements, to comply with all applicable Hazardous Materials Laws, including, without limitation, any deed restrictions, deed notices, soils management plans or certification reports required in connection with the Remedial Action Plan or the Risk Management Plan, including any modifications or amendments to either the Remedial Action Plan or the Risk Management Plan. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Landlord, which may be given or withheld in Landlord's sole and absolute discretion, Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, except for (A) standard building materials and equipment, including, without limitation construction, landscaping and maintenance materials and equipment, that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials the Handling of which do not require a permit or license from, or that need not be reported to, a governmental agency, and which are used in compliance with all applicable laws, (D) janitorial or office supplies or materials in such limited amounts as are customarily used for general maintenance or office purposes so long as such Handling is at all times in full compliance with all Environmental Laws, and (E) pre-existing Hazardous Materials that are required by applicable Law, the Remedial Action Plan or the Risk Management Plan to be Handled for Remediation purposes. Tenant shall have no obligation to remediate or manage Hazardous Materials subsurface conditions that existed as of issuance of the Certificate of Completion for Hazardous Materials Remediation for the Premises or that may migrate onto the Premises following issuance of such Certificate of Completion;, provided, however, Tenant shall be required to comply and cause (i) its Agents, (ii) all Persons under any Sublease, (iii) to the extent reasonably controllable by Tenant, all Invitees or other Persons entering upon the Premises, and (iv) the Premise and Improvements to comply with: (A) the Remediation Action Plan; (B) the Risk Management Plan, including, without limitation the following requirements: (1) long-term groundwater monitoring to monitor the concentrations of volatile organic compounds in groundwater; (2) post-construction maintenance activities to be completed in a manner consistent with the Risk Management Plan; (3) restriction of groundwater for all uses including but not limited to, drinking, irrigation, and industrial uses; and (4) written disclosure of environmental

conditions on the Premises to potential lessees in accordance with the deed restriction for the Premises and (C) the PPA.

(b) Notice. Except for Hazardous Materials permitted by Subsection 17.1(a) above, Tenant shall advise Landlord in writing promptly (but in any event within five (5) business days) upon learning or receiving notice of (i) the presence of any newly discovered Hazardous Materials on, under or about the Premises during or after implementation of the Remedial Action Plan or the Risk Management Plan ("new subsurface environmental condition"), (ii) any action taken by Tenant in response to any (A) new subsurface environmental condition or (B) Hazardous Materials Claims, (iii) any Release of Hazardous Materials at the Premises caused by Hazardous Materials Handling activities at the Premises ("new Release"), and (iv) Tenant's discovery of the presence of new Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform Landlord orally as soon as possible of any emergency or non-emergency regarding any new subsurface environmental condition or new Release. In addition, Tenant shall provide Landlord with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communication, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Section 15) and all communication with any Person relating to Hazardous Materials Claims (other than privileged communications); provided, however, such non-disclosure of such privileged communication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including without limitation, this Section 15).

(c) Landlord's Approval of Remediation. Except as required by law or to cost-effectively contain and clean up a new Release or to respond to an emergency, Tenant shall not undertake any subsurface Remediation in response to any new subsurface environmental condition or new Release unless Tenant follows the cleanup protocols for such subsurface conditions set forth in the approved Remedial Action Plan or Risk Management Plan. If Tenant proposes modifications to the Remedial Action Plan or Risk Management Plan to remediate the new subsurface environmental condition or the new Release, Tenant shall have first submitted to Landlord for Landlord's approval, which approval shall not be unreasonably withheld or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. Landlord shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, but in any event within thirty (30) days after receipt thereof. If Landlord disapproves of any such Hazardous Materials Remediation plan, Landlord shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (x) in compliance with all applicable Hazardous Materials Laws, (y) to cleanup levels set forth in the approved Remedial Action Plan and/or Risk Management Plan, and (z) in accordance with any applicable orders and directives of the RWQCB and the Alameda County Department of Public Health or any other regulatory agency that asserts jurisdiction over the Premises.

15.2 Hazardous Materials Indemnity.

Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to (A) any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, whether by Tenant, its Agents, invitees or any Subtenants (other than Landlord and its Agents and Invitees); (B) any failure by Tenant, its Agents, Invitees or Subtenants (other than Landlord and its Agents and Invitees) to comply with applicable Hazardous Materials Laws, or with the Mitigation Measures; or (C) any failure by Tenant to comply with the obligations contained in Section 17.1. Notwithstanding the foregoing, in no event shall Tenant have any indemnity obligations hereunder with respect to Losses arising from or related in any way to any use, Handling, production, transportation, disposal, storage or Release of Hazardous Materials located in, on or under the Premises as of the Commencement Date of this Lease (and any increase in the concentrations thereof which may occur after the Commencement Date) except to the extent Handling or Remediation of such pre-existing Hazardous Materials is required by the approved Remedial Action Plan and/or Risk Management Plan, as the same may be amended from time to time. Further notwithstanding the foregoing, the foregoing indemnity shall not apply to any and all Losses to the extent arising out of the negligence or willful misconduct of Landlord, City or their respective agents or employees. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to Landlord hereunder and shall be due and payable from time to time immediately upon Landlord's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (a) discovery of any such Hazardous Materials on, under or about the Premises, or (b) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

ARTICLE 16. DELAY DUE TO FORCE MAJEURE

16.1 Delay Due to Force Majeure.

For all purposes of this Lease, a Party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure shall not be considered in breach of or in default in its obligations hereunder to the extent of any delay resulting from Force Majeure, provided, however, that the provisions of this Section 16.1 shall not apply to Tenant's obligation to pay Rent, including Additional Rent. A Party seeking an extension of time pursuant to the provisions of this Section 16.1 shall give notice to the other Party describing with reasonable particularity (to the extent known) the facts and circumstances constituting Force Majeure within (a) a reasonable time (but not more than thirty (30) days unless the other Party's rights are not prejudiced by such delinquent notice) after the date that the claiming party has actual knowledge of the scope and magnitude of the applicable Force Majeure event or (b) promptly after the other Party's demand for performance.

ARTICLE 17. LANDLORD'S RIGHT TO PERFORM TENANT'S
COVENANTS

17.1 Landlord May Perform in Emergency.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an imminent danger to public health or safety, as reasonably determined by Landlord, Landlord may at its sole and absolute option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, Landlord first gives Tenant such notice and opportunity to take corrective action as is reasonable under the circumstances. Nothing in this Section shall be deemed to limit Landlord's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of Landlord constitutes a Condemnation or an impairment of Tenant's contract with Landlord.

17.2 Landlord May Perform Following Tenant's Failure to Perform.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Landlord (other than any Imposition, with respect to which the provisions of Section 4.3 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following written notice from Landlord for a period of thirty (30) days (or, if Section 16.1(c) is applicable, which failure continues for five (5) business days after written notice from Landlord), and is not the subject of a contest under Section 4.3, then, Landlord may, at its sole and absolute option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant. Notwithstanding the foregoing, however, if within such period Tenant gives notice to Landlord that such failure is due to delay caused by Force Majeure, or is the subject of a contest under Section 4.3, or that cure of such failure cannot reasonably be completed within such period, then Landlord will not pay such sum or perform such obligation during the continuation of such contest or such Force Majeure delay or extended cure period, as the case may be, for so long thereafter as Tenant continues diligently to prosecute such contest or cure or the resolution of such event of Force Majeure.

17.3 Tenant's Obligation to Reimburse Landlord.

If pursuant to the provisions of Sections 16.1(c), 21.1, or 21.2, Landlord pays any sum or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Landlord within ten (10) business days following demand, as Additional Rent, the sum so paid, or the reasonable expense incurred by Landlord in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of Landlord's demand until payment is made. Landlord's rights

under this Article 17 shall be in addition to its rights under any other provision of this Lease or under applicable laws.

ARTICLE 18. EVENTS OF DEFAULT; TERMINATION

18.1 Events of Default.

The occurrence of any one or more of the following events shall constitute an "Event of Default" under the terms of this Lease; provided, however, that an Event of Default solely with respect to any Partial Transferred Premises shall not, taken alone, be deemed an Event of Default with respect to any other portion of the Premises:

(a) Tenant fails to pay any Rent to Landlord when due, which failure continues for ten (10) days following written notice from Landlord (it being understood and agreed that the notice required to be given by Landlord under this Section 18.1(a) shall also constitute the notice required under Section 1161 of the California Code of Civil Procedures or its successor, and shall satisfy the requirements that notice be given pursuant to such Section) provided, however, Landlord shall not be required to give such notice on more than three occasions during any Lease year, and failure to pay any Rent for the remainder of such Lease Year when due shall be an immediate Event of Default for the remainder of such Lease Year without need for further notice;

(b) An Event of Default (as defined in the LDDA) on the part of Tenant as Developer, occurs under the LDDA (so long as it is in effect) with respect to Developer's development, construction, use or occupancy of the Premises, but such Event of Default under this Lease shall be deemed cured if the Event of Default as defined in the LDDA is cured pursuant thereto;

(c) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred twenty (120) days;

(d) A writ of execution is levied on the leasehold estate which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred twenty (120) days;

(e) Tenant makes a general assignment for the benefit of its creditors;

(f) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from Landlord;

(g) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from Landlord, or, if such cure cannot be reasonably completed within such five

(5) business day period, if Tenant does not within such five (5) business day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(h) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation Measures) at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Landlord specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(i) Tenant suffers or permits an assignment of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease or sublets all or any portion of the Premises or improvements in violation of this Lease; or

18.2 Special Provisions Concerning Mortgagees and Events of Default.

Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage shall not, in and of itself, constitute a default under this Lease.

18.3 Special Cure Rights.

In the case of any notice of default given by the Landlord to Tenant, Landlord shall deliver to all Investors (as "Investor" is defined below) a copy thereof concurrently with delivery to Tenant, and Investors shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary so long as Investor commences cure within such thirty (30) day period and diligently proceeds to completion) after the later to occur of (i) the expiration of such cure period or (ii) the date that Landlord has served such notice of default on Tenant, and Landlord shall accept such performance by or at the instance of the Investor as if the same had been made by Tenant. For purposes hereof, "Investor" shall mean any entity which is not an Affiliate of a Partner in Developer who acquires a limited partnership interest in Tenant or a membership interest or partnership interest in a Partner of Tenant, and whose name and address for notices is delivered by Tenant to Landlord thirty (30) days prior to the occurrence of the Event of Default. Landlord's failure to give such notice to an Investor shall not be deemed to constitute a default on the part of Landlord under this Lease, but no such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been given to all Investors.

ARTICLE 19. REMEDIES

19.1 Landlord's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of Landlord following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by law or the terms of this Lease), Landlord shall have all rights and remedies provided in this Lease or available at law or equity. All of Landlord's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable law, the exercise of any one or more rights shall not preclude the exercise of any others. In the instance of an Event of Default solely with respect to any Partial Transferred Premises, Landlord's remedies hereunder shall apply solely with respect to such Partial Transferred Premises.

19.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, Landlord may continue this Lease in full force and effect, as permitted by California Civil Code Section 1951.4 (or any successor provisions). Specifically, Landlord has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). In the event Landlord elects this remedy, Landlord shall have the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Landlord's rights, including the right to collect Rent, including any and all Additional Rent, when and as such sums become due, even though Tenant has breached this Lease and is no longer in possession of the Premises or actively managing or operating the Premises. If Tenant abandons the Premises in violation of this Lease, Landlord may (i) enter the Premises and relet the Premises, or any part thereof, to third Persons for Tenant's account without notice to Tenant, Tenant hereby waiving rights, if any, to any such notice under any applicable Law, and (ii) alter, install or modify the Improvements or any portion thereof. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of Restoration and of repairing, securing, servicing, maintaining and preserving the Premises or the Improvements, or any portion thereof. Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease, provided Tenant's obligations shall in no event extend beyond the Term.

(b) No Termination. No act by Landlord allowed by this Section 19.2, nor any appointment of a receiver upon Landlord's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If Landlord elects to relet the Premises as provided hereinabove in Section 21.2(a), the rent that Landlord receives from reletting shall be applied to the payment of

(i) First, all costs incurred by Landlord in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of repairing, securing and maintaining the Premises or any portion thereof;

(ii) Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to Landlord, in addition to or other than Rent due from Tenant;

(iii) Third, Rent, including any and all Additional Rent, due and unpaid under this Lease;

(iv) After deducting the payments referred to in this Section 21.2(c), any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied to monthly installments of Rent as such amounts become due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance which Landlord incurred in reletting, remain after applying the rent received from the reletting as provided in Section 21.2(c)(ii), Tenant shall pay to Landlord, upon demand, in addition to the remaining Rent or other amounts due, all such costs.

(d) Payment of Rent. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the rent Landlord has received from any reletting which exceeds all costs and expenses of Landlord incurred in connection with Tenant's default and the reletting of all or any portion of the Premises.

19.3 Right to Terminate Lease.

(a) Damages. Landlord may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Landlord's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by Landlord other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, Landlord shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following:

(i) The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease;

(ii) The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom; and

(v) "The worth at the time of the award", as used in Section 21.3(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of the award", as used in Section 21.3(a)(iii), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event Landlord terminates Tenant's right to possession of the Premises pursuant to this Section 19.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Assign or Sublet. Upon the occurrence of an Event of Default, notwithstanding Article 12, Tenant shall have no right to sublet or assign its interest in the Premises or this Lease without Landlord's written consent, which may be given or withheld in Landlord's sole and absolute discretion, subject to the rights of Mortgagees as set forth in Article 34.

19.4 Continuation of Subleases and Other Agreements.

Subject to the terms of any Non-Disturbance Agreements entered into by Landlord in accordance with Section 11.4 hereof, Landlord shall have the right, at its sole and absolute option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises. Tenant hereby further covenants that, upon request of Landlord following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to Landlord such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in Landlord the then existing Subleases and other agreements then in force, as above specified.

ARTICLE 20. EQUITABLE RELIEF

20.1 Landlord's Equitable Relief

In addition to the other remedies provided in this Lease, Landlord shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Landlord shall be entitled to any other equitable relief that may be appropriate to the circumstances of such Event of Default.

20.2 Tenant's Equitable Relief

In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after a default or threatened default by Landlord to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Tenant shall be entitled to any other equitable relief (excepting termination of this Lease) that may be appropriate to the circumstances of such Event of Default.

ARTICLE 21. NO WAIVER

21.1 No Waiver by Landlord or Tenant.

No failure by Landlord or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

21.2 No Accord or Satisfaction.

No submission by Tenant or acceptance by Landlord of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of Landlord's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Landlord had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Landlord. Landlord may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Landlord to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

ARTICLE 22. DEFAULT BY LANDLORD; TENANT'S REMEDIES

22.1 Default by Landlord; Tenant's Exclusive Remedies.

Landlord shall be deemed to be in default hereunder only if Landlord shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, (iii) if such default cannot reasonably be cured within such thirty (30)-day period, Landlord shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default. Upon the occurrence of default by Landlord described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder, Tenant shall have the exclusive right (a) to offset or deduct only from the Rent becoming due hereunder, the amount of all actual damages incurred by Tenant as a direct result of Landlord's default, but only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease (provided that, at any time after the Total Repayment Amount has been fully paid, Tenant may bring an action for damages subject to the limitations set forth in Sections 25.1 and 25.2), or except for a default under Section 38.15, (b) to seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Landlord or its Agents in excess of that permitted pursuant to Section 25.1 or in violation of Section 25.2; provided, however, (i) in no event shall Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder or to otherwise recover or obtain from Landlord or its Agents any damages (including, without limitation, any consequential, incidental, punitive or other damages proximately arising out of a default by Landlord hereunder) or Losses other than Tenant's actual damages as described in the foregoing clause (a); (ii) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a default by Landlord hereunder; and (iii) Tenant shall have no remedy of self-help.

ARTICLE 23. TENANT'S RECOURSE AGAINST LANDLORD

23.1 No Recourse Beyond Value of Property Except as Specified.

Tenant agrees that, except for offsets against Rent set forth in Section 24 and except as otherwise specified in this Section 23.1 and except for a default under Section 38.15, Tenant's recourse against Landlord and Landlord's liability with respect to any monetary obligation of Landlord under this Lease, or any monetary claim based upon this Lease, shall not exceed an amount equal to the fair market value of Landlord's fee interest in the Premises (as encumbered by this Lease) at the time such claim is made. By Tenant's execution and delivery hereof and as part of the consideration for Landlord's obligations hereunder, Tenant expressly waives all such monetary liability in excess of the aforementioned amounts.

23.2 No Recourse Against Specified Persons.

No commissioner, officer or employee of Landlord or City will be personally liable to Tenant, or any successor in interest, for any Event of Default by Landlord, and Tenant agrees that it will have no recourse with respect to any obligation of Landlord under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

ARTICLE 24. LIMITATIONS ON LIABILITY

24.1 Waiver of Consequential Damages.

As a material part of the consideration for this Lease, and notwithstanding any provision herein to the contrary, neither party shall be liable for, and each party hereby waives any claims against the other for any consequential damages arising out of any such party's default hereunder.

24.2 Limitation on Liability Upon Transfer.

In the event of any Transfer of Landlord's or Tenant's interest in and to the Premises, Landlord or Tenant, as the case may be, subject to the provisions hereof, (and in case of any subsequent transfers, the then transferor) will automatically be relieved from and after the date of such Transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Landlord or Tenant, as the case may be (or such transferor, as the case may be), but not from liability incurred by Landlord or Tenant, as the case may be (or such transferor, as the case may be) on account of covenants or obligations to be performed by Landlord or Tenant, as the case may be (or such transferor, as the case may be) hereunder before the date of such Transfer; provided, however, that Landlord or Tenant, as the case may be (or such subsequent transferor) has transferred to the transferee any funds in Landlord's or Tenant's possession (or in the possession of such subsequent transferor) in which Landlord or Tenant (or such subsequent transferor) has an interest, in trust, for application pursuant to the provisions hereof, and such transferee has assumed all liability for all such funds so received by such transferee from Landlord or Tenant as the case may be (or such subsequent transferor).

24.3 No Recourse Against Specified Persons.

No shareholder, board member, officer, employee, limited partner or member of Tenant or of any partner or member of Tenant will be personally liable to Landlord or any successor in interest of Landlord for any Event of Default of Tenant, and Landlord agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due to Landlord or any successor or for any obligation or claim based upon this Lease, against any such Person.

24.4 No Landlord Liability. Except to the extent of the gross negligence or willful misconduct of Landlord, or Landlord's Representatives, and subject to Tenant's indemnification obligations, Landlord shall not be liable or responsible in any way for:

(a) Any loss or damage whatsoever to any property belonging to Tenant or to its representatives or to any other person who may be in or upon the Premises; or

(b) Any loss, damage or injury, whether direct or indirect, to persons or property resulting from any failure, however caused, in the supply of utilities, services or facilities provided or repairs made to the Premises under any of the provisions of this Lease or otherwise.

24.5 No Liability for Actions of ORA. Neither Landlord nor Landlord's Representatives shall have any liability or responsibility for any actions taken at any time by ORA or for any losses whatsoever, whether direct or indirect, resulting from the passage, implementation or enforcement of AB 26 by any governmental agency or official.

ARTICLE 25: ESTOPPEL CERTIFICATES BY TENANT

25.1 Estoppel Certificate by Tenant.

Tenant shall execute, acknowledge and deliver to Landlord (or at Landlord's request, to a prospective purchaser or mortgagee of Landlord's interest in the Property), within fifteen (15) business days after a request, a certificate stating to the best of Tenant's knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Landlord. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by any Landlord, any successor agency, and any prospective purchaser or mortgagee of the Premises or any part of Landlord's interest therein. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into each retail Sublease) to cause retail Subtenants under retail Subleases to execute, acknowledge and deliver to Landlord, within ten (10) business days after request, an estoppel certificate covering the matters described in clauses (a), (b), (c) and (d) above with respect to such retail Sublease.

ARTICLE 26. ESTOPPEL CERTIFICATES BY LANDLORD

26.1 Estoppel Certificate by Landlord.

Landlord shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective transferee of

Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate stating to the best of Landlord's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of Landlord, there are then existing any defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to Landlord, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, Landlord shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Landlord that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant, any successor, and any prospective subtenant, mortgagee or transferee of Tenant's interest in this Lease.

ARTICLE 27. APPROVALS BY LANDLORD

27.1. Approvals by Landlord.

Landlord represents to Tenant that the Landlord's City Administrator or his or her designee, is authorized to execute on behalf of Landlord any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Landlord hereunder, if the City Administrator determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in Landlord's best interests. The Landlord City Administrator's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by Landlord of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Landlord, the City Administrator, or his or her designee, shall be authorized to execute such instrument on behalf of Landlord, except as otherwise provided by applicable law, including the City's Charter, or the express language of this Lease.

27.2 Fees for Review.

Within thirty (30) days after Landlord's written request, Tenant shall pay Landlord, as Additional Rent, Landlord's reasonable costs, including, without limitation, Attorneys' Fees and Costs (and including fees and reasonable costs of the City Attorney) incurred in connection with the review, investigation, processing, documentation and/or approval of any Proposed Transfer or Sublease, Mortgage, estoppel certificate, Non-disturbance Agreement and Additional Constmction. Tenant shall pay such reasonable costs regardless of whether or not Landlord consents to such proposal, except only in any instance where Landlord has wrongfully withheld, delayed or conditioned its consent in violation of this Lease.

ARTICLE 28. NO MERGER OF TITLE

28.1 No Merger of Title.

There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the leasehold estate or any interest in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all Persons having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

ARTICLE 29. QUIET ENJOYMENT

29.1 Quiet Enjoyment.

Subject to the Permitted Title Exceptions, the terms and conditions of this Lease and applicable Laws, Landlord agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under Landlord. Notwithstanding the foregoing, Landlord shall have no liability to Tenant in the event any defect exists in the title of Landlord as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to Landlord's willful misconduct) and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect shall be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

ARTICLE 30. SURRENDER OF PREMISES

30.1 End of Lease Term.

(a) Condition of Premises. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender to Landlord the Premises in good order and condition, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder and subject to Articles 7, 9 and 10. The Premises shall be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto subject to Section 30.1(c) and in compliance with Section 30.1(d). Tenant hereby agrees to execute all documents as Landlord may deem necessary to evidence or confirm any such other termination.

(b) Subleases. Upon any termination of this Lease, Landlord shall have the right to terminate all Subleases hereunder except for those Subleases with respect to which Landlord has entered into Non-Disturbance Agreements as provided in Section 14.4, or which Landlord has agreed to assume pursuant to Section 21.4.

(c) Personal Property. Upon expiration or termination of this Lease, Tenant and all Subtenants shall have the right to remove their respective trade fixtures and other personal property. At Landlord's request, Tenant shall remove, at no cost to Landlord, any

Personal Property belonging to Tenant which then remains on the Premises (excluding any personal property owned by Subtenants or other Persons). If the removal of such Personal Property causes damage to the Premises, Tenant shall repair such damage, at no cost to Landlord.

(d) Compliance with Laws. Subject to Articles 9 and 10, Tenant shall surrender the Premises in compliance with all Laws, and free of all Encumbrances created, incurred, assumed or suffered to exist by Tenant or any Person claiming through it (including any Subtenant) other than Permitted Title Exceptions and other Encumbrances approved by Landlord in writing, and in at least a condition which is sufficient to support the following (collectively, the "Minimum Condition"):

(i) Operational capability to handle the same types of services which have been provided within the Premises for the prior 5 Lease Years.

(ii) The following criteria shall be taken into account and considered relevant in determining whether the Minimum Condition has been met at the time of the surrender: (1) the main civil and structural works shall not exhibit any excessive signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification when originally installed, however, Landlord acknowledges that normal wear and tear of such improvements according to their age shall be permissible; (2) limited life and "wear and tear" components of the Improvements have been replaced by Tenant prior to the surrender date in accordance with good industry practice as and when they failed, wore out, or reached their design life or customary replacement frequency, as part of ongoing maintenance activities, however, Landlord acknowledges that such Improvements, may otherwise be turned over with normal wear and tear; and (3) major electrical and mechanical components or equipment shall be in good operating condition, normal wear and tear excepted.

(e) Quitclaim of Regulatory Approvals. Upon the expiration or termination of this Lease, Tenant shall quitclaim and assign to Landlord or Landlord's designee, in such form and substance reasonably satisfactory to Landlord, all of Tenant's rights, title and interest in and to the Regulatory Approvals and all applications and supporting materials relating to such Regulatory Approvals, subject to any rights, title and interest therein of third parties that are Non-Affiliates of Tenant.

ARTICLE 31. HOLD OVER

31.1 No Right to Hold Over.

Tenant shall have no right to remain in possession of all or any part of the Premises after the Termination Date of this Lease. Tenant shall have no right to holdover and no tenancy shall be created by implication or law. However, if Tenant fails to vacate and surrender possession of the Premises on or prior to the Termination Date, Tenant shall pay Landlord two hundred percent (200%) of the higher of monthly rent immediately theretofore payable plus other rents prevailing at the date of such holding over for each month after the Termination Date or then comparable monthly rents for similar projects from the date of hold-over, in any case, always subject to all rents being increased at the sole discretion of Landlord at any time during the holding over

period and upon notice to Tenant. Landlord's receipt and acceptance of such monthly Rent as adjusted in this Section 30.1 shall not be construed as Landlord's consent to any holding over by Tenant. Tenant hereby agrees to indemnify and hold harmless Landlord from and against any and all Claims incurred by Landlord as a result of Tenant remaining in possession of all or any part of the Premises after the Termination Date. Tenant shall not interpose any counterclaim in any summary or other proceeding based on holding over by Tenant. Except as provided in this Section 30.1, all other terms and conditions of this Lease shall apply during any period of holding over by Tenant without Landlord's express written consent, in its sole and absolute discretion.

31.2 No Right to Relocation Assistance. It is understood and agreed that nothing contained in this Lease shall give Tenant any right to relocation assistance or payment from Landlord upon expiration or termination of the Term or upon the termination of any holdover tenancy by any means whatsoever. Tenant acknowledges and agrees that upon such expiration or termination, it shall not be entitled to, and expressly hereby waives, any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) or any other applicable Law with respect to any relocation of its business or activities.

31.3 Transition. During the last Lease Year of the Term, Tenant shall, without compensation, reasonably cooperate with Landlord and any proposed subsequent master lessee, tenant, assignee, licensee or the like to the Premises identified by Landlord to ensure the orderly transition of the Premises upon the Termination Date, including, without limitation, providing tours to, participating in transition meetings with, and providing relevant non-confidential information to Landlord or such subsequent party upon the reasonable request of Landlord.

ARTICLE 32. NOTICES

32.1 Notices.

All notices, demands, consents, and requests that may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on the date that is three days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Landlord: City of Oakland
City Hall
1 Frank H. Ogawa Plaza, 3rd. Fl.
Oakland, CA 94612
Attention: City Administrator
Reference: Oakland Army Base
Facsimile: _____
Telephone: _____
Email: _____

with a copy to: Office of the City Attorney
Attn: _____
City Hall
One Frank H. Ogawa Plaza-6th Fl.
Oakland, CA 94612
Reference: Oakland Army Base
Facsimile: _____
Telephone: _____
Email: _____

To Tenant: [ENTITY TO BE IDENTIFIED BY PROLOGIS/CCIG]

Attn: _____
Facsimile: _____
Telephone: _____
Email: _____

with a copy to:

Attn: _____
Facsimile: _____
Telephone: _____
Email: _____

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof For convenience of the Parties, copies of notices may also be given by telefacsimile to the facsimile number set forth above or such other number as may be provided from time to time by notice given in the manner required hereunder; however, neither Party may give official or binding notice by telefacsimile.

32.2 Form and Effect of Notice.

Every notice given to a Party or other Person under this Section must state (or shall be accompanied by a cover letter that states):

(a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto; and

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 32.2.

ARTICLE 33. INSPECTION OF PREMISES BY LANDLORD

33.1 Entry.

Subject to the rights of Subtenants, Tenant shall permit Landlord and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that Landlord may have a right to perform under Article 17 and/or (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as Landlord reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions. Nothing herein shall imply any duty upon the part of Landlord to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Landlord any obligation, or liability, for the care, supervision or repair of the Premises, provided, however, Landlord shall use reasonable efforts to minimize interference with the activities and tenancies of Tenant, Subtenants and their respective Invitees. If Landlord elects to perform work on the Premises pursuant to Section 19, Landlord shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except to the extent caused solely by the gross negligence or willful misconduct of Landlord, its agents or employees, provided Landlord uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.

33.2 Exhibit for Lease.

Subject to the rights of Subtenants, Tenant shall permit Landlord and its Agents to enter the Premises during regular business hours upon reasonable prior notice (i) to exhibit the same in a reasonable manner in connection with any sale, transfer or other conveyance of Landlord's interest in the Premises, and (ii) provided that Tenant has not exercised its right of first offer pursuant to Article 40, during the last eighteen (18) months of the Term, for the purpose of leasing the Premises.

33.3 Notice, Right to Accompany.

Landlord agrees to give Tenant reasonable prior notice of Landlord's entering on the Premises except in an emergency for the purposes set forth in Sections 37.1 and 37.2. Such notice shall be not less than twenty-four (24) hours oral notice. Tenant shall have the right to have a representative of Tenant accompany Landlord or its Agents on any entry into the

Premises. Notwithstanding the foregoing, no notice shall be required for Landlord's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in Sections 34.1 and 34.2.

33.4 Rights of Subtenants.

Tenant agrees to use commercially reasonable efforts (including efforts to obtain the agreement of each Subtenant (other than Landlord) to the inclusion of a provision similar to this Section 33.4 in its Sublease) to require each Subtenant to permit Landlord to enter its premises for the purposes specified in this Section 33. If Tenant is unable to obtain such agreement after commercially reasonable efforts, Tenant shall use commercially reasonable efforts to include a right of entry for Landlord upon terms customary for comparable leases in the Central District Redevelopment Project Area.

ARTICLE 34. MORTGAGES

34.1 No Mortgage Except as Set Forth Herein.

(a) Restrictions on Financing. Except as expressly permitted in this Section 34, Tenant shall not:

(i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease; or

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrances other than as permitted by Section 13.1.

(b) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Land in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Mortgagee of Tenant.

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this Section 34 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

34.2 Leasehold Liens.

(a) Tenant's Right to Mortgage Leasehold. Subject to the terms and conditions of Article 34, at any time during the Term following Completion of Initial Improvements, and provided that no Event of Default or Unmatured Event of Default then exists, Tenant shall have the right to assign, mortgage or encumber Tenant's leasehold estate created by this Lease, solely with respect to such portion of the Premises containing such completed Initial

Improvements, by way of leasehold mortgages, deeds of trust or other security instruments of any kind to the extent permitted hereby.

(b) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder.

(c) Limitation of Number of Leasehold Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees (other than notice rights, which shall apply to all Mortgagees that have given Landlord the notice required under Section 34.9(b)) shall only apply to the most senior Mortgagee, unless such Mortgagee elects not to exercise its rights thereunder in which event such rights will apply to the next most senior Mortgagee.

34.3 Notice of Liens.

Tenant shall notify Landlord promptly of any lien or encumbrance other than the Permitted Title Exceptions of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

34.4 Limitation of Mortgages. In addition to the limitations set forth elsewhere in this Article 34, the limitations set forth in this Section 34.4 shall apply to all Mortgages.

(a) Limitations. A Mortgage may be made only for the purpose of financing the construction of the Initial Improvements, refinancing completed Initial Improvements, any permanent take-out financing (subject to the limitations herein with respect to construction financing for the Initial Improvements), acquisition financing by a transferee of Tenant's interest in this Lease (subject to the provisions of Article 12), and the refinancing of permitted Mortgages. With respect to any issuance of corporate debt or other securitized financings, Tenant shall not be permitted to create any structure that would create an obligation or security of Landlord. In addition, Tenant's right to enter into a Mortgage shall be subject to the following limitations:

(i) The total amount of the debt encumbering Tenant's interest with respect to any financing for the construction of the Initial Improvements shall not exceed the actual costs of such construction;

(ii) The total amount of the debt encumbering Tenant's leasehold shall not exceed ninety percent (90%) of the sum of the appraised value of such leasehold plus the value of any additional security, guaranty or credit enhancement provided by Tenant, as determined by the proposed Leasehold Mortgagee;

(iii) The interest rate under such Mortgage shall not exceed the then-prevailing market rate for similar mortgages;

(iv) With respect to any financing for the construction of the Initial Improvements, such financing shall not permit Tenant to draw or receive any advances or proceeds of such financing for any purpose other than payment of legitimate third party costs for such construction (including design costs) and any interest or tax reserves mandated by the Mortgagee as a condition to such financing, and Tenant shall not use any such advances or proceeds for any other purpose whatsoever;

(v) Tenant has received the prior written confirmation from Landlord that each such Mortgage is in compliance with this Section 34.4;

(vi) a Mortgage may not cover any property of, or secure any debt issued or guaranteed by, any Person other than Tenant for the purpose described in Section 34.4(a);

(vii) no Person other than a Bona Fide Institutional Lender shall be entitled to the benefits and protections accorded to a Mortgagee in this Lease;

(viii) no Mortgage or other instrument purporting to mortgage, pledge, encumber or create an Encumbrance on or against any or all of the interest of Tenant shall extend to or affect the fee simple interest in the Premises, Landlord's interest hereunder or its reversionary interest and estate in and to the Premises or any part thereof, or adversely affect the rights or increase the liabilities or obligations of Landlord except to the extent set forth in this Lease;

(ix) Landlord shall have no liability whatsoever for payment of the principal sum secured by any Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder;

(x) Landlord shall have no obligation to any Mortgagee except as expressly as set forth in this Lease and only with respect to such Mortgagee that has provided Landlord with written notice of its Mortgage;

(xi) each Mortgage shall provide that if an event of default under the Mortgage has occurred and is continuing and the Mortgagee gives notice of such event of default to Tenant, then the Mortgagee shall give concurrent notice of such default to Landlord;

(xii) subject to the terms of this Lease and except as specified herein, all rights acquired by a Mortgagee under any Mortgage shall be subject and subordinate to all of the provisions of this Lease and to all of the rights of Landlord hereunder;

(xiii) notwithstanding any enforcement of the security of any Mortgage, Tenant shall remain liable to Landlord for the payment of all sums owing to Landlord under this Lease and the performance and observance of all of Tenant's covenants and obligations under this Lease;

(xiv) a Mortgagee shall not, by virtue of its Mortgage, acquire any greater rights or interest in or to the Premises than Tenant has at any applicable time under this

Lease, other than such rights or interest as may be granted or acquired in accordance with this Article 34; and

(xv) prior to the effective date of a Mortgage, each Mortgagee, Landlord and Tenant shall enter into a consent agreement in a form acceptable to all parties if required by Mortgagees, whereby all parties consent to the assignment of such Mortgage by the Mortgagees to an agent for the Mortgagees in connection with the financing of the Mortgage; provided that such consent agreement shall be in a customary form, include the exact rights and protections provided to the Mortgagees in this Lease, acknowledge that Tenant shall remain liable to Landlord for the payment of all sums owing to Landlord under this Lease and the performance and observance of all of Tenant's covenants and obligations under this Lease and provide that the Mortgagees shall promptly cause to be recorded in the County Recorder's Office of Alameda County a reconveyance and release of the Mortgage upon the end of its term.

(b) Statement. Landlord agrees within thirty (30) days after request by Tenant to give to any holder or proposed holder of a Mortgage a statement in recordable form as to whether such Mortgage is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Landlord from asserting, against either Tenant or such prospective Mortgagee, that such Mortgage (if done in the way described in the statement) is not permitted hereunder, but shall create no liability on Landlord, and shall conclusively establish that such Mortgage is permitted hereunder and does not constitute a default by Tenant. In making a request for such statement, Tenant shall furnish Landlord true, accurate and complete copies of such of the financing documents as are required reasonably by Landlord to permit Landlord to make the determination whether such Mortgage is permitted hereby. In no event, however, shall any failure by Tenant or other party to comply with the terms of any Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

34.5 Interest Covered by Mortgage.

A Mortgage may attach to any or all of the following interests in the Premises: (i) Tenant's leasehold interest in the Premises created hereby and Tenant's interest in the Improvements or some portion thereof granted hereunder, (ii) Tenant's interest in any permitted Subleases thereon, (iii) any Personal Property of Tenant, (iv) rents, products and proceeds of the foregoing, and (v) any other rights and interests of Tenant arising under this Lease. As provided in Section 34.1(b) no Mortgage may encumber Landlord's interest in or under this Lease or Landlord's fee simple interest in the Property or Landlord's personal and other property in, on or around the Property.

34.6 Qualified Lender.

A Mortgage may be given only to (i) a Bona Fide Institutional Lender or (ii) any other lender that shall have been approved in advance by Landlord in writing in Landlord's sole and absolute discretion, subject to Landlord's receipt of substantial and adequate evidence providing Landlord with information on the structure, financial capacity, and experience of such other lender. In any instances in which Landlord's consent is so required, Landlord shall be deemed to

have approved such other lender if the written notice from Tenant of the identity of such other lender specifies that no notification of disapproval within sixty (60) days after the receipt of such written notice constitutes approval, and Landlord sends no notification of disapproval within ten (10) days after written notice from Tenant to Landlord, notifying Landlord of the expiration of such 60 day period..

34.7 Rights Subject to Lease.

(a) Subject to Lease. Except as otherwise expressly provided herein, all rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder. None of such covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Mortgage, except as expressly provided in this Lease or otherwise specifically waived by Landlord in writing.

(b) Construction and Restoration Obligations. Notwithstanding any provision of this Lease to the contrary, no Mortgagee (including any such Mortgagee who obtains title to the leasehold or any part thereof as a result of foreclosure proceedings or action in lieu thereof) shall be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements unless expressly assuming such obligation under Section 34.10(c). Any other Person who thereafter obtains title to the leasehold or any interest therein from or through such Mortgagee, or any other purchaser at foreclosure sale (other than a Mortgagee), shall be required to Restore in accordance with the requirements of this Lease. Whether or not a Mortgagee elects to Restore, nothing in this Lease shall be construed to permit any such Mortgagee to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or authorized herein. If Mortgagee obtains title to the leasehold and chooses not to complete or Restore the Improvements, it shall so notify Landlord in writing of its election within ninety (90) days following its acquisition of the tenancy interest in this Lease and shall use commercially reasonable efforts sell its tenancy interest to a purchaser that shall be obligated to Restore the Improvements to the extent this Lease obligates the Tenant to so Restore. Mortgagee shall use good faith efforts to cause such sale to occur within six (6) months following the Mortgagee's written notice to Landlord of its election not to Restore, provided that any such purchaser shall be subject to Landlord's reasonable prior written approval, which approval shall not be unreasonably withheld so long as such purchaser provides evidence satisfactory to Landlord in its reasonable discretion showing that such purchaser possesses the qualifications, experience and financial capacity to Restore in accordance with the requirements of this Lease. In the event Mortgagee agrees to Restore the Improvements, all such work shall be performed in accordance with all the requirements set forth in this Lease, and Mortgagee must submit evidence reasonably satisfactory to Landlord that it has the qualifications, experience and financial responsibility necessary to perform such obligations.

34.8 Required Provisions of any Mortgage.

Tenant agrees to have any Mortgage provide: (a) that the Mortgagee shall by registered or certified mail give written notice to Landlord of the occurrence of any event of default as defined under the Mortgage; (b) that Landlord shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and

condemnation awards shall be consistent with the provisions of this Lease, unless Landlord may agree otherwise in its sole and absolute discretion.

34.9 Notices to Mortgagee.

(a) Copies of Notices. Landlord shall give a copy of each notice Landlord gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of Landlord's consent to an assignment of any interest in this Lease or to a Significant Change, to any Mortgagee that has given to Landlord written notice substantially in the form provided in Subsection (b). Copies of such notices shall be given to Mortgagees at the same time as notices are given to Tenant by Landlord, addressed to such Mortgagee at the address last furnished to Landlord. Landlord shall acknowledge in writing its receipt of the name and address of a Mortgagee so delivered to Landlord. Landlord's failure to give such notice to a Mortgagee shall not be deemed to constitute a default by Landlord under this Lease, but no such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Any such notices to Mortgagee shall be given in the same manner as provided in Section 32.1.

(b) Notice From Mortgagee to Landlord. The Mortgagee under any Mortgage shall be entitled to receive notices from time to time given to Tenant by Landlord under this Lease in accordance with Subsection (a) above provided such Mortgagee shall have delivered a notice to Landlord in substantially the following form:

"The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City of Oakland, as Landlord, and _____ (as Tenant (the "Lease")), of Tenant's interest in the Lease demising the parcels, a legal description of which is attached hereto as Exhibit and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to Tenant by Landlord be sent to the undersigned at the following address:
_____."

34.10 Mortgagee's Right to Cure.

If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. Each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay the Rents due hereunder, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease; provided, however, that no such action shall constitute an assumption by such Mortgagee of the obligations

of Tenant under this Lease. Each Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Tenant. In the case of any notice of default given by Landlord to Tenant, the Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary so long as Mortgagee commences cure within such thirty (30) day period and diligently proceeds to completion) after the later to occur of (i) the expiration of such cure period, or (ii) the date that Landlord has served such notice of default upon Mortgagee, and Landlord shall accept such performance by or at the instance of the Mortgagee as if the same had been made by Tenant. The time in which Mortgagee may cure is herein called the "Mortgagee Cure Period."

(b) Foreclosure. Anything contained in this Lease to the contrary notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, Landlord shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to each Mortgagee, a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver if Mortgagee deems it advisable), or (y) notified Landlord of its intention to institute foreclosure proceedings (or to commence actions to obtain possession of the Premises through appointment of a receiver or otherwise) or otherwise acquire Tenant's interest under the Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings or Force Majeure. The period from the date Mortgagee so notifies Landlord until a Mortgagee acquires and succeeds to the interest of Tenant under this Lease or some other party acquires such interest through Foreclosure is herein called the "Foreclosure Period." A Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee to the extent not cured prior to Foreclosure. The foregoing provisions of this Subsection (b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue Foreclosure after the defaults or Events of Default hereunder referred to shall have been cured (and the Landlord shall accept such cure or performance of such obligation by any party, including Tenant); (ii) nothing herein contained shall preclude Landlord, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) such Mortgagee shall agree with Landlord in writing to comply during the Foreclosure Period with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such Mortgagee (except to the extent related to Hazardous Materials or Restoration), including but not limited to the payment of all sums due and owing hereunder (except for monetary obligations related to Hazardous Materials or Restoration) and the use restrictions set forth in Section 3.1. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (iii) of the preceding sentence, Mortgagee shall have the right at any time to notify Landlord that it has relinquished possession of the Premises or that it will not institute Foreclosure or, if such

Foreclosure has commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Landlord, and, thereupon, Landlord shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease unless such Event of Default has been cured. Upon any such termination, the provisions of this Section 34.10(b) shall apply. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (i) have fully cured any Event of Default due to a default in the payment of money, except for monetary obligations related to Restoration or Hazardous Materials (ii) continue to pay currently such monetary obligations as and when the same become due, and (iii) perform all other obligations of Tenant under this Lease to the extent that they are susceptible of being performed by Mortgagee.

(c) Construction.

(i) Subject to Section 34.7(b), if a default of Tenant occurs following any damage or destruction but prior to Restoration of the Improvements, Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Mortgagee expressly assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to Restore, in the manner provided in this Lease, the Improvements on the Premises or the part thereof to which the lien or title of such Mortgagee relates, and submitted evidence satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligation.

(ii) Upon assuming Tenant's obligations to Restore in accordance with Subsection (c)(i) above, Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date of Tenant stopped work on the Restoration to the date of such assumption plus an additional one hundred twenty (120) days.

(d) New Lease. in the event of the termination of this Lease before the expiration of the Term, including, without limitation, the termination of this Lease by the Landlord on account of an Event of Default or the rejection of this Lease by a trustee of Tenant in bankruptcy or by Tenant as a debtor-in-possession, except (i) by Total Condemnation, or (ii) as the result of damage or destruction as provided in Section 12, Landlord shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The Mortgagee shall thereupon have the option to obtain a new Lease and in the event the LDDA is still in effect, the assignment of Tenant's rights and obligations thereunder, in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, Landlord shall enter into a new lease of the Premises with the most senior Mortgagee giving notice within such period or its designee, provided that the Mortgagee assumes Tenant's obligations as Sublandlord under any Subleases then in effect (unless Landlord entered into such Sublease in violation of (f) below) to the extent such assumption is necessary in order to continue such Subleases in effect; and

(ii) Such new Lease, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (except for any requirements or conditions which Tenant has satisfied prior to the termination). Such new lease shall have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. Such new Lease shall require the Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease that would, at the time of the execution of the new lease, be due under this Lease if this Lease had not been terminated and to perform as soon as reasonably practicable and any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee other than obligations of Tenant with respect to construction of the Initial Improvements, which obligations shall be performed by Mortgagee in accordance with Section ___, or with respect to Restoration, shall be performed by Mortgagee in accordance with Section 34.10(c). Upon the execution of such new Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable Attorneys' Fees and Costs incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such new Lease. The provisions of this Section 34.10(d) shall survive any termination of this Lease (except as otherwise expressly set out in the first sentence of Section 34.10(d)), and shall constitute a separate agreement by the Landlord for the benefit of and enforceable by the Mortgagee.

(iii) Simultaneously with the execution and delivery of the new lease, the Landlord shall confirm and acknowledge that Mortgagee has title to the Improvements for the term of the new lease by such means as is customary or may be reasonably required by a reputable title insurance company to insure the leasehold estate created by the new lease; provided, however, that Landlord shall have no responsibility for exceptions to title or title defects that affected title to the Improvements on or after the Commencement Date of this Lease except to the extent created by the actions of City or Landlord.

(e) Nominee. Any rights of a Mortgagee under this Section 34.10 may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee; provided, however, that a Mortgagee may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of Mortgagee.

(f) Subleases. Effective upon the commencement of the term of any new Lease executed pursuant to Subsection 36.10(d), any Sublease then in effect shall be assigned and transferred without recourse by Landlord to Mortgagee and all monies collected by or for the benefit of Landlord from the Sublessees shall be paid to Mortgagee, or at Mortgagee's option,

shall offset Rent. Between the date of termination of this Lease and commencement of the term of the new Lease, Landlord shall not (1) enter into any new subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee if Mortgagee enters into a new Lease, (2) cancel or materially modify any of the existing subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor or any other agreements affecting the Premises, or (3) accept any cancellation, termination or surrender of any of the above without the written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed. Effective upon the commencement of the term of the new Lease, Landlord shall also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, all Personal Property.

(g) Limited to Permitted Mortgagees. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of Bona Fide Institutional Lenders that are the holders of the Mortgages permitted hereunder

(h) Consent of Mortgagee. No material amendment, termination or cancellation of this Lease shall be effective as against a Mortgagee unless a copy of the same shall have been delivered to such Mortgagee and such Mortgagee shall have approved the material amendment, termination or cancellation in writing. No merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Mortgagee.

(i) Limitation on Liability of Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Mortgagee, or its designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes the owner of the leasehold estate created hereby, and then only for so long as it remains the owner of the leasehold estate and only with respect to the obligations arising during such period of ownership. In no event will Mortgagee have personal liability under this Lease or a new lease under Section 34.10(d) greater than Mortgagee's interest in this Lease or such new lease under Section 34.10(d), and the Landlord will have no recourse against Mortgagee's assets other than its interest herein or therein.

34.11 Assignment by Mortgagee.

Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, or any Transfer of this Lease by Mortgagee after acquisition of the leasehold estate through foreclosure or deed in lieu thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Landlord shall recognize the Mortgagee or other transferee in connection therewith as the Tenant hereunder. The right of such transferee or the right of the transferee of such Mortgagee (but not the right of the Mortgagee) thereafter to assign or transfer this Lease or such new Lease shall be subject to the restrictions of Section 14. After acquisition of the Premises by foreclosure or transfer in lieu of foreclosure, all accrued and unpaid Rent shall be payable by such transferee as provided and subject to the limitations set

forth in this Lease. In the event Mortgagee subsequently assigns or transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new lease obtained pursuant to Section 38.10(d), and in connection with any such assignment or transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such assignment or transfer, then such mortgage or deed of trust shall be considered a permitted Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Section 33 and any other provisions of this Lease intended for the benefit of a permitted Mortgagee who holds a permitted Mortgage.

34.12 Transfer of Mortgage.

Landlord hereby consents to a transfer or encumbrance by Mortgagee, absolutely or as collateral security for performance of its obligations, of its Mortgage or any interest therein, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such transfer the new holder or pledgee of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

34.13 Appointment of Receiver.

In the event of any default under a Mortgage, the holder of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Mortgagee accelerates the maturity of all indebtedness secured by its Mortgage.

ARTICLE 35. NO JOINT VENTURE

35.1 No Joint Venture.

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other Person, or cause Landlord to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

ARTICLE 36. REPRESENTATIONS AND WARRANTIES

36.1 Representations and Warranties of Tenant.

Tenant represents, warrants and covenants to Landlord as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence; Good Standing. Tenant is a limited liability company duly organized and validly existing under the laws of the State of California, and duly registered and authorized to conduct business in the State of California. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

(b) Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to Landlord in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by Landlord and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (I) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant or its business, or (C) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to Landlord in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder, and (iv) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

The representations and warranties herein shall survive any termination of this Lease to the extent specified in this Lease.

36.2 Landlord Warranties.

Landlord warrants that it is duly authorized and existing under the laws of the State of California as a municipal corporation, that Landlord, upon approval of its City Council, has full right, power and authority to enter into this Lease and to carry out the actions contemplated by

this Lease. Upon Tenant's request, Landlord will give Tenant a copy of a resolution or ordinance adopted by City authorizing Landlord to enter into this Lease.

ARTICLE 37. SPECIAL PROVISIONS

37.1 Non-Discrimination.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts entered into by Tenant relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of Subsection (a) above.

37.2 Mitigation Measures.

In order to mitigate the significant environmental impacts of this Lease and operation of the Premises, Tenant agrees that the operation of the Project shall be in accordance with the Mitigation Measures attached to this Lease as Exhibit, which are to be performed on the part of the project sponsor. As appropriate, Tenant shall incorporate such Mitigation Measures and Improvement into any contract for the operation of the Improvements.

37.3 Alcohol, Firearms, Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no advertising of alcohol, firearms, cigarettes or tobacco products shall be allowed on the Premises, except only as incidental to an allowed retail use such as advertising in markets or stores that sell such products if allowed by law. The foregoing prohibition shall include the placement of the name of a company producing, selling or distributing alcohol, firearms, cigarettes or tobacco products or the name of any alcohol, firearms, or cigarette or tobacco product in any promotion of any event or product or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of drinking, using firearms, or using cigarettes and tobacco products or to encourage people not to drink, use firearms, or smoke or to stop smoking.

37.4 Waiver of Relocation Assistance Rights.

If Tenant holds over in possession of the Premises following the expiration of this Lease under Section 31.1, Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 et seq., or the Uniform Relocation Assistance and Real Property

Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as provided in Section 11 relating to Condemnation, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

37.5 Campaign Contributions Limits.

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires City Council approval. The City of Oakland Campaign Reform Act prohibits developers that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either one hundred eighty (180) days after completion of, or termination of, contract negotiations.

Tenant must sign and date an Acknowledgement of Campaign Contributions Limits Form attached hereto as Exhibit ___ and incorporated herein.

37.6 Community Benefits. The City and Developer have previously negotiated and agreed upon a plan of Community Benefits related to the Project and Tenant's performance of this Lease. As additional consideration for this Lease, Tenant hereby agrees to perform all of its obligations set forth in Exhibit ___ attached to this Lease and incorporated herein in full by this reference.

37.7 Other Requirements.

Tenant shall operate and maintain the Premises in accordance with: (1) all applicable federal, state and local requirements for access for disabled persons; (2) the City's Equal Benefits Ordinance; and (3) environmental sustainability measures to the extent that such features are equivalent or lower in cost than comparable non-sustainable alternatives, when measured over their respective life-cycles.

ARTICLE 38. GENERAL

38.1 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., Oakland, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next working day.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option

on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to the provisions of Section 20 relating to Force Majeure.

38.2 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and Sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

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

(e) Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof

38.3 Successors and Assigns.

This Lease is binding upon and will inure to the benefit of the successors and assigns of Landlord, Tenant and any Mortgagee. Where the term "Tenant," "Landlord" or "Mortgagee" is used in this Lease, it means and includes their respective successors and assigns, including, as to any Mortgagee, any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Landlord as a Party or the holder of the right or obligation to give approvals or consents, if Landlord or a comparable public body which has succeeded to

Landlord's rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Landlord for purposes of this Lease.

38.4 No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in Article 34 with regard to Mortgagees.

38.5 Real Estate Commissions.

Landlord is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease. Tenant and Landlord each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to Indemnify the other Party from any Losses arising out of such claim.

38.6 Counterparts.

This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

38.7 Entire Agreement.

This Lease (including the Exhibits), and the LDDA for so long as such agreements are in effect, constitute the entire agreement between the Parties with respect to the subject matter set forth therein, and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Lease.

38.8 Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties.

38.9 Governing Law; Selection of Forum.

This Lease shall be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for Landlord's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of Landlord, be litigated in courts having situs within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

38.10 Recordation.

This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as Exhibit _____. Promptly upon Landlord's request following the expiration of the Term or any other termination of this Lease, Tenant shall deliver to Landlord a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to Landlord and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. Landlord may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

38.11 Extensions by Landlord.

Upon the request of Tenant, Landlord may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of Landlord's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

38.12 Further Assurances.

The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease. The City Administrator of the Landlord is authorized to execute on behalf of the Landlord any closing or similar documents and any contracts, agreements, memoranda or similar documents with Tenant, State, regional and local entities or enter into any tolling agreement with any Person that are necessary or proper to achieve the purposes and objectives of this Lease, if the City Administrator determines that the document or agreement is necessary or proper and is in the Landlord's best interests.

38.13 Attorneys' Fees.

If either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly

charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of Oakland in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

If Tenant utilizes services of in-house counsel, then, for purposes of this Lease, the reasonable fees of such in-house counsel shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the in-house counsel services were rendered and practiced in the City of San Francisco and full-service law firms.

38.14 Lease Effectiveness.

Notwithstanding any provision herein to the contrary, this Lease shall only become effective on the date the Parties duly execute and deliver this Lease upon Close of Escrow in accordance with the LDDA. Such date will be inserted by Landlord as the Commencement Date on the cover page and on page 1 hereof, provided, however, that Landlord's failure to insert the Commencement Date shall not invalidate this Lease. Where used in this Lease or in any of its exhibits, references to "the effective date of this Lease," "the date of this Lease," the "reference date of this Lease" or "Lease Date" will mean the Commencement Date determined as set forth above and shown on the first page hereof

38.15 Severability; Survival.

If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other Person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease. Except as otherwise set forth herein, the rights and obligations of the Tenant, the Landlord and the City under this Lease shall survive any termination of the LDDA.

38.16 Cooperation in the Event of Legal Challenge. In the event of any Legal Challenge, Landlord and Tenant shall cooperate and coordinate with one another in the defense against such Legal Challenge.

38.17 Incident Management, Notifications and Reports. Tenant shall immediately notify Landlord of all emergencies, and promptly notify Landlord of all material accidents and incidents occurring on or at the Premises, and of all material claims made by or against Tenant, or potential material claims that Tenant reasonably expects to make against, or to be made against it by, third parties in connection with its use and occupancy of the Premises. In addition, within 30 calendar days following the end of each calendar quarter of each Lease Year, Tenant shall deliver to Landlord a quarterly report of all such occurrences, including the following details in a format specified by Landlord: (a) type of incident (e.g., bodily injury, death or property damage) and summary of each such incident; (b) classification of incident (e.g., machinery, right-of-way or other); (c) number of incidents by type and classification; (d) costs to

correct incidents by type and classification; (e) claims made by Tenant and revenue received by type and classification; and (f) claims made against Tenant and losses incurred or losses claimed by type and classification.

38.18 Books and Records and Inspection.

(a) Books and Records Tenant shall keep all Tenant's Books and Records according to GAAP. Tenant shall maintain a separate set of accounts, including bank accounts limited to the Premises, to allow a determination of expenses incurred and revenues generated directly from the Premises. If Tenant operates all or any portion of the Premises through a Subtenant or Agent, Tenant shall cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

(b) Inspection. Tenant agrees to make all of Tenant's Books and Records available to Landlord, or to any Landlord or City auditor, or to any auditor or representative designated by Landlord (hereinafter collectively referred to as "Landlord Representative"), for the purpose of examining Tenant's Books and Records, to the extent necessary to determine the accuracy of Tenant's reports, statements and accounting under this Lease (collectively, "Tenant's Accounting"), for a period of three (3) years after such Tenant Accounting was delivered to the Landlord. If Landlord wishes to audit Tenant's Books and Records, Landlord shall give Tenant thirty (30) days' written notice of its intention to audit. Landlord shall complete its audit as soon as reasonably possible. Tenant shall cooperate with the Landlord representative during the course of any audit. Any audit by Landlord shall be at Landlord's own expense, except as hereinafter provided. Tenant shall keep such Books and Records for seven (7) years and maintain them and/or make them available in Oakland to Landlord's representative. All Tenant's Accounting provided by Tenant to Landlord hereunder shall be deemed conclusively approved by Landlord after the expiration of the three (3) year period following delivery of Tenant's Accounting, unless an audit is made within said three (3)-year period and Landlord claims that errors or omissions have occurred. In such event, Tenant shall retain the Books and Records and make them available until those matters are resolved. If Tenant operates the Premises through a Subtenant or Agent, Tenant shall require such Subtenant or Agent to provide the Landlord with the foregoing audit right with respect to the books and records of such Subtenant or Agent. If any such audit reveals that Tenant has misstated any amount shown in any Tenant's Accounting, and such misstatement has resulted in any underpayment of Rent by Tenant, Tenant shall pay Landlord, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to Landlord and as further subject to interest as set forth in Section 2.5. In addition, if such misstatement results in an underpayment of Rent in any audit period of three percent (3%) or more, Tenant shall pay the cost of the audit. At Landlord's option, any overpayments revealed by an audit may be either refunded to Tenant, applied to any other amounts then due and unpaid, or applied to Base Rent due subsequent to the audit.

38.19 Public Disclosure.

Tenant acknowledges that under the California Public Records Act and the City's Sunshine Ordinance both as they may be amended or modified, or any similar public records disclosure law hereinafter enacted that by its terms applies to this Agreement (collectively, the "Disclosure Laws"), all Tenant's Books and Records and documents maintained by Tenant (or

maintained for Tenant by Tenant's Agents) relating to the operation of the Premises and delivered or required to be delivered by Tenant to Landlord may be considered public records and, to the extent required by the Disclosure Laws, will be made available to the public upon request. Landlord shall not in any way be liable or responsible for the disclosure of any such information, books or records or portions thereof if the disclosure is made pursuant to a request under the Disclosure Laws.

ARTICLE 39. RIGHT OF FIRST REFUSAL

In the event: (i) Landlord is compelled by applicable Law to sell or transfer to a third party Landlord's title to all or any portion of the Premises (the "Offered Interest"); (ii) Landlord receives and intends to accept a bona fide offer from such a third party to purchase or acquire the Offered Interest (the "Offer"); and (iii) applicable Law does not prohibit or prevent the implementation of this Article 40, then Tenant shall have a one-time right of first refusal to meet the Offer and purchase the Offered Interest pursuant to the provisions of this Article 40. Landlord shall promptly provide written notice of the Offer to Tenant ("Landlord's Notice"), which shall include a true and complete copy of the Offer. Tenant shall have forty-five (45) days after receipt of Landlord's Notice in which to provide written notice to Landlord of Tenant's election to purchase the Offered Interest ("Tenant's Notice"). If Tenant provides Tenant's Notice within such forty-five (45)-day period, Landlord and Tenant shall proceed with the purchase and sale of the Offered Interest pursuant to the provisions hereof at the same purchase price and upon substantially the same other terms and conditions of the Offer, as may be amended by agreement of Landlord and Tenant. Notwithstanding any provision to the contrary in the Offer, the closing date for Tenant's purchase of the Offered Interest shall not be sooner than forty-five (45) days after the date of Tenant's Notice. Unless otherwise agreed in writing by the Parties, the purchase by Tenant of an Offered Interest hereunder, and the ownership, use and occupancy of the Premises thereafter, shall be and remain subject to the provisions of this Lease. If Tenant does not provide Tenant's Notice within the forty-five (45)-day period as provided above, Landlord may sell the Offered Interest to such third party in accordance with the terms and conditions of the Offer, free and clear of Tenant's right of first refusal hereunder. If the Offered Interest sold at any time during the Term by Landlord to Tenant or to a third party includes less than the entire Premises, Tenant's one-time right of first refusal hereunder shall remain effective as to the remaining unsold portion of in the Premises. Tenant's right of first refusal hereunder shall expire on the expiration or termination of the Term.

ARTICLE 40. DEFINITION OF CERTAIN TERMS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them below in this Section.

AB 26 means the provisions of California Assembly Bill 26 adopted into law June 28, 2011, and any successor statute thereto, as may be amended from time to time.

Additional Constmction means the constmction, installafion, reconstmction, replacement, addition, expansion, Restorafion, alteration or modification of any Additional Improvements.

Additional Improvements means any and all buildings, structures, fixtures, and other improvements, including but not limited to any work of improvement as defined in California Civil Code Section 3106, constructed, installed, erected, built, placed or performed (or to be so done) upon or within the Premises at any time by or on behalf of Tenant in accordance with this Lease, excluding the Initial Improvements.

Additional Rent means any and all sums, other than Base Rent, that may become due or be payable by Tenant at any time pursuant to this Lease.

Affiliate means any Person directly or indirectly Controlling, Controlled by or under Common Control with another Person.

Agency means the former Redevelopment Agency of the City of Oakland.

Agents means, when used with reference to either Party to this Lease, the members, officers, directors, commissioners, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

Anniversary Date means each anniversary of the start of a Lease Year (starting with the Commencement Date) or, for purposes of Section 2.2(a)(ii), each anniversary of the start of a Lease Year or a Pre-Lease Year, as applicable.

Annual Reconciliation Statement as defined in Section 2.3(b)(iii).

Arbiter as defined in Section 25.3.

Attorneys' Fees and Costs means reasonable attorneys' fees (including fees from attorneys in the Office of the City Attorney of Oakland), costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Award means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

Billboard Agreement means that certain Billboard Franchise and Lease Agreement, dated _____, 2012, between City and Developer, regarding the installation and use of advertising billboards on or adjacent to the Premises.

Bona Fide Institutional Lender means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for one or more Persons none of which need be Bona Fide Institutional Lenders and who is not an Affiliate of Tenant: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, a religious, educational or charitable institution, an employees' welfare, benefit, pension or retirement fund

or system, an investment banking, merchant banking or brokerage firm, or any other Person or group of Persons which, at the time of a Mortgage is recorded in favor of such Person or Persons, has (or is Specially Controlled by a Person having) assets of at least \$500 million in the aggregate (or the equivalent in foreign currency), as Indexed, and in the case of any Person or group of Persons none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged in the financial services business, or (ii) any special account, managed fund, department, agency or Special Affiliate of any of the foregoing, or (iii) any person acting in a fiduciary capacity for any of the foregoing. For purposes hereof, (1) acting in a "fiduciary capacity" shall be deemed to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document, (2) a lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if promptly after such loan is consummated the note(s) or other evidence of indebtedness or the collateral securing the same are assigned to one or more persons then qualifying as a Bona Fide Institutional Lender, and (3) "Special Affiliate" means any Person directly or indirectly Specially Controlling, Specially Controlled by, or under common Special Control, through one or more other persons, with the person in question.

Business Day means any day that is neither a Saturday, a Sunday, nor a day observed as a holiday by either the City or the State of California or the United States government.

Casualty Event as defined in Section 11.1(b).

Casualty Notice as defined in Section 11.4(a)(i).

CC&Rs as defined in Section 12.1(d)(ix).

Central Gateway means the ___ ± acres of real property, comprising a portion of the former Oakland Army Base and located adjacent to the West Gateway, commonly referred to as the Central Gateway and depicted on Exhibit ___ attached to this Lease.

Certificate of Completion means a certificate of occupancy or equivalent certificate of completion issued by City with respect to the Completion of Initial Improvements.

City means the City of Oakland, a municipal corporation.

City Administrator means the City Administrator of City or his or her designee.

City Council means the City Council of City.

Closing Date as defined in the LDDA.

Commencement Date as defined in Section 1.2(a), subject to the provisions of Section 38.14.

Commercial General Liability Insurance as defined in Section 16.(a)(iii).

Community Benetits or Community Benefits Program means those benetits to the community required to be provided by Developer and the Project with respect to this Lease pursuant to City's community jobs policy and other City policies and programs, as set forth in Exhibit ___ attached to this Lease.

Completion of Initial Improvements means completion of construction and installation of all Initial Improvements on all or any portion of the Premises in accordance with the terms of this Lease. The fact of Completion of Initial Improvements shall be conclusively evidenced by the issuance by City of a certificate of occupancy or equivalent certificate of completion with respect to such Initial Improvements.

Completion Date means the date of Completion of Initial Improvements.

Completion Guaranty means the Completion Guaranty to be given by Prologis, Inc. to Landlord to guaranty completion of the Initial Improvements, substantially in accordance with the form attached as Exhibit ___ to this Lease and otherwise in form and substance acceptable to Landlord.

Condemnation means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

Condemnation Date means the earlier of (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

Condemned Land Value as defined in Section 12.4(b).

Construction Bonds as defined in Section 8.1(f).

Construction Documents as defined in Section 10.4.

Control means: (1) the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the profits or capital of another Person; or (2) the power to direct the affairs or management of another Person, whether by contract or operation of Law or otherwise, and Controlled and Controlling have correlative meanings. Common Control means that two Persons are both Controlled by the same other Person.

CPI means the Consumer Price Index for All Urban Consumers, All Items for the San Francisco-Oakland-San Jose CMSA (Base year 1982-84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made in the revised CPI which would produce results equivalent, as nearly as possible, to those which would be obtained hereunder if the CPI were not so revised. If the 1982-84 average shall no longer be

used as an index of 100, such change shall constitute a substantial revision. If the CPI becomes unavailable to the public because publication is discontinued, or otherwise, Landlord shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by a governmental agency, major bank, other financial institution, university or recognized financial publisher.

Default Rate as defined in Section 2.5.

Depository means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as a Bona Fide Institutional Lender, designated by Tenant and approved by Landlord to serve as depository pursuant to this Lease, provided that such Depository shall have an office, branch, agency or representative located in the State of California.

Development Agreement means a development agreement with respect to all or any portion of the Project as may be finally approved by City at any time pursuant to California Government Code sections 65864 *et seq.* and applicable provisions of City's Municipal Code or ordinances pertaining to development agreements and executed by City and Developer, and as may be amended from time to time during the Term in accordance with the provisions thereof

Disabled Access Laws means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. Section 12101 *et seq.* and disabled access laws under the Landlord's building code.

Encumbrance means any mortgage, deed of trust, claim, levy, lien, judgment, execution, pledge, charge, security interest, restriction, covenant, condition, reservation, rights of way, liens, encumbrances, certificate of pending litigation, judgment or certificate of any court, and other matters of any nature whatsoever, whether arising by operation of Law or otherwise created, affecting the Premises.

Event of Default as defined in Section 20.1.

Excess Coverage as defined in Section 16.1(a)(iv).

Exercise Notice as defined in Section 1.2(b)(ii).

Exhibit as defined in Section 38.2(a).

Existing Improvements mean any and all grading, infrastructure and other improvements existing upon the Property as of the Commencement Date.

Final Construction Documents means plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws.

Force Majeure means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, fires, floods, earthquakes, tidal waves, terrorist acts, strikes, freight embargoes, delays of subcontractors and

unusually severe weather and, in the case of Tenant, any delay resulting from a defect in Landlord's title to the Premises. Force Majeure does not include failure to obtain financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, to Restore if appropriate, and to complete performance of the hindered act.

Foreclosure means a foreclosure of a Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to court order or pursuant to a power of sale contained in the Mortgage), deed or voluntary assignment or other conveyance in lieu thereof.

Foreclosure Period as defined in Section 35.10(b).

GAAP means generally accepted accounting principles consistently applied.

Gross Building Area means the total floor areas of the buildings on the Premises, including basements, mezzanines, and penthouses included within the principal outside faces of the exterior walls and excluding architectural setbacks or projections and unenclosed areas.

Handle when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material ("Handling" will have a correlative meaning).

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under CERCLA or under Section 25281 or Section 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of a structure, or are naturally occurring substances on, in or about the Premises and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

Hazardous Material Claims means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Material Laws, together with any and all Losses made or threatened by any third party against City or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any structures or other Improvements, the loss or restriction of the use of all or any portion of the Premises, and attorneys' fees and consultants' fees and experts' fees and costs.

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on,

under or about the Premises, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions.

Impositions means all taxes, assessments, liens, levies, charges, fees, or expenses of every description, levied, assessed, confirmed or imposed on or with respect to the Premises, any of the Improvements or Personal Property located on or within the Premises, this Lease, Tenant's leasehold estate, any Sublease, any subleasehold estate, any Transfer, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments (including but not limited to any taxes or assessments for a Special District encompassing all or any portion of the Premises), liens, levies, charges, fees, or expenses, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied, assessed, confirmed or imposed in lieu of or in substitution of any of the foregoing of every character.

Improvements means, collectively, the Initial Improvements and Additional Improvements.

Indemnified Parties means Landlord, City, including, but not limited to, all of their boards, commissions, departments, agencies and other subdivisions, including, without limitation; all of the Agents of Landlord or the City, and all of their respective heirs, legal representatives, successors and assigns, and each of them.

Indemnify means indemnify, protect and hold harmless.

Indexed means the product of the number to be Indexed multiplied by the percentage increase, if any, in the CPI from the first day of the month in which the Commencement Date, or such other date specified in this Lease as the start of a particular period, occurred to the first day of the most recent month for which the CPI is available at any given time.

Initial Improvements means the site and vertical improvements to the Property as set forth in the Scope of Development on Exhibit to this Lease, to be constructed and installed by or on behalf of Tenant in accordance with this Lease.

Initial Improvements Construction Contract means one or more contracts entered into between Developer and one or more contractors for the construction and installation of the Initial Improvements in accordance with this Lease.

Investigate or Investigation when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

Invitees when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

Landlord means the City of Oakland.

Landlord Representative as defined in Section 2.2(h).

Late Charge as defined in Section 2.6.

Law or Laws means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, including, without limitation, Hazardous Materials Laws and mandatory prevailing wage laws, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, regional, county and municipal governments, the departments, bureaus, agencies, courts or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon.

LDDA as defined in Recital C.

Leasable Square Feet means those portions of the Premises designed for occupancy and exclusive use of Tenant and its Subtenants, including storage areas, that produces rental income, and expressly excluding stairs, escalators, elevator shafts, flues, pipe shafts, vertical ducts, balconies, mechanical rooms, public access areas, and other areas set aside for the provision of facilities or services to the floor or building where such facilities are not for the exclusive use of occupiers of the floor or building.

Lease means this Ground Lease, as it may be amended from time to time in accordance herewith.

Lease Year means a period of twelve (12) consecutive months during the Term, commencing on the Commencement Date and continuing for each twelve (12) consecutive calendar months thereafter.

Leasehold estate means Tenant's leasehold estate created by this Lease.

Legal Challenge means any action or proceeding before any court, tribunal, arbitration or other judicial, adjudicative or legislation-making body, including any administrative appeal, brought by a third party, who is not an Affiliate or related to Developer, which (i) seeks to challenge the validity of any action taken by the City in connection with the Project, including the City's approval, execution and delivery of this Agreement, the Ground Lease, and its performance thereunder, including any challenge under the California Environmental Quality Act, the performance of any action required or permitted to be performed by the City hereunder, or any findings upon which any of the foregoing are predicated, or (ii) seeks to challenge the validity of any other Regulatory Approval.

Letter of Credit means a letter of credit issued by a Bona Fide Institutional Lender for or on behalf of Tenant and in favor of Landlord to secure any or all obligations of Tenant to Landlord under this Lease, in each instance in such amount, form and substance satisfactory to Landlord.

Loss or Losses when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Major Damage or Destruction means damage to or destruction of all or any portion of the Improvements on the Premises to the extent that the hard costs of Restoration will exceed seventy five percent (75%) of the hard costs to replace such Improvements on the Premises in their entirety, except that during the last five years of the Term, the percentage figure shall be: (1) in the fifth remaining year of the Term- 25%; (2) in the fourth through second years of the Term- 10%, and (3) in the final year of the Term- 5%. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

Master Plan means that certain Oakland Army Base Master Plan Design Set, dated April 2, 2012, prepared by Architectural Dimensions Master Design Team, approved by City on _____ by _____, and as may be amended from time to time during the Term in accordance with the provisions thereof

Memorandum of Lease means the Memorandum of this Lease, between Landlord and Tenant, recorded in the Official Records.

Minor Alterations as defined in Section 9.2.

MMRP or Mifigation Measures as defined in the LDDA.

Mortgage means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of Tenant's leasehold interest under this Lease that is recorded in the Official Records.

Mortgagee means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial insfitutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

Mortgagee Cure Period as defined in Section 34.10(a).

Net Awards and Payments as defined in Section 11.4.

Non-Affiliate means any Person who is not an Affiliate of another Person.

Non-Affiliate Mortgage means a Mortgage that is held by a Non-Affiliate Mortgagee.

Non-Affiliate Mortgagee means the holder of a Mortgage, which holder (A) is not an Affiliate of Tenant, or (B) is a Bona Fide Institutional Lender.

Non-Affiliate Transfer means any Transfer to a transferee that is not an Affiliate of Tenant.

Non-Affiliate Transferee means the transferee of a Non-Affiliate Transfer.

Non-Disturbance Agreements as defined in Section 14.4(a).

North Gateway means the ___ ± acres of real property, comprising a portion of the former Oakland Army Base and located in the vicinity of the West Gateway, commonly referred to as the North Gateway and depicted on Exhibit ___ attached to this Lease.

Official Records means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the County of Alameda.

ORA or Agency means the former Redevelopment Agency of the City of Oakland.

Outside Lease Date means January 1, 2016.

Partial Condemnation as defined in Section 13.1(b), 13.3.

Partial Transferred Premises means all or any portion of the Premises subsumed within any Partial Transfer allowed or permitted pursuant to Article 12.

Partner shall mean [Prologis or CCIG constituent partners in Developer]

Party means City, Landlord or Tenant, as a party to this Lease; Parties means City, Landlord and Tenant, as Parties to this Lease.

Permitted Title Exceptions as defined in Section 1.1(b).

Permitted Transfers as defined in Section 14.3.

Permitted Uses as defined in Section 3.1.

Person means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof

Personal Property means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may

hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

Phase as defined in Recital C.

Port means the Port of Oakland.

Pre-Completion Period means the period between the Effective Date of the LDDA and the Certificate of Completion for the Project.

Pre-Lease Year means, in the event that the Commencement Date of this Lease is after the Outside Lease Date, each 12-month period (or part thereof) between the Outside Lease Year and the Commencement Date.

Premises as defined in Section 1.1.

Project as defined in Recital C. [NOTE: only for the particular Phase covered by the particular Lease]

Prologis, Inc. means Prologis, Inc., a Maryland corporation qualified to transact business in California.

Prologis Entity means Prologis, Inc. or any entity Controlled by or under Common Control with Prologis, Inc. (excluding Tenant or any other Affiliate of Tenant) or any investment fund established and Controlled by any of the foregoing.

Property as defined in Section 1.1.

Proposed Transfer as defined in Section 12.1(a).

PUD means a planned unit development with respect to all or any portion of the Project as may be finally approved by City at any time pursuant to applicable provisions of City's Municipal Code or ordinances pertaining to planned unit developments, and as may be amended from time to time during the Term in accordance with the provisions thereof

Refinancing as defined in Section 34.14(a)

Regulatory Approval means any authorization, approval or permit required or granted by any governmental agency having jurisdiction over the Premises, including, but not limited to, the City, BCDC, the RWQCB, DTSC, or Alameda County Department of Public Health.

Release when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Lease or the LDDA by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof

Remedial Action Plan or RAP as defined in the LDDA.

Remediate or Remediation when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, transport, dispose, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

Rent means, collectively, Base Rent and Additional Rent. For purposes of this Lease, Rent includes all unpaid sums that are payable as Rent, but that are unpaid when earned and/or accme for payment at a later time in accordance with the provisions of this Lease.

Restoration means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable; provided that Tenant shall not be required to Restore the Improvements to the identical size or contiguration as existed before the event giving rise to the Restoration so long as the Improvements, as Restored, constitute a first-class Project. In connection with any Restoration, the Project and the other Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Project as so redesigned is a first-class Project similar to the original Project, subject to the provisions of Section 11 relating to Additional Constmction. All Restoration shall be conducted in accordance with the provisions of Section 9. ("Restore" and "Restored" shall have correlative meanings.)

Risk Management Plan or RMP as defined in the LDDA.

RWQCB shall mean the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

Schedule of Performance as defined in the LDDA.

Schematic Drawings means conceptual drawings in sufficient detail to describe a development proposal.

Scope of Development means the scope and schedule of work for the Initial Improvements as set forth on Exhibit __ attached to this Lease.

Signiticant Change means (a) any dissolution, merger, consolidation or other reorganization, or any issuance or transfer of beneficial interests in Tenant, directiy or indirectly, in one or more transactions, that results in a change in the identity of the Persons Controlling Tenant, or (b) the sale of tifty percent (50%) or more of Tenant's assets, capital or protits, or the assets, capital or profits of any Person Controlling Tenant other than a sale to an Aftiliate, provided that a Significant Change will not include any change in the identity of Persons Controlling Tenant or sale of tifty percent (50%) or more of assets, capital or protits in a Person Controlling Tenant as a result of (i) the sale or transfer of shares of a publicly traded company; or (ii) the merger, consolidation or other reorganization of a Person Controlling Tenant or the sale of all or substantially all of the assets of a Person Controlling Tenant in a transaction where the surviving entity in any such merger, consolidation or other reorganization or the purchaser of the assets of such Person has a net worth, calculated in accordance with GAAP, following such

transaction, that is at least 150% of the net worth of the Person Controlling Tenant prior to such transaction.

Special Control means the power to direct the affairs or management of another Person, whether by contract, operation of Law or otherwise (and Specially Controlling and Specially Controlled shall have correlative meanings).

Special District means any community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code sections 53311 et seq.) or otherwise, special assessment district, facilities assessment district, landscaping and lighting district, and any other infrastructure financing or infrastructure maintenance financing district or device established at any time upon the approval of City with respect to all or any portion of the Project.

State means the State of California.

Subdivision means any subdivision of the Property or the Premises as such term is defined in, and subject to and in accordance with, the provisions of the Subdivision Map Act.

Subdivision Map Act means the provisions of California Government Code Sections 66410 et seq., or any successor provisions thereof, as the same may be amended from time to time in accordance therewith.

Sublease means any lease, sublease, license, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

Substantial Condemnation as defined in Section 12.3(a).

Subtenant means any Person leasing, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

Tax Fiscal Year means the fiscal year for real property taxes, which is currently July 1 to June 30. Liens for secured property taxes attach on January 1st preceding the Tax Fiscal Year for which taxes are levied. Secured property taxes are levied on the first business day of September and are payable in two equal installments: the first is due on November 1st and delinquent with penalties after December 10th; the second is due February 1st and delinquent with penalties after April 10th.

Tenant means _____ [Developer to identify JV party], a _____, and its permitted successors and assigns.

Tenant's Accounting as defined in Section 2.10(b).

Tenant's Books and Records means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank

statements, income tax schedules relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises.

Term as defined in Section 1.2.

Termination Date means _____, 20__ [INSERT DATE THAT IS 66 YEARS AFTER LEASE COMMENCEMENT DATE] or such earlier date upon which this Lease is terminated or such later date to which this Lease is extended pursuant to subsequent mutual written agreement of the Parties.

Total Condemnation as defined in Section 12.2.

Transfer as defined in Section 12.1(a).

Truck Operations Site means that certain real property owned by City, located in the vicinity of the Property, and more particularly described and generally depicted on Exhibits _____ and _____, respectively.

Uninsured Casualty as defined in Section 11.4(a)(i).

Unmatured Event of Default means a circumstance which, with notice or the passage of time would constitute an Event of Default.

West Gateway means the _____ ± acres of real property, comprising a portion of the former Oakland Army Base and located adjacent to the Central Gateway, commonly referred to as the West Gateway and depicted on Exhibit _____ attached to this Lease.

West Gateway Lease means a written ground lease between City, as landlord, and Developer or Developer Affiliate, as tenant, covering all or a portion of the West Gateway.

Work as defined in Sections 10.7, 10.8.

Worth at the Time of the Award as defined in Section 23.3(a)(v).

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

TENANT:

PROLOGIS CCIG OAKLAND GLOBAL,
LLC,
a _____ limited liability company
qualified to transact business in California

By: _____

By: _____

By: _____

[NAME]

[TITLE]

LANDLORD:

CITY OF OAKLAND,
a municipal corporation

By _____
City Administrator

APPROVED AS TO FORM:

BARBARA PARKER, City Attorney

By: _____
Dianne M. Millner
Deputy City Attorney

Landlord Resolution No. _____

City Resolution No. _____

LIST OF LEASE EXHIBITS [SUBJECT TO MODIFICATION BASED ON FINAL LEASE TERMS]

<u>Exhibit</u>	<u>Description</u>
EXHIBIT __	Description of Premises
EXHIBIT __	Site Plan
EXHIBIT __	List of Permitted Exceptions
EXHIBIT __	Scope of Development
EXHIBIT __	List of Mitigation Measures
EXHIBIT __	Community Benefits Program
EXHIBIT __	Acknowledgement of Campaign Contributions Limits Forms
EXHIBIT __	Form of Memorandum of Lease
EXHIBIT __	Prevailing Wage Ordinance

EXHIBIT ____
TO
GROUND LEASE FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]
DESCRIPTION OF PREMISES
[See Attached]

EXHIBIT ____
TO
GROUND LEASE FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]
SITE PLAN
[See Attached]

EXHIBIT _____
TO
GROUND LEASE FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]
LIST OF PERMITTED EXCEPTIONS
[See Attached]

EXHIBIT ____
TO
GROUND LEASE FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]
SCOPE OF DEVELOPMENT
[To Follow]

EXHIBIT _____
TO
GROUND LEASE FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]
LIST OF MITIGATION MEASURES
[See Attached]

EXHIBIT _____
TO
GROUND LEASE FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]
COMMUNITY BENEFITS PROGRAM
[See Attached]

EXHIBIT _____
TO
GROUND LEASE FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]
ACKNOWLEDGEMENT OF CAMPAIGN CONTRIBUTIONS LIMITS FORMS
[See Attached]

EXHIBIT _____
TO
)
GROUND LEASE FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]
FORM OF MEMORANDUM OF LEASE
[See Attached]

EXHIBIT _____

TO

GROUND LEASE FOR

[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]

PREVAILING WAGE ORDINANCE

[See Attached]

SCHEDULE 6.1_____
TO
GROUND LEASE FOR
[CENTRAL GATEWAY OR EAST GATEWAY, AS APPLICABLE]
[CITY/HK NOTE: SUBJECT TO CITY/HK REVIEW AND REVISION]

Examples of the Implementation of the provisions of Section 6.1

A. Credit of Excess Central Gateway Improvements to the Threshold Amount. By way of example only, if

1. The Second Threshold Amount under the Central Gateway Lease is 300,000 square feet of Central Gateway Improvements with a Floor Area Ratio of at least 0.29;

2. The tenant under the Central Gateway Lease has Commenced Construction of 325,000 square feet of Central Gateway Improvements with a Floor Area Ratio of at least 0.29 prior to the Second Milestone Date under this Agreement; and

3. Tenant has Commenced Construction of 225,000 square feet of Initial Improvements with a Floor Area Ratio of at least 0.29 prior to the Second Milestone Date under this Agreement.

Then the excess 25,000 square feet of Central Gateway Improvements shall be applied to the calculation of the Initial Threshold Amount under this Agreement and Tenant shall be deemed to have satisfied the requirement of Section 6.1(a)(ii).

B. Adjustment of Fourth Threshold Amount. By way of example only, if Tenant and the tenant under the Central Gateway Lease elect pursuant to Section 3.____ to decrease the maximum permissible square footage of uses for the Premises by 50,000 square feet in order to increase the maximum permissible square footage of uses for the Central Gateway Premises by 50,000, then the Fourth Threshold Amount under this Agreement shall automatically be decreased from 42,560 to 392,560 and the Fourth Threshold Amount under the Central Gateway Lease shall be automatically increased from 537,000 to 587,000. There would be no other adjustments to the Threshold Amounts for the premises and the Central Gateway Premises.

C. Calculation of the Minimum Project Liquidated Damages and Partial Termination of this Agreement. By way of example only, if:

1. Tenant has Commenced Construction of 300,000 square feet of Central Gateway Improvements with a Floor Area Ratio of at least 0.29 prior to the Third Milestone Date under this Agreement;

2. The tenant under the Central Gateway Lease has Commenced Construction of 385,000 square feet of Central Gateway Improvements with a Floor Area Ratio of at least 0.29 prior to the Third Milestone Date under this Agreement; and

3. The Initial Improvements Completed prior to the Third Milestone Date are located on 21 acres and the Unimproved Premises includes 8 acres, then [Note: Correct acreages.]

(a) The excess 10,000 square feet of Central Gateway Improvements shall be credited to Tenant and Tenant shall be deemed to have Completed the Construction of 310,000 square feet of Initial Improvements;

(b) The Minimum Project Liquidated Damages for such default shall be calculated by taking the lesser of the following percentages:

Divide the 8 acres (Unimproved Premises) by 29 (total Premises) = 27.5%; and

Divide 132,560 (Fourth Threshold Amount less 310,000) by the Fourth threshold Amount (442,560) = 29.9%

And multiplying such amount by \$ _____ [Note Insert prorated amount of \$5mm applicable to the Premises.], resulting in a Minimum Project Liquidated Damages Amount of \$ _____.

D. Landlord shall have the right, but not the obligation, to terminate this Agreement with respect to the 8 acre Unimproved Premises and if such a termination is implemented, Tenant's rights and obligations with respect to the balance of the Premises shall continue (except that upon the payment of the Minimum Liquidated Damages, Tenant shall have no further obligation with respect to the Minimum Project).

RIGHT OF ENTRY

(Oakland Army Base – City Property)

The CITY OF OAKLAND, acting both in its capacity as an independent municipal corporation and as the successor agency to the Redevelopment Agency of the City of Oakland ("Successor Agency") (together, the "City") as owner of record of the real property commonly referred to as the Oakland Army Base, as shown on Exhibit A (the "City Property"), in the City of Oakland, County of Alameda, State of California, hereby grants to [*Developer or Affiliate to be inserted*] the right to enter upon the Property between _____ and _____, for the sole purpose of performing environmental due diligence pursuant to the Lease Disposition and Development Agreement by and between the City and Prologis CCIG Oakland Global, LLC dated _____, 2012 ("LDDA"), including subsurface drilling and sampling pursuant to the work plan attached hereto as Exhibit B (referred to herein as "Right of Entry" or "Agreement"). _____ are collectively referred to herein as "Grantee." Furthermore, notwithstanding anything to the contrary in Exhibit B, this Right of Entry applies to the City Property only.

Insurance: The Grantee parties represent that they each carry and agree to continue to carry, as of the date hereof, with insurance companies acceptable to the City, the following insurance coverages continuously during the life of this Agreement.

1. Commercial General Liability, Bodily Injury and Property Damage:

- a. Policy limits of at least the following amounts: \$2,000,000 each Occurrence, and \$4,000,000 General Aggregate that applies separately to this Project;
- b. Occurrence Form Policies Only (Modified Occurrence or Claims Made Insurance is not acceptable);
- c. Include Bodily Injury, Broad Form Property Damage, Premises/Operation, independent contractors, products-completed operations, personal & advertising injury, and Contractual;
- d. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01);
- e. Provide a separate certificate of insurance for each Project with the name of the Project stated thereon;
- f. The words, "endeavor to" and "but failure to mail such notice shall impose no obligation of liability of any kind upon the company, its agents or representatives" shall be lined out or such policy shall contain an endorsement attached to the Certificate of Insurance, that states that the policy may not be cancelled or terminated without at least ten (10) days' prior notice for nonpayment of premiums and not less than thirty (30) days' prior notice for any other reason, to Agency; and
- g. Such policy shall also contain an endorsement attached to the Certificate of Insurance that states the following: "Grantee's insurance shall be primary insurance as respects to any claims, losses or liability arising directly or indirectly from the Grantee's operations and other insurance maintained by the Agency shall be non-contributory with the insurance provided thereunder; any

other insurance available under any other policies shall be excess insurance (over the insurance required by this Agreement);" and

h. Such policy shall contain cross-liability coverage as provided under standard ISO forms' separation of insureds clause.

2. Additional Insured Endorsement (separate endorsement) for General Liability:

a. To name (i) the City, and the City's council members, directors, officers, agents, employees, and volunteers (collectively, the "City Parties") and (ii) the [] and its partners and together with the City Parties, the "Additionally Insured Parties"), as additional insureds;

b. Including "insurance is primary and non-contributory" wording; and

c. Form CG 20 10 10 93 or equivalent form that meets the above requirements.

Grantee shall add the Additionally Insured Parties as an additional insured on the above general liability policy by having the insurance carrier issue a CGL-2010 Additional Insured – Premises/Ongoing Operations Endorsement Edition date 10/93, or its equivalent. This extension shall apply to the full extent of the actual limits of Grantee's coverages even if such actual limits exceed the minimum limits required by this Agreement. The Additionally Insured Parties' additional insured status under the policy(ies) must not be limited by amendatory language to this policy. To the extent umbrella or excess insurance is available above the minimum required limits stated in this Agreement, the protection afforded the Additionally Insured Parties in the umbrella or excess liability insurance shall be as broad or broader than the coverage present in the underlying insurance and in accordance with this Agreement. Each general liability, umbrella or excess policy shall specifically state that the insurance provided by the Grantee shall be considered primary, and insurance of the Additionally Insured Parties shall be considered excess for purposes of responding to claims.

3. Automobile Liability, Bodily Injury, Property Damage:

a. Policy limits of at least the following amounts: \$1,000,000 each Occurrence; and

b. Any Automobile (including owned, non-owned and hired).

4. Workers Compensation Liability:

a. Employer's Liability with policy limits of \$1,000,000;

b. Waiver of Subrogation Endorsement (Separate Endorsement). A separate endorsement is not required on policies issued by State Fund – the endorsement wording can be stated directly on the Certificate of Insurance; and

c. Grantee certifies that it 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. Grantee shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

5. Professional Liability Insurance:

- a. Professional Liability Insurance appropriate to the contractor's profession that shall be on a "claims made basis";
- b. Policy limits of at least the following amounts: each claim \$2,000,000/Aggregate \$2,000,000;
- c. If such policy contains a retroactive date for coverage of prior acts, this date will be prior to the date of commencement of work under this Agreement; and
- e. Such coverage shall be maintained for no less than thirty-six months after expiration of this Agreement.

6. Grantee Parties Involved With Hazardous Materials:

- a. Grantee and Grantee parties involved with Hazardous Materials must carry a Pollution Liability Policy with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate that applies separately to this Project.

All insurance companies issuing the above-described insurance policies must have an AM Best rating of A- VII or better. All policy endorsements and certificates of insurance must be received by Agency or Agency's designated insurance agents, administrators or managers as originals. Faxes and photocopies of such items are not acceptable.

Prior to entering onto the City Property, Grantee and each Grantee party shall evidence that such insurance is in force by furnishing the City with a Certificate of Insurance, or if requested by the City, certified copies of policies. The Certificate of Insurance shall accompany and become a part of this Agreement. Each Certificate of Insurance shall (1) contain an unqualified statement that the policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to the City, but in the event of nonpayment of premium, ten (10) days notification will be provided; (2) show the Additionally Insured Parties as Additional Insureds by either referencing or attaching the required endorsement; (3) shall indicate that the Grantee's Commercial General Liability coverage is primary and the Additionally Insured Parties' insurance is excess for any Covered Claims (defined in Section 9.1 below); and (4) indicate that the coverage applies in the state where operations are being performed; and (5) Commercial General Liability insurance coverage shall include contractual liability coverage insuring the agreement and obligations of the insured to indemnify the Additionally Insured Parties and others to the extent set forth in Agreement.

Any attempt by the Grantee to cancel or modify such insurance coverage, or any failure by the Grantee to maintain such coverage, shall be a default under this Agreement and, upon such default, the City will have the right to terminate this Agreement and/or exercise any of its rights at law or at equity. In addition to any other remedies, the City may, at its discretion, withhold payment of any sums due under this Agreement until Grantee provides adequate proof of compliance with all insurance requirements.

The amounts and types of insurance set forth above are minimums required by the City and shall not substitute for an independent determination by Grantee of the amounts and types of insurance which Grantee shall determine to be reasonably necessary to protect itself and its work.

Grantee agrees that the City, or the City's designated insurance agent, manager or administrator may audit Grantee books and records, insurance coverages, insurance cost information, or any other information that Grantee provides to the City, or the City's designated insurance agent, manager or administrator to confirm the accuracy of such documents and matters.

In the case of the breach of any of the insurance provisions of this Agreement that are not cured within 10 days of written notice to Grantee, the City may, at the City's option, take out and maintain at the expense of Grantee, such insurance in the name of Grantee as is required pursuant to this Agreement, and shall have the right to recover the cost of taking out and maintaining such insurance from Grantee.

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

Any deductible or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the Additionally Insured Parties; or the Grantee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Grantee waives all rights against the Additionally insured Parties to the extent these damages are covered by the forms of insurance coverage required above.

The City maintains the right to modify, delete, alter or change any of the insurance or indemnity requirements included in this Agreement upon not less than ninety (90) days' prior written notice.

Defense, Indemnity and Hold Harmless:

a. Grantee shall defend, indemnify and hold the Additionally Insured Parties harmless against all liabilities, losses, claims, judgments, suits or demands for (1) injuries to or death of persons, (2) damages to personal or real property and (3) economic loss (collectively, "Claims") brought against or incurred by any of the Additionally Insured Parties arising out of, resulting from or relating to Grantee's entry onto the City Property pursuant to this Right of Entry. The Additionally insured Parties' rights to indemnity from the Grantee are in addition to and cumulative to any benefits that they may have under any policy of insurance.

b. Notwithstanding the foregoing to the contrary, the foregoing defense, indemnity and hold harmless obligations of Grantee shall not apply to any Claims arising out of or related to (1) the sole negligence or willful misconduct of the Additionally Insured Parties or (2) the mere discovery

of existing conditions at the City Property, including, but not limited to the presence of hazardous materials.

c. Grantee's duty to defend the Additionally Insured Parties shall arise at the time notice of a Claim is first provided to Grantee by the Additionally Insured Parties, regardless of whether the claimant has tiled suit on the Claim. Grantee's duty to defend the Additionally Insured Parties shall arise even if the Additionally Insured Parties, or any of them, are the only parties identified/sued by the claimant. After tender by the City or another Additionally Insured Party, Grantee will defend any and all Claims which may be brought or threatened against the Additionally Insured Parties and will pay on behalf of the Additionally Insured Parties any expenses incurred by reason of such Claims including, but not limited to, court costs and reasonable attorney fees incurred in defending or investigating such Claims. Such payments on behalf of the Additionally Insured Parties shall be in addition to any and all other legal remedies available to the Additionally Insured Parties and shall not be considered the Additionally Insured Parties' exclusive remedy. Notwithstanding anything to the contrary, if a defense was provided by Grantee, upon final resolution of the Claim by judgment or award, the applicable Additionally Insured Parties will reimburse Grantee for such defense costs to the extent that:

- (1) the Claim arises out of, pertains to, or relates to the active negligence or willful misconduct of the individual or entity being indemnified; or
- (2) the Claim does not arise out of, pertain to, or relate to the scope of the Grantee's entry upon or activities on the Property pursuant to this Agreement.

Notwithstanding anything to the contrary, if a defense was provided by Grantee, upon final resolution of the Claim by a settlement agreement, the applicable Additionally Insured Party shall reimburse Grantee for a percentage of defense costs actually incurred by Grantee, which percentage shall be calculated by dividing the amount that the Additionally Insured Party agreed to pay pursuant to the settlement agreement by the total amount that both Grantee and the Additionally Insured Party agreed to pay pursuant to the settlement agreement. Grantee shall not agree to enter into any settlement agreement that requires an Additionally Insured Party to pay any amount without such Additionally Insured Party's express, prior consent.

d. Nothing contained in this paragraph shall affect (1) the validity of any insurance contract, workers' compensation or agreement issued by an admitted insurer as defined by the California Insurance Code or (2) obligations of an insurance carrier under the holding of *Presley Homes, Inc. v. American States Insurance Company* (2001) 90 Cal.App.4th 571.

e. The obligations of Grantee under this paragraph arising by reason of any occurrence taking place during the term of this Right of Entry, shall survive any termination of this Right of Entry.

Handling of Hazardous Materials: All samples and by-products from sampling processes in connection with the Services shall be disposed of by Grantee at Grantee's expense in accordance with applicable law; provided, however, (a) as between Grantee and the City, the City shall be deemed to be the owner of any and all such materials, including wastes, that cannot

be introduced back into the environment under existing law without additional treatment, and all hazardous wastes, radioactive wastes, or hazardous substances ("Hazardous Substances") related to the Services and (b) the City shall execute any necessary generator, transporter, or disposer manifests or other documents reasonably required in connection with the disposal of Hazardous Substances.

Miscellaneous:

Grantee understands that this Right of Entry shall not in any way whatsoever grant or convey any permanent easement or other interest in the Property to Grantee. This Right of Entry is expressly revocable and may be terminated by the City for any reason immediately upon written notice to Grantee.

Any work performed by Grantee shall not interfere with the operation or use of the property by the City or City departments or its tenants, as applicable or cause any damages to any improvements on the Property. All work shall be coordinated with the City, City departments using the Property and the terms of any existing leases.

Any work performed by Grantee shall conform to the regulatory requirements for hazardous materials set forth in the terms of the LDDA.

For the purposes of delivering notices pursuant to this Right of Entry, Grantee's notice address is _____, telephone _____.

All property disturbed in the performance of delivery will be restored by Grantee, to condition reasonably similar or better.

If a party brings any action or legal proceeding against the other party with respect to this Right of Entry, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees, expert witness fees, court costs, and other related expenses incurred by the prevailing party.

[Signatures on next page]

CITY

CITY OF OAKLAND

By: _____

Date: _____

GRANTEE

By:

Its:

By: _____ Date: _____

Its: _____

Exhibit A
Legal Description of City Property

[See attached]

Exhibit B
Work Plan

[See attached]

COMMUNITY BENEFITS MATRIX OF TERMS

	Community Benefit Category	Summary	Obligation/Agreement
1.	West Oakland Community Fund (WOCF)	<p>Developer to pay fair share contribution to WOCF (\$16,000 per net developable acre).</p> <p>Payments in phases due as a condition precedent to entering into each phase of ground lease.</p>	Developer/ LDDA
2.	Jobs	The City shall use commercially reasonable efforts to negotiate a Cooperation Agreement regarding jobs on the OAB with labor organizations and community groups.	City/ LDDA
3.	Jobs	The City shall make commercially reasonable efforts to assist in establishment of a West Oakland Jobs Center (Jobs Center) in West Oakland, including providing assistance in identifying suitable locations and funding sources. In the event that the Jobs Center is not established prior to commencement of construction of Public Improvements, then the functions of the Jobs Center shall be transferred to the existing City Comprehensive One-Stop Career Center, until such time as the Jobs Center is established.	City/ LDDA; Property Management Agreement; Billboard Agreement; Ground Lease
4.	Jobs	<p>The City and City's Construction Project Manager (as defined in the Property Management Agreement) shall include the Construction Jobs Policy for Public Improvements, attached as <u>Exhibit A</u>, as a material term of all contracts under which construction of Public Improvements may occur and shall itself comply with such Policy (except as provided under item 11 below). Developer shall include the Construction Jobs Policy for Vertical Construction, attached as <u>Exhibit B</u>, as a material term of all contracts under which Vertical Construction (as that term is defined in the Policy) may occur, and shall itself comply with terms of such Policy.</p> <p>Inclusion of said Policies in all relevant contracts, and compliance with applicable terms of such Policies by Developer, will fully satisfy the Developer's obligation with regard to such policy.</p>	City and Construction Project Manager (re Public Infrastructure Construction Jobs Policy)/ LDDA; Project Management Agreement

		The Constmction Jobs Policy for Public Improvements diverges from and expressly supersedes the employment portions of City Ordinance No. 12389, as amended by Council Ordinance 13101 (12/20/11), and the program Guidelines in the Local and Small Local Business Enterprise Program guidance dated February 1, 2012 with regard to Local Employment Program, Local Construction Employment Referral Program, and Apprenticeship Program ("City's Employment Program"). The City's Employment Program does not apply to the Private Improvements, which are governed by the Contstmction Jobs Policy for Vertical Constmction.	Developer (re Vertical Constmction Jobs Policy)/ LDDA; Ground Lease
5.	Jobs	Developer shall ensure that any contract under which an On-Site Job, as defined in the attached Policies, may be performed include the Operations Jobs Policy applicable to the relevant portion of the Project site as a material term of the contract in question, and shall itself comply with the Policy. The Parties acknowledge that the uses anticipated to be managed by the Developer's affiliates on the different phase areas will differ; therefore, there is one Operations Jobs Policy that shall apply to the East and Central Gateway Areas, attached as <u>Exhibit C</u> , and one that applies to the West Gateway Area, attached as, attached as <u>Exhibit D</u> . Inclusion of such Policy in all relevant leases and contracts, and compliance with such Policy by Developer, will fully meet the Developer obligation.	Developer/ LDDA; Ground Lease
6.	Jobs	Developer shall require compliance with the City Living Wage Ordinance for On-Site Jobs (Council Ordinance No. 12050, 4/7/98) in accordance with terms of the applicable Operations Jobs Policy.	Developer/ Project Management Agreement, Billboard Agerement, and Ground Lease
7.	Jobs	Developer shall comply, and require its subtenants to comply with the City Equal Benefits Policy (Council Ordinance No. 12394, 12/18/01), except where such application would be inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or the State of California.	Developer/ Project Management Agreement; Billboard

			Agerement; Ground Lease
8.	Jobs	The City, its Construction Project Manager and the subcontractors and subconsultants shall comply with the Prompt Payment Ordinance with respect to the constmction of Public Improvements (Council Ordinance No. 12857 (01/15/08)).	City and Constmction Project Manager/ LDDA; Project Management Agreement
9.	Jobs	Developer to pay, at time of each building permit application, Jobs/Housing Impact Fee (approximately \$4.50/sf) into fund to support West Oakland Jobs Center. [THROUGH DA/PUD PROCESS, CITY TO PROPOSE ALTERNATIVE FEE/REDIRECTION OF FEE TO SUPPORT THE JOBS CENTER]	Developer/ LDDA
10.	Jobs	Developer to establish a Community Area Maintenance fee equal to \$0.005/month per leasable square foot of building space and pay annual fee into fund to support the Jobs Center. The annual fee shall increase consistent with the Ground Lease CPI structure.	Developer/ Ground Lease
11.	Contracting	<p>The City and its Constmction Project Manager shall ensure that contract awards for constmction of Public Improvements proceed according to the contracting requirements in the City Local and Small Local Business Enterprise Program, Council Ordinance 12389 (12/18/01), as amended by Council Ordinance 13101 (12/20/11), (L/SLBE participation requirements), are for Public Improvements, except where such application would be inconsistent with the terms or conditions of a grant or a contract with an agency of the United States or the State of California. The City through its Office of Contracting Compliance shall oversee compliance of the Public Improvements contracting with the L/SLBE participation requirements.</p> <p>If the City's receipt of federal funds for any portion of the Public Improvements requires compliance with the U.S. Department of Transportation's Disadvantaged Business Enterprise Program, then for such portions of Public Improvements, the City and its Constmction Manager shall comply with the that program, an in such case, the Disadvantaged Business Enterprise Program shall replace the L/SLBE participation</p>	City and Construction Project Manager/ LDDA; Project Management Agreement

		<p>requirements.</p> <p>In the event that the City obtains federal funds to support construction of the Public Improvements, the City and its Construction Project Manager shall ensure, through terms of application for such funds, and through the scope and process of contract awards, that portions of Public Improvements supported by such funds are segregated from the remainder of Public Improvements so as to maximize application of the L/SLBE participation requirements and any other City policies that may conflict with requirements of federal funding sources.</p>	
12.	Contracting	<p>The City shall make commercially reasonable efforts to enter into a Project Labor Agreement (PLA) with the Unions for the Public Infrastructure that facilitates compliance with the Public Improvements Jobs Policy; this satisfies City Prevailing Wage Policy, Agency Resolution No. 87-4 (1/20/87) and State Prevailing Wage requirement, CA Labor Code 1720 et seq. The current PLA between Developer and the Unions does not apply to the City for the City's Public Infrastructure. If the City is not able to enter into a PLA as provided herein, the the existing City's Employment Policy shall apply and the parties shall meet and confer.</p>	City/ LDDA
13.	Contracting	<p>In order to protect the City's proprietary interest in prompt completion of construction, Developer shall use commercially reasonable efforts, prior to commencement of construction, enter into or amend, as applicable, a PLA with the Alameda County Building Trades Council, which agreement requires such labor organizations to refrain from work stoppages on project construction, and shall be consistent with and facilitate compliance with the Vertical Construction Jobs Policy.</p>	Developer/ LDDA
14.	Environmental	<p>City and Developer, in conjunction with both the Public Infrastructure and the Private Improvements, shall comply with CEQA Mitigation Measures and Standard Conditions of Approval, attached as <u>Exhibit E</u>. Such measures include those set forth in the City Council Areas of Agreement, including measures to address noise limits, dust control, hazardous materials removal, storm water plan, use of permeable pavers where feasible, use deconstruction rather than demolition where possible, and preparation and implementation of a demolition debris recycling plan, prepare a GHG Reduction Plan and maximize the use of green energy (solar, wind, other) where possible, further water conservation through</p>	City/ LDDA Developer/ Billboard Agreement; Ground Lease

		<p>use of rain barrels and gray water technology where possible, ensure that truck related construction routes are directed away from residents, provide public or private transit connection for construction workers (connecting to BART and at least two West Oakland locations), and provide public notification of project status (updated at least monthly and posted online and at the West Oakland Public Library).</p> <p>Responsibility for implementation of these measures will be allocated as between the City and the Developer through the DA/PUD process that will follow the LDDA. More feasible and/or cost effective measures may be considered by the Parties so long as those measures meet CEQA requirements and do not themselves cause any potentially significant effect on the environment, as determined by the City through the DA/PUD process.</p>	
15.	Environmental	<p>Developer shall make a good faith effort to show conformance with the applicable sections of the current draft of the City's Energy Climate Action Plan as presented to the City Council March 1, 2011. The same measures may be used to satisfy the applicable requirements of the Climate Action Plan, required per this item 15, and the Greenhouse Gas Reduction Plan, required per item 14, above.</p>	Developer/ Ground Lease
16.	Environmental	<p>The City and Developer shall cooperate in an air quality monitoring program to install and maintain air monitoring equipment in locations determined in consultation with the Port, Bay Area Air Quality Management District (BAAQMD), Alameda County Public Health Department (ACPHD), and shall provide monitoring reports from that equipment to the BAAQMD, the City, the Port on a quarterly basis. The "fence-line" monitoring program shall be funded by the City throughout the construction of the Public Infrastructure, the Developer shall fund the ongoing "fence-line" monitoring and reporting during the construction of the Private Improvements and throughout the term of the Ground Lease.</p>	City/ LDDA Developer/ Ground Lease

EXHIBIT ____

Construction Jobs Policy

Oakland Army Base Project

Public Improvements

I. **Purpose.** This Construction Jobs Policy ("Policy") sets forth certain requirements regarding hiring and employment for the construction of the Public Improvements. Contractors participating in the construction of the Public Improvements agree to comply with terms of this Policy as a condition of operation.

II. **Definitions.** As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form. Capitalized terms that are not defined below are defined as in the LDDA.

"Apprentice" shall mean an individual who is enrolled in a Registered Apprenticeship Program on the date that such individual is hired or assigned to perform the applicable work.

"Apprentice Work Hours" shall mean Project Work Hours performed by Apprentices.

"**Background Exceptions**" shall mean: (i) law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential (TWIC) program and the Customs Trade Partnership Against Terrorism); or (ii) the Contractor's good faith determination that the position is of such sensitivity that Individuals with particular types of criminal convictions or histories are ineligible.

"Contractor" shall mean any entity employing individuals to perform Project Construction Work, including contractors and subcontractors of any tier, and any entity with a construction management contract for performance of Project Construction Work.

"Designated Preapprenticeship Program" shall mean a preapprenticeship program designated by the City for purposes contemplated in this Policy. The City shall provide developer with 60 days notice of changes to the list of Designated Preapprenticeship Programs. Do we use this definition?

"Disadvantaged Worker" shall mean a Resident meeting eligibility criteria for California Enterprise Zone Hiring Credits, as set forth in Cal. Rev. & Tax Code Sec. 23622.7 (4)(A) on the date that such individual is hired or assigned to perform the applicable work.

"Public Improvements" shall mean construction work performed pursuant to

Section ____ of the LDDA or otherwise occurring on the Project Site pursuant to a prime contract entered by the City or by any entity serving as a construction manager or other agent of the City.

"City PLA" shall mean a project labor agreement governing Horizontal Construction, and executed by the Alameda County Building Trades Council and the City.

"Jobs Center" shall mean a referral center to be designated by the City as such for purposes of implementation of this Policy.

"LDDA" shall mean the Lease Disposition and Development Agreement entered into by the City and Developer respecting the development activities at the Oakland Army Base.

"New Apprentice" shall mean a Resident who is newly enrolled (less than 3 months) as an Apprentice in a Registered Apprenticeship Program on the date that such individual is hired or assigned to perform the applicable work.

"Policy" shall mean this Construction Jobs Policy.

"Prime Contractor" shall mean a Contractor awarded a contract by a Developer, the City, or a construction manager retained by a Developer or the City, for performance of Project Construction Work.

"Project Construction Work" shall mean construction work performed on the Project Site and in furtherance of the Public improvements. For purposes of this definition, "construction work" shall mean work for which a California state contractor's license is required.

"Project Work Hours" shall mean hours of Project Construction Work performed on the Project Site.

"Project Site" shall mean parcels [define] as described in the LDDA .

"Registered Apprenticeship Program" shall mean a labor-management apprenticeship program that is currently registered with the State of California's Division of Apprenticeship Standards.

"Resident" shall mean an individual domiciled in the City for at least seven days prior to the commencement of Project Construction Work, with "domiciled" as defined by Section 349(b) of the California Election Code on the date that such individual is hired or assigned to perform the applicable work.

"Unions" shall mean construction trades unions affiliated with the Alameda

County Building Trades Council and that have executed the City PLA.

III. EMPLOYMENT REQUIREMENTS.

A. **Alternative Approaches.** Each Contractor shall either follow the Hiring and Referral Processes set forth in Section III.B, below, or satisfy the percentage requirement set forth in Section III.C, below.

B. Hiring and Referral Processes.

1. **Contractor Procedures.** Contractors shall undertake the following steps in the following order, in an effort to retain Residents and New Apprentices:

- a. **Step One:** Utilize the Contractor's discretion to assign to perform Project Work any current employees who are Residents, identified Disadvantaged Workers, or New Apprentices;
- b. **Step Two:** If the Contractor utilizes a Union hiring hall to retain workers, utilize name call, rehire, or similar procedures in the relevant collective bargaining agreement to request particular Individuals who have been identified as Residents, Disadvantaged Workers, Apprentices, or New Apprentices;
- c. **Step Three:** If the Contractor utilizes a Union hiring hall to retain workers, request that the hiring hall refer Residents, Apprentices, and/or New Apprentices;
- d. **Step Four:** If the above steps have not enabled satisfaction of requirements of this Policy related to hiring of Residents, Disadvantaged Workers, Apprentices and New Apprentices, request referral of needed categories of workers from the Jobs Center;
- e. **Step Five:** Fairly consider workers referred by the Jobs Center within three business days of notification.

2. **Hiring Discretion.** Nothing In this Policy shall require that any Contractor hire any particular individual; each Contractor shall have the sole discretion to hire any individual referred by the Jobs Center or any other person or entity.

C. **Percentage Requirements.** The requirements of this Section III(C) shall be satisfied if:

1. **Residents.** For each construction trade in which it performs for Project Construction Work, at least 50% of Project Work Hours are performed by Residents.

2. **Disadvantaged Workers** For each construction trade in which a Contractor performs for Project Construction Work, at least 25% of hours worked by Registered Apprentices are performed by Disadvantaged Workers.

3. **Twenty Percent Utilization Requirement.** For all Project Work Hours in aggregate, performed by any Contractor, Apprentice Work Hours shall constitute at least 20% of Project Work Hours.

4. **Credit for Hours Worked on Other Projects.** Construction work to be credited toward the requirements set forth above may be Project Work or work on other construction projects performed by the Contractor.

5. **Bonus for Retention of New Apprentices.** For every 1,000 hours beyond an initial 1000 hours that any one New Apprentice works for a Contractor (on the Project Construction Work or otherwise), such Contractor shall be entitled to 500 "bonus" hours that may be applied toward satisfaction of the percentage requirements set forth in Section III.C.1 and III.C.2.

D. **Liquidated Damages for Percentage Requirements.** If a Contractor fails to satisfy its the requirements of either Section III(B) or III(C), then as the sole and exclusive remedy therefor, such Contractor shall pay as liquidated damages an amount equal to \$20.00 per hour short of such requirements for Resident, Disadvantaged Worker and Apprenticeship Project Construction Hours, as applicable, in any case to the extent that such Contractor failed to achieve the applicable hour threshold. In addition, a Contractor shall not owe liquidated damages if it negotiates a Negotiated Compliance Plan with the City, and complies with that plan. Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

E. **New Apprentice Sponsorship Requirements for Prime Contractors.** In each calendar year, for each 20,000 Project Work Hours performed by a Prime Contractor and its subcontractors of any tier, the Prime Contractor or its subcontractors shall sponsor at least one New Apprentice and employ that apprentice for at least 1000 hours of construction work, on the Project Site and/or on other projects. A Contractor may satisfy this requirement by sponsoring more than one New Apprentice and employing those New Apprentices for a combined total of at least 1000 hours of construction work, on the Project Site and/or on other projects. The parties agree that

the City's sole and exclusive remedy for a Contractor's failure to meet this requirement will be specific performance.

F. Funding Restrictions. For any portions of the Project Construction Work on which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements described above, the City will work collaboratively with the funding agency to adapt the above requirements to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, the Developers and the City shall meet and confer with regard to the adapted requirements agreed to by the City and the funding agency, and, with the Developer's consent, such requirements shall be applied to portions of the Project Construction Work in question, and shall automatically become terms of this Construction Jobs Policy, to which all Contractors agree. Developer's consent to application of such adapted terms shall not be withheld if such adapted terms are reasonable and generally advance the goals of this Policy. Such adapted terms shall be deemed to have Developer consent if no contrary position is delivered by Developer to the City within ten days of being furnished to the Developer.

G. Contact Person. At least two weeks prior to performance of Project Construction Work, each Contractor shall provide to the City contact information for a contact person for purposes of implementation of this Policy.

H. Employment Needs Projections.

1. Prime Contractor. Within one month after being awarded a prime contract any prime contractor shall project employment needs by Project Work Hours for performance of the contract, and provide such projection to the Jobs Center and the City. Such projection shall indicate number of workers, apprentices, and Project Work Hours needed by trade, at different stages of performance of the contract.

2. Subcontractors. Each Contractor shall, at least one month before commencing performance of Project Work, project employment needs for performance of the contract, and provide such projection to the Jobs Center and the City. Such projection shall indicate number of workers, apprentices, and Project Work Hours needed by trade, at different stages of performance of the contract.

3. Compliance Plan. Prior to commencement of construction, Prime Contractors may request participation from the City in negotiation of a proactive compliance plan with regard to requirements of this Policy. The City shall negotiate in good faith in an attempt to reach agreement on such a plan. Negotiated compliance plans may streamline and clarify responsibilities under this Policy, but may not conflict with this Policy. If such a plan is agreed to by Prime Contractors and the City, then compliance with the plan shall be compliance with the Policy.

I. **Determination of Status.** The applicable Contractor's determination of whether any individual is a **Resident, Disadvantaged Worker, Apprentice or New Apprentice** shall be binding. In determining whether the requirements of this Policy have been satisfied, including the requirements of Sections III.B and III.C, provided that Developer or such Contractor obtains reasonable documentation demonstrating that such individual is a **Resident or New Apprentice** at the time that such Individual is assigned or hired and Developer or such Contractor retains such documentation and makes it available to City for inspection at reasonable times (provided that City shall not request such information more than once every three (3) months). The City shall keep all documentation provided pursuant to this Section confidential, subject to applicable law. [Note: Contractor determination of **Disadvantaged Worker** status (versus **Job Center** determination.)]

J. **Worker Qualifications.** Unless a criminal background check is required by any of the Background Exceptions, a Contractor shall neither request from prospective workers, nor independently research prospective workers' history of Involvement with the criminal justice system. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Contractor shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no Interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Contractor may state such requirement at the outset of the recruitment and hiring process. Unless a credit history is required by any of the Background Exceptions or Contractor's good faith determination that the position is of such sensitivity that individuals with particular types of credit histories are ineligible, a Contractor shall neither request from prospective workers, nor independently research prospective workers', credit histories.

IV. MONITORING AND ENFORCEMENT.

A. **Reporting Requirements.** Contractors shall submit monthly

certified payroll records to the City, with an indication as to which work hours were worked by Residents, Disadvantaged Workers, and New Apprentices. Each Contractor shall also provide other records or information requested by the City regarding fulfillment of responsibilities under this Policy. All such records and information shall be considered public documents. Prior to such documents being released to the public, the City will redact identifying information from such documents to protect privacy of individuals.

B. Project Labor Agreement. As set forth in the LDDA, in order to protect the City's proprietary interest in prompt completion of Public Improvements, and to implement this Policy, the City has or will have entered into a Project Labor Agreement (PLA) with the Building and Construction Trades Council of Alameda County covering the Public Improvements, with contractors and subcontractors to perform work under terms of such PLA, and such PLA to be consistent with and facilitate compliance with this Policy.

V. MISCELLANEOUS.

A. Subcontracts. Each Contractor shall include compliance with this Policy as a material term of any subcontract under which Project Construction Work will be performed, with such subcontractor having all rights and responsibilities of a Contractor. If a Contractor enters into a subcontract in violation of this subsection A., then such Contractor shall be liable for any breach of this policy at any sub-tier level(s). If a Contractor complies with this subsection A, such Contractor shall not be liable for any breach of this policy at any sub-tier level.

B. Assurance Regarding Preexisting Contracts. Except with respect to [insert provision regarding existing CCIG PLA for the Project], each entity that agrees to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Site that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into a contract in violation of this Section V.B, then upon request from the City it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

C. Third Party Beneficiaries. Each entity that agrees to comply with this Policy agrees that, with regard to the terms of this Policy, the City is an intended third-party beneficiary of any contract that incorporates this Policy, and that the City shall

have the right to enforce terms of this Policy directly against entities that have agreed to comply with this Policy. There shall be no other third party beneficiaries. City shall not delegate any of its responsibilities to any third party, require the consent of any third party or act solely upon the direction of any third party in performing its obligations or exercising its rights under this Policy.

D. Out-of-State Workers. The requirements of Sections III.C.1 or III.C.2 shall not apply to Project Work Hours performed by residents of states other than the State of California. Notwithstanding the above, if, for any calendar year, the percentage of Project Work Hours worked by residents of states other than the State of California exceeds thirty percent, then for all subsequent years of work on the Project, the first sentence of this Section V.D. shall not apply, and the requirements of Sections III.C.1 or III.C.2 shall be applicable to all Project Work Hours.

E. Material Term. This Policy is a material term of any contract into which it is incorporated.

F. Severability. If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy.

G. Applicable Law and Compliance with Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; and (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law.

H. Successors and Assigns. This Policy shall be binding upon and inure to the benefit of successors and assigns of any party to a contract incorporating this Policy. References in this Agreement to any entity shall be deemed to apply to any successor of that entity.

I. Warranties and Representation. Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to be consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

Construction Jobs Policy
Oakland Army Base Project
Vertical Construction

I. **Purpose.** This Construction Jobs Policy ("Policy") sets forth certain requirements regarding hiring and employment in Vertical Construction portions of the Oakland Army Base project. Contractors participating in Vertical Construction agree to comply with terms of this Policy as a condition of operation.

II. **Definitions.** As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form. Capitalized terms that are not defined below are defined as in the Community Jobs Agreement.

"Apprentice" shall mean an individual who is enrolled in a Registered Apprenticeship Program.

"Apprentice Work Hours" shall mean Project Work Hours performed by Apprentices.

"Background Exceptions" shall mean: (i) law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential (TWIC) program and the Customs Trade Partnership Against Terrorism); (ii) the Contractor's good faith determination that the position is of such sensitivity that individuals with particular types of criminal convictions or histories are Ineligible; and (iii) the Contractor's hiring policies that are uniformly applied in the State of California.

"Contractor" shall mean any entity employing individuals to perform Project Construction Work, including contractors and subcontractors of any tier, and any entity with a construction management contract for performance of Project Construction Work.

"Designated Preapprenticeship Program" shall mean a preapprenticeship program designated by the City for purposes contemplated in this Policy.

"Jobs Center" shall mean a referral center to be designated by the City as such for purposes of implementation of this Policy.

"LDDA" shall mean the Lease Disposition and Development Agreement entered into by the City and Developer respecting the development activities at the Oakland Army Base.

"New Apprentice" shall mean a Resident who is newly enrolled as a first period apprentice in a Registered Apprenticeship Program.

"Policy" shall mean this Construction Jobs Policy.

"Prime Contractor" shall mean a Contractor awarded a contract by a Developer, the City, or a construction manager retained by a Developer, for performance of Project Construction Work.

"Project Construction Work" shall mean construction work performed in on the Project Site, other than the Public Improvements.

"Project Work Hours" shall mean hours of Project Construction Work performed on the Project Site.

"Project Site" shall mean parcels [define] as described in Exhibit A of the ENA.

"Registered Apprenticeship Program" shall mean a labor-management apprenticeship program that is currently registered with the State of California's Division of Apprenticeship Standards.

"Resident" shall mean an individual domiciled in the City for at least seven days prior to the commencement of Project Construction Work, with "domiciled" as defined by Section 349(b) of the California Election Code.

"Unions" shall mean construction trades unions affiliated with the Alameda County Building Trades Council that have executed a Vertical PLA.

"Vertical Construction" shall mean Project Construction Work related to private site improvements and core and shell building improvements worth over \$1,000,000, and expressly excludes any tenant improvements. This threshold applies to prime contract awards, rather than to subcontract amounts.

"Vertical PLA" shall mean any project labor agreement governing Vertical Construction, and executed by the Alameda County Building Trades Council and a Developer.

III. EMPLOYMENT REQUIREMENTS.

A. Alternative Approaches. Each Contractor shall either follow the Hiring and Referral Processes set forth in Section III.B, below, or satisfy the

percentage requirement set forth in **Section III.C**, below.

B. Hiring and Referral Processes.

1. **Contractor Procedures.** Contractors shall undertake the following steps in the following order, in an effort to retain Residents and New Apprentices:

- a. **Step One:** Assign to perform Project Work any current employees who are Residents or New Apprentices;
- b. **Step Two:** Utilize name call, rehire, or similar procedures in the relevant collective bargaining agreement to request particular individuals who have been identified, in cooperation with the Unions, as Residents or New Apprentices;
- c. **Step Three:** Request that the union hiring hall refer Residents and/or New Apprentices;
- d. **Step Four:** If the above steps have not enabled satisfaction of requirements of this Policy related to hiring of Residents, Disadvantaged Workers, and New Apprentices, request referral of needed categories of workers from the Jobs Center.
- e. **Step Five:** Fairly consider workers referred by the Jobs Center within three business days of notification.

C. Percentage Requirements.

1. **Residents.** The percentage requirement of this subsection III.C is satisfied if, for each construction trade in which a Contractor performs Project Construction Work, at least 50% of Project Work Hours are performed by Residents.

2. **Credit for Hours Worked on Other Projects.** Construction work to be credited toward the percentage requirement set forth above may be Project Work or work on other construction projects performed by the Contractor.

3. **Bonus for Retention of New Apprentices.** For every 1,000 hours beyond an initial 1000 hours that any one New Apprentice works for a Contractor, such contractor shall be entitled to 500 "bonus" hours that may be applied toward satisfaction of the percentage requirement set forth above.

4. **Exemption for Core Workers.** The percentage requirement set forth above, shall not apply to Project Work Hours performed by members of

a Contractor's core workforce. For a Contractor that is certified by the City of Oakland as a Very Small Local Business Enterprise, a Small Local Business Enterprise, or a Local Business Enterprise, a member of the core workforce is a worker who has appeared on payroll records for at least 750 hours of work in the 180 days prior to that Contractor's commencement of work on the contract in question. For any other Contractor, a member of the core workforce is a worker who has appeared on payroll records for at least 1500 hours of work in the 365 days prior to that Contractor's commencement of work on the contract in question.

D. Apprentices.

1. **New Apprentice Sponsorship Requirements for Prime Contractors.** in each calendar year, for each 20,000 Project Work Hours performed by a Prime Contractor and its subcontractors of any tier, the Prime Contractor and/or its subcontractors shall sponsor at least one New Apprentice and employ that apprentice for at least 1000 hours of construction work, on the Project Site and/or on other projects. A Prime Contractor may satisfy this requirement by sponsoring more than one New Apprentice for each 20,000 Project Work Hours, and employing those New Apprentices for a combined total of at least 1000 hours of construction work, on the Project Site and/or on other projects.

2. **Twenty Percent Utilization Requirement.** For all Project Work Hours in aggregate, performed by any Contractor, Apprentice Work Hours shall constitute at least 20% of Project Work Hours.

E. Hiring Discretion. Nothing in this Policy shall require that any Contractor hire any particular individual; each Contractors shall have the sole discretion to make hiring decisions with regard to any individual referred by the Jobs Center or any other person or entity.

F. Funding Restrictions. For any portions of the Project Construction Work on which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements described above, the City will work collaboratively with the funding agency to adapt the above requirements to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. in such cases, the Developers and the City shall meet and confer with regard to the adapted requirements agreed to by the City and the funding agency, and, with the Developer's consent, such requirements shall be applied to portions of the Project Construction Work in question, and shall automatically become terms of this Construction Jobs Policy, to which all Contractors agree. Developer's consent to application of such adapted terms shall not be withheld if such

adapted terms are reasonable and generally advance the goals of this Policy. Such adapted terms shall be deemed to have Developer consent if no contrary position is delivered by Developer to the City within ten days of being furnished to the Developer.

G. Contact Person. At least two weeks prior to performance of Project Construction Work, each Contractor shall provide to the City contact information for a contact person for purposes of implementation of this Policy.

H. Employment Needs Projections.

1. Prime Contractor. Within one month of being awarded a prime contract, any prime contractor shall project employment needs for performance of the contract, and provide such projection to the Jobs Center and the City. Such projection shall indicate number of workers and apprentices needed by trade, at different stages of performance of the contract.

2. Subcontractors. Each Contractor shall, at least one month before commencing performance of Project Work, project employment needs for performance of the contract, and provide such projection to the Jobs Center and the City. Such projection shall indicate number of workers and apprentices needed by trade, at different stages of performance of the contract.

3. Compliance Plan. Prior to commencement of construction, Prime Contractors may request participation from the City in negotiation of a proactive compliance plan with regard to requirements of this Policy. The City shall negotiate in good faith in an attempt to reach agreement on such a plan. Negotiated compliance plans may streamline and clarify responsibilities under this Policy, but may not conflict with this Policy. If such a plan is agreed to by Prime Contractors and the City, then compliance with the plan shall be compliance with the Policy.

I. Worker Qualifications. Unless a criminal background check is required by any of the Background Exceptions, a Contractor shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Contractor shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in

question); (c) consider only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Contractor may state such requirement at the outset of the recruitment and hiring process. Unless a credit history is required by any of the Background Exceptions or Contractor's good faith determination that the position is of such sensitivity that individuals with particular types of credit histories are ineligible, a Contractor shall neither request from prospective workers, nor independently research prospective workers', credit histories.

J. Project Labor Agreement. As set forth in the LDDA, the project developer has or will have entered into a Project Labor Agreement (PLA) with the Building and Construction Trades Council of Alameda County covering the vertical construction phases of this project, with all contractors and subcontractors to perform work under terms of such PLA, and such PLA to be consistent with and facilitate compliance with this Policy.

IV. MISCELLANEOUS.

A. Subcontracts. Each Contractor shall include compliance with this Policy as a material term of any subcontract under which Project Construction Work will be performed, with such subcontractor having all rights and responsibilities of a Contractor. If a Contractor enters into a subcontract in violation of this subsection A., then such Contractor shall be liable for any breach of this policy at any sub-tier level(s). If a Contractor complies with this subsection A, such Contractor shall not be liable for any breach of this policy at any sub-tier level.

B. Assurance Regarding Preexisting Contracts. Each entity that agrees to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Site that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into a contract in violation of this Section V.B, then upon request from the City it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

C. Third Party Beneficiaries. Each entity that agrees to comply with this Policy agrees that, with regard to the terms of this Policy, the City is an intended third-party beneficiary of any contract that incorporates this Policy, and

that the City shall have the right to enforce terms of this Policy directly against entities that have agreed to comply with this Policy. There shall be no other third party beneficiaries. City shall not delegate any of its responsibilities to any third party, require the consent of any third party or act solely upon the direction of any third party in performing its obligations or exercising its rights under this Policy.

D. Reporting Requirements. Contractors shall submit monthly certified payroll records to the City, with an indication as to which work hours were worked by Residents and New Apprentices. Each Contractor shall also provide other records or information requested by the City regarding fulfillment of responsibilities under this Policy. All such records and information shall be considered public documents. Prior to such documents being released to the public, the City will redact identifying information from such documents to protect privacy of individuals.

E. Determination of Status. A Contractor's determination of whether any individual is a Resident or New Apprentice shall be binding in determining whether the requirements of this Policy have been satisfied, including the requirements of Sections III.A and III.B, provided that such Contractor obtains reasonable written documentation demonstrating that such Individual is a Resident or New Apprentice at the time that such individual is assigned or hired and such Contractor retains such documentation and makes it available to City for inspection at reasonable times.

F. Remedies.

1. Liquidated Damages for Percentage Requirements. If a Contractor fails to satisfy at least one of the alternative approaches set forth in Section III.A of this Policy, then as the sole and exclusive remedy therefor, such Contractor shall pay to the City liquidated damages an amount equal to _____ dollars for each hour short of the percentage requirement. A Contractor shall not owe liquidated damages if it negotiates a Negotiated Compliance Plan with the City, and complies with that plan. Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

2. Specific Performance. The City may bring an action for specific performance to ensure compliance with this Policy.

3. No Breach of Certain Agreements. In no case shall a Contractor's noncompliance with this Policy constitute a breach of the LDDA or any Ground Lease related to the Project Site.

G. Out-of-State Workers. The requirements of Sections III.A.1 or III.A.2 shall not apply to Project Work Hours performed by residents of states other than the State of California. Notwithstanding the above, if, for any calendar year, the percentage of Project Work Hours worked by residents of states other

than the State of California exceeds thirty percent, then for all subsequent years of work on the Project, the first sentence of this Section V.D. shall not apply, and the requirements of Sections III.A.1 or III.A.2 shall be applicable to all Project Work Hours.

H. Material Term. This Policy is a material term of any contract into which it is incorporated.

I. Emergency. [Emergency provision to be negotiated to ensure safety or material damage to property.]

E. Severability. If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy.

F. Applicable Law and Compliance with Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; and (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law.

G. Successors and Assigns. This Policy shall be binding upon and inure to the benefit of successors and assigns of any party to a contract incorporating this Policy. References in this Agreement to any entity shall be deemed to apply to any successor of that entity.

H. Warranties and Representation. Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to be consulted by counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that resolves any ambiguities against the drafting party shall not apply to this Policy.

EXHIBIT

Operations Jobs Policy
Oakland Army Base Project
West Gateway

I. Purpose. This Operations Jobs Policy ("Policy") sets forth certain requirements regarding hiring and employment in operation of portions of the West Gateway, pursuant to the LDDA. Employers in the West Gateway portions of the Oakland Army Base project agree to comply with terms of this Policy as a condition of entry into any Agreement to which this Policy is attached. This Policy does not cover construction hiring or employment.

II. Definitions. As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form. Capitalized terms that are not defined below are defined as in the Community Jobs Agreement.

"Background Exceptions" shall mean: (i) law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential (TWIC) program and the Customs Trade Partnership Against Terrorism); or (ii) the Contractor's good faith determination that the position is of such sensitivity that individuals with particular types of criminal convictions or histories are ineligible.

"Employer" shall mean any entity employing at least two full time equivalent individuals to perform On-Site Jobs. For example, this threshold would be satisfied by employment of either two full-time workers or four half-time workers to perform On-Site Jobs.

"Disadvantaged Worker" shall mean a Resident meeting eligibility criteria for California Enterprise Zone Hiring Credits, as set forth in Cal. Rev. & Tax Code Sec. 23622.7 (4)(A) on the date that such individual is hired or assigned to perform the applicable work.

"Jobs Center" shall mean a referral center to be designated by the City as such for purposes of implementation of this Policy.

"Large Employer" shall mean any entity leasing space within the Project Site and employing at least fifty (50) full time equivalent individuals to perform On-Site Jobs, or performing services pursuant to one or more service contracts within the Project Site

and employment at least fifty (50) full time equivalent individuals to perform On-Site Jobs.

“LDDA” shall mean the Lease Disposition and Development Agreement entered into by City and Developer respecting the development of the Oakland Army Base.

“On-Site Job” shall mean any job for which at least fifty percent of the work hours are performed on the Project Site.

“Policy” shall mean this Operations Jobs Policy.

“Project Site” shall mean the West Gateway as described in Exhibit A of the LDDA.

“Resident” shall mean an individual domiciled in the City for at least seven days prior to having been retained by an Employer under this policy, with “domiciled” as defined by Section 349(b) of the California Election Code on the date that such individual is hired or assigned to perform the applicable work.

III. Local Hiring.

A. Hiring Process.

1. Long-Range Planning. Prior to a Large Employer commencing operations in the Project and within thirty (30) days of each January 1 thereafter, each Large Employer shall provide to the City and the Jobs Center information regarding such Large Employers’ good faith estimate of the number and type of On-Site Jobs that such Large Employer reasonably believes it will need to fill during the applicable calendar year and the basic qualifications anticipated to be necessary for such On-Site Jobs.

2. Initial Hiring Process.

a. Notification of Job Opportunities. At least four weeks prior to an Employer commencing operations in the Project, each Large Employer shall notify the Jobs Center of available non-management job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g. language skills, drivers’ license, required background check, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

b. **Hiring.** The Large Employer shall use normal hiring practices, including interviews, to consider all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during the four week period after initial notification to the Jobs Center, or until all open positions are filled, whichever is sooner. The Large Employer shall make best efforts to fill all non-management available positions with Residents and Disadvantaged Workers referred by the Jobs Center. If at the conclusion of the four-week period the Large Employer has been unable to fill all available non-management positions with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods.

c. **Pre-opening Transfer.** Provisions of Section III.A.1 are not applicable to a Large Employer that is closing a facility located outside Oakland and is transferring the majority of its staff from the previous facility to a new facility within Oakland. Upon commencing operation in the new facility, such a Large Employer is covered by subsection 3, below. Provisions of this Section III.A.2 are applicable to Large Employers who hire for positions in facilities located outside Oakland with the intention of transferring such hires to a new facility at the Project Site upon commencement of operations for the new facility. All such hires shall be made under the provisions of this subsection.

d. **Jobs Center Feedback.** Following the completion of the initial hiring process set forth in this Section, at the request of the City a Large Employer shall meet and confer with and provide feedback to the City Administrator and the Jobs Center to provide feedback on the initial hiring process so as to ensure that the Jobs Center may meet the future employment needs of the Employer and any future Employer and ensure the maximum hiring of Residents and Disadvantaged Workers feasible given the opportunities to be created by the Project.

3. Ongoing hiring process.

a. **Notification of job opportunities.** After a Large Employer has commenced operations in the Project, it shall continue to use the Jobs Center as a resource to fill positions that become available. When a Large Employer has positions available, the Employer shall notify the Jobs Center of available job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g. language skills, drivers' license, required background check, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

b. **Hiring.** The Large Employer shall then use standard hiring practices, including interviews, to consider all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during a five-day period after initial notification, or until all open positions are filled, whichever is sooner. The Large Employer shall make good faith efforts to fill all available positions with Residents and Disadvantaged Workers referred through the Jobs Center. If at the conclusion of the five day period the Large Employer has been unable to fill all available positions with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods.

4. Nondiscrimination. Employers shall not discriminate against Residents or Disadvantaged Workers on the basis of their Resident status, status as a Disadvantaged Worker, or on any prohibited basis in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.

5. Priorities. Each Large Employer shall apply the following priorities in hiring Residents:

- i. **First Priority:** Residents of zip codes _____;
[insert zip codes that comprise West Oakland and city council District 3]
- ii. **Second Priority:** Residents of the Oakland Enterprise Zone
[need zip codes];
- iii. **Third Priority:** other Residents of the City of Oakland.

6. Worker Qualifications. Unless a criminal background check is required by any of the Background Exceptions, a Employer shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Employer shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories (i) related to job requirements and responsibilities or (ii) related to

violent acts; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Employer may state such requirement at the outset of the recruitment and hiring process. Unless a credit history is required by any of the Background Exceptions or Employer's good faith determination that the position is of such sensitivity that individuals with particular types of credit histories are ineligible, a Employer shall neither request from prospective workers, nor independently research prospective workers', credit histories.

B. Monitoring and Enforcement.

1. **Safe Harbor Provision.** Any Large Employer for whom at least fifty percent of workers hired for On-Site Jobs during a particular year were Residents, and for whom at least twenty-five percent of workers hired for On-Site Jobs during a particular year were Disadvantaged Workers, shall be deemed to be in compliance with Sections III.A.2, and III.A.3 of this Policy, for all hiring during that year.

2. **Credit for Hiring at Other Locations.** Large Employers shall receive credit toward achievement of the Safe Harbor threshold set forth in Section III.B.1 for any hires of Residents or Disadvantaged Workers to perform jobs at other locations, so long as such Residents or Disadvantaged Workers are paid are compensated In an amount equal to or in excess of that set forth in the Oakland Living Wage Ordinance (Oakland Municipal Code Section 2.28.010 *et seq.*)

3. **Retention Incentive.** For every 2,000 hours that any one Resident or Disadvantaged Worker hired pursuant to this Policy works for a Large Employer, that Large Employer shall be entitled to a "bonus" hiring credit towards achievement of the Safe Harbor threshold set forth in Section III.B.1, above.

4. **Liquidated Damages.** Each Large Employer agrees that, if it has not complied with the hiring process requirements of Sections III.A.2 and III.A.3, above, during a particular year, then as the sole and exclusive remedy therefor, it shall pay to the City liquidated damages in the amount of \$5,000.00 per job short of the Safe Harbor threshold set forth in Section III.B.1, above. A Large Employer shall not owe liquidated damages if it negotiates a Negotiated Compliance Plan with the City, and complies with that plan. Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

5. **Compliance Records.** Each Employer shall make available to the City on an annual basis or upon request records sufficient to determine compliance with this Policy. The City shall keep all documentation provided pursuant to this Section confidential, subject to applicable law.

IV. Temporary Employment Agencies.

A. Temporary Employment Agencies. Large Employers may enter into a contract or other arrangement to supply workers for temporary employment in On-Site Jobs, provided that without the approval of the City Administrator in his or her reasonable discretion (i) temporary employment of any individual worker will last one hundred twenty (120) days or less per calendar year and (ii) no more than forty percent (40%) of the total number of days worked by all individuals performing On-Site Jobs on behalf of such Large employer shall be performed by temporary workers. The City Administrator shall reasonably consider any request for such approval by the applicable Large Employer if such Large Employer reasonably demonstrates that compliance with this Section IV.A could create significant economic or operational hardship for the Large Employer.

V. Living Wages

A. Compliance with Ordinance. Each Employer shall provide compensation required of covered employers under, and shall otherwise comply with, the Oakland Living Wage Ordinance. (Oakland Municipal Code Section 2.28.010 *et seq.*)

VI. Miscellaneous.

A. Contact Person. Within 30 days of having entered into any contract related to operation on the Project Site, each Employer will designate a contact person for all matters related to implementation of this Policy. The Employer shall forward the name, address and phone number of the designated individual to the City.

B. Determination of Status. The applicable Employer's determination of whether any individual is a Resident or Disadvantaged Worker shall be binding in determining whether the requirements of this Policy have been satisfied, including the requirements of Section III.B(1), provided that such Employer obtains reasonable documentation demonstrating that such individual is a Resident or New Apprentice at the time that such individual is assigned or hired such Employer retains such documentation and makes it available to City for inspection at reasonable times. The

City shall keep all documentation provided pursuant to this Section confidential, subject to applicable law. [Note: Contractor determination of Disadvantaged Worker status (versus Job Center determination).]

C. Subcontracts. Each Employer shall include compliance with this Policy as a material term of any subcontract or other agreement under which any On-Site Jobs may be performed. If an Employer enters into a contract in violation of this Section VII.C, then upon request from the Oversight Committee or the City it shall either amend that contract to include all requirements of this Policy, or terminate that contract.

D. Assurance Regarding Preexisting Contracts. Each entity that agrees to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Site that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into a contract in violation of this Section VI.C, then upon request from either the Oversight Committee or the City it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

E. Funding Restrictions. If a federal or state agency prohibits application of the requirements of this Policy based on the use of federal or state funds, the City will work collaboratively with the applicable agency to adapt the requirements of this Policy to the restrictions imposed by the agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, Developer and the City shall meet and confer with regard to the adapted requirements agreed to by the City and the agency, and, with the Developer's consent, such requirements shall be applied, and shall become terms of this Policy with respect to the applicable portion of the Project. Developer's consent to application of such adapted terms shall not be withheld if such adapted terms are reasonable, generally advance the goals of this Policy and do not create a material adverse economic impact on Employers. Such adapted terms shall be deemed to have Developer consent if no contrary position is delivered by the Developer to the City within ten (10) business days of being furnished to the Developer. If such adapted terms are consented to by Developer, the adapted terms shall be applied to portions of the Project in question, and shall automatically become terms of this Policy, to which Employers agree. If no Developer consent is obtained in accordance with this Section VI.E, then the parties shall continue to meet and confer in a good faith attempt to resolve the issue. Portions of this Policy prohibited by a funding source shall not apply without Developer's consent as described in this paragraph.

F. Third Party Beneficiaries. Each entity that agrees to comply with this Policy agrees that, with regard to the terms of this Policy, the City is an intended third-party beneficiary of any contract that incorporates this Policy, and that the City has the

right to enforce terms of this Policy directly against entities that have agreed to comply with this Policy.

G. Retaliation Prohibited. An Employer shall not discharge, reduce the compensation of, or otherwise discriminate against any person for making a complaint, participating in any proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Policy.

H. Waiver. Any waiver by any worker hired for the performance of an On-Site Job of any of the provisions of this Policy shall be deemed contrary to public policy and shall be void and unenforceable, except that workers hired for the performance of On-Site Jobs shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Policy if such waiver is set forth in clear and unambiguous terms. Any request to an individual by an Employer to waive his or her rights under this Policy shall constitute a violation of this Policy. [Note: Subject to negotiation.]

I. Material Term. This Policy is a material term of any contract into which it is incorporated.

J. Severability. If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy.

K. Applicable Law and Compliance with Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; and (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law.

L. Successors and Assigns. This Policy shall be binding upon and inure to the benefit of successors and assigns of any party to a contract incorporating this Policy. References in this Agreement to any entity shall be deemed to apply to any successor of that entity.

M. Warranties and Representation. Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to be consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against

any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

N. Collective Bargaining Agreement(s). To the extent that Sections IV or V conflict with any collective bargaining agreement(s) to which Employer is a party, the terms of such collective bargaining agreement(s) shall take precedence, and Sections IV or V of this Policy shall not apply to the extent of such conflict.

Operations Jobs Policy
Oakland Army Base Project
Prologis Portion

I. **Purpose.** This Operations Jobs Policy ("Policy") sets forth certain requirements regarding hiring and employment in operation of portions of the Project developed by Prologis, pursuant to the LDDA. Employers in Prologis portions of the Oakland Army Base project agree to comply with terms of this Policy as a condition of entry into any Agreement to which this Policy is attached. This Policy does not cover construction hiring or employment.

II. **Definitions.** As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form. Capitalized terms that are not defined below are defined as in the Community Jobs Agreement.

"Employer" shall mean any entity employing at least two individuals to perform On-Site Jobs.

"Background Exceptions" shall mean: (i) law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential (TWIC) program and the Customs Trade Partnership Against Terrorism); (ii) the Employer's good faith determination that the position is of such sensitivity that individuals with particular types of criminal convictions or histories are ineligible; and (iii) the Employer's hiring policies that are uniformly applied in the State of California.

"Disadvantaged Worker" shall mean a Resident meeting eligibility criteria for California Enterprise Zone Hiring Credits, as set forth in Cal. Rev. & Tax Code Sec. 23622.7 (4)(A).

"Jobs Center" shall mean a referral center to be designated by the City as such for purposes of implementation of this Policy.

"Large Employer" shall mean any entity leasing space within the Project Site and employing at least 50 individuals to perform On-Site Jobs, or performing services pursuant to one or more service contracts within the Project Site and employment at least 50 individuals to perform On-Site Jobs.

"LDDA" shall mean the Lease Disposition and Development Agreement or similar agreement entered into by city and Developer respecting the development of the Oakland Army Base project.

"On-Site Job" shall mean any job for which at least fifty percent of the work hours are performed on the Project Site.

"Policy" shall mean this Operations Jobs Policy.

"Project Site" shall mean parcels _____ as described in Exhibit A of the LDDA. [limit to Prologis portions]

"Resident" shall mean an individual domiciled in the City for at least seven days prior to having been retained by an Employer under this policy, with "domiciled" as defined by Section 349(b) of the California Election Code.

III. Local Hiring.

A. Hiring Process.

1. Long-Range Planning. As soon as the Information is available, each Large Employer shall provide to the City and the Jobs Center information regarding the approximate number and type of jobs that will need to be filled and the basic qualifications necessary.

2. Initial Hiring Process.

a. Notification of Job Opportunities. At least four weeks prior to an Employer commencing operations in the Project, each Large Employer shall notify the Jobs Center of available job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g. language skills, drivers' license, required background check, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

b. Hiring. The Large Employer shall use normal hiring practices, including interviews, to consider all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during the four week period after initial notification to the Jobs Center, or until all open positions are filled, whichever is sooner. The Large Employer shall make best efforts to fill all available positions with Residents and Disadvantaged Workers referred by the Jobs Center. If at the conclusion of the four-week period the Large Employer has

been unable to fill all available positions with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods, although the Employer shall continue to make best efforts to hire Residents and Disadvantaged Workers later referred by the Jobs Center.

c. **Pre-opening Transfer.** Provisions of Section III.A.1 are not applicable to a Large Employer that is closing a facility located outside Oakland and is transferring the majority of its staff from the previous facility to a new facility within Oakland. Upon commencing operation in the new facility, such a Large Employer is covered by subsection 3, below. Provisions of this Section III.A.2 are applicable to Large Employers who hire for positions in facilities located outside Oakland with the intention of transferring such hires to a new facility at the Project Site upon commencement of operations for the new facility. All such hires shall be made under the provisions of this subsection.

d. **Jobs Center Feedback.** Following the completion of the initial hiring process set forth in this Section, at the request of the City a Large Employer shall meet and confer with and provide feedback to the City Administrator and the Jobs Center to provide feedback on the initial hiring process so as to ensure that the Jobs Center may meet the future employment needs of the Employer and any future Employer and ensure the maximum hiring of Residents and Disadvantaged Workers feasible given the opportunities to be created by the Project.

3. Ongoing hiring process.

a. **Notification of job opportunities.** After a Large Employer has commenced operations in the Project, it shall continue to use the Jobs Center as a resource to fill positions that become available. When a Large Employer has positions available, the Employer shall notify the Jobs Center of available job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g. language skills, drivers' license, required background check, etc.). Job qualifications shall be limited to skills directly related to performance of job duties.

b. **Hiring.** The Large Employer shall then use standard hiring practices, including interviews, to consider all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during a five-day period after initial notification, or until all open positions are filled, whichever is sooner. The Large Employer shall make good faith efforts to fill all available positions with Residents and Disadvantaged Workers referred through the Jobs Center. If at the conclusion of the five day period the Large Employer has been unable to fill all available positions with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods, although

the Large Employer shall continue to make good faith efforts to hire Residents and Disadvantaged Workers later referred through the Jobs Center.

4. Nondiscrimination. Employers shall not discriminate against Residents or Disadvantaged Workers on the basis of their Resident status, status as a Disadvantaged Worker, or on any prohibited basis in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.

5. Priorities. Each Large Employer shall apply the following priorities in hiring Residents:

- i. First Priority: Residents of zip codes _____;
[insert zip codes that comprise West Oakland and city council District 3]
- ii. Second Priority: Residents of the Oakland Enterprise Zone;
- iii. Third Priority: other Residents of the City of Oakland.

6. Worker Qualifications. Unless a criminal background check is required by any of the Background Exceptions, an Employer shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Employer shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. Where a criminal background check is required by any Background Exception, subject to the requirements of such Background Exception the Employer may state such requirement at the outset of the recruitment and hiring process. Unless a credit history is required by any of the Background Exceptions or Employers' good faith determination that the position is of such sensitivity that individuals with particular types of credit histories are ineligible, an Employer shall neither request from prospective workers, nor independently research prospective workers', credit histories.

7. Management Employees. [provision re management employees under negotiation]

B. Monitoring and Enforcement.

1. Safe Harbor Provision. Any Large Employer for whom at least fifty percent of workers hired for On-Site Jobs during a particular year were Residents, and for whom at least twenty-five percent of workers hired for On-Site Jobs during a particular year were Disadvantaged Workers, shall be deemed to be in compliance with Sections III.A.2, and III.A.3 of this Policy, for all hiring during that year.

2. Credit for Hiring at Other Locations. Large Employers shall receive credit toward achievement of the Safe Harbor threshold set forth in Section III.B.1 for any hires of Residents or Disadvantaged Workers to perform jobs at other locations, so long as such Residents or Disadvantaged Workers are compensated in an amount equal to or in excess of that set forth in the Oakland Living Wage Ordinance (Oakland Municipal Code Section 2.28.010 et seq.)

3. Retention Incentive. For every 2,000 hours that any one Resident or Disadvantaged Worker hired pursuant to this Policy works for a Large Employer, that Large Employer shall be entitled to a "bonus" hiring credit towards achievement of the Safe Harbor threshold set forth in Section III.B.1, above.

4. Liquidated Damages. Each Large Employer agrees that, if it has not complied with the hiring process requirements of Sections III.A.2 and III.A.3, above, during a particular year, it shall pay to the City liquidated damages in the amount of \$5,000.00 per job short of the Safe Harbor threshold set forth in Section III.B.1, above. A Large Employer shall not owe liquidated damages if it negotiates a Negotiated Compliance Plan with the City, and complies with that plan. Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

5. Compliance Records. Each Employer shall make available to the City on an annual basis or upon request records sufficient to determine compliance with this Policy. An Employer may redact names and social security numbers from requested records in order to protect the privacy of individual employees.

6. Additional Enforcement Mechanisms. Assessment of liquidated damages as described herein does not derogate other contractual remedies the City may have for failure to comply with this Policy. Employers who repeatedly violate this Policy may be debarred from future City contracts.

IV. Temporary Employment Agencies.

A. Large Employers may enter into a contract or other arrangement to supply workers for temporary employment in On-Site Jobs, provided that without the approval of the City Administrator in his or her reasonable discretion (i) temporary employment of any individual worker will last one hundred twenty (120) days or less per calendar year and (ii) no more than forty percent (40%) of the total number of days worked by all individuals performing On-Site Jobs on behalf of such Large Employer shall be performed by temporary workers. The City Administrator shall reasonably consider any request for such approval by the applicable Large Employer If such Large Employer reasonably demonstrates that compliance with this Section IV.A may reasonably be expected to create significant economic or operational hardship for the Large Employer.

V. Living Wages

A. Compliance with Ordinance. Each Employer shall provide compensation required of covered employers under, and shall otherwise comply with, the Oakland Living Wage Ordinance. (Oakland Municipal Code Section 2.28.010 et seq.)

VI. Miscellaneous.

A. Contact Person. Within 30 days of having entered into any contract related to operation on the Project Site, each Employer will designate a contact person for all matters related to implementation of this Policy. The Employer shall forward the name, address and phone number of the designated individual to the City.

B. Determination of Residency Status. An Employer's determination of whether any individual is a Resident or New Apprentice shall be binding in determining whether the requirements of this Policy have been satisfied, including the requirements of Sections III.A and IILB, provided that such Employer obtains reasonable written documentation demonstrating that such individual is a Resident or New Apprentice at the time that such individual is assigned or hired and such Employer retains such documentation and makes it available to City for inspection at reasonable times.

C. Determination of Disadvantaged Status. [Contractor determination of disadvantaged status vs Jobs Center determination is subject to negotiation]

D. Subcontracts. Each Employer shall include compliance with this Policy as a material term of any subcontract or other agreement under which any On-Site Jobs may be performed. If an Employer enters into a contract in violation of this Section

VI.B., then upon request from the Oversight Committee or the City it shall either amend that contract to include all requirements of this Policy, or terminate that contract.

E. Assurance Regarding Preexisting Contracts. Each entity that agrees to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Site that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into a contract in violation of this Section VI.C, then upon request from either the Oversight Committee or the City it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

F. Funding Restrictions. For any portions of the Project on which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements described above, the City will work collaboratively with the funding agency to adapt the above requirements to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, the adapted requirements agreed to by the City and the funding agency shall be applied to portions of the Project in question, and shall automatically become terms of this Policy, to which all Employers agree.

G. Third Party Beneficiaries. Each entity that agrees to comply with this Policy agrees that, with regard to the terms of this Policy, the City is an intended third-party beneficiary of any contract that incorporates this Policy, and that the City has the right to enforce terms of this Policy directly against entities that have agreed to comply with this Policy. There shall be no other third party beneficiaries. City shall not delegate any of its responsibilities to any third party, require the consent of any third party or act solely upon the direction of any third party in performing its obligations or exercising its rights under this Policy.

H. Retaliation Prohibited. An Employer shall not discharge, reduce the compensation of, or otherwise discriminate against any person for making a complaint to the City or participating in any proceedings related to enforcement of this Policy against the Employer.

I. Material Term. This Policy is a material term of any contract into which it is incorporated.

J. Severability. If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy.

K. Applicable Law and Compliance with Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and

the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; and (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law.

L. Successors and Assigns. This Policy shall be binding upon and inure to the benefit of successors and assigns of any party to a contract incorporating this Policy. References in this Agreement to any entity shall be deemed to apply to any successor of that entity.

M. Collective Bargaining Agreement Supersession. [provision to be negotiated]

N. Warranties and Representation. Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to be consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

O. Emergency. [Emergency provision to be negotiated to ensure safety or material damage to property.]

P. Hiring Discretion. Nothing in this Policy shall require that any Contractor hire any particular individual; each Contractor shall have the sole discretion to hire any individual referred by the Jobs Center or any other person or entity.