

NO FEE DOCUMENT
Government Code Section 27383

RECORDING REQUESTED BY:
The City of Oakland

City of Oakland
Economic & Workforce Development Department
250 Frank H. Ogawa Plaza, 5th floor
Oakland, CA 94612
Attn: Director

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT
(Oak to Ninth/Brooklyn Basin)

THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT (“**Third DA Amendment**”) is made and entered into as of _____, 20__ (the “**Third Amendment Effective Date**”), by and between the CITY OF OAKLAND, a municipal corporation (“**City**”), and ZARSION-OHP I, LLC, a California limited liability company (“**Developer**”), as successor-by-assignment to Oakland Harbor Partners, LLC (“**OHP**”).

RECITALS

This Third DA Amendment is entered into upon the basis of the following facts, understandings, and intentions of the City and Developer:

A. On August 24, 2006, the City, OHP, and the Redevelopment Agency of the City of Oakland (the “**Redevelopment Agency**”) entered into that certain Development Agreement (the “**Original Agreement**”) related to the development of the real property previously referred to as “Oak to Ninth/Brooklyn Basin” now commonly known as Brooklyn Basin. The Original Agreement was authorized by Ordinance No. 12760 C.M.S. adopted on July 18, 2006. The Original Agreement was recorded in the Official Records of Alameda County, California (“**Official Records**”) on August 30, 2006, as Document No. 2006-331819.

B. The Original Agreement, among other things, vested Developer’s right to develop the subject real property (the “**Property**”) into a mixed-use, urban in-fill project containing up to 3,100 residential units, 200,000 square feet of retail uses, and 60 boat slips located in two marinas.

C. As of the Third Amendment Effective Date, Developer retains ownership of the portion of the Property more particularly described on Exhibit A-1 attached hereto and incorporated herein by this reference.

D. The Redevelopment Agency dissolved on February 1, 2012. The City, pursuant to Health and Safety Code Section 34176, elected to retain and assume the housing assets,

obligations, and functions of the Redevelopment Agency upon dissolution of the Redevelopment Agency (Resolution No. 83680 C.M.S. adopted on January 10, 2012). All of the rights, interests, and obligations of the Redevelopment Agency under the Original Agreement were housing assets and obligations retained and assumed by, and transferred to, the City as housing successor.

E. On April 9, 2013, OHP assigned all of its right, title and interest in the Property, including its rights and obligations under the Original Agreement, to Developer, pursuant to that certain unrecorded Assignment and Assumption of Project Materials (Oak to Ninth-Brooklyn Basin (the “**Assignment**”).

F. On August 28, 2014, Developer and the City entered into that certain First Administrative Amendment to the Development Agreement (Oak to Ninth/Brooklyn Basin) (the “**First DA Amendment**”), which was recorded in the Official Records on August 28, 2014, as Document No. 2014-211182. On June 28, 2017, Developer and the City entered into that certain Second Administrative Amendment to the Development Agreement (Oak to Ninth/Brooklyn Basin) (the “**Second DA Amendment**”), which was recorded in the Official Records on June 28, 2017, as Document No. 2017-141021.

G. The Original Agreement, as assigned by the Assignment, and as amended by the First DA Amendment, the Second DA Amendment, and this Third DA Amendment is collectively referred to herein as the “**Development Agreement**”.

H. All capitalized terms used herein shall have the definitions given in the Original Agreement, as amended by the First Amendment and the Second Amendment, unless otherwise expressly provided herein.

I. Pursuant to Section 11.1 of the Development Agreement, the Parties may amend the Development Agreement pursuant to Section 65868 of the Development Agreement Legislation.

J. The City and Developer now desire to amend the Original Agreement, as amended by the First Amendment and the Second Amendment, on the terms and conditions set forth herein.

K. At a duly noticed public hearing held on _____, 20__, pursuant to the Development Agreement Legislation and the Development Agreement Ordinance, the City’s Planning Commission recommended that the City Council certify the Supplemental Environmental Impact Report for the Brooklyn Basin Marina Expansion Project (the “**SEIR**”) as having been prepared in compliance with CEQA and approve this Third DA Amendment based on its consistency with the goals, objectives, policies, land uses, and programs specified in the General Plan, the Estuary Policy Plan, and the Redevelopment Plans. In making these recommendations and advisory determinations, the Planning Commission reviewed and heard the report of City staff on Developer’s application for this Third DA Amendment and considered all other evidence heard and submitted at the public hearing, including the matters to be considered pursuant to Section 17.138.080 of the Development Agreement Ordinance in recommending to the City Council the adoption of this Third DA Amendment.

L. On _____, 20__, the City Council held a duly noticed public hearing on this Third DA Amendment pursuant to the requirements of the Development Agreement Legislation and the Development Agreement Ordinance. After due review of, and report on, Developer's application for this Third DA Amendment by City staff, consideration of the Planning Commission's recommendations thereon, all other evidence heard and submitted at such public hearing, all other matters considered by the Planning Commission, and the matters to be considered pursuant to Section 17.138.080 of the Development Agreement Ordinance in adopting an amendment to a development agreement, the City Council (1) certified the SEIR, (2) adopted the findings required by CEQA, and (3) introduced an ordinance approving this Third DA Amendment, finding and determining in connection therewith that this Third DA Amendment is consistent with the goals, objectives, policies, land uses and programs specified in the General Plan, the Estuary Policy Plan, and the Redevelopment Plans.

M. On _____, 20__, the City Council adopted Ordinance No. _____ C.M.S. enacting this Third DA Amendment.

AGREEMENT

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

1. Definitions. Section 1.1 of the Development Agreement is hereby amended as follows:

1.1. The following new definitions are hereby added to Section 1.1:

2006 Residential Units: The three thousand one hundred (3,100) residential units approved for the Project pursuant to the original Project Approvals.

2022 Residential Units: The additional six hundred (600) residential units approved for the Project pursuant to the Project Approvals set forth in Section 2 of Exhibit G.

Community Coalition: Shall have the meaning give to it in Section 4.11 below.

1.2. The definition of "Applicable City Regulations" is hereby deleted in its entirety and replaced with the following:

Applicable City Regulations: The Existing City Regulations, and such other City Regulations otherwise applicable to the development of the Project pursuant to the provisions of Section 3.5.

1.3. The definition of “City Development Fees” is hereby deleted in its entirety and replaced with the following:

City Development Fees: The fees or assessments listed in Exhibit B. In addition, Affordable Housing Impact Fees imposed pursuant to Oakland Municipal Code Chapter 15.72 and Transportation and Capital Improvements Impact Fees imposed pursuant to Oakland Municipal Code Chapter 15.74 will apply to the 2022 Residential Units.

1.4. The definitions of “CFD” and “CSD” are hereby deleted in their entirety and replaced with the following:

CFD: A Mello-Roos Community Facilities District formed pursuant to California Government Code Section 53311 et seq., or comparable financing mechanism acceptable to City, to provide funds for the acquisition/construction and/or perpetual maintenance of certain public infrastructure within the Project Site, including, but not limited to the Open Space.

CSD: A Community Services District formed pursuant to California Government Code Section 6100 et seq., or an alternative arrangement for maintenance services, for maintaining certain public infrastructure within the Project Site, including, but not limited to the Open Space.

1.5. Existing City Regulations. The definition of “Existing City Regulations” is hereby deleted in its entirety and replaced with the following:

Existing City Regulations: The City Regulations and City Policies in effect as of the Adoption Date (July 18, 2006) and to the extent such are inconsistent therewith, the Project Approvals as such are adopted from time to time and, solely with respect to the 2022 Residential Units, Affordable Housing Impact Fees imposed pursuant to Oakland Municipal Code Chapter 15.72 and Transportation and Capital Improvements Impact Fees imposed pursuant to Oakland Municipal Code Chapter 15.74.

2. Term Expiration. Section 2.2 of the Development Agreement is hereby deleted in its entirety and replaced with the following:

2.2. Expiration of Term. Unless sooner Terminated pursuant to the applicable provisions of this Agreement, the Term shall expire on May 19, 2031, except that the Term with respect to Development Parcels K, L and M, as shown on Exhibit E to the Development Agreement, shall expire on May 19, 2038. The Parties have established the Term as a reasonable estimate of the time required to

carry out the Project, develop the Project, and obtain the public benefits of the Project.

3. New Section 3.2.1. Section 3.2.1 is hereby added to the Development Agreement as follows:

3.2.1 Allocation of 2006 and 2022 Residential Units.

(a) As of the Third Amendment Effective Date, the 2006 Residential Units and the 2022 Residential Units are hereby allocated among the Development Parcels as follows:

<u>Development Parcel</u>	<u>2006 Residential Units</u>	<u>2022 Residential Units</u>
Parcel A:	254	0;
Parcel B:	241	0;
Parcel C:	241	0;
Parcel D:	243	0;
Parcel E:	191	0;
Parcel F:	211	0;
Parcel G:	371	0;
Parcel H:	382	0;
Parcel J:	378	0;
Parcel K:	400	0;
Parcel L:	188	32 ¹ ; and
Parcel M:	<u>0</u>	<u>568</u>
Total:	3,100	600

(b) Notwithstanding the provisions of Section 3.2.1(a) above to the contrary, if Developer elects, pursuant to Section 3.3.1, to develop Parcel M as Phase III, the 2006 Residential Units and the 2022 Residential Units are hereby allocated among the following Development Parcels:

<u>Development Parcel</u>	<u>2006 Residential Units</u>	<u>2022 Residential Units</u>
Parcel K:	20	380;

¹ Subject to Section 3.2.1(c), the first 218 units allocated to Parcel L shall be 2006 residential Units and the balance shall be 2022 Residential Units.

Parcel L:	0	220; and
Parcel M:	568	0
Total:		600

(c) The aggregate number of residential units (whether 2006 Residential Units or 2022 Residential Units) may be reallocated among the Development Parcels pursuant to the procedures set forth in Section 17.101. .110 of the Planned Waterfront Zoning District-4 (PWD-4) adopted by Ordinance No. 12758 on July 18, 2006 (referenced on Exhibit G to the Development Agreement).

(d) Subject to the provisions of Section 3.2.1(c) above, Developer may change the designation of the residential units (2006 versus 2022) allocated to a particular Development Parcel upon written notice to the City. By way of example, Developer may redesignate the twenty (20) 2006 Residential Units initially allocated to Parcel K pursuant to Section 3.2.1(b) above to 2022 Residential Units so that Parcel K includes four hundred (400) 2022 Residential Units and Parcel L includes twenty (20) 2006 Residential Units and two hundred (200) 2022 Residential Units.

4. New Section 3.3.1. Section 3.3.1 is hereby added to the Development Agreement as follows:

3.3.1 Re-Phasing of Phases III and IV. Developer shall have the right, upon written notice delivered to the City prior the commencement of on-site improvements for Parcels K and L, to re-phase Phases III and IV, such that Phase III includes Parcel M and related on-site, off-site and park improvements and Phase IV includes Parcels K and L and related on-site, off-site and park improvements.

5. Clarification of Section 4.4.4.

5.1. Section 4.4.4.1 is hereby deleted in its entirety and replaced with “Intentionally Omitted.”

5.2. Section 4.4.4.4 is hereby amended to delete “CSD or” in subsection (ii)(A) and replace “CSD” in two instances in the last sentence with “CFD”.

5.3. Section 4.4.4.5 is hereby deleted in its entirety and replaced with the following:

4.4.4.5. Insurance Requirements. The CSD shall acquire and maintain, and the CFD budget shall include sufficient funding for, insurance

policies, including without limitation, Commercial General Liability, Automobile Liability, Workers' Compensation, Builder's Risk and Property, as determined applicable and acceptable by the City Risk Manager.

6. Affordable Housing Funds. Section 4.11 is hereby amended to add the following at the end of the section:

In connection with the 2022 Residential Units, Developer shall provide funds for affordable housing pursuant to this Section 4.11 (the "**Affordable Housing Funds**"). The amount of the Affordable Housing Funds shall be Nine Million Dollars (\$9,000,000), which amount is based on a contribution of Fifteen Thousand Dollars (\$15,000) per 2022 Residential Unit. The Affordable Housing Funds shall be expended pursuant to the terms of an Affordable Housing Agreement, by and between East Bay Asian Youth Center and Asian Pacific Environmental Network, each a California nonprofit public benefit corporation (jointly, the "**Community Coalition**") and the Oakland Community Land Trust, a California nonprofit public benefit corporation ("**OakCLT**") (the "**Affordable Housing Agreement**"). The terms and conditions of the Affordable Housing Agreement shall be based on that certain Term Sheet (Brooklyn Basin Affordable Housing Fund Implementation) agreed to by the City, Developer, the Community Coalition, and OakCLT, which includes the purpose and objective set forth below.

When Developer is required to pay Affordable Housing Funds pursuant to this Agreement, such Affordable Housing Funds shall be deposited into an escrow account (the "**Escrow**") opened with a third-party escrow company approved by the City and Developer and retained therein until the Affordable Housing Agreement has been executed. If the Affordable Housing Agreement is executed prior to the date the First Tranche (as defined below) is deposited into Escrow (the "**Deposit Date**"), the Affordable Housing Funds shall be disbursed pursuant to the applicable terms of the Affordable Housing Agreement and the related Escrow Agreement entered into by and among the City, the Community Coalition and the escrow agent. If the Affordable Housing Agreement has not been executed prior to the Deposit Date, the City may withdraw the Affordable Housing Funds from escrow and expend them consistent with the purpose and objective set forth below.

4.11.1 Purpose. The purpose of the Affordable Housing Funds is to acquire and preserve or rehabilitate affordable housing within the Chinatown, Eastlake and San Antonio neighborhoods (the "**Project Area**") by affordable housing developers or organizations; provided, however, (a) at least ninety percent (90%) of the Affordable Housing Funds must be expended to acquire and preserve or rehabilitate existing rental housing units in the Project Area, (b) the overhead costs and developer fees charged by such developers or organizations from Affordable Housing Funds for each project may not exceed ten percent (10%) of

the Affordable Housing Funds used to acquire and preserve or rehabilitate the designated project, and (c) the acquisition and preservation or rehabilitation of mixed-use (residential and commercial uses) affordable housing projects shall be a permitted use of the Affordable Housing Funds, provided that the square footage of the commercial uses does not represent more than thirty five percent (35%) of the aggregate of the residential and commercial square footage of such project. For purposes herein, the term “preserve” shall have the meaning ascribed to it in Oakland Municipal Code Section 15.62.040(A).

4.11.2 Funding. The Affordable Housing Funds shall be paid as follows:

(a) Four Million Dollars (\$4,000,000) (the “**First Tranche**”) of the Affordable Housing Funds shall be paid in cash on the date that is eighteen (18) months following the Third Amendment Effective Date; and

(b) The balance of the Affordable Housing Funds shall be paid on a pro rata basis (\$8,333.33 per 2022 Residential Unit) concurrently with payment of the City Development Fees paid upon issuance of the building permit for the construction of an applicable 2022 Residential Unit(s). If the Finished Parcel Developers do not actually construct all of the 2022 Residential Units, Developer shall pay the balance of the Affordable Housing Funds within fifteen (15) calendar days after the issuance of either (a) the first building permit issued for the last Development Parcel within the Project, or (b) the first building permit for the final phase, if the last Development Parcel is to be developed in phases.

7. Notices. Article XII of the Original Agreement as replaced by Section 12 of the First DA Amendment is hereby amended to delete the notice addresses in their entirety and replace them with the following:

To City: City of Oakland
Economic & Workforce Development Department
Public/Private Development Division
250 Frank H. Ogawa Plaza, 5th Floor
Oakland, CA 94612
Attention: Director

With a copy to: Office of the City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attention: Supervising City Attorney for Real Estate

To Developer: Zarsion-OHP I, LLC
c/o Signature Development Group, Inc.
2335 Broadway, Suite 200
Oakland, CA 94612

Attention: Michael Ghielmetti

With a copy to: Stice & Block, LLP
2335 Broadway, Suite 201
Oakland, CA 94612
Attention: Marc Stice

8. Form of Assumption Agreement. The form of the Assumption Agreement attached hereto as Exhibit O is hereby approved for transfers to Exempt Transferees pursuant to Sections 10.2.2 and 10.4 of the Development Agreement.

9. Exhibits. The following exhibits to the Development Agreement are hereby amended as follows: Exhibit A (CEQA Documents), Exhibit C (Phasing Schedule), Exhibit C-1 (Phasing Plan), Exhibit G (Approval Documents for the Oak to Ninth Mixed Use Development Project), and Exhibit J (Local Hiring and Construction Job Training Benefits) are hereby deleted in their entirety and replaced with Exhibit A, Exhibit C, Exhibit C-1, Exhibit G, and Exhibit J respectively, attached hereto. In addition, Exhibit O attached hereto is hereby added to the Development Agreement.

10. Effectiveness and Ratification of Agreement. The Development Agreement, as modified by this Third DA Amendment, remains in full force and effect and the Parties hereby ratify the same.

11. Counterparts. This Third DA Amendment may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not signatory to the same counterpart.

12. Recordation. The Third DA Amendment shall be recorded in the Official Records with respect to the portion of the Property described in Exhibit A-1, attached hereto.

[Remainder of page intentionally blank; signature page follows]

IN WITNESS WHEREOF, the City and Developer have executed this Third DA Amendment as of the day and year first above written.

CITY OF OAKLAND,
a municipal corporation

By: _____
Edward D. Reiskin
City Administrator

Approved as to form and legality:

By: _____
JoAnne Dunec
Deputy City Attorney

ZARSION-OHP I, LLC,
a California limited liability company

By: _____
Michael Ghielmetti
Authorized Individual

EXHIBIT A-1

to

**Third Amendment to Development Agreement
(Oak to Ninth/Brooklyn Basin)**

Property Legal Description

[Attached]

[Note: Insert legal descriptions of the parcels owned by Developer as of the Third Amendment Effective Date.]

EXHIBIT A

CEQA DOCUMENTS

Section 1. The following documents were approved concurrently with the Original Agreement:

1. Oak to Ninth Avenue Project
Draft Environmental Impact Report, August 2005
State Clearinghouse No. 2004062013
Public Review Period: September 1, 2005 – October 24, 2005
2. Oak to Ninth Avenue Project
Final Environmental Impact Report, February 2006
State Clearinghouse No. 2004062013
Published February 1, 2006
3. Oak to Ninth Avenue Project
Addendum #1 to Certified Environmental Impact Report
State Clearinghouse No. 2004062013
Published June 7, 2006

Section 2. The following documents were approved concurrently with the Third DA Amendment:

1. Brooklyn Basin Marina Expansion Project
Draft Supplemental Environmental Impact Report June 2021
State Clearinghouse No. 2004062013
Public Review Period: June 11, 2021 - July 26, 2021
2. Brooklyn Basin Marina Expansion Project
Final Supplemental Environmental Impact Report _____
State Clearinghouse No. 2004062013
Published: _____

EXHIBIT C
PHASING SCHEDULE

Project Phasing

Developer has proposed that the Project be constructed in five (5) phases during the term of this Development Agreement, which phases are likely to occur sequentially, however, they may move forward concurrently or out of sequence as conditions require.

Phase I: Parcels A, B, C, F, G.

This phase will involve at a minimum a) demolition and remediation, b) on-site improvements, c) off-site improvements and d) completion timeframes and conditions.

- a) Demolition and Remediation;
 - i. Demolition of approximately 88,000 square foot of manufacturing, storage, 78,400 square foot warehouse building, approximately 160,000 square feet of the Ninth Avenue Terminal Shed Building, and approximately 120,000 square feet of timber supported pier structure.
 - ii. Implementation of the site remediation plan under the regulatory oversight of the California State Department of Substance Control (DTSC).
- b) On-site Improvements:
 - i. Construction of a portion of Township Commons (formerly Shoreline Park) as shown on Exhibit C-1, including all landscaping, pier renovation, tree removal and installation, bike paths, pedestrian walk ways, bay trail connections, and shoreline improvements.
 - ii. Renovation of a minimum of 20,000 square feet of the existing 9th Avenue Terminal Shed Building as a mixed-use commercial/cultural resource building.
 - iii. Site improvements including grading, underground wet and dry utility installation, construction of streets, bike paths, pedestrian trails, bay trail connections, sidewalks, street trees, and landscaping.
 - iv. Installation of a temporary eight-foot wide asphalt bay trail for Phase II and Phase III.
- c) Off-site Improvements;
 - i. Removal of existing street section, sidewalks and landscaping of the Embarcadero from the South Bound On-Ramp to I-880 at 10th Avenue to 5th Avenue.
 - ii. Widening of the Embarcadero from the South Bound On-Ramp to I-880 at 10th Avenue to 5th Avenue including construction of street section, medians, traffic signals, sidewalks, bike trails, street trees and landscaping.
 - iii. Installation of wet and dry underground utilities fronting the Project on the Project side of Embarcadero.

All off-site mitigation measures and conditions as required for the development of this phase. The reconstruction of Embarcadero includes demolition of the existing street section and undergrounding utilities.

- d) Completion Time frames:
 - i. Completion of Phase I park improvements prior to the earlier to occur of the issuance of the first building permit for Phase II of the Project or April 6, 2022.

Phase II: Parcels D, E, H, and J

This phase will involve at a minimum a) remediation, b) on-site improvements, c) off-site improvements and d) completion timeframes and conditions.

- a) Remediation:
 - i. Implementation of the site remediation plan under the regulatory oversight of the California State Department of Substance Control (DTSC).
- b) On-site Improvements:
 - i. Construction of the remainder of Township Commons (formerly Shoreline Park), Brooklyn Plaza (formerly Gateway Plaza) and a portion Clinton Basin Quay, each as shown on Exhibit C-1, and including all landscaping, tree removal and installation, bike paths, pedestrian walk ways, bay trail connections, and shoreline improvements.
 - ii. Site improvements including grading, underground wet and dry utility installation, construction of streets, bike paths, pedestrian trails, bay trail connections, sidewalks, street trees and landscaping.
- c) Off-site Improvements:
 - i. Removal of existing street section, sidewalks and landscaping.
 - ii. Widening of the Embarcadero from 5th Avenue to the existing Embarcadero Bridge including construction of street section, medians, traffic signals, sidewalks, bike trails, street trees and landscaping.
 - iii. Installation of wet and dry underground utilities fronting the Project on the Project side of Embarcadero.
 - iv. All off-site mitigation measures and conditions as required for the development of this phase.
- d) Completion Time frames;
 - i. Completion of Phase II park improvements prior to the earlier to occur of the issuance of the first building permit for Phase III of the Project or April 6, 2025.

[Note: The sequence of Phases III and IV are subject to the provisions of Section 3.3.1 of this Development Agreement.]

Phase III: Parcels K and L

This phase will involve at a minimum a) demolition and remediation, b) on-site improvements, c) off-site improvements and d) completion timeframes and conditions.

- a) Demolition and Remediation:
 - i. Demolition of approximately 46,000 square feet of marine, storage, service, manufacturing, and industrial uses.
 - ii. Implementation of the site remediation plan under the regulatory oversight of the California State Department of Substance Control (DTSC).
- b) On-site Improvements
 - i. Construction of the Sii Tka Park (formerly South Park) and the balance of the Clinton Basin Quay, each as shown on Exhibit C-1, and including all landscaping, tree removal and installation, bike paths, pedestrian walk ways, bay trail connections, and shoreline improvements.
 - ii. Site improvements including grading, underground wet and dry utility installation, construction of streets, bike paths, pedestrian trails, bay trail connections, sidewalks, street trees and landscaping.
- c) Off-site Improvements:
 - i. All off-site mitigation measures and conditions as required for the development of this phase.
- d) Completion Time frames:
 - i. Completion of Phase III Park improvements prior to the earlier to occur of the issuance of the first building permit for Phase IV of the Project or April 6, 2028. **[Note: If Developer exercises its right to re-sequence Phases III and IV and Parcels K and L are designated as Phase IV, this Section (d)(i) shall be read as “Completion of the Phase IV Park improvements prior earlier of the issuance of a certificate of occupancy or its equivalent for the 3,700th residential unit for the Project or April 6, 2031.]**

Phase IV: Parcel M

This phase will involve at a minimum a) demolition and remediation, b) on-site improvements, c) off-site improvements and d) completion timeframes and conditions.

- a) Demolition and Remediation:
 - i. Demolition of on-site structures.
 - ii. Implementation of the site remediation plan under the regulatory oversight of the California State Department of Substance Control (DTSC).
- b) On-site Improvements:
 - i. Construction of Mayhew Park (formerly Channel Park) as show on Exhibit C-1, including all landscaping, tree removal and installation, bike paths, pedestrian walk ways, bay trail connections, and shoreline improvements.

- ii. Site improvements including grading, underground wet and dry utility installation, construction of streets, bike paths, pedestrian trails, bay trail connections, sidewalks, street trees and landscaping.
- iii. Installation of a temporary bay trail upon termination/expiration of the Berkeley Ready Mix lease, but no earlier than June 1, 2016.
- c) Off-site Improvements:
 - i. All off-site mitigation measures and conditions as required for the development of this phase
- d) Completion Time frames.
 - i. Completion of Phase IV park improvements prior to the earlier to occur of the issuance of a certificate of occupancy or its equivalent for the 3,700th residential unit for the Project or April 6, 2031. **[Note: If Developer exercises its right to re-sequence Phases III and IV and Parcel M is designated as Phase III, this Section (d)(i) shall be read as “Completion of the Phase III park improvements prior the earlier to occur of the issuance of the first building permit for Phase IV of the Project or April 6, 2028.]**

Phase V: Demolition of Cash and Carry Building and Remediation of Estuary Park and Parcel N

This phase involves demolition of the Cash and Carry warehouse and Remediation of Estuary Park and Parcel N, comprising the entirety of the area depicted as Phase V on the Phasing Plan attached as Exhibit C-1.

- a) Demolition and Remediation;
 - i. Demolition of approximately of a 78,400 square foot warehouse building.
 - ii. Implementation of the site remediation plan under the regulatory oversight of the California State Department of Substance Control (DTSC).
- b) Completion Time frames;
 - i. Completion of the remediation of Phase V as required by the Development Agreement and that certain Estuary Park Agreement between the City and Developer.

**EXHIBIT C-1
PHASING SCHEDULE**

[See attached.]

EXHIBIT G

APPROVAL DOCUMENTS FOR THE OAK TO NINTH/ BROOKLYN BASIN MIXED USE DEVELOPMENT PROJECT

Section 1. The following items were approved concurrently with the Original Agreement:

- (1) A Resolution Denying the Appeal of Arthur D. Levy, Sustaining the March 15, 2006 Planning Commission Actions on the Oak to Ninth Mixed use Development Project and Certifying the Final Environmental Impact Report for the Oak to Ninth Project
- (2) A Resolution Amending the General Plan Estuary Policy Plan to Create a New Land Use Designation, Planned Waterfront Development-4, and to Adopt Land Use Map and Text Changes in Connection with the Oak to Ninth, Avenue Mixed Use Development Project
- (3) A Resolution Approving and Recommending Adoption of the Second Amendment to the Central City East Redevelopment Plan to Revise Land Use Designation for the Oak to Ninth Project Site
- (4) An Ordinance Adopting the Second Amendment to the Central City East Redevelopment Plan to Revise Land Use Designations for the Oak to Ninth Project Site
- (5) An Agency Resolution Approving and Recommending Adoption of an Amendment to the Central District Urban Renewal Plan to Revise Land Use Designations for the Oak to Ninth Project Site
- (6) An Ordinance Adopting an Amendment to the Central District Urban Renewal Plan to Revise Land Use Designations for the Oak to Ninth Project Site
- (7) An Ordinance Adopting the Planned Waterfront Zoning District-4 (PWD-4) for the Oak to Ninth Mixed Use Development Project
- (8) An Ordinance Rezoning Property in the Oak to Ninth Avenue Mixed Use Development Project Site from Heavy Industrial (M-40) to the Planned Waterfront Zoning District-4 (PWD-4) and Open Space-Regional Serving Park (OS-RSP), and from Civic Center/Design Review Combining Zone (S-2/S-4) to Open Space-Regional Serving Park (OS-RSP) with the exception of the Jack London Aquatic Center which will remain S-2/S-4
- (9) Resolution Approving Vesting Tentative Map (No. 7621) for the Oak-to-Ninth Mixed Use Development Project

(10) A Resolution Approving a Preliminary Development Plan and Design Guidelines for the Oak to Ninth Mixed Use Development Project

(11) An Ordinance Approving a Development Agreement Between the City of Oakland, the Redevelopment Agency of the City of Oakland, and Oakland Harbor Partners, LLC, and Authorizing the City Administrator to Execute the Development Agreement on Behalf of the City

(12) An Agency Resolution Authorizing a Development Agreement with the City of Oakland and Oakland Harbor Partners, LLC

Exhibits to Each Document (1 through 12) Listed Above:

Exhibit A – CEQA findings and Statement of Overriding Considerations

Exhibit B - Mitigation Monitoring and Reporting Program

Exhibit C - Conditions of Approval

Exhibit D – General Findings Related to the Approval of the Oak to Ninth Project

Section 2. The following items were approved concurrently with the Third DA Amendment:

[NOTE: ADD 2022 APPROVALS RELATED TO THE THIRD DA AMENDMENT]

EXHIBIT J

LOCAL HIRING AND CONSTRUCTION JOB TRAINING BENEFITS

1. Local Hiring: The Project shall be subject to a local hiring program based on the following:
 - a. Definitions: All capitalized terms used herein shall have the definitions given in the Development Agreement to which this Exhibit J is attached, as amended, unless otherwise expressly provided herein.
 - (i) “**Qualified Job Hours**” are (A) all job hours worked by Qualified Oakland Residents on the Project site, (B) all job hours worked by Qualified Oakland Residents under continuous employment for one employer where such resident’s initial employment was for work on the Project site and (C) all job hours worked by Oakland residents between the Effective Date and the date the first building permit is pulled for the Project on job sites owned by Signature Properties, Inc., Reynolds & Brown or their affiliates.
 - (ii) “**Qualified Oakland Residents**” are Oakland residents that (A) have not worked in the construction trades within the five (5) years prior to their employment at the Project and have not completed an apprenticeship program; or (B) have worked in the construction trades within the five (5) years prior to their employment at the Project but have not completed more than twenty five percent (25%) of an apprenticeship program.
 - b. Each Development Parcel within the Project shall create Qualified Job Hours equal to six percent (6%) of the construction hours worked in the construction of the improvements on such parcel (subject to a Project-wide maximum requirement of 357,600 Qualified Job Hours).
 - c. Developer(s) would receive a bonus of 100 Qualified Job Hours for each Qualified Oakland Resident that works at least 900 Qualified Job Hours for a particular employer within any twelve (12) month period.
 - d. Developers would be able to transfer Qualified Job Hours in excess of their six percent (6%) requirement to other developers subject to this program upon written notice to the City.
 - e. Prior to the issuance of a building permit for a particular parcel the Development Parcel developer shall provide the City with estimates of (i) total construction hours to be created through the development of such parcel and (ii) total apprentice construction hours to be created through the development of such parcel.

- f. Developers shall submit a certified payroll to the City on a quarterly basis. The first certified payroll shall be due to the City at the end of the first quarter after the first building permit is issued.
 - g. In the event that a developer fails to meet the six (6%) minimum requirement, such developer shall pay an amount equal to the number of deficit hours multiplied by an amount equal to fifty (50%) of the average hourly apprentice compensation (including wages and benefits) for the Project to the City as a fine (the average hourly apprentice compensation rate for the Project shall be determined by the certified payrolls submitted through the date of default); and
 - h. City staff shall present a report on Project compliance with this requirement to the City Council annually during the term of the Development Agreement.
2. Additional Good Faith Efforts Local Hire Goals for 2022 Residential Units. The Finished Parcel Developers for each Development Parcel that includes one (1) or more 2022 Residential Units shall comply with both (a) the local hire requirements of Section 1, above, and (b) the additional program set forth in this Section 2 (the “**2022 Local Hire Program**”). The 2022 Local Hire Program shall be based on the following:
- a. Definitions.
 - (i) “**Good Faith Efforts**” means either (A) such efforts to satisfy the 2022 Local Hire Goal (as defined in Section 2(b) below) that are acceptable to the City or (B) that the applicable Finished Parcel Developer has complied with each of the following:
 - A. required its general contractor to comply with the 2022 Local Hire Program;
 - B. required its general contractor to require each of its subcontractors to comply with the 2022 Local Hire Program;
 - C. if the applicable contractor is unable to satisfy the 2022 Local Hire Goal with its existing employees, to avail itself of the applicable “name call” or similar procedures to allow the contractor to hire sufficient additional Oakland residents; provided, however, such contractor shall not be required to utilize such procedures if they require the contractor to incur additional costs not directly related to the employment of the Oakland residents required to meet the goal (such as the requirement to hire additional employees in order to be referred an Oakland resident).
 - (ii) “**Qualified 2022 Construction Hours**” means (A) all construction job hours worked by Oakland residents (whether or not such resident is a

current employee or new hire) on the Project and/or (B) all construction job hours worked by Oakland residents under continuous employment with one employer where such resident's initial employment with such employer was at the Project site. Each Qualified Job Hour shall qualify as a Qualified 2022 Construction Hour and be credited against both the local hire requirements set forth in Section 1 above and the 2022 Local Hire Program.

(iii) **“Subject Construction Hours”** means the applicable Finished Parcel Developer's estimate of the construction hours necessary to complete the 2022 Residential Units located on the subject Development Parcel. When the development for the subject Development Parcel includes both 2006 Residential Units and 2022 Residential Units, the Subject Construction Hours for such development parcel shall be determined by multiplying (A) the applicable Finished Parcel Developer's estimate of the total construction hours necessary to complete the entire development by (B) a percentage determined by dividing the number of 2022 Residential Units included in the subject development by the total number of residential units included in such development.

b. Each Finished Parcel Developer that develops one or more 2022 Residential Units within the Project shall use Good Faith Efforts to create a number of Qualified 2022 Construction Hours equal to twenty percent (20%) of the Subject Construction Hours applicable to such Finished Parcel Developer's Development Parcel (the **“2022 Local Hire Goal”**), subject to a Project-wide maximum equal to 192,000 Qualified 2022 Construction Hours.

c. Construction hours that would otherwise constitute Qualified 2022 Construction Hours but were worked prior to the Third DA Amendment Effective Date shall not be eligible for credit against the requirements of the 2022 Local Hire Program, however, Qualified 2022 Construction Hours that are (i) worked after the Third DA Amendment Effective Date and (ii) are in excess of, as applicable:

A. a Developer's obligations under Section 1 of this Exhibit J (whether or not the subject improvements include 2022 Residential Units); or

B. a Finished Parcel Developer's applicable 2022 Local Hire Goal,

may be transferred to other Developers that are subject to the 2022 Local Hire Program upon written notice to the City. For avoidance of doubt, Zarsion-OHP I, LLC shall accrue credit for Qualified 2022 Construction Hours that are (1) worked after the Third DA Amendment Effective Date, (2) related to its construction of horizontal Project improvements (grading, streets, utilities, parks, etc.) and (3) in excess of its obligations under Section 1 of this Exhibit J.

- d. Prior to the issuance of a building permit for a particular Development Parcel, the applicable Finished Parcel Developer shall provide the City with an estimate of the Subject Construction Hours for the improvements authorized by such building permit.
- e. Finished Parcel Developers shall submit a certified payroll to the City on a quarterly basis. The first certified payroll shall be due to the City at the end of the first quarter after the first building permit is issued for a 2022 Residential Unit.
- f. If the certified payroll submitted for any quarter does not evidence compliance with the 2022 Local Hire Goal, the applicable Finished Parcel Developer shall submit reasonable evidence that it has satisfied the Good Faith Efforts requirement to meet the 2022 Hire Goal.
- g. In the event that a Finished Parcel Developer fails to (i) meet the 2022 Local Hire Goal or (ii) provide evidence that it complied with the Good Faith Efforts requirement, such Finished Parcel Developer shall pay an amount equal to the number of deficit Qualified 2022 Construction Hours multiplied by an amount equal to fifty percent (50%) of the average hourly apprentice compensation (including wages and benefits) for the subject Development Parcel to the City as a fine (the average hourly apprentice compensation rate for the Project shall be determined by the certified payrolls submitted through the date of default).
- h. City staff shall present a report on the Project compliance with the requirement to the City Council annually during the term of the Development Agreement.

3. Job Training Assistance:

- a. Initial Assistance Payment. Upon the issuance of the first building permit for the Project, Developer will provide One Million Dollars (\$1,000,000) to be equally distributed among four (4) existing job training programs: Youth Employment Partnership, Cypress/Mandela, Allen Temple Training Center, and Men of Valor, which amount was paid prior to the Third DA Amendment Effective Date.
- b. Second Assistance Payment. Prior to the issuance of the building permit for the 1,240th Project residential unit, Developer shall provide an additional Three Hundred Twenty-Five Thousand Dollars (\$325,000) for a provider, or partnership of providers, that will use the funds to serve local residents in the Eastlake/Chinatown, Fruitvale and Lower San Antonio neighborhoods, which amount was paid prior to the Third DA Amendment Effective Date.
- c. Third Assistance Payment. Prior to the issuance of the building permit for the 1,860th Project residential unit, Developer will provide an additional Three Hundred Twenty-Five Thousand Dollars (\$325,000) to be equally distributed among the following existing job training programs for their use in serving

residents in the Eastlake/Chinatown, Fruitvale and Lower San Antonio neighborhoods: West Oakland Jobs Resource Center, Cypress/Mandela and the Rising Sun Center for Opportunity.

- d. Fourth Assistance Payment. Prior to the date that is one (1) year after the issuance of the building permit for the 1,860th Project residential unit, Developer will provide an additional Three Hundred Fifty Thousand Dollars (\$350,000) to the following existing job training programs for its use in serving residents in the Eastlake/Chinatown, Fruitvale and Lower San Antonio neighborhoods: West Oakland Jobs Resource Center.

In the event any one of the existing job training programs designated in Section 3(c) or 3(d) above does not exist at the time Developer is obligated make the applicable payment or does not agree to use the funds to serve residents in the Eastlake/Chinatown, Fruitvale and Lower San Antonio neighborhoods, then: (1) with respect to funds to be paid pursuant to Section 3(c), Developer shall have the right to identify a similar replacement program or increase the amount to be distributed to the remaining programs and (2) with respect to funds to be paid pursuant to Section 3(d), such funds shall be paid to a third party that provides construction pre-apprenticeship training to residents in the Eastlake/Chinatown, Fruitvale and Lower San Antonio neighborhoods and is reasonably approved by Developer and the Community Coalition. Developer shall provide the City with written notice of any funds that are re-designated pursuant to this paragraph.

EXHIBIT O
FORM OF
ASSUMPTION AGREEMENT

WHEN RECORDED, RETURN TO:

ASSIGNMENT AND ASSUMPTION AGREEMENT
OF THE DEVELOPMENT AGREEMENT BETWEEN
CITY OF OAKLAND, ZARSION-OHP I, LLC, AND _____
(Brooklyn Basin: Phase ____, Parcel ____)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (Brooklyn Basin: Phase ____, Parcel ____) (this "Assignment and Assumption") is entered into this ____ day of _____, 20____ (the "Effective Date"), by and among the City of Oakland, a municipal corporation ("City"), Zarsion-OHP I, LLC, a California limited liability company ("Developer"), and _____, a _____ ("Assignee").

RECITALS

A. On August 24, 2006, the City, the Redevelopment Agency of the City of Oakland (the "Redevelopment Agency"), and Oakland Harbor Partners, LLC ("OHP") entered into that certain agreement entitled "Development Agreement Between City of Oakland, Redevelopment Agency of the City of Oakland, and Oakland Harbor Partners, LLC" (hereinafter, the "Original Development Agreement"). Pursuant to the Original Development Agreement, OHP agreed to develop certain property more particularly described in the Original Development Agreement and commonly known as "Oak Street to Ninth Avenue District Project," subject to certain conditions and obligations as set forth in the Original Development Agreement. The Original Development Agreement was recorded on August 30, 2006, in the Official Records of Alameda County, California ("Official Records") as Document No. 2006-331819 and affects the property within the Oak to Ninth Avenue District commonly known as "Brooklyn Basin" (the "Property").

B. The City, pursuant to California Health and Safety Code Section 34176, elected to retain and assume the housing assets, obligations, and functions of the Redevelopment Agency upon dissolution of the Redevelopment Agency, including the Redevelopment Agency's interests in the Development Agreement. Effective upon the dissolution of the Redevelopment Agency on

February 1, 2012, all rights and responsibilities of the Redevelopment Agency under the Development Agreement were transferred to the City by operation of law.

C. On April 9, 2013, (1) OHP assigned to Developer all of its rights, title and interest in and to the Original Development Agreement, and (2) Developer assumed all of OHP's obligations under the Original Development Agreement. Such assignment and assumption was conditioned upon receipt of the City's consent as required by Section 10.3 of the Original Development Agreement.

D. At a duly noticed public hearing held on April 22, 2014, the City Council (1) reviewed OHP's and Developer's request for the City's consent to the proposed assignment and assumption of the Original Development Agreement, (2) reviewed the proposed form of assumption agreement (the "OHP-ZOHP Assumption Agreement"), (3) consented to the proposed assignment and assumption of the Original Development Agreement and (4) approved the form of the OHP-ZOHP Assumption Agreement (Resolution No. 24934 C.M.S.).

E. On August 28, 2014, the City and Developer entered into that certain First Administrative Amendment to Development Agreement (the "First Amendment"), which was recorded in the Official Records on August 28, 2014 as Document No. 2014-211182. On June 28, 2017, the City and Developer entered into that certain Second Administrative Amendment to Development Agreement (the "Second Amendment"), which was recorded in the Official Records on June 28, 2017 as Document No. 2017-141021. On _____, 20__, the City and Developer entered into that certain Third Amendment to Development Agreement (the "Third Amendment"), which was recorded in the Official Records on _____, 20__ as Document No. 20__ - _____. The Original Development Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment, is collectively referred to herein as the "Development Agreement." Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Development Agreement.

F. Article X of the Development Agreement provides that Developer may assign its rights and obligations under the Development Agreement to Finished Parcel Developers upon the satisfaction of the applicable conditions set forth in Section 10.2 of the Development Agreement. Concurrently with the parties' execution of this Assignment and Assumption, Developer has transferred the real property commonly referred to as Phase ___, Parcel ___ (the "Subject Property") to Assignee. The Subject Property is more particularly described in Exhibit A, attached hereto. The Subject Property is the subject of the Subdivision Improvement Agreement (Phase ___) recorded in the Official Records as Document No. _____ and therefore qualifies as a "Finished Parcel" under the Development Agreement.

G. The form of this Assignment and Assumption was approved by the City Council as Exhibit O to the Development Agreement (Ordinance No. _____ C.M.S.).

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Developer, Assignee, and City hereby agree as follows:

1. Effective as of the Effective Date, Developer hereby assigns and delegates to Assignee all of the rights, title, interest, burdens and obligations of Developer under the Development Agreement, each to the extent (a) related to the Subject Property and (b) arising from and after the Effective Date, which rights and obligations expressly exclude (i) any prior breach or default by Developer thereunder, (ii) any Master Developer Obligations, (iii) the “Developer” rights and obligations under Sections 4.3, 4.4, 4.10, 4.11, 4.13, 4.14 and 4.16 of the Original Development Agreement, (iv) the “Developer” obligations under Sections 4.15 of the Original Development Agreement, 5.1(i) of the Original Development Agreement to the extent of any City Approval applied for by Developer and issued prior to the Effective Date, and 5.1(iv) of the Original Development Agreement with respect to the Open Space Parcels, and (v) the “Developer” obligations under Sections 4 and 5 of the First Amendment and Second Amendment (the “Assigned Rights and Obligations”).

2. Effective as of the Effective Date, Assignee hereby assumes all of the Assigned Rights and Obligations arising from and after the Effective Date and agrees to observe and fully perform all the duties and obligations of Developer under such Assigned Rights and Obligations arising from and after the Effective Date, subject to all the terms and conditions thereof. The parties hereto intend that, as of the Effective Date, Assignee shall become substituted for Developer as the “Developer” under the Development Agreement with respect to the Subject Property and the Assigned Rights and Obligations. Assignor remains responsible for all duties and obligations of Developer under such Assigned Rights and Obligations arising prior to the Effective Date, subject to all the terms and conditions thereof.

3. The City hereby acknowledges that the above assignment and assumption and corresponding Transfer of the Subject Property to Assignee qualifies as an Exempt Transfer to a Finished Parcel Developer pursuant to Article X (Section 10.4) of the Development Agreement.

4. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

5. Developer hereby agrees to protect, indemnify, defend and hold Assignee, its officers, directors, shareholders, members, affiliates, employees, successors and assigns, harmless from and against any and all claims, demands, damages, actions, causes of action, losses, judgments, liabilities, costs and expenses (including, without limitation, attorneys’ fees, disbursements and court costs incurred as a result of such claims or in enforcing this indemnity provision) (collectively, “Claims”) arising out of the assigned rights and obligations under the Development Agreement first arising prior to the Effective Date. Assignee hereby agrees to protect, indemnify, defend and hold Developer, its officers, directors, shareholders, members, affiliates, employees, successors and assigns, harmless from and against any and all Claims arising out of the Assigned Rights and Obligations first arising after the Effective Date.

6. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment and Assumption, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees.

7. This Assignment and Assumption shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

8. From and after the Effective Date, the Notice Address described in Article XII of the Original Development Agreement for Assignee shall be:

Attn: _____

9. This Assignment and Assumption may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not a signatory to the same counterpart.

10. Developer and Assignee each agree to perform such further acts and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm the assignment contained herein in the manner contemplated hereby.

[Remainder of page intentionally blank; signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption as of the Effective Date.

CITY:

City of Oakland,
a municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form and legality:

By: _____
Name: _____
Title: _____

[Signatures continued on next page]

DEVELOPER:

Zarsion-OHP I, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

ASSIGNEE:

_____,
a _____

By: _____
Name: _____
Title: _____

[Certificates of acknowledgement to be added upon execution.]

Assignment and Assumption

Exhibit 1

Legal Description of the Subject Property

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

[INSERT LEGAL DESCRIPTION]

APN: _____