

FILED
OFFICE OF THE CITY CLERK
INTRODUCED BY COUNCIL MEMBER _____
2013 JUL 11 PM 3:58

REVISED JULY 2, 2013
APPROVED AS TO FORM AND LEGALITY

Mark P. Ward
City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. 13183 C.M.S.

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND PROLOGIS CCIG OAKLAND GLOBAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR THE DEVELOPMENT ON APPROXIMATELY 160 ACRES IN THE GATEWAY DEVELOPMENT AREA OF THE FORMER OAKLAND ARMY BASE TO BE IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED DOCUMENTS

WHEREAS, on June 12, 2012, the Oakland City Council, via Resolution No. 83930 C.M.S., approved the amended Oakland Army Base (OARB) Reuse Plan (Master Plan), including adopting the 2012 OARB Initial Study/Addendum, making related California Environmental Quality Act (CEQA) findings, and adopting the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP); and

WHEREAS, the Gateway Development Area encompasses approximately 160 acres of the OARB; and

WHEREAS, on July 3, 2012, the Oakland City Council approved, via Ordinance No. 13131 C.M.S., a Lease Disposition and Development Agreement (LDDA) with Prologis CCIG Oakland Global, LLC, a Delaware Limited Liability Company (Developer), which provided for the development on approximately 130 acres of the Gateway Development Area of a mixed-use industrial (warehousing and logistics) and commercial, including billboard, maritime, rail, and open space project (Project) and other Project-related matters; and

WHEREAS, Developer now seeks to “vest” its rights for the Project for the term of the LDDA (approximately 70 years) through a Development Agreement with the City; and

WHEREAS, the City Planning Commission held a duly noticed public hearing on the proposed Development Agreement, as well as other related planning matters, on May 1, 2013, and at the close of the hearing recommended approval of the Development Agreement to the City Council; and

WHEREAS, the Community and Economic Development Committee held a duly noticed meeting on May 28, 2013, to consider the Development Agreement and recommended approval of such to the City Council; and

WHEREAS, the City Council held duly noticed public hearings on the Development Agreement on June 4, 2013, and July 2, 2013; now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1: The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present. Thus, prior to approving the Development Agreement, the City Council finds and determines that it can continue to rely on the previously adopted 2012 OARB Initial Study/Addendum for the reasons stated in June 12, 2012, and May 28, 2013, City Council Agenda Report and related attachments/exhibits. The (Final and Corrected) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, dated October 15, 2012, is also hereby reaffirmed/readopted, including the clarifying corrections discussed at the June 4, 2013, City Council hearing (Mitigation Measure 4.4-3b, West Gateway Rail and Maritime Emissions Reduction Program) and in the Agenda Report for the July 2, 2013, City Council meeting (Mitigation Measure 4.3-10, Parking Demand Study), and the revisions discussed at the July 2, 2013, City Council meeting (Mitigation Measure PO-1, Stakeholder Review of Air Quality and Trucking Plans).

Section 2: The City Council finds and determines that this action complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies.

Section 3: The City Administrator or her designee is hereby authorized to execute, in form and content substantially in conformance with the Development Agreement and its Exhibits/Attachments, as set forth in Exhibit A, and such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate implementation of the Project in order to consummate the transaction authorized under the Development Agreement in accordance with this Ordinance and City Council direction, and to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

Section 4. The recitals set forth above are true and correct and are an integral part of this Ordinance.

Section 5. The City Council finds and determines the following:

a) The Development Agreement contains all information required by State Law and by the Oakland Municipal Code, including all information referenced in Chapter 17.138; and

b) The Project is consistent with the General Plan and all applicable planning and zoning enactments; and

c) The Development Agreement is desirable in order to facilitate the successful Project implementation; and

d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs and the catalytic effect the project will have on revitalizing the surrounding neighborhood, which will result in increased property values in the surrounding area and an increase in the viability of existing businesses; and

e) The public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Development Agreement.

Section 6. Except as specifically set forth herein, this Ordinance suspends and supersedes all resolutions, ordinances, plans, codes, laws and regulations conflicting with this Ordinance and/or implementation of the Development Agreement as approved or as may be amended, including without limitation Oakland Municipal Code section 14.04.270 (Chapter 15, Signs Adjacent to Freeways, sections 1501-1506).

Section 7. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of this Ordinance or its application to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Ordinance or the application of this Ordinance to other situations shall remain in full force and effect.

Section 8. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of the Development Agreement that this Ordinance approves or application of the Development Agreement to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of the Development Agreement or the application of the Development Agreement to other situations shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of the Development Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties to the Development Agreement shall work in good faith and fully cooperate with each other to amend the Development Agreement to carry out its intent.

Section 9. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all relevant plans and maps;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City;
4. all oral and written evidence received by the City staff, Planning Commission, and City Council before and during the public hearings on the application; and
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) the Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations.

Section 10. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the Office of Neighborhood Investment, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland; (b) the Planning and Building Department, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland.

Section 11. This Ordinance shall not be codified in the Oakland Municipal Code.

Section 12. Pursuant to section 216 of the City Charter, this Ordinance is effective as of the date it is adopted if passed by an affirmative vote of at least six council members; otherwise, it is effective seven days after final adoption.

Section 13. All documents related to this transaction shall be reviewed and approved by the City Attorney's Office prior to execution, and copies will be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 16 2013

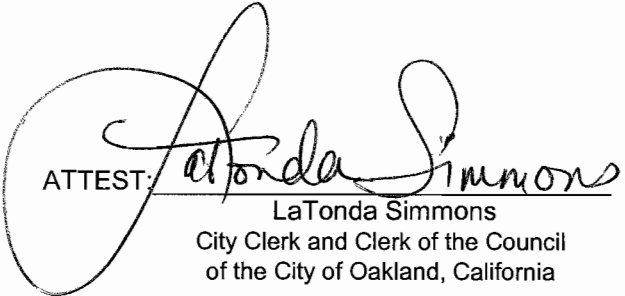
PASSED BY THE FOLLOWING VOTE:

AYES- ~~BROOKS~~, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN - 7

NOES- 0

ABSENT- 0

ABSTENTION- Brooks - 1

ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date JUL 2 2013

DATE OF ATTESTATION: 7-19-13

EXHIBIT A

Development Agreement

MPW

Revised June 25, 2013

NO COST RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Oakland
Dept. of Planning & Building
Attention: Rachel Flynn, Director of Planning & Building
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

(Above Space for Recorder's Use Only)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF OAKLAND

AND

PROLOGIS CCIG OAKLAND GLOBAL, LLC

REGARDING THE PROPERTY AND PROJECT KNOWN AS

“GATEWAY DEVELOPMENT/OAKLAND GLOBAL”

Dated _____, 2013

Table of Contents

ARTICLE I DEFINITIONS.....	7
1.1 Defined Terms.....	7
ARTICLE II TERM	13
2.1 Effective Date; Term Commencement.....	13
2.2 Expiration of Term.	14
2.3 Subsequent Amendments or Termination	15
2.4 Effect of Termination of Agreement.....	15
ARTICLE III GENERAL REGULATION OF DEVELOPMENT OF PROJECT.....	16
3.1 Application of Agreement to Project Site:	16
3.2 Permitted Uses; Control of Development:	16
3.3 Development Schedule/Sequencing:.....	17
3.4 Applicable City Regulations.....	17
3.4.1 Future City Regulations.....	18
3.4.2 Regulation for Health and Safety	19
3.4.3 Existing City Regulations	19
3.4.4 Construction Codes and Standards	20
3.4.5 City Fees	20
3.4.6 Project Exactions.....	20
3.4.7 Term of City Approvals and Subsequent Approvals.....	21
3.5. Review and Processing of Subsequent Approvals.	21
3.5.1 Reliance on Project EIR.	21
3.5.2 Subsequent CEQA Review.....	22
3.5.3 Request for Amendments to City Approvals.	22
3.6 Exempting Fees Imposed by Outside Agencies.....	23
3.7 Intentionally Omitted.....	23
3.8 Allocation of SCA/MMRP.	23
3.8.1 Developer's Allocation of SCA/MMRPs.....	23
3.8.2 City's Allocation of SCA/MMRPs.	23
3.8.3 SCA/MMRPs Allocated to Developer and City.....	24
3.8.4 Revisions to SCA/MMRP.	24
3.8.5 Survival of Termination.....	25

3.8.6	Corrections to SCA/MMRP.....	25
	ARTICLE IV COMMUNITY BENEFITS	26
4.1	Community Benefits.	26
	ARTICLE V INDEMNITY AND INSURANCE	26
5.1	Prior Indemnity Agreement.	26
5.2	Developer Indemnity Regarding City Approvals.....	26
5.3	Developer Indemnity Regarding Other Matters.....	27
5.4	Insurance.....	27
	ARTICLE VI ANNUAL REVIEW OF COMPLIANCE	28
6.1	Annual Review.	28
6.2	Developer's Submittal.....	28
6.3	Finding of Compliance.....	29
6.4	Failure to Conduct Annual Review.....	30
6.5	Certificate of Compliance.....	30
	ARTICLE VII FORCE MAJEURE; SUPERSEDURE BY SUBSEQUENT LAWS	31
7.1	Force Majeure.....	31
7.2	Supersedure By Subsequent Laws.	31
7.2.1	Effect of Conflicting Law	31
7.2.2	Contest of New Law	32
	ARTICLE VIII EVENTS OF DEFAULT; REMEDIES; ESTOPPEL CERTIFICATES	33
8.1	Events of Default.....	33
8.2	Notice of Noncompliance	33
8.3	Response to Notice of Noncompliance.....	33
8.4	Meet and Confer/Mediation Process.	34
8.5	Hearing Before City Council to Determine Compliance.....	34
8.6	Effect of City Council Finding of Noncompliance; Rights of Developer	36
8.7	Remedies.....	36
8.8	Time limits; Waiver; Remedies Cumulative	36
8.9	Effect of Court Action.....	39
8.10	Estoppel Certificate.....	39
8.11	Special Cure Provisions.	40
	ARTICLE IX MORTGAGES/MORTGAGEE PROTECTION	40

9.1	Mortgages/Mortgagee Protection.....	40
ARTICLE X TRANSFERS AND ASSIGNMENTS		40
10.1	Transfer/Assignment; Release.....	40
10.2	Effect of Transfer; No Cross Default	41
ARTICLE XI AMENDMENT AND TERMINATION		41
11.1	Amendment or Cancellation	41
11.2	Certain Actions Not an Amendment.....	42
ARTICLE XII NOTICES		42
12.1	Procedure.....	42
12.2	Change of Notice Address.....	44
ARTICLE XIII COVENANTS RUNNING WITH THE LAND		44
13.1	Covenants Running With The Land.....	44
13.2	Successors to City.....	45
ARTICLE XIV MISCELLANEOUS.....		45
14.1	Negation of Partnership.....	45
14.2	Approvals	45
14.3	Not a Public Dedication.....	46
14.4	Severability.....	46
14.5	Exhibits	47
14.6	Entire Agreement.....	47
14.7	Construction of Agreement	47
14.8	Mitigation of Damages.....	48
14.9	Further Assurances; Covenant to Sign Documents.....	48
14.10	Covenant of Good Faith and Fair Dealing	48
14.11	Governing Law	48
14.12	References; Terminology	49
14.13	Irregularity in Proceeding.....	49
14.14	Judicial Proceeding to Challenge Termination.....	49
14.15	Conflicts of Interest.....	50
14.16	Nonliability	50
14.17	Developer's Warranties	50
14.18	Exercise of Police Power	50

14.19	Intentionally Omitted.....	51
14.20	City of Oakland Campaign Contribution Limits	51
14.21	Disabled Access	51
14.22	City Subject to Brown Act and Sunshine Ordinance Requirements	51
14.23	Signature Pages.....	51
14.24	No Third Party Beneficiary	51
14.25	Time	52
14.26	Recitals True and Correct.....	52
14.27	Conflict with LDDA or Ground Lease.....	52

DEVELOPMENT AGREEMENT
("Gateway Development/Oakland Global")

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of this ___ day of _____, 2013, by and between the CITY OF OAKLAND, a California charter city ("City"), and PROLOGIS CCIG OAKLAND GLOBAL, LLC, a Delaware limited liability company ("Developer"), pursuant to California Government Code Sections 65864, et seq., with respect to the development of the property and project known as the "Gateway Development/Oakland Global." City and Developer shall collectively be referred to herein as the "Parties," and may each individually be referred to as a "Party."

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

A. These Recitals refer to and utilize terms which are defined in this Agreement; and the Parties refer to those definitions in conjunction with their use in these Recitals.

B. The Development Agreement Legislation authorizes City to enter into development agreements in connection with the development of real property within its jurisdiction. The Development Agreement Ordinance establishes the authority and procedure for review and approval of proposed development agreements by City.

C. Developer applied for approval of this Agreement to: (1) vest the land use policies established in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and other Existing City Regulations as of the Adoption Date; (2) vest its rights and City's obligations regarding current and future approvals necessary for the Project; (3) allocate responsibility for the cost and implementation of the Mitigation Monitoring and Reporting

Program; and (4) memorialize certain other agreements made between City and Developer with respect to the Project. City and Developer acknowledge that development and construction of the Project is a large-scale undertaking involving major investments by Developer, with development occurring in phases over a period of years. Certainty that the Project can be developed and used in accordance with the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and other Existing City Regulations, will benefit City and Developer and will provide the Parties certainty with respect to implementation of the policies set forth in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and the other Existing City Regulations.

D. Development of the Project will meet the key objectives of City embodied in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date) and other Existing City Regulations. Specifically, the development of the Project will provide many benefits to City and the public including, but not limited to: (1) mitigate or avoid potentially significant environmental impacts; (2) provide public improvements and infrastructure; (3) deliver the Community Benefits required by the LDDA and the Ground Leases; (4) strengthen City's economic base with a variety of long term jobs, in addition to shorter term construction jobs; (5) provide for and generate substantial revenues for City in the form of one time fees and Exactions, rent pursuant to the applicable ground leases, property tax and other fiscal benefits; and (6) otherwise achieve the goals and purposes for which the Development Agreement Ordinance was enacted. City is therefore willing to enter into this Agreement to, among other

things: (1) provide certainty to encourage the required substantial private investment in the comprehensive development and planning of the Project; (2) secure orderly development and progressive fiscal benefits for public services, improvements and facilities planning in City; and (3) fulfill and implement adopted City plans, goals, policies and objectives, including, among others, those embodied in City's General Plan.

E. City recognizes the pioneering nature of the Project and the Project Site, and City intends that implementation of the General Plan and Redevelopment Plan policies, objectives and goals, and the zoning ordinance, as amended, will create increased value, operation and function of the Port of Oakland area and the surrounding neighborhoods.

F. City and Developer anticipate that the full build-out of the Gateway/Oakland Global project pursuant to this Agreement will generate economic and community benefits to the City of Oakland and Oakland residents.

G. The Development Agreement Legislation authorizes City to enter into a development agreement with any Person having a legal or equitable interest in real property. Developer has an interest in the Project Site described in Exhibit A, attached hereto, pursuant to the Lease Development and Disposition Agreement, by and among the City, the Oakland Redevelopment Successor Agency and Developer, effective December 4, 2012 (the "LDDA").

H. Developer proposes the development of the Project Site for a mix of trade and logistics uses, a marine terminal for bulk and oversized cargo and other uses and improvements in accordance with the City Approvals, the LDDA and this Development Agreement, as further described in Exhibits D-1 and D-2.

I. City has taken several actions to review and plan for the future development of the Project. These include, without limitation, the following: (1) preparation and certification of

the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report and the 2012 OARB Initial Study/Addendum("EIR"); (2) adoption and approval of the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date); (3) adoption and approval of the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date); (4) execution of the LDDA; (5) adoption and approval of the Gateway Industrial zoning district; and (6) adoption and approval of the Gateway Industrial Design Standards. This Agreement also anticipates City will timely consider and grant additional future approvals for the Project and that City will use the Environmental Impact Report prepared in support of this Agreement for those approvals and actions to the fullest extent allowed under applicable law.

J. On May 1, 2013, the City's Planning Commission held a duly noticed public hearing on this Agreement pursuant to the Development Agreement Ordinance, and other relevant provisions of the Planning Code. After due review of and report on Developer's application for this Agreement by City staff, consideration of all evidence heard and submitted at such public hearing and the matters to be considered pursuant to Section 17.138.060 of the Development Agreement Ordinance in enacting a development agreement, the Planning Commission, in relevant part: (1) considered and relied upon the certified the EIR for the Project, and determined that consideration of this Agreement complies with CEQA based on the EIR, and that this Agreement is consistent with the goals, objectives, policies, land uses and programs specified in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and the other Existing City Regulations pertaining thereto; and(2) recommended that the City Council approve this Agreement based on the foregoing findings. In taking the above actions, the Planning Commission reviewed and heard the report of City's staff

on the Agreement and considered all other evidence heard and submitted at the public hearing, including the matters to be considered pursuant to Section 17.138.060 of the Development Agreement Ordinance in recommending to the City Council the approval of a development agreement.

K. On June 4, 2013 and July 2, 2013, the City Council held duly noticed public hearings on this Agreement pursuant to the requirements of the Development Agreement Ordinance, and other relevant provisions of the Planning Code. After due review of and report on Developer's application for this Agreement 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 17.138.060 of the Development Agreement Ordinance in enacting a development agreement and other relevant provisions of the Planning Code, the City Council: (1) considered and relied upon the certified EIR and determined that consideration of this Agreement complies with CEQA based on the EIR; and (2) introduced Enacting Ordinance No. ____ C.M.S. approving this Agreement, finding and determining in connection therewith that this Agreement is consistent with the goals, objectives, policies, land uses and programs specified in the General Plan, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), the Oakland Army Base Reuse Plan (as amended prior to the Adoption Date) and in the other Existing City Regulations pertaining thereto.

L. At a duly noticed public meeting on July 16, 2013, the City Council adopted Enacting Ordinance No. ____ C.M.S. enacting this 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.

AGREEMENT

ARTICLE I

DEFINITIONS

1.1 Defined Terms. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.

Adoption Date: The date the City Council adopted the Enacting Ordinance enacting this Agreement.

Applicable City Regulations: The Existing City Regulations, as defined below, and such other City Regulations, as defined below, otherwise applicable to development of the Project pursuant to the provisions of Section 3.4.

CEQA: The California Environmental Quality Act (Public Resources Code Sections 21000, et seq.) and the Guidelines there under (14 California Code of Regulations, Sections 15000, et seq.) ("CEQA Guidelines").

City Application Fees: Fees City regularly charges for the filing and processing of applications as set forth on City's Master Fee Schedule. City Application Fees shall not include City Development Fees, as defined below, or any fee, the purpose of which, is to compensate for or cover any cost or expense other than the filing and processing of an application.

City Approvals: Permits or approvals required under Applicable City Regulations to develop, use and operate the Project and granted on or before the Adoption Date of this Agreement as identified in Recital I of this Agreement and described in Exhibit B. (See also "Subsequent Approval," defined below.)

City Development Fees: The fees or assessments legislatively imposed by City against development projects as a general matter for capital improvements in effect on the Adoption Date, as set forth in the City's Master Fee Schedule. If, subsequent to the Adoption Date, the City ceases to apply or otherwise require a particular City Development Fee within the City, such fee or assessment shall no longer be deemed part of the City Development Fees.

City Master Fee Schedule: The Master Fee Schedule as adopted by the Oakland City Council (a) with respect to City Application Fees, as adopted and amended by the Oakland City Council and (b) with respect to City Development Fees, in effect as of the Adoption Date, a copy of which shall be included in the binders prepared pursuant to Section 3.4.3.

City Policies: The interpretations made by City of the manner in which Existing City Regulations will be applied to the development of the Project under Applicable City Regulations. "City Policies" shall include (a) those City Policies adopted prior to the Adoption Date, whether consistent or inconsistent with this Agreement, and (b) those City Policies adopted after the Adoption Date that are consistent with this Agreement (and exclude those City Policies adopted after the Adoption Date that are inconsistent with this Agreement). The term "City Policy" shall refer to any or all City Policies as the context may require.

City Regulations: The General Plan of City, the Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date), Oakland Army Base Reuse Plan (as amended prior to the Adoption Date), and all other ordinances, resolutions, codes, rules, regulations and policies in effect as of the time in question.

Commence in Earnest: To Commence in Earnest a Phase of the Project shall mean to initiate activities based on a City-issued building permit and other necessary permit(s) and diligently prosecute such permit(s) in substantial reliance thereon and make regular and

consistent progress toward the completion of construction and the issuance of a final certificate of occupancy, including successful completion of building inspections to keep the building permit(s) and other permit(s) active without the benefit of an extension.

Conditions of Approval: Project conditions adopted by the City in connection with City Approvals or Subsequent Approvals.

Construction Codes and Standards: The City Regulations pertaining to or imposing life safety, fire protection, seismic, mechanical, electrical and/or building integrity requirements with respect to the design and construction of buildings and improvements, including the then-current Uniform Building Code as adopted and amended by City and other construction codes, Federal Emergency Management Agency standards, and City's then current design and construction standards for streets, drains, sidewalks and other similar improvements, which codes and standards are applied to comparable development on a City-wide basis.

Dedication: An Exaction comprised of land and/or improvements required to be Dedicated to City.

Development Agreement Legislation: California Government Code Sections 65864 through 65869.5, authorizing City to enter into development agreements as therein set forth.

Development Agreement Ordinance: Chapter 17.138 of City's Planning Code, in effect as of the Adoption Date, establishing City's authority and procedure for review and approval of proposed development agreements.

Effective Date: The date this Agreement becomes effective, which shall be concurrent with the effective date of the Enacting Ordinance.

Enacting Ordinance: Ordinance No. _____ C.M.S., enacted by the City Council on July 2, 2013, enacting this Agreement.

Environmental Impact Report or EIR: The 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report and the 2012 OARB Initial Study/Addendum.

Exaction: An exaction (other than City Application Fees or City Development Fees), Dedication or reservation requirement, an obligation for on- or off-site improvements or construction of public improvements, or an obligation to provide services. For purposes hereof, Exactions include, but are not limited to, mitigation measures imposed or adopted pursuant to CEQA or as part of the City Approvals.

Existing City Regulations: The City Regulations and City Policies in effect as of the Adoption Date and to the extent such are consistent therewith, the City Approvals as such are adopted from time to time.

Feasible: Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. The term "Feasible" includes any grammatical variant thereof, including "Feasibly" and "Infeasible."

Force Majeure: During such portion of the Term that the LDDA is in effect for any Phase, the definition of Force Majeure for such Phase shall be as defined in the LDDA. During such portion of the Term that a Ground Lease is in effect for any Phase, the definition of Force Majeure for such Phase shall as defined in the applicable Ground Lease.

Ground Lease: Each written Ground Lease that is or may be entered into between City and Developer (or City-approved affiliate of Developer) subsequent to the Effective Date of this Agreement, in substantially the same form required by the LDDA, and covering each Phase of the Project.

Governmental Agencies: All governmental or quasi-governmental agencies (such as public utilities) having jurisdiction over, or the authority to regulate development of, the Project. As used in this Agreement, the term "Governmental Agencies" does not include City or any of the departments of City.

Governmental Agency Approvals: All permits and approvals required by Governmental Agencies under Governmental Agency Regulations for construction, development, operation, use, provision of services to, or occupancy of, the Project.

Governmental Agency Regulations: The Laws, ordinances, resolutions, codes, rules, regulations and official policies of Governmental Agencies in effect as of the time in question.

Laws: The Constitution and Laws of the State, the Constitution of the United States, and any codes, statutes, regulations, or executive mandates thereunder, and any court decision, State or federal, thereunder. The term "Laws" shall refer to any or all Laws as the context may require. "Law" or "Laws" excludes, for the purpose of this Agreement, any local ordinance, regulation, rule or requirement.

LDDA: That certain Lease, Development and Disposition Agreement, by and among the City of Oakland, the Oakland Redevelopment Successor Agency and Prologis/CCIG Oakland Global, LLC, effective December 4, 2012.

Mitigation Monitoring and Reporting Program or SCA/MMRP: The (Final and Corrected) Standard Conditions of Approval and Mitigation Monitoring and Reporting Program, dated October 15, 2012 prepared for the EIR and adopted by the City Council on June 19, 2012, as may be amended or corrected.

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 in a Phase of the Project that is permitted under a Ground Lease and 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.

Person: An individual, partnership, limited liability company, firm, association, corporation, trust, governmental agency, administrative tribunal or other form of business or legal entity.

Phase: Each phase of the Project commonly referred to as the East Gateway, Central Gateway or West Gateway, as applicable.

Private Improvements: The term "Private Improvements" shall have the definition ascribed to the same in the LDDA.

Project: The development, use and occupancy of the Private Improvements on the Project Site pursuant to the City Approvals, the Subsequent Approvals and this Agreement, as identified in Recital H and described in Exhibit D.

Project Site: The real property described on Exhibit A hereto.

Public Improvements: The term "Public Improvements" shall have the definition ascribed to the same in the LDDA.

Subsequent Approvals: Permits or approvals required under Applicable City Regulations to develop, use and/or operate the Project and applied for, considered or granted after the

Adoption Date of this Agreement. Subsequent Approvals may include, without limitation, the following: amendments of the City Approvals, design review approvals, improvement agreements, encroachment permits, use permits, variances, grading permits, public improvement permits, building permits, tree removal permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps, rezonings, development agreements, permits, resubdivisions, condominium maps or approvals, and any amendments to, or repealing of, any of the foregoing, each as permitted by this Agreement.

Terminate: The expiration of the Term of this Agreement, whether by the passage of time or by any earlier occurrence pursuant to any provision of this Agreement. "Terminate" includes any grammatical variant thereof, including "Termination" or "Terminated".

Termination shall not relieve Developer of any other obligation, including obligations under this Agreement that survive Termination (such as Indemnity obligations), accrued obligations under this Agreement, and obligations to comply with City Approvals, Governmental Agency Approvals and other Laws.

Transfer: During such portion of the Term that the LDDA is in effect for any Phase, the definition of Transfer for such Phase shall be as defined in the LDDA. During such portion of the Term that a Ground Lease is in effect for any Phase, the definition of Transfer for such Phase shall as defined in the applicable Ground Lease.

Transferee: The Person to whom a Transfer is effected.

ARTICLE II

TERM

2.1 Effective Date; Term Commencement. This Agreement shall be dated as of the Adoption Date; the rights, duties and obligations of the Parties hereunder shall be effective, and

the Term shall commence, as of the Effective Date. Not later than five (5) days after the Adoption Date, Developer shall execute and acknowledge this Agreement and return the Agreement to City; not later than ten (10) days after the Adoption Date, City, by and through its City Administrator or his/her designee, shall execute and acknowledge this Agreement, and upon receipt of such executed and acknowledged Agreement. The Parties anticipate that Developer may not own or hold any ground leasehold interest in any of the Project Site as of the Effective Date, and that Developer will, if at all, acquire a ground leasehold or Franchise interest in the Project Site in Phases. In order to make clear that the rights and obligations under this Development Agreement will apply to and run with the property comprising the Project Site (or Developer's ground leasehold interest therein) after such property is acquired by Developer, upon acquisition of a ground leasehold or Franchise interest in such property by Developer, Developer shall cause this Agreement or a memorandum thereof to be recorded against Developer's interest in such property in the Official Records of the County of Alameda pursuant to Section 65868.5 of the Development Agreement Legislation and Section 17.138.070 of the Development Agreement Ordinance. City shall cooperate in such recording, and shall execute, acknowledge and deliver such additional instruments and documents as may be necessary to facilitate such recording.

2.2 Expiration of Term. Unless sooner terminated pursuant to the applicable provisions of this Agreement, the Term of this Agreement shall expire as to a Phase on the first to occur of the following: (i) if a Ground Lease is not executed by the Parties with respect to a particular Phase, then, with respect to such Phase, upon expiration or earlier termination of the LDDA; or (ii) if a Ground Lease is executed by the Parties with respect to a particular Phase, then, with respect to such Phase, upon expiration or earlier termination of the Ground Lease for

such Phase; or (iii) December 31 of the calendar year that is seventy (70) years after the Effective Date. Notwithstanding the foregoing, the Term shall be extended, on a day-for-day basis, for any period of time during which (A) a development moratorium (including, but not limited to, a water or sewer moratorium (or both)), prevents, prohibits or delays the construction of the Project or (B) a lawsuit by a third party challenging any Project development approvals or permits is pending. Such extension shall be established pursuant to the procedure set forth in Section 7.1 below. Notwithstanding anything to the contrary in Section 7.1, the Term shall not be extended for any Force Majeure event except as set forth in this Section 2.2.

2.3 Subsequent Amendments or Termination. If the Parties amend, modify or Terminate this Agreement as herein provided, or as otherwise provided by the Development Agreement Ordinance, or this Agreement is modified or Terminated pursuant to any provision hereof, then the Developer shall, within ten (10) days after such action takes effect, cause an appropriate notice of such action to be recorded in the Official Records of the County of Alameda.

2.4 Effect of Termination of Agreement. Except for obligations a Party has accrued, upon Termination of this Agreement, all of the rights, duties and obligations of the Parties hereunder shall Terminate and be of no further force or effect. The Termination shall not permit City to modify, reduce or terminate any of the rights vested in Subsequent Approvals made pursuant to this Agreement prior to Termination for any Phase that Developer has Commenced in Earnest prior to the Termination or expiration of the Term. Upon Termination, City shall retain any and all benefits, including money or land, received by City as of the date of Termination under or in connection with this Agreement. No Termination shall prevent Developer from completing and occupying buildings or other improvements authorized pursuant

to valid building permits approved by City prior to the date of Termination, except that nothing herein shall preclude City, in its discretion, from taking any action authorized by Laws or City Regulations to prevent, stop or correct any violation of Laws or City Regulations occurring before, during or after construction.

ARTICLE III

GENERAL REGULATION OF DEVELOPMENT OF PROJECT

3.1 Application of Agreement to Project Site: As between the Parties, this Agreement is effective as of the Effective Date and is enforceable by each Party in accordance with its terms. Upon the acquisition by Developer (or a Transferee of Developer) of a ground lease or Franchise interest in any portion of the Project Site, this Agreement shall automatically become effective as to, and govern, such property as of the earlier of: (a) the Effective Date, or (b) the date Developer provides written evidence reasonably acceptable to City that Developer has acquired such interest.

3.2 Permitted Uses; Control of Development: This Agreement vests in Developer the right to develop the Project in accordance with the terms and conditions of this Agreement, the City Approvals and the Existing City Regulations; provided that City shall have the right to control development of the Project in accordance with the provisions of this Agreement, the LDDA and each Ground Lease. Notwithstanding any provision herein to the contrary, the permitted uses of each Phase of the Project, the density and intensity of use of each Phase, and the siting, height, envelope, and massing and size of proposed buildings in each Phase, shall consist only of those described in and expressly permitted by, and subject to all terms, conditions and requirements of, the City Approvals, the Subsequent Approvals, the LDDA, and the applicable Ground Lease for each Phase. Nothing in this Agreement shall prohibit Developer from requesting amendments to the City Approvals. The reservation or dedication of land for

public purposes shall be as set forth on the appropriate tentative or final subdivision maps for the Project or elsewhere in the City Approvals or Subsequent Approvals. This Agreement, the City Approvals, the LDDA and the Ground Lease, and where such instruments are silent, the Applicable City Regulations, shall control the overall design, development and construction of the Project, and all on- and off-site improvements and appurtenances in connection therewith. In the event of any inconsistency between the Applicable City Regulations and this Agreement, this Agreement shall control, except that if the inconsistency cannot be reconciled by application of this rule of construction, the provision which, as determined by the City Council, best gives effect to the purposes of this Agreement shall control.

3.3 Development Schedule/Sequencing: Developer shall develop each Phase of the Project strictly in accordance with, and in all respects subject to, the scope, timing, terms, conditions and requirements set forth in the City Approvals, the Existing City Regulations, the LDDA, and the Ground Lease for each Phase. Without limiting the preceding sentence, and notwithstanding any provision in this Agreement to the contrary, Developer shall develop the Private Improvements for each Phase of the Project in accordance with the "Minimum Project" description, scope, schedule and sequencing set forth in the Ground Lease for each Phase. Nothing in this Agreement shall be deemed to amend or modify the LDDA or any Ground Lease or to limit, modify, restrict or alter the rights of City, in its capacity as Landlord under each Ground Lease, to control development of each Phase or to otherwise exercise any other rights or remedies of Landlord under each Ground Lease.

3.4 Applicable City Regulations. Except as expressly provided in this Agreement and the City Approvals, the Existing City Regulations shall govern the development of the Project and all Subsequent Approvals with respect to the development of the Project on the Project Site,

except that Oakland Municipal Code section 14.04.270 (Chapter 15, Signs Adjacent to Freeways, sections 1501-1506) shall not apply to the Project. City shall have the right, in connection with any Subsequent Approvals, to apply City Regulations as Applicable City Regulations only in accordance with the following terms, conditions and standards:

3.4.1 Future City Regulations. Except as otherwise specifically provided in this Agreement, including, without limitation, the provisions relating to (a) regulations for health and safety reasons under Section 3.4.2 below; (b) regulations for Construction Codes and Standards under Section 3.4.4 below; and (c) provisions relating to the payment of City Application Fees pursuant to Section 3.4.5, below, City shall not impose or apply any City Regulations on the development of the Project Site that are adopted or modified by City after the Adoption Date (whether by action of the Planning Commission or the City Council, or by local initiative, local referendum, ordinance, resolution, rule, regulation, standard, directive, condition, moratorium) that would: (i) be inconsistent or in conflict with the intent, purposes, terms, standards or conditions of this Agreement; (ii) materially change, modify or reduce the permitted uses of the Project Site, the permitted density or intensity of use of the Project Site, the siting, height, envelope, massing, design requirements, or size of proposed buildings in the Project, or provisions for City Fees specified in Section 3.4.5 below and Exactions as set forth in the City Approvals, including this Agreement; (iii) materially increase the cost of development of the Project (subject to the acknowledgement as to the cost of Exactions specified in Section 3.4.6 below); (iv) materially change or modify, or interfere with, the timing, phasing, or rate of development of the Project; (v) materially interfere with or diminish the ability of a Party to perform its obligations under the City Approvals, including this Agreement, or the Subsequent Approvals, or to expand, enlarge or accelerate Developer's obligations under the City Approvals,

including this Agreement, or the Subsequent Approvals; or (vi) materially modify, reduce or terminate any of the rights vested in City Approvals or the Subsequent Approvals made pursuant to this Agreement prior to expiration of the Term. Developer reserves the right to challenge in court any City Regulation that would conflict with this Agreement or reduce the development rights provided by this Agreement, provided that such City Regulation directly affects the Project; provided, however, Developer shall first follow the dispute resolution procedures in Article VIII.

3.4.2 Regulation for Health and Safety. Notwithstanding any other provision of this Agreement to the contrary, City shall have the right to apply City Regulations adopted by City after the Adoption Date, if such application (a) is otherwise permissible pursuant to Laws (other than the Development Agreement Legislation), and (b) City determines based on substantial evidence and after a public hearing that a failure to do so would place existing or future occupants or users of the Project, adjacent neighbors, or any portion thereof, or all of them, in a condition substantially dangerous to their health or safety. The Parties agree that the foregoing exception to Developer's vested rights under this Agreement is in no way intended to allow City to impose additional fees or exactions on the Project, beyond the City Fees described below in Section 3.4.5, that are for the purpose of general capital improvements or general services (except in the event of a City-wide emergency).

3.4.3 Existing City Regulations. The City shall, at the Developer's sole cost and expense, compile two binders which include copies of all Existing City Regulations within ninety (90) calendar days after the Adoption Date, sign both copies, and deliver one copy to Developer. The City shall make every reasonable effort to include all Existing City Regulations.

3.4.4 Construction Codes and Standards. The City shall have the right to apply to the Project at any time, as a ministerial act, the Construction Codes and Standards in effect at the time of the approval of any City Approval or Subsequent Approval thereunder.

3.4.5 City Fees. Except as otherwise specified in this Agreement, the City Development Fees and the City Application Fees shall be the only fees or assessments charged by City in connection with the development or construction of the Project. The City Development Fees applicable to the Project shall only be those fees in effect on the Adoption Date, as set forth in the City's Master Fee Schedule. The Project shall not be subject to any increases in City Development Fees, and shall not be subject to any new City Development Fees adopted after the Adoption Date. Notwithstanding any other provision of this Agreement, Developer shall pay City Application Fees chargeable in accordance with City Regulations (including any action by the City Council to increase or otherwise adjust City Application Fees listed in the City's Master Fee Schedule) in effect and generally applicable at the time the relevant application is made.

3.4.6 Project Exactions. Developer and City acknowledge that the City Approvals and Subsequent Approvals authorize and require implementation of Exactions in connection with the development of the Project and that the specific costs of implementing such Exactions currently cannot be ascertained with certainty, but notwithstanding such uncertainty, except as otherwise provided in this Agreement, Developer shall be solely responsible for such costs in connection with implementing such Exactions as and when they are required to be implemented. Subject to the terms and conditions of this Agreement, no new Exactions shall be imposed by City on the Developer or the development of the Project, or on any application made by Developer for any City Approval or Subsequent Approval concerning the development of the

Project, or in enacting any City Approval or Subsequent Approval concerning the development of the Project, or in connection with the development, construction, use or occupancy of the Project; provided, however, subject to the provisions of Section 3.5 below, that Exactions may be imposed if required by CEQA (e.g., further CEQA review is undertaken for Subsequent Approvals and such review identifies the need for additional or modified mitigation measures, or previously imposed mitigation measures are no longer Feasible).

3.4.7 Term of City Approvals and Subsequent Approvals. Notwithstanding anything to the contrary in Applicable City Regulations, the term of any City Approval (other than this Agreement) and the Subsequent Approvals for the Project shall be for the longer of the Term of this Agreement (including any extensions) or the term otherwise applicable to such City Approval or Subsequent Approval if this Agreement is no longer in effect. Upon the later to occur of (a) the expiration or termination of this Agreement or (b) any Ground Lease (as such Ground Lease may be extended from time to time), any City Approval or Subsequent Approval related to the applicable Ground Lease premises in effect beyond the term of this Agreement shall be quitclaimed and assigned to the City or its designee pursuant to Section 30.1.5 of the applicable Ground Lease.

3.5. Review and Processing of Subsequent Approvals.

3.5.1 Reliance on Project EIR. The EIR, which has been certified by City as being in compliance with CEQA, addresses the potential environmental impacts of the entire Project as it is described in the Project Approvals. Nothing in this Development Agreement shall be construed to require CEQA review of Ministerial Approvals. It is agreed that, in acting on any discretionary Subsequent Approvals for the Project, City will rely on the EIR to satisfy the requirements of CEQA to the fullest extent permissible by CEQA and City will not require a new

initial study, negative declaration or subsequent or supplemental EIR unless required by CEQA, as determined by City in its capacity as the Lead Agency, and will not impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the City Approvals, specifically required by the Existing City Regulations or by subsequent CEQA review.

3.5.2 Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City, in its capacity as the Lead Agency, shall conduct such CEQA review as expeditiously as possible at Developer's sole cost and expense, including, without limitation, the payment of the applicable City Application Fee.

3.5.3 Request for Amendments to City Approvals. In the event that Developer requests an amendment to the City Approvals which proposes to increase the permitted square footage of development uses for the Project and (a) the approval by the City of such request would be a discretionary approval subject to CEQA and (b) at the time of the City's consideration of such request the project defined in the EIR has not been fully constructed, then the City shall, to the maximum extent permissible by law and other applicable agreements, take into consideration during the City's CEQA review of the requested amendment to the City Approvals the capacity/project envelope previously studied under the EIR that has not been previously constructed and is not the subject of a then current application for a land use related permit or a building permit to minimize the effects of such proposed amendment(s) that may otherwise require additional review under CEQA.

3.6 Exempting Fees Imposed by Outside Agencies. City agrees to exclude Developer from any and all collection agreements regarding fees, including, but not limited to, development impact fees, which other public agencies request City to impose at City's sole and absolute discretion with no conditions on the Project during the Term of this Agreement. Developer shall reimburse City for all costs and expenses (including without limitation consultants, City staff and/or City attorney or outside counsel time) incurred to implement this section.

3.7 Intentionally Omitted.

3.8 Allocation of SCA/MMRP.

3.8.1 Developer's Allocation of SCA/MMRPs. If the Developer elects to proceed with the development of the Project pursuant to the terms of the LDDA and the applicable Ground Leases, the Developer shall be responsible, at its sole cost and expense (as between the Parties), for the implementation of the applicable SCA/MMRPs allocated to Developer on Exhibit C. If the Developer elects to proceed with the development of the Project pursuant to the terms of the LDDA and the applicable Ground Leases, the failure of the Developer to implement the SCA/MMRP allocated to Developer pursuant to Exhibit C at the time set forth for such SCA/MMRP shall be an Event of Default of Developer under this Agreement.

3.8.2 City's Allocation of SCA/MMRPs. The Parties agree that any SCA/MMRP allocated to the City under Exhibit C shall be deemed to be a "Public Improvement" as defined in the LDDA and as such, the City's obligations related to the implementation of the applicable SCA/MMRPs allocated to the City on Exhibit C shall be controlled exclusively by the LDDA, including, but not limited to, the City's obligation to Complete (as defined in the LDDA) the Public Improvements pursuant to the LDDA and the

City's maximum financial contribution pursuant to Section 3.3.1.1.1 of the LDDA. Any failure of the City to Complete any Public Improvement, including any SCA/MMRPs allocated to the City on Exhibit C and any related remedies of the Developer shall be controlled exclusively by the LDDA, and therefore shall not be an Event of Default under this Agreement.

3.8.3 SCA/MMRPs Allocated to Developer and City. Unless otherwise agreed in writing among the Parties as an amendment to this Agreement pursuant to Article XI, where both the City and Developer are identified as being responsible for implementation of an SCA/MMRP: (a) the City shall be responsible with respect to the construction of the Public Improvements, subject to Section 3.8.2, and (b) Developer shall be responsible with respect to the construction and operation of the Private Improvements, as applicable, subject to Section 3.8.1.

3.8.4 Revisions to SCA/MMRP. The Parties acknowledge the provisions of Item 14 of Exhibit 15 to the LDDA which states in part:

“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.”

Consistent with this language, the Parties further agree that with respect to the following SCA/MMRPs, if the events identified in the EIR which require the implementation of a SCA/MMRP associated with a cumulative impact have not occurred within the time period contemplated in the EIR or a Party proposes a more cost effective or feasible mitigation measure that meets the applicable CEQA requirements and do not themselves cause any potentially significant effect on the environment, the City may delete or amend

the applicable SCA/MMRPs, so long as the City, in its capacity as the Lead Agency under CEQA for the Project, takes the appropriate action under CEQA to amend or delete the applicable SCA/MMRP, as follows:

- a. at the request of Developer and with the City's prior written consent which shall not be unreasonably withheld or delayed, the SCA/MMRPs allocated to Developer pursuant to Exhibit C and Sections 3.8.1 and/or 3.8.3 of this Agreement; and
- b. in the sole and absolute discretion of the City, the Delayed Public Improvements, which the Parties hereby agree refer specifically to the cumulative off-site traffic improvements listed in Mitigation Measures 3.16-17 through 33 and related Recommended Measures, inclusive, of the SCA/MMRP and are a subset of the Public Improvements.

In the event a SCA/MMRP is deleted pursuant to this Section, the applicable Party shall have no obligation to implement the applicable SCA/MMRP under this Agreement, the LDDA and/or CEQA, as applicable. In the event that a SCA/MMRP is amended pursuant to this Section, the applicable Party shall be deemed to have satisfied its obligation under this Agreement, the LDDA and CEQA, as applicable, by implementing the amended SCA/MMRP.

3.8.5 Survival of Termination. The Parties agree that Section 3.8 shall survive any termination of this Agreement.

3.8.6 Corrections to SCA/MMRP. The Parties agree that technical corrections made by the City to the SCA/MMRP, including previously adopted but omitted Standard Conditions and/or Mitigation Measures, will be incorporated herein and allocated in the same manner as the foregoing.

ARTICLE IV
COMMUNITY BENEFITS

4.1 Community Benefits. During such portion of the Term that the LDDA is in effect for any Phase, Developer shall comply with the Community Benefit requirements set forth in Article IV of the LDDA for such Phase. During such portion of the Term that a Ground Lease is in effect for any Phase, Developer shall comply with the Community Benefit requirements set forth in Section 37.6 of the applicable Ground Lease for such Phase. In addition, the parties hereby agree to amend the Construction Jobs Policy for the Public Improvements to require weekly compliance reporting through the website proposed by the California Capital & Investments Group, Inc.

ARTICLE V
INDEMNITY AND INSURANCE

5.1 Prior Indemnity Agreement. The Parties acknowledge that they have previously entered into that certain Oakland Army Base Environmental Review Funding and Indemnity Agreement Associated with Initial Project Approvals, dated October 23, 2012 (the “Prior Indemnity Agreement”). Nothing in this Agreement shall amend the provisions of the Prior Indemnity Agreement.

5.2 Developer Indemnity Regarding City Approvals. To the maximum extent permitted by law, Developer shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission and their respective agents, officers, employees and volunteers (hereafter collectively called “City Parties”) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal

costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Agreement or any City Approvals approved concurrently herewith or any Subsequent Approval or the implementation of the same. The City may elect, in its sole discretion, to participate in the defense of said Action and Developer shall reimburse the City for its reasonable legal costs and attorneys' fees.

Within ten (10) calendar days of the filing of any Action as specified in the preceding paragraph, Developer shall execute a Joint Defense Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the City Approval or any Subsequent Approval requested by Developer. Failure to timely execute the Letter Agreement does not relieve the Developer of any of the obligations contained in this Section or other requirements or Conditions of Approval that may be imposed by the City.

5.3 Developer Indemnity Regarding Other Matters. Subject to the provisions of Section 5.1 and 5.2 with respect to such matters included within the scope of such Sections, during such portion of the Term that a Ground Lease is in effect for any Phase, Developer shall defend, indemnify, protect and hold harmless the City Parties, from and against any and all Actions related to such Phase, in accordance with the indemnification obligations of the tenant as set forth in the applicable Ground Lease.

5.4 Insurance. During such portion of the Term that a Ground Lease is in effect for any Phase, Developer shall, at no cost to City, maintain and cause to be in effect with respect to

each Phase, the same types and amounts of insurance required of the tenant under the Ground Lease for such Phase.

ARTICLE VI

ANNUAL REVIEW OF COMPLIANCE

6.1 Annual Review. City and Developer shall annually review this Agreement, and all actions taken pursuant to the terms of this Agreement with respect to the Project, in accordance with the provisions of Section 17.138.090 of the Development Agreement Ordinance and this Article VI. Nothing herein is intended to, nor does, (a) preclude earlier review by City at its reasonable request with thirty (30) days' notice to Developer, or (b) either Party providing notice of noncompliance, breach or default of this Agreement to the other Party in accordance with, as applicable, the terms of the LDDA (for Events of Default arising under the LDDA), the terms of the applicable Ground Lease (for Events of Default arising under the applicable Ground Lease) or the applicable dispute resolution provisions of this Agreement detailed in Article VIII (for all other Events of Default under this Agreement).

6.2 Developer's Submittal. Not later than the first anniversary date of the Effective Date, and not later than each anniversary date of the Effective Date thereafter during the Term, Developer shall apply for annual review of this Agreement, as specified in Section 17.138.090.A of the Development Agreement Ordinance. Developer shall pay with such application the City Application Fee for annual review of Development Agreements under Existing City Regulations in effect at the time the application is submitted. Developer shall submit with such application a written report to City's Director, Department of Planning and Building ("Director of City Planning"), with a copy to the City Attorney, describing Developer's good faith substantial compliance with the terms of this Agreement during the preceding year. Such report shall

include a statement that the report is submitted to City pursuant to the requirements of Government Code Section 65865.1, and Section 17.138.090 of the Development Agreement Ordinance, on the top of the first page of the report, in clearly marked bold, twelve point typeface, substantially as follows:

**"THIS REPORT IS SUBMITTED UNDER GOVERNMENT
CODE SECTION 65865.1 AND SECTION 17.138.090 OF
THE DEVELOPMENT AGREEMENT ORDINANCE. CITY
HAS 45 DAYS TO RESPOND."**

6.3 Finding of Compliance. Within forty-five (45) days after Developer submits its report hereunder, the Director of City Planning shall review Developer's submission to ascertain whether Developer has demonstrated good faith substantial compliance with the material terms of this Agreement. If the Director of City Planning finds and determines that Developer has in good faith substantially complied with the material terms of this Agreement, the Director of City Planning shall prepare and issue a certificate of compliance pursuant to Section 6.5 below. If the Director of City Planning does not make a determination and issue a certificate of compliance within forty-five (45) days of receipt of Developer's report under Section 6.2 above (unless extended by Developer in writing), Developer shall submit a second letter notifying the Mayor, Council President, Director of City Planning, City Administrator, and City Attorney that the 45-day determination period has expired. The second notification letter shall inform the City representatives that if the Director of City Planning does not make a determination and issue a certificate of compliance, within 30 days after receipt of the second notification letter, the annual review shall be deemed concluded and Developer shall be entitled to a certificate of compliance pursuant to Section 6.5.

If the Director of City Planning initially determines that such report is inadequate in any respect, he or she shall provide written notice to that effect to Developer, and Developer may supply such additional information or evidence as may be necessary to demonstrate good faith substantial compliance with the material terms of this Agreement. Developer's written response of additional information/evidence must be submitted within 30 days of City notification. If the Director of City Planning again concludes that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, he or she shall so notify Developer within 30 days after receipt of Developer's additional information or evidence. If the Director of City Planning does not agree with Developer's response, then he/she shall provide written notice of the commencement of the Meet and Confer/Mediation Process within 30 days of the receipt of the response, and the dispute resolution procedures and process detailed in Article VIII will apply, commencing with Section 8.4 (Meet and Confer/Mediation Process).

6.4 Failure to Conduct Annual Review. Failure of the City to conduct an annual review shall not be an Event of Default under this Agreement by the City and shall not constitute a waiver by the City of its rights to require subsequent annual reviews pursuant to this Article VI. Failure of the City to conduct an annual review shall not cause the Developer to be in Default under this Agreement, but it does not relieve the Developer of the obligation to submit the Annual Review report as required by Section 6.2.

6.5 Certificate of Compliance. Upon Developer's written request following the annual review process described in Article VI, if the Director of City Planning (or the City Council, if applicable) finds good faith substantial compliance by Developer with the material terms of this Agreement (or the City fails to timely conduct an annual review and the Developer has complied with all submittal requirements of Section 6.2), the Director of City Planning shall

issue a certificate of compliance within twenty (20) days thereafter, certifying Developer's good faith compliance with the material terms of this Agreement through the period of the applicable annual review. Such certificate of compliance shall be in recordable form and shall contain such information as may be necessary to impart constructive record notice of the finding of good faith compliance hereunder. Developer shall have the right to record the Certificate of Compliance in the Official Records of the County of Alameda.

ARTICLE VII

FORCE MAJEURE; SUPERSEDURE BY SUBSEQUENT LAWS

7.1 Force Majeure. During such portion of the Term that the LDDA is in effect for any Phase, the provisions of Section 10.1 of the LDDA shall apply to such Phase. During such portion of the Term that a Ground Lease is in effect for any Phase, the provisions of Article 16 of the applicable Ground Lease shall apply to such Phase.

7.2 Supersedure By Subsequent Laws.

7.2.1 Effect of Conflicting Law. Except as prohibited by Government Code Section 65869.5 or other applicable state or federal law, to the extent any future rules, ordinances, regulations or policies applicable to development of the Project Site are inconsistent with the land use designations or permitted or conditionally permitted uses on the Project Site, density and intensity of use, rate or timing of construction, design requirements, maximum building height and size, or provisions for reservation and dedication of land or other conditions of approval or terms under the City Approvals as defined herein and as provided in this Agreement, the terms of the City Approvals and this Agreement shall prevail. As specified in Government Code Section 65869.5, if any Law enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent Feasible, be modified or suspended by City as may be

necessary to comply with such new Law. Immediately after becoming aware of any such new Law, the Parties shall meet and confer in good faith to determine the Feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. At the conclusion of such meet and confer process, and to the extent Feasible in any event no later than ninety (90) days after such new Law takes effect, City shall initiate proceedings for the modification or suspension of this Agreement as may be necessary to comply with such new Law. Such proceedings shall be initiated by public notice given in accordance with the Applicable City Regulations, and the City Council shall make the determination of whether modifications to or suspension of this Agreement is necessary to comply with such new Law. The City Council's determination shall take into account the results of the meet and confer process between the Parties, including all data and information exchanged in connection therewith. To the extent Feasible, the City Council shall make its determination hereunder within sixty (60) days after the date the proceedings hereunder are initiated.

7.2.2 Contest of New Law. Either Party shall have the right to contest the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. The City Council, in making its determination under Section 7.2.1, shall take into account the likelihood of success of any contest pending hereunder, and if the contesting Party has obtained interim relief preventing enforcement of such new Law, then the City Council shall delay consideration of action on modifications to or suspension of this Agreement pursuant to Section 7.2.1 above until such contest is concluded or such interim relief expires.

ARTICLE VIII

EVENTS OF DEFAULT; REMEDIES; ESTOPPEL CERTIFICATES

8.1 Events of Default. Subject to the provisions of this Agreement, any failure by a Party to perform any material term or provision of this Agreement shall constitute an "Event of Default," if, following the notice, meet and confer and cure processes specified below, the Party in default has not timely cured said default. Notwithstanding the foregoing to the contrary, (a) subject to the applicable limitations under the LDDA on cross-defaults between the Phases, during such portion of the Term that the LDDA is in effect for any Phase, any "Event of Default" (as defined in the LDDA) related to such Phase under the LDDA shall be deemed an Event of Default under this Agreement, (b) subject to the applicable limitations under the Ground Leases on cross-defaults between the Ground Leases, during such portion of the Term that a Ground Lease is in effect for any Phase, any "Event of Default" (as defined in the applicable Ground Lease) related to such Phase under the applicable Ground Lease shall be deemed an Event of Default under this Agreement and (c) the provisions of Section 8.2 through 8.6, inclusive, and the notice provisions of Section 8.8 shall not apply to "Events of Default" under the LDDA or the applicable Ground Lease.

8.2 Notice of Noncompliance. If either Party determines there is noncompliance with this Agreement, said Party must provide the other Party written notice of such noncompliance, which shall specify in reasonable detail the grounds therefor and all facts demonstrating such noncompliance or failure, so the other Party may address the issues raised in the notice of noncompliance or failure on a point-by-point basis.

8.3 Response to Notice of Noncompliance. Within thirty (30) days of receipt of the notice of noncompliance, the Party receiving such notice shall respond in writing to the issues raised in the notice of noncompliance on a point-by-point basis. If the noticing Party agrees with

and accepts the other Party's response, no further action shall be required. If the noticing Party does not agree with the response, then it shall provide to the other Party written notice of the commencement of the Meet and Confer/Mediation Process within thirty (30) days of the receipt of the response.

8.4 Meet and Confer/Mediation Process. Within fifteen (15) days of receipt of a meet and confer notice, the Parties shall initiate a Meet and Confer/Mediation Process pursuant to which the Parties shall meet and confer in good faith in order to determine a resolution acceptable to both Parties of the bases upon which either Party has determined that the other Party has not demonstrated good faith substantial compliance with the material terms of this Agreement.

8.5 Hearing Before City Council to Determine Compliance.

(a) Pursuant to the Annual Review Process of Article VI, or if City determines, after the Meet and Confer/Mediation Process, that there still remain outstanding noncompliance issues, the City Council shall conduct a noticed public hearing pursuant to Section 17.138.090 of the Development Agreement Ordinance to determine the good faith substantial compliance by Developer with the material terms of this Agreement. At least ten (10) days prior to such hearing, the Director of City Planning shall provide to the City Council, Developer, and to all other interested Persons requesting the same, copies of the City Council agenda report, agenda related materials and other information concerning the Annual Review Process of Article VI and/or Developer's good faith substantial compliance with the material terms of this Agreement and the conclusions and recommendations of the Director of City Planning. The results and recommendations of the Meet and Confer/Mediation Process shall be presented to the City Council for review and consideration. At such hearing, Developer and any

other interested Person shall be entitled to submit evidence, orally or in writing, and address all the issues raised in the staff report on, or with respect or germane to, the issue of Developer's good faith substantial compliance with the material terms of this Agreement.

(b) The City Council may, in its sole discretion, require an additional Meet and Confer/Mediation Process with a designated third party or mediator. The results and recommendations of said process shall be presented to the City Council for review and consideration at a duly noticed meeting.

(c) If, after receipt of any written or oral response of Developer, and/or results and recommendations from the Meet and Confer/Mediation Process that may have occurred, and after considering all of the evidence at such public hearing, or a further public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not substantially complied in good faith with the material terms of this Agreement, the City Council shall specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance that shall reasonably reflect the time necessary to adequately bring Developer's performance into good faith substantial compliance with the material terms of this Agreement. If the areas of noncompliance specified by the City Council are not corrected within the time limits prescribed by the City Council hereunder, subject to the Permitted Delay provisions of Section 7.1, above, the City Council may by subsequent noticed hearing extend the time for compliance for such period as the City Council may determine (with conditions, if the City Council deems appropriate), Terminate or modify this Agreement, or take such other actions as may be specified in the Development Agreement Legislation and the Development Agreement Ordinance.

8.6 Effect of City Council Finding of Noncompliance; Rights of Developer. If the City Council determines that Developer has not substantially complied in good faith with the material terms of this Agreement pursuant to this Article VIII, and takes any of the actions specified in this Article VIII with respect to such determination of noncompliance, Developer shall have the right to contest any such determination of noncompliance by City Council pursuant to Section 8.7, below.

8.7 Remedies. Upon the occurrence of an Event of Default, each Party shall have the right, in addition to all other rights and remedies available under this Agreement, to (a) bring any proceeding in the nature of specific performance, injunctive relief or mandamus, and/or (b) bring any action at law or in equity as may be permitted by Laws or this Agreement. Notwithstanding the foregoing, however, neither Party shall ever be liable to the other Party for any consequential or punitive damages on account of the occurrence of an Event of Default (including claims for lost profits, loss of opportunity, lost revenues, or similar consequential damage claims), and the Parties hereby waive and relinquish any claims for punitive damages on account of an Event of Default, which waiver and relinquishment the Parties acknowledge has been made after full and complete disclosure and advice regarding the consequences of such waiver and relinquishment by counsel to each Party.

8.8 Time limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. In the event a Party determines that the other Party has not complied with any applicable time limit governing performance under this Agreement by such other Party or governing the time within which such

other Party must approve a matter or take an action, then the Party affected by such circumstance shall, prior to taking any other action under this Agreement or exercising any other right or remedy under this Agreement, notify such other Party of such failure of timely performance or such failure to render an approval or take an action within the required time period.

In the case of City, Developer shall send such notice to Director of Planning with copy to the head of any board or commission, the President of the City Council, or the Mayor, having responsibility for performance, approval or action, as applicable, and to the City Administrator, and City Attorney.

Any such notice shall include a provision in at least twelve point **bold** face type as follows:

**"YOU HAVE FAILED TIMELY TO PERFORM OR
RENDER AN APPROVAL OR TAKE AN ACTION
REQUIRED UNDER THE AGREEMENT: [SPECIFY IN
DETAIL]. YOUR FAILURE TO COMMENCE TIMELY
PERFORMANCE AND COMPLETE SUCH
PERFORMANCE AS REQUIRED UNDER THE
AGREEMENT OR RENDER SUCH APPROVAL TO TAKE
SUCH ACTION WITHIN THIRTY (30) DAYS AFTER THE
DATE OF THIS NOTICE SHALL ENTITLE THE
UNDERSIGNED TO TAKE ANY ACTION OR EXERCISE
ANY RIGHT OR REMEDY TO WHICH IT IS ENTITLED
UNDER THE AGREEMENT AS A RESULT OF THE
FOREGOING CIRCUMSTANCES."**

The failure of the Party receiving such notice to proceed to commence timely performance and complete the same as required, or render such approval or take such action, within such thirty (30) day period shall entitle the Party giving such notice to take any action or exercise any right or remedy available under this Agreement, subject to any additional notice, cure or other procedural provisions applicable thereto under this Agreement.

Any deadline in this Agreement that calls for action by the City Council or other body that is subject to the requirements of the Ralph M. Brown Act (Government Code Sections 54950 et seq.), City Sunshine Ordinance (Oakland Municipal Code Chapter 2.20), or other noticing and procedural requirements, shall be automatically extended as may be reasonably necessary to comply with such requirements and with City's ordinary scheduling practices and other procedures for setting regular public meeting agendas.

No waiver by a Party of any failure of performance, including an event of default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other action or inaction, or cover any other period of time, other than any action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent action or inaction, and the performance of the same or any other term or provision contained in this Agreement.

Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

8.9 Effect of Court Action. If any court action or proceeding is brought within the applicable statute of limitations by any third Person to challenge the City Council's approval of (a) this Agreement or any portion thereof, or (b) any Project approval concurrently adopted with this Agreement, then (i) Developer shall have the right to Terminate this Agreement upon thirty (30) days' notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination, and (ii) any such action shall constitute a permitted delay under Article VII.

8.10 Estoppel Certificate. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such other Party to certify in writing that: (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and identifying any administrative implementation memoranda entered into by the Parties, and (c) to the knowledge of such other Party, neither Party has committed an event of default under this Agreement, or if an event of default has to such other Party's knowledge occurred, to describe the nature of any such event of default. A Party receiving a request hereunder shall execute and return such certificate within forty five (45) days following the receipt thereof, and if a Party fails so to do within such 45-day period, the requesting Party may submit a second request (which shall also be sent to the City Council President, City Administrator and City Attorney) and if a Party fails to execute and return such certificate within thirty (30) days after the receipt of the second request, the information in the requesting Party's notice shall conclusively be deemed true and correct in all respects. The Director of City Planning, as to City, shall execute certificates requested by Developer hereunder. Each Party

acknowledges that a certificate hereunder may be relied upon by Transferees and Mortgagees. No Party shall, however, be liable to the requesting Party, or third Person requesting or receiving a certificate hereunder, on account of any information therein contained, notwithstanding the omission for any reason to disclose correct and/or relevant information, but such Party shall be estopped with respect to the requesting Party, or such third Person, from asserting any right or obligation, or utilizing any defense, which contravenes or is contrary to any such information.

8.11 Special Cure Provisions. During such portion of the Term that a Ground Lease is in effect for any Phase, the provisions of Section 18.3 of the applicable Ground Lease shall apply to such Phase.

ARTICLE IX

MORTGAGES/MORTGAGEE PROTECTION

9.1 Mortgages/Mortgagee Protection. During such portion of the Term that a Ground Lease is in effect for any Phase, the provisions of Article 34 (“Mortgages”) and Section 18.2 (“Special Provisions Concerning Mortgages and Events of Default”) of the applicable Ground Lease govern and shall apply to all Mortgages with respect to such Phase.

ARTICLE X

TRANSFERS AND ASSIGNMENTS

10.1 Transfer/Assignment; Release. During such portion of the Term that the LDDA is in effect for any Phase, (a) Developer shall not be entitled to Transfer all or any portion of its rights or obligations under this Agreement related to such Phase separate or apart from a Transfer that is permitted pursuant to the LDDA and (b) if Developer makes a permitted Transfer of all or any portion of its rights or obligations under the LDDA with respect to any Phase, Developer’s rights and obligations under this Agreement related to such Phase with respect to such Phase shall automatically transfer to the Transferee under the LDDA. During such portion

of the Term that a Ground Lease is in effect for any Phase, (y) Developer shall not be entitled to Transfer all or any portion of its rights or obligations under this Agreement related to such Phase separate or apart from a Transfer that is permitted pursuant to the applicable Ground Lease and (z) if Developer makes a permitted Transfer all or any portion of its rights or obligations under the applicable Ground Lease with respect to any portion of the Project Site, Developer's rights and obligations under this Agreement with respect to such portion of the Project Site shall automatically transfer to the Transferee under the applicable Ground Lease (other than such a Transferee that is a subtenant under such Ground Lease). In either event, no such Transfer shall release or relieve Developer from any of its obligations under this Agreement unless, and only to the extent, expressly set forth in the documentation for such Transfer under, as applicable, the LDDA or the applicable Ground Lease.

10.2 Effect of Transfer; No Cross Default. A Transferee shall become a Party to this Agreement only with respect to the interest Transferred to it under the Transfer and then only to the extent set forth in Section 10.1 above. Subject to the preceding sentence, from and after the effective date of the Transfer, (a) an Event of Default by the Developer under this Agreement shall have no effect on the Transferee's rights and obligations under this Agreement; (b) an Event of Default with respect to any Transferee shall have no effect on the Developer's rights and obligations under this Agreement; and (c) an Event of Default by a Transferee under this Agreement shall have no effect on the rights and obligations of any other Transferee under this Agreement.

ARTICLE XI

AMENDMENT AND TERMINATION

11.1 Amendment or Cancellation. Except as expressly provided in this Agreement, this Agreement may be Terminated, modified or amended only by the consent of the Parties

made in writing, and then only in the manner provided for in Section 17.138.080 of the Development Agreement Ordinance. Neither this Agreement nor any term, covenant, condition or provision herein contained shall be subject to initiative or referendum after the Effective Date.

11.2 Certain Actions Not an Amendment. Notwithstanding the provisions of Section 11.1 above, a minor modification to this Agreement may be approved by mutual agreement of City and Developer and shall not require a noticed public hearing or any action by the Planning Commission or City Council before the Parties execute such modification, but shall require the giving of notice pursuant to Section 65867 of the Development Agreement Legislation as specified by Section 65868 thereof. Modifications related to the Term, City Development Fees, Community Benefits, the allocations of SCA/MMRP as set forth in this Agreement or modifications that would increase the obligations of the City under this Agreement are expressly excluded from the definition of a “minor modifications” and shall require the approval of the City Council. Subject to the foregoing, for purposes hereof, "minor modification" shall be determined as set forth in Section 10.12 of the LDDA. The Developer shall forward to all City Council members any and all “minor modifications” within ten (10) days after execution of such.

Upon the expiration of such notice period, any such matter shall automatically be deemed incorporated into the Project and vested under this Agreement. The granting or amendment of a Project Approval or Subsequent Approval shall not require notice under Section 65867 and shall not be considered an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement.

ARTICLE XII

NOTICES

12.1 Procedure. Subject to the provisions of Section 8.8, all formal notices to a Party shall be in writing and given by delivering the same to such Party in person or by sending the

same by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, or by overnight courier delivery, to such Party's mailing address. A Party may provide courtesy notice via electronic mail or facsimile, which notice shall not be deemed official notice under this Agreement. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City: City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, California 94612
Attention: Rachel Flynn, Director of Planning and Building
Email: rflynn@oaklandnet.com

Oakland City Attorney's Office
One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94162
Attention: Mark Wald
Email: mwald@oaklandcityattorney.org

Developer: Prologis CCIG Oakland Global, LLC
Pier 1, Bay 1
San Francisco, CA 94111
Attn: Mr. Mark Hansen
Email: mhansen@prologis.com

With a copies to:

Prologis CCIG Oakland Global, LLC
c/o California Capital & Investments, Inc.
The Rotunda Building
300 Frank Ogawa Plaza, Suite 340
Oakland, CA 94612
Attn: Mr. Phil Tagami
Email: tagami@californiagroup.com

Prologis, Inc.
4545 Airport Way
Denver, CO 80239
Attn: General Counsel
Facsimile: (303) 567-5761

Stice & Block, LLP
2201 Broadway, Suite 604

Oakland, CA 94612
Attention: Marc Stice, Esq.
Email: mstice@sticeblock.com

Notices and communications with respect to technical matters in the routine performance and administration of this Agreement shall be given by or to the appropriate representative of a Party by such means as may be appropriate to ensure adequate communication of the information, including written confirmation of such communication where necessary or appropriate. All formal notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed or sent by courier, on the delivery date or attempted delivery date shown on the return receipt or courier records. Any notice which a Party desires to be a formal notice hereunder and binding as such on the other Party must be given in writing and served in accordance with this Section 12.1.

12.2 Change of Notice Address. A Party may change its mailing address at any time by giving formal written notice of such change to the other Party in the manner provided in Section 12.1 at least ten (10) days' prior to the date such change is effected

ARTICLE XIII

COVENANTS RUNNING WITH THE LAND

13.1 Covenants Running With The Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other Persons that acquire a legal or equitable interest of Developer in the Project Site, or any portion thereof, or any interest therein, or any improvement thereon, whether by operation of Laws or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and permitted assigns as Transferees, as covenants running

with the land pursuant to Section 65868.5 of the Development Agreement Legislation. This Agreement and the covenants as set forth herein shall run in favor of City without regard to whether City has been, remains or is an owner of any land or interest in the Project Site.

13.2 Successors to City. For purposes of this Article XIII, "City" includes any successor public agency to which land use authority over the Project may be transferred, which public agency shall, as part of such Transfer, by written instrument satisfactory to City and Developer, expressly (a) assume all of City's rights, duties and obligations under this Agreement; and (b) release and Indemnify City from all obligations, claims, liability or other Losses under this Agreement.

ARTICLE XIV

MISCELLANEOUS

14.1 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that neither Party is acting as the Agent of the others in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any Person who is not a Party or a Transferee; and nothing in this Agreement shall limit or waive any rights Developer may have or acquire against any third Person with respect to the terms, covenants or conditions of this Agreement.

14.2 Approvals. Unless otherwise provided in this Agreement or, if applicable, the LDDA or any applicable Ground Lease, whenever approval, consent, satisfaction, or decision

(herein collectively referred to as an "Approval"), is required of a Party pursuant to this Agreement, it shall not be unreasonably withheld or delayed. If a Party shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. Approval by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

14.3 Not a Public Dedication. Except for Exactions made in accordance with this Agreement, and then only when made to the extent so required, nothing herein contained shall be deemed to be a gift or dedication of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development of the Project as private property.

14.4 Severability. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of this Agreement, or its application to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situations shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

14.5 Exhibits. The exhibits listed below, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto:

Exhibit A: Project Site Legal Description
Exhibit B: City Approvals
Exhibit C: Allocation of SCA/MMRP's
Exhibit D-1: Project Conceptual Site Plan
Exhibit D-2: Development Program

14.6 Entire Agreement. This written Agreement and the exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and exhibits hereto, and such administrative implementation memoranda. Neither the conduct or actions of the Parties, nor the course of dealing or other custom or practice between the Parties, shall constitute a waiver or modification of any Term or provision of this Agreement; and this Agreement may be modified or amended only in the manner specified in this Agreement.

14.7 Construction of Agreement. All of the provisions of this Agreement have been negotiated at arms-length between the Parties and after advice by counsel, who have reviewed this Agreement, and other representatives chosen by each Party, and the Parties are fully informed with respect thereto. Therefore, this Agreement shall not be construed for or against either Party by reason of the authorship or alleged authorship of any provisions hereof, or by reason of the status of either Party. The provisions of this Agreement and the exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party and consistent with the provisions hereof, in order to achieve the objectives and purpose of the Parties hereunder. The captions preceding the text of each article, section and the

table of contents hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

14.8 Mitigation of Damages. In all situations arising out of this Agreement, each Party shall attempt to avoid and minimize the damages resulting from the conduct of the other Party. Each Party shall take all necessary measures to effectuate the provisions of this Agreement. Such actions shall include, but not be limited to, good faith and active participation in any meet and confer and cure process.

14.9 Further Assurances; Covenant to Sign Documents. Each Party shall take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

14.10 Covenant of Good Faith and Fair Dealing. Neither Party shall do anything which shall have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement; each Party shall refrain from doing anything which would render its performance under this Agreement impossible; and each Party shall do everything which this Agreement contemplates that such Party shall do in order to accomplish the objectives and purposes of this Agreement. The Parties intend by this Agreement to set forth their entire understanding with respect to the terms, covenants, conditions and standards for the development, use and occupancy of the Project and by which the performance of the rights, duties and obligations of the Parties hereunder shall be measured or judged.

14.11 Governing Law. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the Laws of the State of California.

14.12 References; Terminology. Unless otherwise specified, whenever in this Agreement, reference is made to the table of contents, any article or section, or any defined term, such reference shall be deemed to refer to the table of contents, article or section or defined term of this Agreement. The use in this Agreement of the words "including," "such as" or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific items or matters, whether or not language of nonlimitation, such as "without limitation" or "but not limited to," or words of similar import, are used with reference thereto, but rather 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.

14.13 Irregularity in Proceeding. No action, inaction or recommendation by a Party pursuant to this Agreement, or of City in connection with a City approval, shall be held void or invalid, or be set aside by a court on the grounds of improper admission or rejection of evidence, or by reason of any error, irregularity, informality, neglect or omission (collectively, an "Error") as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation or any matters of procedure whatsoever, unless after an examination of the entire record with respect to such error, including the evidence, the court finds that the Error complained of was prejudicial, and that by reason of the Error, the complaining Party, or third Person, sustained and suffered substantial injury, and that a different result would have been probable if the Error had not occurred or existed. No presumption shall arise that an Error is prejudicial, or that injury resulted from an Error, solely as a result of a showing that Error occurred.

14.14 Judicial Proceeding to Challenge Termination. Any challenge made by Developer to City's termination, modification, or amendment of this Agreement pursuant to a

right so to do granted by this Agreement, shall be subject to review in the Superior Court of the County of Alameda and solely pursuant to California Code of Civil Procedure Section 1094.5(c).

14.15 Conflicts of Interest. Developer shall use all diligent efforts to ensure that no member, officer, employee, or consultant of City who participates in any way in the Project or in the making of this Agreement, or a member of such Person's immediate family, shall have any personal financial interest in the Project or this Agreement or receive any personal financial benefit from the Project. Developer warrants that it has not paid or given, and will not pay or give, to any third Person any money or other consideration in exchange for obtaining this Agreement. Not in limitation of any other indemnity obligation or Developer, Developer shall Indemnify City from any claims for real estate commissions or brokerage fees, finders or any other fees in connection with this Agreement.

14.16 Nonliability. No member, official, employee, agent, or member of any board or commission of City shall be personally liable to Developer, or any Transferee, in the event of any Event of Default committed by City or for any amount that may become due to Developer or a Transferee under the terms of this Agreement.

14.17 Developer's Warranties. Developer represents and warrants that it: (i) has access to professional advice and support to the extent necessary to enable Developer to fully comply with the terms of this Agreement and otherwise carry out the Project, (ii) is duly organized and validly existing under the Laws of the State of California, and (iii) has the full power and authority to undertake the Project; and (iv) that the Persons executing and delivering this Agreement are authorized to execute and deliver this Agreement on behalf of Developer.

14.18 Exercise of Police Power. The Parties acknowledge that City has exercised its police power in the interest of the Parties, the citizens of City and the general public, by enacting

this Agreement as its legislative act, and that full implementation of this Agreement will confer substantial benefits to the citizens of City and the general public.

14.19 Intentionally Omitted.

14.20 City of Oakland Campaign Contribution Limits. Developer has dated and executed and delivered to City an acknowledgement of campaign contributions limits form as required by Chapter 3.12 of the Oakland Municipal Code.

14.21 Disabled Access. Developer shall construct the Project in compliance with all applicable federal, state, and local requirements for access for disabled Persons.

14.22 City Subject to Brown Act and Sunshine Ordinance Requirements. Developer acknowledges that all City Council and Planning Commission actions are subject to the requirements of the provisions of the Sunshine Ordinance (Oakland Municipal Code Chapter 2.20) and the Ralph M. Brown Act (Government Code Sections 54950, et seq.), and the published agenda of the City Council and Planning Commission and regular procedures applicable thereto. City shall cause all City Council and Planning Commission actions to conform to the foregoing requirements and Developer shall take no action which would violate the foregoing requirements.

14.23 Signature Pages. This Agreement may be executed in counterparts, and in facsimile and/or electronic form, and all so executed, shall constitute one Agreement that shall be binding upon all Parties hereto, notwithstanding that the signatures of all Parties' designated representatives do not appear on the same page.

14.24 No Third Party Beneficiary. Nothing in this Agreement shall confer any rights in favor of any third party or third parties.

14.25 Time. Time is of the essence of this Agreement and of each and every term and condition hereof.

14.26 Recitals True and Correct. The Parties acknowledge and agree that the Recitals are true and correct and are an integral part of this Agreement.

14.27 Conflict with LDDA or Ground Lease. Notwithstanding any provision in this Agreement to the contrary, with the exception of Sections 3.8.4(b) and 3.8.6 and the addition of weekly compliance reporting referenced in Section 4.1, which are intended to control, (a) except as otherwise expressly set forth in the LDDA, in the event of any conflict between any provision of this Agreement and any provision of the LDDA, the provision of the LDDA shall govern and control; and (b) except as otherwise expressly set forth in the Ground Lease, in the event of any conflict between any provision of this Agreement and any provision of any applicable Ground Lease, the provision of the applicable Ground Lease shall govern and control.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

AUTHORIZED SIGNATURE OF CITY:

CITY OF OAKLAND, a California charter city

By:

Its:

APPROVED AS TO FORM AND LEGALITY:

By:

Deputy City Attorney

AUTHORIZED SIGNATURE OF DEVELOPER:

PROLOGIS CCIG OAKLAND GLOBAL,
a Delaware limited liability company,

By: _____

Name: _____

Title: Authorized Individual

EXHIBIT A

Project Site

[See attached]

EXHIBIT B

City Approvals

1. The 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report and the 2012 OARB Initial Study/Addendum ("EIR");
2. The Oakland Army Base Redevelopment Plan (as amended prior to the Adoption Date);
3. The Oakland Army Base Reuse Plan (as amended prior to the Adoption Date);
4. The LDDA;
5. The Gateway Industrial zoning district (Ordinance _____ C.M.S.); and
6. The Gateway Industrial Design Standards (Resolution _____ C.M.S).

True and correct copies of the above-mentioned City Approvals shall be included in the binders prepared by the City pursuant to Section 3.4.3.

EXHIBIT C

Allocation of SCA/MMRPs

[See attached]

EXHIBIT C

**Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost**

Standard Conditions of Approval/Mitigation Measures¹		Responsibility/Cost
Aesthetics, Wind and Shadows		
SCA-AES-1: Lighting Plan		City Developer
Mitigation 4.11-1: Lighting Design.		City Developer
Mitigation 4.11-3: Active and passive solar systems.		Developer
Mitigation 4.11-4: New construction within the Gateway development area adjacent to parcels containing permitted or existing active or passive solar systems.		Developer
Mitigation 4.11-5: Design of new, permanent buildings constructed along the Port/Gateway boundary to minimize conflicts over solar access.		Developer
Mitigation 4.11-6: Design of new construction adjacent to a public park or open space.		Developer
Air Quality		
SCA AIR-2: Construction-Related Air Pollution Controls (Dust and Equipment Emissions).		City Developer
Mitigation 4.4-3b: Maritime and port-related emission reduction plan.		Developer
Mitigation 4.4-4: Truck diesel emission reduction program.		Developer
Mitigation Measure 4.4-5: Transportation Control Measures (TCMs).		Developer
SCA AIR-1: Construction Management Plan.		City Developer
Mitigation 4.4-6: Title 24 compliance re new construction.		Developer
Mitigation Measure 5.4-1: Emission reduction demonstration projects that promote technological advances in improving air quality.		City Developer
SCA AIR-3: Exposure to Air Pollution (Toxic Air Contaminants: Particulate Matter) Indoor/Outdoor.		City Developer

¹ Standard Conditions of Approval/Mitigation Measures listed herein reference the 2012 OARB Project (Final and Corrected) SCA/MMRP 10-15-2012.

EXHIBIT C

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

	Biological Resources	
SCA BIO-1: Tree removal during breeding season.		City Developer
SCA BIO-5: Regulatory permits and authorizations for construction in or near the water.		City Developer
Mitigation Measure 4.12-5: Qualified observer for in-water construction activities near potential herring spawning areas between December 1 and March 1.		City Developer
Mitigation Measure 4.12-6: Redirection of construction if spawning is observed.		City Developer
Modified Mitigation Measure 4.12-11: For Berths 7 and 8 (Wharves 6½ and 7), development and implementation of carrier ballast water education program.		Developer
Modified Mitigation Measure 4.12-12: For Berths 7 and 8 (Wharves 6½ and 7), support international or national standards to avoid introduction of exotic species through shipping activities.		Developer
Mitigation Measure 3.4-1a: Landscape Plan.		Developer
Mitigation Measure 3.4-1b: Lighting Plan with raptor deterrents as required.		Developer
SCA BIO-2: Tree Removal Permit.		City Developer
SCA BIO-3: Tree Replacement Plantings.		City Developer
SCA BIO-4: Tree Protection During Construction.		City Developer
	Cultural Resources	
SCA CULT-4: Compliance with Policy 3.7 of the Historic Preservation Element (Property Relocation Rather than Demolition).		City Developer
Mitigation Measure 4.6-2: Commemoration site, including preparation of a Master Plan for such a site, at a public place located within the Gateway development area.		Developer
Mitigation Measure 4.6-3: Public access to commemoration site.		Developer
Mitigation Measure 4.6-5: Military history web site.		Developer
Mitigation Measure 4.6-7: Distribution of copies of "A Job Well Done" documentary video published by the Army.		Developer
Mitigation Measure 4.6-9: Salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed.		City
Mitigation Measure 4.6-10: Brochure describing history and architectural history of the OARB.		Developer
Modified Mitigation Measure 4.6-14: Limits on demolition or deconstruction of contributing structures to the OARB Historic District.		City Developer
SCA CULT-1: Archaeological Resources.		City Developer

EXHIBIT C

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

SCA CULT-2: Human Remains.	City Developer
SCA CULT-3: Paleontological Resources.	City Developer
SCA GEO-2: Soils Reports.	City Developer
SCA GEO-3: Geotechnical Reports.	City Developer
Mitigation 4.13-1: Conformance with IBC, soil investigation and construction requirements established in the Oakland General Plan, the Bay Conservation and Development Commission Safety of Fill Policy, and wharf design criteria established by the Port or City of Oakland (depending on the location of the wharf).	City Developer
Mitigation 4.13-2: Conformance with site-specific geotechnical evaluation.	City Developer
SCA GEO-1: Erosion and Sedimentation Control Plan.	City Developer
Mitigation 4.13-4: Review of available building and environmental records.	City Developer
Mitigation 4.13-5: Due diligence regarding underground utilities and facilities.	City Developer
SCA GCC-1: Greenhouse Gas (GHG) Reduction Plan.	Developer
SCA HAZ-1: Best Management Practices for Soil and Groundwater Hazards.	City Developer
SCA HAZ-2: Hazards Best Management Practices.	City Developer
SCA HAZ-3: Hazardous Materials Business Plan.	City Developer
SCA HAZ-4: Asbestos Removal in Structures.	City Developer
SCA HAZ-5: Lead-Based Paint/Coatings, Asbestos, or PCB Occurrence Assessment.	City
SCA HAZ-6: Lead-Based Paint Remediation.	City
SCA HAZ-7: Other Materials Classified as Hazardous Waste.	City Developer
SCA HAZ-8: Health and Safety Plan per Assessment.	City

² The parties' allocation of environmental obligations may be more specifically addressed in other written agreements, which are controlling.

EXHIBIT C

**Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost**

Mitigation 4.7-3: Implement RAP/RMP.	Developer
Mitigation 4.7-4: For the project areas not covered by the DTSC-approved RAP/RMP, investigate potentially contaminated sites.	City Developer
Mitigation 4.7-5: For the project areas not covered by the DTSC-approved RAP/RMP, remediate soil and groundwater contamination consistent with the City of Oakland ULR Program.	City Developer
Mitigation 4.7-6: LBP sampling prior to demolition.	City
Mitigation 4.7-7: ACM sampling prior to demolition.	City
Mitigation 4.7-8: PCB sampling prior to demolition.	City
Mitigation 4.7-9: Implement RAP/RMP for above-ground and underground storage tanks.	City Developer
Mitigation 4.7-11: Sampling and management of LBP-impacted soil, ground area.	City Developer
Mitigation 4.7-12: Annual ACM assessment.	Developer
Mitigation 4.7-13: Use consistent with Reuse Plan.	Developer
Mitigation 4.7-16: Investigation of oil-filled electrical equipment.	City Developer
Mitigation 4.7-17: Disposal of PCB-containing equipment.	City Developer
SCA HYD-1: Stormwater Pollution Prevention Plan (SWPPP).	City Developer
Mitigation 4.15-1: Prior to in-water construction, water quality protection plan.	City Developer
Mitigation 4.15-2: Comply with permit conditions from the Corps, RWQCB and BCDC.	City Developer
Mitigation 3.9-1: Coordinate and consult with EBMUD and if necessary construct storm drain improvements resulting from increased elevation in the North Gateway area.	City
SCA HYD-2: Post-Construction Stormwater Management Plan.	City Developer
SCA HYD-3: Maintenance Agreement for Stormwater Treatment Measures.	City Developer
SCA HYD-4: Stormwater and Sewer Improvements and Maintenance.	City Developer
Mitigation 4.15-5: Post-construction controls of stormwater shall be incorporated into the design of new redevelopment elements to reduce pollutant loads.	City Developer

EXHIBIT C

**Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost**

Mitigation 4.14-1: Prohibition on installation of groundwater extraction wells into the shallow water-bearing zone or Merritt Sand aquifer for any purpose other than construction de-watering and remediation.	City Developer
Mitigation 4.14-2: Minimize extraction of groundwater for construction de-watering or remediation.	City Developer
Mitigation 4.15-6: Site-specific design and best management practices shall be implemented to prevent runoff of recycled water to receiving waters.	City Developer
Recommended Measure: Prepare a Sea Level Rise Adaptation Plan for City of Oakland for review and approval.	City Developer
SCA NOI-1: Days/Hours of Construction Operation.	City Developer
SCA NOI-2: Noise Control.	City Developer
SCA NOI-3: Noise Complaint Procedures.	City Developer
SCA NOI-6: Pile Driving and Other Extreme Noise Generators.	City Developer
SCA NOI-4: Interior Noise.	City Developer
SCA NOI-5: Operational Noise-General.	City Developer
SCA PSU-1: Underground Utilities.	City Developer
SCA PSU-2: Fire Safety Phasing Plan.	City Developer
Mitigation 4.9-1: Increased firefighting and medical emergency response services via fireboat to serve the OARB sub-district.	Developer
Mitigation 4.9-2: Work with OES to ensure changes in local area circulation are reflected in the revised Response Concept.	Developer
Mitigation 4.9-3: Requirement to notify OES in advance of construction or remediation activities.	Developer
Mitigation Measure 3.16-1: 7th Street & I-880 Northbound Off-Ramp (#12) ³ .	City Developer
Mitigation Measure 3.16-2: San Pablo Ave & Ashby Avenue (#42)	City Developer

³ The numbers appearing after the location of the intersection listed refer to Figure 3.16-1 in the IS/Addendum that illustrates the study intersections.

EXHIBIT C

**Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost**

Mitigation Measure 3.16-3: 7 th Street & Harrison Street (#18).	city
Mitigation Measure 3.16-4: 12 th Street & Castro Street (#29). Submit plans specifications and estimates (PS&E) as detailed in Mitigation Measure 3.16-1 that are consistent with the City's standards to City of Oakland's Transportation Engineering Division for review and approval.	City
SCA TRANS-1: Parking and Transportation Demand Management.	City Developer
Mitigation 4.3-5: Design of roadways, bicycle and pedestrian facilities, parking lots, and other transportation features.	City Developer
Mitigation 4.3-7: Truck management plan.	Developer
Mitigation 4.3-8: Emergency service program and emergency evacuation plan using waterborne vessels.	Developer
With regard to Maritime Street between 7th Street and West Grand Avenue:	
Mitigation Measure 3.16-5: Shoulder with a minimum width of 8 feet on the west side of Maritime Street.	City
Mitigation Measure 3.16-6: 9-foot wide area along the entire west side of Maritime Street.	
Mitigation Measure 3.16-7: 18-foot wide area along the entire east side of Maritime Street.	
With regard to North Maritime (formerly Wake Avenue):	City
Mitigation Measure 3.16-8: 2 travel lanes in each direction.	
With regard to Burma Road between Maritime Street and West Oakland (Burma East):	City
Mitigation Measure 3.16-9: 9-foot wide area along the entire north side of Burma Street.	
Mitigation Measure 3.16-10: 7-foot wide area along the entire south side of Burma Street.	City
With regard to Burma Road between Maritime Street and Railroad Tracks (Burma West):	
Mitigation Measure 3.16-11: 9-foot wide area along the entire south side of Burma Street.	City
Mitigation Measure 3.16-12: 20-foot wide area along the entire north side of Burma Street.	
With regard to Burma Road between Railroad Tracks and Gateway Park (Burma Far West):	City
Mitigation Measure 3.16-13: 8-foot wide area along the entire south side of Burma Street.	
Mitigation Measure 3.16-14: Shoulder along the entire north side of Burma Street.	City
With regard to Emergency Access:	
Mitigation Measure 3.16-15a: Emergency response plan for the 2012 Army Base Project addressing emergency ingress/egress.	City Developer
Mitigation Measure 3.16-15b: Include West Burma Road turn-outs and turn-arounds at the appropriate locations and dimensions as required by the Fire Department.	
SCA TRANS-3: Railroad Crossings.	City Developer
Mitigation Measure 3.16-16: Engineers Road, crosswalk just west of the rail crossing on West Burma Road, "KEEP CLEAR," rail crossing angles.	City
Mitigation 4.3-9: Conformance with City of Oakland or Port development standards with facilities that support transportation alternatives to the single-occupant automobile.	City Developer
Mitigation 4.3-10: Developer-sponsored parking demand study.	Developer
SCA TRANS-2: Construction Traffic and Parking.	City Developer

EXHIBIT C

**Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost**

Mitigation 4.3-13: Traffic Control Plan (TCP).	City Developer
Mitigation Measure 3.16-17: West Grand Avenue & I-880 Frontage Road (#2).	City
Mitigation Measure 3.16-18: San Pablo Ave & Ashby Ave (#42).	City
Mitigation Measure 3.16-19: West Grand Avenue & Maritime Street (#1).	City
Mitigation Measure 3.16-20: 7th Street & Union Street (#15).	City
Mitigation Measure 3.16-21: West Grand Avenue & Northgate Avenue (#8).	City
Mitigation Measure 3.16-22: 5th Street & Union Street / I-880 North Ramps (#21).	City
Mitigation Measure 3.16-23: MacArthur Boulevard & Market Street (#33).	City
Mitigation Measure 3.16-24: West Grand Avenue & I-880 Frontage Road (#2).	City
Mitigation Measure 3.16-25: West Grand Avenue & Adeline Street (#4).	City
Mitigation Measure 3.16-26: West Grand Avenue & Market Street (#5).	City
Mitigation Measure 3.16-27: West Grand Avenue & San Pablo Avenue (#6).	City
Mitigation Measure 3.16-28: West Grand Avenue & Harrison Street (#9).	City
Mitigation Measure 3.16-29: 7th Street & Harrison Street (#18).	City
Mitigation Measure 3.16-30: 6th Street & Jackson Street (#20).	City
Mitigation Measure 3.16-31: 12th Street & Brush Street (#28).	City
Mitigation Measure 3.16-32: Powell Street & Hollis Street (#37).	City
Mitigation Measure 3.16-33: Powell Street/Stanford Avenue & San Pablo Avenue (#38).	City
Recommended Measures (Project and Cumulative): W. Grand Avenue & Maritime Street (#1) 7th Street & Maritime Street (#10) 7th Street & I-880 northbound off-ramp (#12)	City

EXHIBIT C

Standard Conditions Of Approval/Mitigation Monitoring and Reporting Program
City/Developer Allocation of Responsibility/Cost

	Underground Utilities	City
SCA UTL-3: Underground Utilities.		City
SCA UTL-5: Improvements in the Public Right-of Way (Specific).		City
SCA UTL-6: Payment for Public Improvements.		City
Mitigation 4.9-4: Individual actions with landscaping requirements of one or more acres.		City Developer
Mitigation 4.9-5: Dual plumbing.		Developer
Mitigation 4.9-6: Use of recycled water.		City Developer
SCA UTL-1a, UTL-1b: Compliance with the Green Building Ordinance, OMC Chapter 18.02.		City Developer
SCA UTL-2: Waste Reduction and Recycling.		City Developer
Mitigation: 4.9-7: Deconstruction program.		City
Mitigation 4.9-8: Concrete and asphalt removed during demolition/construction.		City

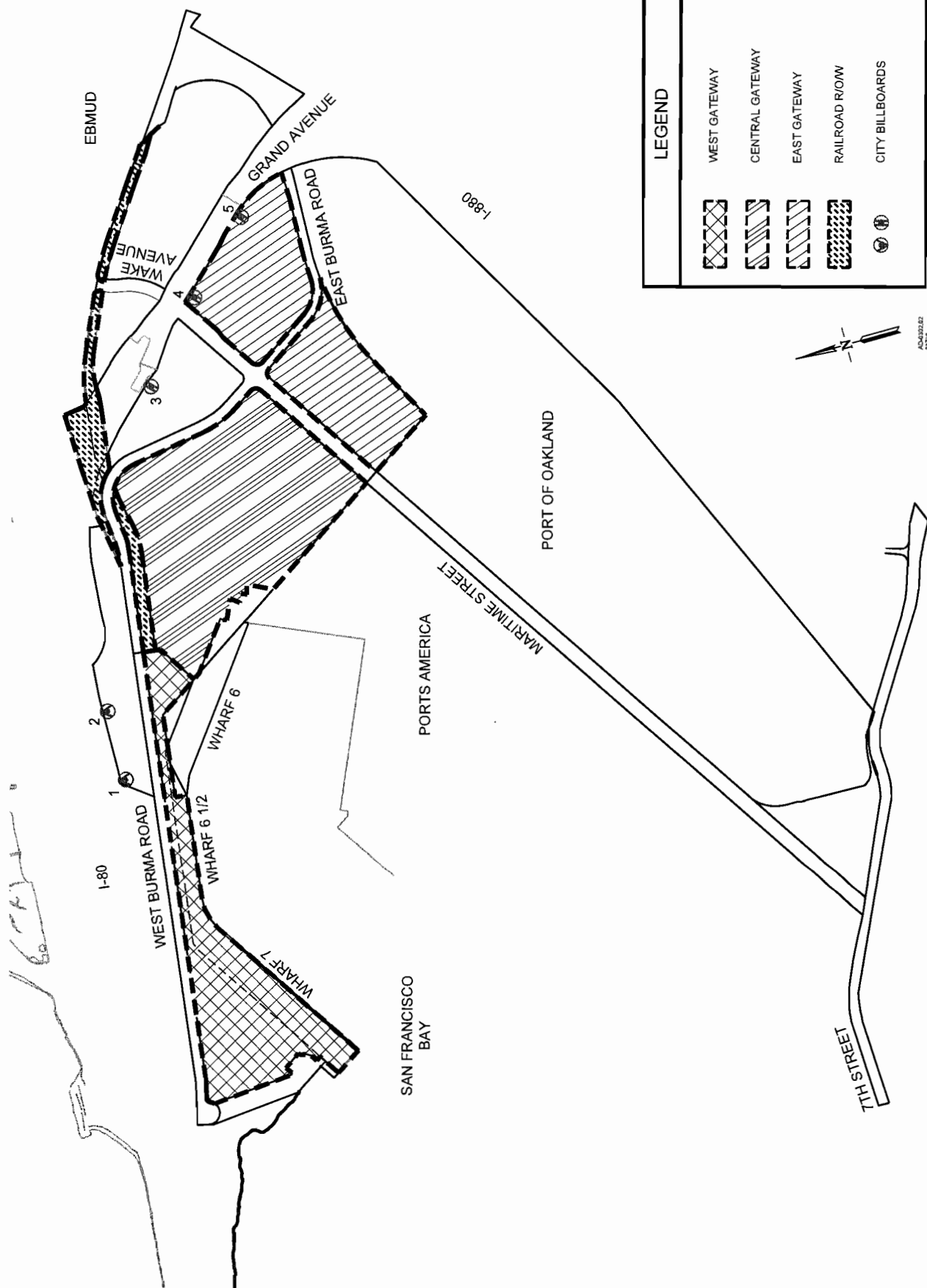
EXHIBIT D-1

PROJECT CONCEPTUAL SITE PLAN

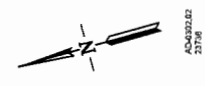
[See attached]

PROJECT CONCEPTUAL SITE PLAN

EXHIBIT D-1



LEGEND	
	WEST GATEWAY
	CENTRAL GATEWAY
	EAST GATEWAY
	RAILROAD R/O/W
	CITY BILLBOARDS



03/02/22
2/16

Exhibit D-2

Project Development Program

A. East Gateway: (The development of the following shall be subject to the provisions of the applicable Ground Lease.)

1. Trade & Logistics Uses: Up to 442,560 square feet (at any permissible FAR) of 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 (collectively, “EGW Trade & Logistics Uses”).

2. Ancillary Uses: Developer also may develop and operate, as uses that are ancillary and related to the EGW Trade & Logistics Uses, trailer and container cargo storage and movement, chassis pools, open storage and open truck parking, and other ancillary uses (“EGW Ancillary Uses”).

3. Conditional Uses: Trailer and container cargo storage and movement, chassis pools, open storage and open truck parking (collectively, “EGW Conditional Uses”); provided, however, that EGW Conditional Uses may only be developed and operated independent of EGW Trade & Logistics Uses on the continuing condition that, and for so long as, Developer is in compliance with its obligations under the applicable Ground Lease.

4. Support Improvements. Private circulation, utility and rail spur improvements consistent with the Master Plan and ancillary and supplemental to the Public Improvements constructed by the City (collectively, “EGW Support Improvements”).

B. Central Gateway: (The development of the following shall be subject to the provisions of the applicable Ground Lease.)

1. Trade & Logistics Uses: Up to 500,210 square feet (at any permissible FAR) of 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 (collectively, “CGW Trade & Logistics Uses”).

2. Ancillary Uses: Developer also may develop and operate, as uses that are ancillary and related to the CGW Trade & Logistics Uses, trailer and container cargo storage and movement, chassis pools, open storage and open truck parking, and other ancillary uses (“CGW Ancillary Uses”).

3. Conditional Uses: Trailer and container cargo storage and movement, chassis pools, open storage and open truck parking (collectively, “CGW Conditional Uses”); provided, however, that CGW Conditional Uses may only be developed and operated independent of CGW Trade & Logistics Uses on the continuing condition that, and for so long as, Developer is in compliance with its obligations under the applicable Ground Lease).

4. Support Improvements. Private circulation, utility and rail spur improvements consistent with the Master Plan and ancillary and supplemental to the Public Improvements constructed by the City (collectively, "CGW Support Improvements”).

C. West Gateway: (The development of the following shall be subject to the provisions of the applicable Ground Lease.)

1. Bulk Oversized Terminal: A ship-to-rail terminal designed for the export of non-containerized bulk goods and import of oversized or overweight cargo (“Bulk Oversized Terminal”).

2. Railroad Improvements: Railroad tracks and related equipment necessary to adequately serve the Bulk Oversized Terminal as shown on the Master Plan. The Railroad Improvements are subject to reduction if Caltrans approves only one (1) rail line pursuant to Section 2.2.6.3 of the Agreement.

3. Ancillary Uses: Developer also may develop and operate, as uses that are ancillary and related to the Bulk Oversized Terminal and, trailer and container cargo storage and movement, chassis pools, open storage and open truck parking, and other ancillary uses (the “WGW Ancillary Uses”).

4. Developer Funded Wharf Improvements: If Developer elects to construct the Developer Funded Wharf Improvements pursuant to Section 3.5.1 of the Agreement, Developer shall also construct the Developer Funded Wharf Improvements as defined in the Agreement.

5. Conditional Uses: Trailer and container cargo storage and movement, chassis pools, open storage and open truck parking (collectively, “WGW Conditional Uses”); provided, however, that WGW Conditional Uses may only be developed and operated independent of Bulk Oversized Terminal on the continuing condition that, and for so long as, Developer is in compliance with its obligations under the applicable Ground Lease.

6. Support Improvements: Private circulation, utility and rail spur improvements consistent with the Master Plan and ancillary and supplemental to the Public Improvements constructed by the City (collectively, "WGW Support Improvements”).

D. Billboards.

Number	General Billboard Location	Size	Sides	Display Type
1	Bay Bridge approx. 300' East of Toll Plaza – South Line, East & West Face	20'H x 60'W	2	LED
2	Bay Bridge approx. 800' East of Toll Plaza – South Line, West Face	20'H x 60'W	2	Backlit
3	I-880 West Grand approx. 500' North of Maritime – West Line, North & South Face	14'H x 48'W	2	LED
4	I-880 West Grand South of Maritime – West Line, North & South Face	14'H x 48'W	2	Backlit
5	I-880 West Grand approx. 600' South of Maritime– 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.