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City of Oakland
Oakland Community and Economic Development Agency
250 Frank H. Ogawa Plaza
Suite 3330
Oakland, CA 94612

Attention: Director of City Planning

DEVELOPMENT AGREEMENT

BETWEEN

CITY OF OAKLAND, REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND,

AND

OAKLAND HARBOR PARTNERS, LLC,

Dated: _____, 2006

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS.....	12
1.1. Defined Terms	12
1.2. Certain Other Terms	29
ARTICLE II TERM.....	29
2.1. Effective Date; Term Commencement	29
2.1.1. Condition Subsequent.....	30
2.2. Expiration of Term	30
2.3. Subsequent Amendment or Termination	31
2.4. Effect of Expiration of Term	31
ARTICLE III GENERAL REGULATION OF DEVELOPMENT OF PROJECT.....	31
3.1. Application of Agreement to Development Parcels ...	31
3.2. Project Development; Permitted Uses; Control of Development	32
3.3. Project Phasing	33
3.4. Easements; Abandonment; Subdivision Improvements ..	34
3.5. Applicable City Regulations	35
3.5.1. Future City Regulations.....	35
3.5.2. Regulation for Health and Safety.....	36
3.5.3. Existing City Regulations.....	37
3.5.4. Construction Codes and Standards.....	37
3.5.5. City Fees.....	37
3.5.6. Project Exactions.....	38
3.5.7. Term of City Approvals.....	38
3.6. Review and Processing of City Approvals	38
3.7. Effect of Agreement	39
3.8. Other Governmental Approvals	39
3.9. Effect of Termination	40
ARTICLE IV CERTAIN ADDITIONAL CRITERIA AND OBLIGATIONS APPLICABLE TO DEVELOPMENT OF PROJECT	41
4.1. Requirements for Approval of Project	41
4.2. Effect of CEQA Documents	42
4.3. Lease of Existing Commercial Improvements/Ninth Avenue Terminal Shed	42
4.3.1. Lease of Existing Commercial Improvements	42
4.3.2. Lease of Ninth Avenue Terminal Shed	45
4.3.3. Estoppels	46
4.3.4. Indemnity	48
4.3.5. Survival	48
4.4. Ownership, Operation and Maintenance of the Public Open Space and Public Improvements within the Project	48
4.4.1. Ownership of Public Open Space	48
4.4.2. Improvement of Public Open Space	49

4.4.3.	Management	49
4.4.4.	Maintenance	50
4.4.5.	Easement for Storm Water Management	54
4.5.	Small Local Business Utilization Requirements	54
4.6.	Local Hiring and Job Training	55
4.7.	Prevailing Wages	55
4.8.	Compliance With Port Art in Public Places Ordinance	55
4.9.	Equal Benefits	55
4.10.	Potential Reimbursement to Developer	55
4.11.	Affordable Housing	56
4.12.	Environmentally Sustainable Project	56
4.13.	General Provisions With Respect to Financing Improvements	57
4.14.	Sewer Capacity	58
4.15.	Chinatown Area Traffic Studies	58
4.16.	Temporary Bay Trail	59
ARTICLE V INDEMNITY.....		59
5.1.	Developer Indemnity	59
5.2.	Insurance	62
5.2.1.	Commercial General Liability Insurance	63
5.2.2.	Automobile Liability Insurance	64
5.2.3.	Workers' Compensation Insurance	64
5.2.4.	General Requirements of Insurance	65
5.2.5.	City and Agency Right to Take Out Insurance	66
5.2.6.	Subcontractors	66
5.2.7.	Waiver of Subrogation	67
5.2.8.	Evaluation of Adequacy of Coverage	67
5.3.	Cooperation of City	67
5.4.	Survival; Other Obligations	67
5.5.	Release of Claims Against City and Agency	68
ARTICLE VI ANNUAL REVIEW OF COMPLIANCE.....		68
6.1.	Annual Review	68
6.2.	Developer's Submittal	68
6.3.	Finding of Compliance	69
6.4.	Hearing Before City Council to Determine Compliance	70
6.5.	Meet and Confer Process	72
6.6.	Certificate of Compliance	73
6.7.	Effect of City Council Finding of Noncompliance; Rights of Developer	73
ARTICLE VII PERMITTED DELAYS; SUPERSEDURE BY SUBSEQUENT LAWS...		74
7.1.	Permitted Delays	74
7.2.	Supersedure by Subsequent Laws	74
7.2.1.	Effect of Conflicting Laws	74
7.2.2.	Contest of New Law	76

ARTICLE VIII	EVENTS OF DEFAULT; REMEDIES; ESTOPPEL CERTIFICATES	76
8.1.	Events of Default	76
8.2.	Remedies	77
8.3.	Time Limits; Waiver; Remedies Cumulative	77
8.4.	Limitations on Actions	80
8.5.	Effect of Court Action	80
8.6.	Estoppel Certificate	80
ARTICLE IX	MORTGAGEE PROTECTION; DEVELOPER RIGHTS OF CURE.....	82
9.1.	Mortgagee Protection	82
9.2.	Mortgagee Not Obligated; Mortgagee as Transferee ..	82
9.3.	Notice of Default to Mortgagee; Right of Mortgagee to Cure	82
9.4.	Priority of Mortgages	84
9.5.	Effect of Mortgagee Protection Provisions on Port	85
ARTICLE X	TRANSFERS AND ASSIGNMENTS; DEVELOPER'S RIGHT TO CURE; ALLOCATION OF DEVELOPMENT RIGHTS, DUTIES AND OBLIGATIONS	86
10.1.	Limitations on Developer's Right to Transfer	86
10.2.	Conditions Precedent to All Transfers	87
10.2.1.	No Event of Default	87
10.2.2.	Assumption Agreement	88
10.3	Non-Exempt Transferee	89
10.4.	Transfers to Exempt Transferees	89
10.5.	Transfers Involving Improvement of Public Open Space	90
10.6.	Mortgagee as Transferee	90
10.7.	Effect of Transfer; Release; No Cross Default	90
10.8.	Right of Developer to Cure Supported Transferee Default	91
ARTICLE XI	AMENDMENT AND TERMINATION.....	92
11.1.	Amendment or Cancellation	92
11.2.	Certain Actions Not an Amendment	92
ARTICLE XII	NOTICES.....	93
12.1.	Procedure	93
12.2.	Change of Notice Address	94
ARTICLE XIII	COVENANTS RUNNING WITH THE LAND.....	94
13.1.	Covenants Running with the Land	94
13.2.	Successors to City	95
ARTICLE XIV	MISCELLANEOUS.....	95
14.1.	Negation of Partnership	96
14.2.	Approvals	96
14.3.	Not a Public Dedication	97
14.4.	Severability	97
14.5.	Exhibits	98

14.6. Entire Agreement	98
14.7. Construction of Agreement	99
14.8. Mitigation of Damages	99
14.9. Further Assurances; Covenant to Sign Documents ...	100
14.10. Covenant of Good Faith and Fair Dealing	100
14.11. Governing Law	100
14.12. References; Terminology	100
14.13. Irregularity in Proceeding	101
14.14. Judicial Proceeding To Challenge Termination	102
14.15. Conflicts of Interest	102
14.16. Nonliability	103
14.17. Developer's Warranties	103
14.18. Execution of Other Documentation	103
14.19. Exercise of Police Power	103
14.20. City of Oakland Campaign Contribution Limits	104
14.21. Employment Nondiscrimination	104
14.22. Disabled Access	104
14.23. City Subject to Brown Act Requirements	104
14.24. Signature Pages	105
14.25. Time	105

CITY OF OAKLAND

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of this ____ day of ____, 2006, by and between the CITY OF OAKLAND, a California charter city ("City"), the REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law ("Agency"), and OAKLAND HARBOR PARTNERS, LLC, a California limited liability company ("OHP").

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 in order to (1) vest the land use policies established in the General Plan, the Estuary Policy Plan, the Redevelopment Plans, and other Existing City Regulations as of the Adoption Date, and

(2) memorialize certain other agreements made between City, Agency 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 Estuary Policy Plan, the Redevelopment Plans, 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 Estuary Policy Plan, the Redevelopment Plans, and the other Existing City Regulations.

D. City considers the Oak to Ninth Avenue District a destination location within City, of vital importance to the economic health, vibrance and stature of City, and to attracting City and Bay Area residents and national and international visitors to City. The General Plan, the Estuary Policy Plan, the Redevelopment Plans, and other Existing City Regulations contemplate development of public infrastructure, residential, retail, commercial, and other uses in the Oak to Ninth Avenue District to enhance the value, operation and function of, and access to, the Oak to Ninth Avenue District and the adjacent waterfront. The General Plan, Estuary Policy Plan, the Redevelopment Plans, and other Existing City Regulations call for redeveloping the Oak to Ninth Avenue District area as a primary

waterfront neighborhood in City by constructing a mixture of open space, residential, recreational, retail, commercial, dining and visitor-serving uses oriented to significant public gathering places and public access along the waterfront. City intends through implementation of the goals, policies and objectives set forth in the General Plan, the Estuary Policy Plan, the Redevelopment Plans, and other Existing City Regulations to create increased value, operation and function of the Oak to Ninth Avenue District.

E. Development of the Project will meet the key objectives of City embodied in the General Plan, the Estuary Policy Plan, the Redevelopment Plans and other Existing City Regulations. Specifically, the development of the Project will provide many benefits to the City and the public including, but not limited to: (1) creating increased public access and significant new open space maintained by the Project: by (a) improving approximately 21.21 acres of public open space; and (b) extending the San Francisco Bay Trail along Project frontage east of the Lake Merritt Channel; (2) providing a new source of property tax and tax increment that can be reinvested into the community; (3) enabling new public transportation to and from the waterfront: by (a) funding AC Transit Bus service; and (b) operating a private shuttle for the Project; (4) Restoring a portion of the Ninth Avenue Terminal Shed as a cultural resource; (5) completing

environmental remediation and removal of contaminants from the Project Site; (6) upgrading public infrastructure: by (a) rebuilding the Embarcadero roadway adjacent to the Project and east of the Lake Merritt Channel including landscaping, bike lanes and pedestrian paths, (b) improving pedestrian and bike access on Fifth Avenue between Embarcadero and East Eighth Street, and (c) enhancing the entire Oak to Ninth Avenue District area as a result of development of the Project. City is therefore willing to enter into this Agreement to (i) provide certainty to encourage the required substantial private investment in the comprehensive development and planning of the Project; (ii) secure orderly development and progressive fiscal benefits for public services, improvements and facilities planning in City; and (iii) fulfill and implement adopted City plans, goals, policies and objectives, including, among others, those embodied in the Estuary Policy Plan and other elements of City's General Plan.

F. The Project is located within two redevelopment plan areas established under the Community Redevelopment Law: the Central District Redevelopment Project Area and the Central City East Redevelopment Project Area. Development of the Project will fulfill the goals and objectives of Agency as embodied in the Redevelopment Plans. Both Redevelopment Plans apply the land use and development codes and standards contained in the General Plan and other City codes and regulations.

G. The redevelopment project area housing area production requirements (commonly referred to as inclusionary housing requirements) of Section 33413 of the Community Redevelopment Law and Section 330 of the Central City East Redevelopment Plan require the Agency to produce new housing units that are available at affordable housing costs to persons and families of low or moderate income, with not less than forty percent (40%) of those units affordable to very low income households at a rate equal to at least fifteen percent (15%) of all new or substantially rehabilitated dwelling units developed by entities other than the Agency in the Central City East Redevelopment Plan area.

H. The Development Agreement Legislation authorizes City to enter into a development agreement with any Person having a legal or equitable interest in real property. The Port and OHP have entered into that certain Option to Purchase and Ground Lease Real Property, dated November 7, 2003, as it has been or may be amended (the "Option Agreement"), whereby OHP has acquired the exclusive right to (1) purchase certain of the Development Parcels, (2) ground lease certain the remaining Development Parcels and (3) cause the Port to convey that portion of the Project Site to be developed into public right-of-way, parks or open space further described or depicted in the Site Plan to the City. The Option Agreement provides the legal or equitable

interest in the Project Site to allow the parties to enter into this Agreement.

I. At a duly noticed public hearing held on March 15, 2006, pursuant to the Development Agreement Legislation and the Development Agreement Ordinance, City's Planning Commission (1) certified the CEQA Documents for the Project and determined that consideration of this Agreement complies with CEQA based on the CEQA Documents, and that this Agreement is consistent with the goals, objectives, policies, land uses and programs specified in the General Plan, the Estuary Policy Plan, the Redevelopment Plans, and the other Existing City Regulations pertaining thereto, and (2) recommended that the City Council and the Agency approve this Agreement based on the foregoing findings. In adopting its Resolution, the Planning Commission reviewed and heard the report of the City staff on Developer's application for this 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 adoption of a development agreement.

J. On June 20, 2006, the City Council and the governing body of Agency (the "Agency Board") held a duly noticed public hearing on this Agreement pursuant to the requirements of the Development Agreement Legislation and the Development Agreement Ordinance. After due review of and report on Developer's

application for this 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, the City Council and Agency (1) considered and found the CEQA Documents in compliance with CEQA; (2) adopted the findings required by CEQA as part of the CEQA Documents; and (3) introduced the Enacting Ordinance 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 Estuary Policy Plan, the Redevelopment Plans and in the other Existing City Regulations pertaining thereto. On July 18, 2006, the City Council adopted the Enacting Ordinance enacting this Agreement. On July 18, 2006, Agency adopted an Agency resolution authorizing 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:

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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.

Affiliate: Any Person (a) directly or indirectly Controlling, Controlled by or under Common Control with Developer, or Developer's principals: James C. Ghielmetti, Michael J. Ghielmetti, Jon Q. Reynolds, David A. Brown or Dana G. Parry; and (b) that meets the following criteria: (1) either alone or in combination with its members, partners or guarantors has a demonstrated net worth of not less than \$15,000,000.00; and (2) neither it nor its principals, members or partners has been convicted, found or admitted or assumed (including any plea of no contest) criminal or civil liability for any felony, fraud, misrepresentation or any act of moral turpitude (excluding only civil liability for construction defect claims of fraud or misrepresentation arising out of the sale, construction, warranty or repair of real property and improvements thereto).

Agent: Any member, shareholder, partner, official, officer, director, board, commission, employee, agent, or contractor or subcontractor of a Party, and its respective heirs,

legal representatives, successors and assigns of an Agent in accordance with Laws, as each Agent is acting in his, her or its official capacity.

Applicable City Regulations: The Existing City Regulations, and such other City Regulations otherwise applicable to development of the Project pursuant to the provisions of Section 3.8.

Assumption Agreement: An executed and acknowledged agreement in recordable form specifying in detail (i) the name, form of entity, and address of the proposed Transferee; (ii) the property and or interests that are the subject of the proposed Transfer; (iii) the rights and obligations of Developer under this Agreement that the proposed Transferee is assuming, (iv) the proposed Transferee's agreement that it expressly assumes such obligations, and (v) the assignor's express acknowledgement that it remains liable for all obligations not expressly assigned pursuant to the Assumption Agreement.

Central City East Redevelopment Plan: The Redevelopment Plan for the Central City East Redevelopment Project, adopted by the City Council pursuant to the Community Redevelopment Law on July 29, 2003, as amended or as subsequently may be amended from time to time, along with that Central City East Implementation Plan, 2003-2008, as amended and restated on December 7, 2004, as amended or as subsequently may be amended from time to time.

Central District Redevelopment Plan: The Central District Urban Renewal Plan adopted by the City Council pursuant to the Community Redevelopment Law on June 12, 1969, as amended or as subsequently may be amended from time to time, along with that Five-Year Implementation Plan, 2004-2009, for the Central District Redevelopment Project Area adopted on December 7, 2004, as amended or as subsequently may be amended from time to time.

CEQA: The California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*) and the Guidelines thereunder (14 California Code of Regulations Section 15000, *et seq.*).

CEQA Documents: The information and documents listed in Exhibit A prepared pursuant to the requirements of CEQA for the Project Approvals, and approved by City acting through its City Council, in accordance with the requirements of CEQA.

CFD: A Mello-Roos Community Facilities District formed pursuant to California Government Code Section 53311 *et seq.*, or comparable financing mechanism acceptable to City, to provide a perpetual source of funds to pay the cost of the obligations specified in Section 4.4.

City Application Fees: Fees levied or assessed by City to cover the cost of City's performance of any discretionary, ministerial, clerical or other action, or required by City for reviewing and processing applications for City Approvals,

including City Application Fees for the City Approvals and compliance with CEQA.

City Approvals: Permits or approvals required under Applicable City Regulations in order to develop, use and operate the Project. The term "City Approval" shall refer to any or all of the City Approvals as the context may require.

City Council: The City Council of City or its designee.

City Clerk: The City Clerk of City or his/her designee.

City Development Fees: The fees or assessments listed in Exhibit B.

City Fees: City Application Fees and/or City Development Fees. The term "City Fee" shall refer to any or all City Fees as the context may require.

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. 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 Estuary Policy Plan, the Redevelopment Plans, and all other ordinances, resolutions, codes, rules, regulations and policies in effect as of the time in question.

Community Redevelopment Law: The California Community Redevelopment Law (California Health and Safety Code section 33000, *et seq.*).

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 and other construction codes, FEMA 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.

Control: The ownership (direct or indirect) by one Person of an interest in the profits and capital and the right to manage and control, in fact, the day to day affairs of another Person. The term "Control" includes any grammatical variation thereof, including "Controlled" and "Controlling".

Common Control: means that two Persons are both Controlled by the same other Person.

CSD: A Community Services District formed pursuant to California Government Code Section 61000 *et seq.*, which would be responsible for maintaining certain public infrastructure within the Project Site, including, but not limited to the Open Space.

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

Developer: The term "Developer" shall refer to OHP and, except as otherwise specified with respect to Master Developer Obligations, its respective Transferees, as the context may require, including for this purpose, Affiliates of Developer.

Development Agreement Legislation: Government Code §§65864-65869.5, 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.

Development Parcels: The parcels of real property (including any improvements thereon) located in the Oak to Ninth Avenue District and more particularly described in Exhibit E hereto, as such description shall be amended as may be necessary to conform to any approved final subdivision map.

Development Parcel Ground Lease: The ground leases of certain of the Development Parcels entered into by Port and Developer or another Person (including Affiliates of Developer) as of the time in question for the construction and operation of marina and supporting facilities on or adjacent to the Project Site. The term "Development Parcel Ground Lease" shall refer to

any or all Development Parcel Ground Leases as the context may require.

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

Enacting Ordinance: Ordinance No. _____, enacted by the City Council on July 18, 2006, enacting this Agreement.

Estuary Policy Plan: The Estuary Policy Plan, which is part of the Existing City Regulations, adopted by Port on February 10, 1999, and by the City Council on June 8, 1999 and amended by the City Council on July 18, as part of the Project Approvals.

Exaction: An exaction (other than City 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 Project Approvals.

Exempt Transferee: Shall have the meaning given to it in Section 10.4 below.

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

Existing Commercial Improvements: All buildings, improvements and appurtenant supporting areas: (a) in existence on the date that the City acquires title to the Public Open Space; and (b) located in whole or in part on the Public Open Space; except for the existing approximately 180,000 square foot Ninth Avenue Terminal Shed building.

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."

FEIR: The Final Environmental Impact Report (and related materials) for the Project.

Finished Parcel: A Development Parcel or legally subdivided portion thereof, rough graded, with utilities stubbed to the lot line, and all adjacent curbs, gutters, utilities and streets for its use and enjoyment have been constructed or the construction thereof has been secured through the Developer's delivery of a subdivision improvement agreement executed by Developer and City, together with the surety bonds or other security instruments acceptable to City required thereunder.

Finished Parcel Developer: A prospective Transferee who is (a) acquiring one or more Finished Parcels and (b) assuming only those obligations under this Agreement and the Project Approvals that relate specifically to the development or

construction of any improvements located on such Finished Parcel and not any Master Developer Obligations.

Force Majeure: A delay in performance caused by war, terrorist acts, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, or acts of God; restrictions or delays imposed or mandated by Governmental Agencies; enactment of Laws that prevent or preclude compliance by a Party with any material provision of this Agreement; litigation brought by Persons other than a Party, or Affiliate of a Party; acts of one Party, or failure of such Party to act when action is required, which to the extent in and of itself prevents or precludes compliance by the other Party with any material provision of this Agreement; neglect of one Party which to the extent in and of itself prevents or precludes compliance by the other Party with any material provision of this Agreement; or other similar basis for excused performance that is not within the reasonable control of the Party whose performance is to be excused. Force Majeure does not include delays that are within the reasonable control of the Party whose performance is to be excused, delays associated with economic or market conditions, or delays related to financial inability or insolvency of a Party.

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.

Indemnify: An obligation of Developer to indemnify, defend, protect and hold the Indemnitees harmless from and against Losses. The term "Indemnify" includes any grammatical variation thereof, including "Indemnified", "Indemnifies" and "Indemnity".

Indemnitees: City, Agency and each of its respective Agents, departments, subdivisions, agencies the City Council, Agency Board, Mayor, boards and commissions (and each individual member of the City Council or any other City board or commission) and all of the heirs, legal representatives, successors and assigns of an Indemnitee in accordance with Laws, as each Indemnitee is acting in his, her or its official capacity. For purposes of this definition, the Port shall not be considered an agency of the City.

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.

Losses: Any and all losses, damages (including foreseeable and unforeseeable consequential damages), liabilities, claims, liens, obligations, interest, penalties, fines, lawsuits and other proceedings, judgments and awards, challenges, demands, judgments, actions, causes of action, court costs, and legal or other expenses (including reasonable attorneys' fees, reasonable expert witness and consultant fees, reasonable City Attorney time and overhead costs, and other normal, reasonable day-to-day business expenses incurred by City), all of whatever kind or nature, known or unknown, contingent or otherwise.

Master Developer Obligations: Notwithstanding any Transfer, Developer shall not be released from any of the following obligations under this Agreement without the City Council's prior written consent: (a) the construction of all public improvements, including, but not limited to the Public Open Space improvements (except, subject to Section 10.5, to the extent that such obligations are assumed by a single Affiliate or Pre-Qualified Developer pursuant to a Transfer of a (i) an entire Phase or (ii) all of Developer's then remaining interest in the

Project Site); (b) the payment of apprenticeship funds as set forth in Paragraphs 2(a) and 2(b) of Exhibit J; (c) the formation of the CSD and CFD; (d) compliance with the affordable housing obligations set forth in Exhibit L with respect to Development Parcels F and G; (e) certain adopted Conditions of Approval and CEQA Mitigation Measures applicable to the Project, as set forth in Exhibit M; and (f) the construction of offsite sewer improvements as set forth in Conditions of Approval incorporated into the Project Approvals. A Transferee that assumes any Master Developer Obligation similarly shall not be released from such Master Developer Obligation except as specified with respect to Developer.

Master Lease: Developer's lease of the Existing Commercial Improvements to the extent they are located on the Public Open Space pursuant to Section 4.3.1.

Mayor: The Mayor of City or his/her designee.

Minimum Maintenance Standards: Those minimum standards set forth in Exhibit F which the CSD shall be required to meet in its maintenance of the subject public improvements.

Mortgage: (i) A mortgage or deed of trust, or other transaction, in which Developer conveys or pledges as security its interest in a Development Parcel, or a portion thereof, or interest therein, or any improvements thereon for the purpose of (A) financing the acquisition of the Project or any of the Development Parcels, or the development of the Project, or a

Development Parcel or Development Parcels, (B) refinancing any of the foregoing, or (C) obtaining financing proceeds by encumbering a Development Parcel or Development Parcels;(ii) a sale and leaseback arrangement, in which Developer sells and leases back concurrently therewith its interest in a Development Parcel, or a portion thereof, or interest therein, or improvements thereon for the purpose of (A) financing the acquisition of a Development Parcel or Development Parcels, or the development of the Project, or a Development Parcel or Development Parcels, (B) refinancing any of the foregoing, or (C) obtaining financing proceeds by encumbering a Development Parcel or Development Parcels for purposes of financing the construction, maintenance or ownership of the Project; or (iii) a Development Parcel Ground Lease under which Port is Landlord or Lessor. The term "Mortgage" includes all other customary vehicles of real estate financing, financing for real estate acquisition, construction and land development, and refinancing any of the foregoing.

Mortgagee: The holder of the beneficial interest under a Mortgage, the landlord or lessor under a sale and leaseback Mortgage, or Port, as the Landlord or Lessor, under a Development Parcel Ground Lease.

Ninth Avenue Terminal Shed: That portion of the Ninth Avenue Terminal Shed structure as renovated by the Developer in accordance with the terms of this Agreement and all appurtenant supporting structures and areas which are used or may be

reasonably necessary in conjunction with the use thereof, including, but not limited to, utility connections, parking areas, areas for ingress and egress, and outdoor seating areas.

Non-Exempt Transferee: Any proposed Transferee which is not an Exempt Transferee or Mortgagee.

Oak to Ninth Avenue District: That area of City commonly referred to as "Oak to Ninth Avenue District" within which the Development Parcels are located, and as more specifically described in the Estuary policy Plan.

Option Agreement: The Option to Purchase and Ground Lease Real Property dated November 7, 2003, as amended, entered into between the Port and Developer.

Ownership Costs: The costs of ownership of the Ninth Avenue Terminal Shed, including but not limited to real property and possessory taxes, insurance and maintenance.

Party: City and/or Developer, and Transferees, as applicable, determined as of the time in question.

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

Phase: A development phase of the Project as identified on Exhibit C.

Port: The City of Oakland, a California charter city, acting by and through its Board of Port Commissioners.

References in this Agreement to "City" shall not include the Port unless expressly so provided.

Pre-Qualified Developer Transferee: A Transferee that meets the following criteria: (1) a nationally or regionally recognized real estate development company which has, on its own or through its assembled development team, developed a major urban mixed-use project similar to the portion of the Project being Transferred to such Transferee within the proceeding ten year period, (2) either alone or in combination with its members, partners or guarantors has a demonstrated net worth of not less than \$15,000,000.00; and (3) neither it nor its principals, members or partners has been convicted, found or admitted or assumed (including any plea of no contest) criminal or civil liability for any felony, fraud, misrepresentation or any act of moral turpitude (excluding only civil liability for construction defect claims of fraud or misrepresentation arising out of the sale, construction, warranty or repair of real property and improvements thereto).

Project: The development, use and occupancy of buildings and other improvements pursuant to the Project Approvals and any other City Approvals to the extent required under this Agreement.

Project Approvals: The City Approvals governing the Project enacted by City and listed in Exhibit G hereto, as the same may be amended from time to time during the Term. Project

Approvals include all Conditions of Approval contained therein and the Mitigation Monitoring and Reporting Program approved as part of the Project Approvals pursuant to CEQA. Further reference to a particular Project Approval shall have the meaning ascribed to such Project Approval set forth in Exhibit G.

Project Site: The real property and improvements upon and in which the Project will be developed, as shown on the Site Plan, attached as Exhibit H.

Public Open Space: Those portions of the Oak to Ninth Avenue District designated as Public Open Space on the Site Plan.

Redevelopment Plans: The Central City East Redevelopment Plan and the Central District Redevelopment Plan.

Remediation: This term is defined in Exhibit D.

Site Plan: The site plan attached hereto as Exhibit H approved as part of the Project Approvals, which generally shows the Development Parcels and Public Open Space.

State: The State of California and any department or agency acting on behalf of the State.

Storm Water Improvements: Those improvements that are reasonably necessary to meet the storm water management, treatment and mitigation requirements for the Project as required by any applicable City Regulations or Governmental Agency Regulations, including, but not limited to, the applicable "NPDES" permit.

Supported Transferee: Any Transferee in a Transfer whereby the Developer is not released from the obligations assumed by the Transferee.

Term: The term of this Agreement, as determined pursuant to Article II below, unless sooner Terminated as provided in 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. The term "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: The sale, assignment, lease, sublease, or other transfer by Developer of this Agreement, or any right, duty or obligation of Developer under this Agreement, made pursuant to the terms, standards and conditions of Article X of this Agreement, including by foreclosure, trustee sale, or deed in lieu of foreclosure, under a Mortgage, but excluding (i) a Dedication, (ii) a Mortgage, including a transfer or assignment of this Agreement to a mortgagee as additional security under a Mortgage, (iii) leases or subleases entered into by Developer

with tenants of the Project solely for occupancy of space or improvements (together with any appurtenant tenant rights and controls customarily included in such leases or subleases) in the Project, and any assignment or transfer of any such lease or sublease by either party thereto and (iv) the sale, assignment or other transfer between Developer with buyers of completed condominium units or interests in completed tenant spaces or improvements in the Project and any further sale, assignment or other transfer of any such completed condominium units, or interests in completed tenant spaces or improvements.

Transferee: The Person to whom a Transfer is effected.

1.2. Certain Other Terms. Certain other terms shall have the meaning set forth for each such term in this Agreement.

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 Effective Date, (a) City, by and through its Mayor or his/her designee, shall execute and acknowledge this Agreement and (b) Agency, by and through its Executive Director, shall execute and acknowledge this Agreement;

and upon receipt of such executed and acknowledged Agreement, Developer shall cause this Agreement to be recorded in the Official Records of the County of Alameda pursuant to Section 65868.5 of the Development Agreement Legislation and Development Agreement Ordinance 17.138.070.

2.1.1 Condition Subsequent. Notwithstanding the earlier Effective Date of this Agreement, in the event that Developer (or its Transferee) fails to acquire a fee simple or ground lease interest (as applicable) in any Development Parcel prior to the expiration of the Agreement for Purchase and Sale and Ground Lease of Real Property and Escrow Instructions attached as Exhibit A to the Option Agreement, as such date may be extended from time to time, any party may terminate this Agreement upon sixty (60) calendar days' prior written notice to the other parties; provided however, in the event that Developer (or its Transferee) acquires such fee simple or ground lease interest within such sixty (60) calendar day period, the termination notice shall be void.

2.2. Expiration of Term. Unless sooner Terminated pursuant to the applicable provisions of this Agreement, the Term shall expire on December 31 of the calendar year in which the 20th anniversary of the Effective Date falls, as such twenty (20) year term may be extended in the event of Force Majeure. The Parties have established the Term as a reasonable estimate of the time

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

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 Expiration of Term. Except for accrued obligations of a Party, upon expiration of the Term, this Agreement and all of the rights, duties and obligations of the Parties hereunder shall Terminate and be of no further force or effect. The expiration of the term shall not affect the effectiveness of the Project Approvals.

ARTICLE III

GENERAL REGULATION OF DEVELOPMENT OF PROJECT

3.1. Application of Agreement to Development Parcels. 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 exercise of the Option and acquisition by Developer (or a Transferee of Developer) of a fee simple or ground lease interest (as applicable) in the Development Parcels pursuant to such Option, this Agreement shall automatically

become effective as to, and govern, such Development Parcels as of the later of (i) the Effective Date or (ii) the date Developer provides written evidence reasonably acceptable to City that it has acquired such interest. Upon the exercise of the Option and acquisition by the City (or a Transferee of Developer) of a fee simple or ground lease interest (as applicable) in the Public Open Space, this Agreement shall automatically become effective as to, and govern, the Public Open Space as of the later of (i) the Effective Date or (ii) the date the City has acquired such interest.

3.2. Project Development; Permitted Uses; Control of Development. Developer shall have the right to develop the Project in accordance with the terms and conditions of this Agreement; and City shall have the right to control development of the Project in accordance with the provisions of this Agreement. The permitted uses of the Project Site, the density and intensity of use of the Project Site, the maximum height, bulk and size of proposed buildings in the Project, provisions for Exactions, and the provision of affordable housing shall be those set forth in the Project Approvals, including this Agreement. The Applicable City Regulations and this Agreement 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 manner specified in this Agreement. 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. Project Phasing. The Parties acknowledge that uncertainties associated with market conditions, availability of financing, and other factors, may alter Developer's ability to construct the Project within the Term of this Agreement. Notwithstanding this possibility, in order to assure City that the Project will be developed within a reasonable time period, Developer shall use all reasonable efforts to substantially complete each Phase in accordance with the phasing plan specified in Exhibit C. City shall have the right to Terminate this Agreement by written notice to Developer if City determines that, if for any reason, despite such Developer's reasonable efforts and other factors, including market and economic conditions as of the time in question for the uses contemplated for the Project, appropriate mix of uses and use categories, return on investment and similar criteria, Developer has not substantially completed the improvements within the applicable periods specified in Exhibit C. City's sole and exclusive remedy in the event of Developer's breach of its obligations under this Section 3.3 shall be to Terminate this Agreement; however, any such 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.

3.4. Easements; Abandonment; Subdivision Improvements.

City shall reasonably cooperate with Developer in connection with any arrangements for abandoning existing utility or other easements and facilities and the relocation thereof or creation of any new easements within or adjacent to the Project Site or the widening of Embarcadero necessary or appropriate in connection with the development of the Project; provided, however, that Developer shall be solely responsible for all costs associated therewith, including but not limited to, utility company charges, City staff time, City Attorney time and other costs or expenses incurred by City or an agency of the City in performing its obligations under this Section 3.4. All improvements required as Exactions pursuant to the Project Approvals shall be constructed by Developer concurrently with each phase of the Project, in accordance with City Approvals, as such improvements relate thereto and are necessary with respect to such phase of the Project development. Not in limitation of any other Developer obligation, Developer's obligations to Indemnify in accordance with Article V of this Agreement shall include any Losses of an Indemnitee that arise out of or are related to this Section 3.4.

3.5. Applicable City Regulations. Except as expressly provided in this Agreement, the Existing City Regulations shall govern the development of the Project and all subsequent City Approvals with respect to the Project. City shall have the right, in connection with any further City Approvals, to apply City Regulations as Applicable City Regulations only in accordance with the following terms, conditions and standards:

3.5.1. Future City Regulations. Except as otherwise specifically provided in this Agreement, including, without limitation, the provisions relating to regulations for health and safety reasons under Section 3.5.2 below and provisions relating to the payment of City Application Fees pursuant to Section 3.5.5, below, City shall not impose or apply any City Regulations adopted or modified by City after the Adoption Date (whether by action of the Planning Commission or the City Council, or by initiative, referendum, ordinance, resolution, rule, regulation, standard, directive, condition, or other measure) (i) which would be inconsistent or in conflict with the intent, purposes, terms, standards or conditions of this Agreement; (ii) which would change or modify the permitted uses of the Project Site, the density or intensity of use of the Project Site, the maximum height, bulk, or size of proposed buildings in the Project, or provisions for Exactions as set forth in the Project Approvals, including this Agreement; (iii) which would materially increase the cost of development of the Project (subject to the

acknowledgement as to the cost of Exactions specified in Section 3.5.6 below); (iv) which would materially change or modify, or interfere with, the timing, phasing, or rate of development of the Project; or (v) which would materially interfere with or diminish the ability of a Party to perform its obligations under the Project Approvals, including this Agreement, or expand, enlarge or accelerate Developer's obligations under the Project Approvals, including this Agreement.

3.5.2. 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 (i) is otherwise permissible pursuant to Laws (other than the Development Agreement Legislation), and (ii) City determines that a failure to do so would place existing or future occupants, or users of the Project, or any portion thereof, or the immediate community, or all of them, in a condition dangerous to their health or safety. The parties agree that the foregoing exception to Developer's vested rights under this Agreement is not intended to allow the City or Agency to impose additional fees or exactions on the Project that are for the purpose of general capital improvements or general services (except in the event of a City-wide emergency).

3.5.3. Existing City Regulations. The City shall, at Developer's sole cost and expense, compile two binders which

include copies of all Existing City Regulations within 90 calendar days after the Adoption Date, sign both copies, and deliver one copy to Developer. The City shall make every effort to include all Existing City Regulations.

3.5.4. Construction Codes and Standards. 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 thereunder.

3.5.5. City Fees. Except as otherwise specified in this Agreement, the City Development Fees shall be the only fees or assessments charged by the City in connection with the development or construction of the Project. The amount of the City Development Fees shall be the amount of such City Development Fees as of the date the City Development Fees are paid. The Project will be subject to future fee increases on City Development Fees that existed as of the Adoption Date and are reasonably applied. 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 at the time the relevant application is made.

3.5.6. Project Exactions. Developer and City acknowledge that the Project 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, 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 Project or Developer, or on any application made by Developer for any City Approval, or in enacting any City Approval, or in connection with the development, construction, use or occupancy of the Project.

3.5.7. Term of City Approvals. Notwithstanding anything to the contrary in Applicable City Regulations, the term of any City Approval for the Project shall be automatically extended to equal, but not to exceed, the Term of this Agreement.

3.6. Review and Processing of City Approvals. City shall accept for processing, review and action all applications for City Approvals with respect to the Project when and if the same are complete, as determined pursuant to City Policies and Government Code Section 65940, *et seq.* Upon acceptance by City, City shall reasonably cooperate with Developer to facilitate prompt and timely review and processing of such applications, including the timely provision of notice and scheduling of all required public hearings, and processing and checking of all maps, plans, permits, building plans and specifications and other plans relating to development of the Project filed by Developer.

In connection with any City Approval, City shall exercise its discretion or take action only in that manner which complies and is consistent with this Agreement.

3.7. Effect of Agreement. This Agreement constitutes a part of the Enacting Ordinance, as if incorporated by reference therein in full, and shall constitute a City Approval pursuant to the Applicable City Regulations as if separately enacted thereunder.

3.8. Other Governmental Approvals. Developer shall promptly and timely apply for and diligently pursue all required Governmental Agency Approvals from Governmental Agencies, as and when each such Governmental Approval is required during the course of design, development, construction, use or occupancy of, and delivery of services to, the Project. Developer shall diligently take all reasonable steps necessary to obtain all such Governmental Approvals and shall bear all costs and expenses for obtaining such Governmental Approvals. When and if obtained, copies of all such Governmental Approvals shall be submitted to City promptly after Developer's receipt of a written request therefor from City. Developer shall comply with, and shall cause the Project to comply with, all Governmental Agency Regulations and Laws related to the development, use and operation of, or provision of services to, the Project. Developer shall take all reasonable, diligent efforts to fulfill its obligations under this Section 3.8. City shall reasonably cooperate with Developer

in such endeavors upon Developer's written request for such cooperation. Developer shall be solely responsible for undertaking any investigation and acquiring necessary knowledge of Governmental Agency Regulations and Laws applicable to or affecting the Project Site, including existing or proposed restrictions, environmental and land use laws and regulations (other than City Regulations) to which the Project Site may be subject. Developer shall reimburse City for all costs and expenses (including without limitation City staff or City Attorney time) incurred in connection with obtaining Governmental Agency Approvals.

3.9. Effect of Termination. Upon any Termination of this Agreement, City and Agency shall retain any and all benefits, including money or land, received by City or Agency as of the date of Termination under or in connection with this Agreement. No Termination of this Agreement shall prevent Developer from completing and occupying buildings or other improvements authorized pursuant to valid building permits previously approved by City or under construction at the time of Termination, except that nothing herein shall preclude City or Agency, 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.

No Termination of this Agreement shall affect the validity of the other Project Approvals.

ARTICLE IV

**CERTAIN ADDITIONAL CRITERIA AND
OBLIGATIONS APPLICABLE TO DEVELOPMENT OF PROJECT**

4.1. Requirements for Approval of Project. City and Developer acknowledge that Developer has obtained a Preliminary Development Plan for the entire Project Site (as included within the Project Approvals set forth in Exhibit G) and that further development, construction, occupation and implementation of the Project is subject to review and approval in accordance with the Project Approvals, including, but not limited to, the Planned Waterfront Development District 4 (as included within the Project Approvals set forth in Exhibit G). To develop the Project, Developer will need to obtain (i) the City Approvals under Applicable City Regulations for a Final Development Plan (as defined the Project Approvals) for each Development Parcel and the Public Open Space as contemplated in the zoning ordinance adopting the Planned Waterfront Development District 4 as shown on the Site Plan, (ii) design review as may be required in the Planned Waterfront Development District 4, and (iii) City Approvals under Construction Codes and Standards, and that, subject to the attainment of such City Approvals, as applicable, Developer may proceed with the development, construction, use and occupancy of the Project as a matter of right under this Agreement. Subject to the terms of this Agreement, Developer

shall, at its sole cost and expense, fund, comply with, and implement (or ensure implementation of) all mitigation measures or conditions of approval that are: (1) required by the CEQA Documents and incorporated as part of the Project Approvals, (2) otherwise incorporated as part of the Project Approvals, or (3) incorporated as part of Governmental Agency Approvals, all in accordance with the standards, timing, terms and conditions specified for such mitigation measures in the Project Approvals, City Approvals or Governmental Agency Approvals.

4.2. Effect of CEQA Documents. City's review of subsequent discretionary City Approvals shall utilize the CEQA Documents to the extent incorporated as part of the Project Approvals to the fullest extent permitted by Laws.

4.3. Lease of Existing Commercial Improvements/Ninth Avenue Terminal Shed.

4.3.1 Lease of Existing Commercial Improvements. For and in consideration of the payment of One Dollar (\$1.00) per year, commencing upon the City's acquisition of the Public Open Space, City hereby master leases to Developer and Developer hereby master leases from the City the Existing Commercial Improvements to the extent they are located on the Public Open Space, on the terms and conditions hereinafter set forth. Such master lease shall be referred to herein as the "Master Lease".

4.3.1.1 Term of Leaseback. The term of the Master Lease with respect to each Existing Commercial Improvement shall

remain in effect until the earlier to occur of: (a) the demolition of the subject Existing Commercial Improvement as set forth below; or (b) that date which is twenty (20) years after the Effective Date. Notwithstanding the foregoing to the contrary, in the event that this Agreement is Terminated prior to the full Term, the City shall be entitled to terminate the Master Lease with respect to any portion of the Public Open Space for which (a) the City has final park improvement plans and (b) intends to commence park construction six (6) months after delivery of the termination notice.

4.3.1.2 Use. During the term of the Master Lease, and otherwise subject to the terms hereof, Developer may license or sublease for its benefit the Existing Commercial Improvements for any lawful use to third parties. Subject to the terms hereof, Developer may, during the term of the Master Lease and without the City's consent, sublease, license or enter into a concession agreement for all or any portion of the Existing Commercial Improvements on terms and conditions acceptable to Developer in its sole and absolute discretion, and Developer may modify, amend, terminate, assign, convey, encumber, or otherwise hypothecate the Master Lease or any such sublease, license or concession agreement thereof. Developer shall have all of the rights and obligations of the sublandlord, sublessor, or licensor under each of the subleases, licenses or concession agreements of the Existing Commercial Improvements.

4.3.1.3 Removal of Existing Commercial

Improvements. Prior to the issuance of a grading permit for the Project, Developer shall, at its sole cost and expense, do the following with respect to the Existing Commercial Improvements located within the portion of the Project Site subject to such grading permit: (a) terminate any leases, licenses, or concession agreements then existing with respect to Existing Commercial Improvements, (b) evict any tenants, licensees or other occupants or such Existing Commercial Improvements, (c) relocate such tenants, licensees or other occupants as may be required by law (including without limitation, payment of any required benefits), and (d) demolish, remove and lawfully dispose of the Existing Commercial Improvements then located within each such Phase.

4.3.1.4 Assignment of Existing Leases.

Notwithstanding any term or provision of this Agreement to the contrary, the Parties agree that the leases, licenses and concession agreement affecting the public Open Space at the time of the City's acquisition thereof shall be assigned directly from the Port to Developer.

4.3.2 Lease of Ninth Avenue Terminal Shed. Condition of Approval 25c adopted as part of the Project Approvals establishes a Request for Proposal process pertaining to the potential re-use of the Ninth Avenue Terminal Shed building. If, (a) at the completion of such Request for Proposal process City does not

award a contract for reuse of the Ninth Avenue Terminal Shed building, (b) the award of a contract for the reuse of the Ninth Avenue Terminal Shed does not result in the reuse of the Ninth Avenue Terminal Shed building or (c) the lease for the reuse of the Ninth Avenue Terminal Shed building terminates or expires during the Term of this Agreement City and Developer hereby agree that the City shall lease to Developer the Ninth Avenue Terminal Shed and all appurtenant areas used in conjunction therewith for and in consideration of the payment of One Dollar (\$1.00) per year on the terms and conditions hereinafter set forth. Such lease shall be referred to herein as the "Terminal Shed Lease".

4.3.2.1 Term of Lease. The term of the Terminal Shed Lease shall commence upon completion of Developer's obligation to Renovate the Ninth Avenue Terminal Shed and shall remain in effect until that date which is sixty six (66) years thereafter. Notwithstanding anything contained herein to the contrary, Developer shall have the right at any time on not less than six (6) months' prior written notice to City to terminate the Terminal Shed Lease.

4.3.2.2 Use. During the term of the Terminal Shed Lease, and otherwise subject to the terms hereof, Developer may use the Ninth Avenue Terminal Shed for any lawful purpose. Subject to the terms hereof, Developer may, during the term of the Terminal Shed Lease and without the City's consent, sublease or license all or any portion of the Ninth Avenue Terminal Shed

on terms and conditions acceptable to Developer in its sole and absolute discretion, and Developer may modify, amend, terminate, assign, convey, encumber, or otherwise hypothecate the Terminal Shed Lease or any such sublease or license thereof.

4.3.2.3 Taxes, Insurance, Maintenance. The parties agree that the costs of ownership of the Ninth Avenue Terminal Shed, including but not limited to real property and possessory taxes, insurance and maintenance ("Ownership Costs") shall be paid as follows during the term of the Ninth Avenue Terminal Shed Lease: (a) the CFD/CSD shall pay that portion of the Ownership Costs related to the portion of the Ninth Avenue Terminal Shed occupied by a non-profit entity or designated for use as a community center, and (b) Developer shall pay all other Ownership Costs.

4.3.3 Estoppels. 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) the Master Lease and/or the Terminal Shed Lease is in full force and effect and the binding obligation of the Parties, (b) the Master Lease and/or the Terminal Shed Lease 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, (c) to the knowledge of such other Party, neither Party is in default of its obligations under the Master Lease and/or Terminal Shed Lease, or

if such a default has occurred, to describe the nature of any such default, and (d) such other information regarding the Master Lease and/or Terminal shed Lease as a Party may request. A Party receiving a request hereunder shall execute and return such certificate within twenty (20) days following the receipt thereof, and if a Party fails so to do within such 20-day period, 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 the 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.

4.3.4 Indemnity. Except as otherwise specifically provided to the contrary in this Agreement, Developer shall Indemnify the Indemnitees from any Losses arising out of, related to, or in connection with, the use or operation of the Existing Commercial Improvements or the Ninth Avenue Terminal.

4.3.5 Survival. Subject to the provisions of this Section 4.3, the rights and obligations of the Parties under this Section 4.3 shall survive the expiration or earlier Termination of the Term of this Agreement.

4.4. Ownership, Operation and Maintenance of the Public Open Space and the Public Improvements within the Project.

4.4.1 Ownership of Public Open Space. Developer shall cause fee title to the Public Open Space to be transferred to the City pursuant to the Tideland Trust Exchange Agreement entered into by Developer, the Port, and the State of California, acting by and through the State Lands Commission (the "State"). The terms and conditions for completion of this transfer are specified in Exhibit D to this Agreement

4.4.1.1 Hazardous Materials. The parties acknowledge that the Public Open Space is currently impacted with various hazardous materials. Developer shall cause the Public Open Space to be Remediated pursuant to Exhibit D. The Remediation may occur after the City's acquisition of the Public Open Space and in phases prior to or concurrently with the development of the Project as set forth in Exhibit C, subject to the requirements established in Exhibit D.

4.4.2 Improvement of the Public Open Space. Developer, at its sole cost, shall be responsible for the construction of the Public Open Space improvements for that portion of the Public Open Space located east of the Lake Merritt

Channel pursuant to plans approved by the City, which plans shall be substantially similar to the conceptual plans included within the Project Approvals. Such improvements would be constructed pursuant to the phasing schedule set forth in the Exhibit C. Notwithstanding the foregoing to the contrary, Developer shall have the right to fund all or a portion of the costs associated with the construction of the Public Open Space improvements through the CFD. The City shall be responsible for the construction of the Public Open Space improvements for that portion of the Public Open Space located to the west of the Lake Merritt Channel pursuant to plans approved by the City.

4.4.3 Management. The City, through its Parks and Recreation Department, shall be responsible for the management of the Public Open Space, including, but not limited to, the organization, promotion and operation of any community recreation programs involving the Public Open Space and the issuance of any permits associated with a private party's use of the Public Open Space.

4.4.4 Maintenance. The City and Developer shall work together to form the CSD. Developer shall fund City costs and expenses incurred in connection with such formation, including without limitation, the retention of consultants, City overhead, City staff and City attorney time. It is contemplated that the formation of the District shall be based on the following:

4.4.4.1. Board of Directors. The CSD would be managed by a five (5) member board of directors. The board members would be recommended by the City Administrator and confirmed by the City Council; provided, however, the City shall appoint Developer representatives to four (4) board positions until the earlier to occur of (i) the date that Developer and its Affiliates no longer own any Development Parcels; or (ii) the expiration/Termination of this Agreement. Developer's representatives shall be subject to removal by City Council for cause.

4.4.4.2. Maintenance Obligations. The CSD would be responsible for day to day maintenance of the following public improvements pursuant to the Minimum Maintenance Standards attached hereto as Exhibit F:

i. The improvements within the Public Open Space (including, without limitation, the pile supported deck underlying Shoreline Park);

ii. The landscaping located within any public right of way within the Project Site, including, but not limited to, street trees and median landscaping;

iii. Street lights located within any public right of way within the Project Site;

iv. Street furniture located within any public right of way within the Project Site;

v. Storm drainage treatment improvements within Project (including, without limitation, the Storm Water Improvements, as defined below); and

vi. Sidewalks located within the Project public right of way and along the south side of Embarcadero.

4.4.4.3. Services. The CSD also would perform the following services:

i. Provide security services, including, but not limited to, burglar and fire alarm services, to protect lives and property;

ii. Abate graffiti; and

iii. Fund any operating shortfall associated with the portion of the Ninth Avenue Terminal Shed Building restored by Developer pursuant to the Project Approvals.

4.4.4.4. Funding. Regardless of whether or when the CSD is formed, (i) the CFD shall be formed, and (ii) full funding established and authorized as necessary to fulfill in perpetuity (A) the maintenance and service obligations specified in this Section 4.4 or otherwise specified for inclusion in the CSD or CFD budget and (B) all costs of ownership of the real property and improvements located within the Public Open Space, including, but not limited to, real property and possessory interest taxes and insurance. The foregoing (i) and (ii) shall be reviewed and approved by City prior to the First Final Map within the Project, and Developer

shall provide City with any information City determines necessary to complete such review and approval within a reasonable timeframe to enable Developer to comply with the Phasing Schedule set forth in Exhibit C and any other applicable deadlines. Developer shall bear all costs and expenses associated with the foregoing (i) and (ii), including without limitation, completion in a manner acceptable to City of any required elections and reports, retention of consultants, and reimbursement for City overhead, staff and City attorney time. It is currently contemplated that the CFD shall be a special tax on the residential components of the Project. The CFD budget shall include, without limitation, the costs and reserves for (a) annual operations (including, without limitation, any costs associated with indebtedness, inflation or depreciation) maintenance, repair or replacement of the public improvements specified in Section 4.4.4.2 and (b) the performance of all CSD services and obligations specified in this Agreement (including, without limitation, the insurance and indemnity obligations specified in Sections 4.4.4.5 and 4.4.4.6. Any sponsor of special events over and above the customary use of the Public Open Space (e.g. concerts, festivals, private parties and or public gatherings) shall be required to reimburse the CSD for any additional maintenance and security associated with such events that is not otherwise covered by the CSD's routine maintenance budget.

4.4.4.5. Insurance Requirements. The CSD shall acquire and maintain, and the CSD budget shall include sufficient funding for, insurance policies, including without limitation, Commercial General Liability, Automobile Liability, Workers' Compensation, Builder's Risk and Property, as determined acceptable by the City Risk Manager at the time the CSD is formed and the CSD budget is established.

4.4.4.6. Indemnity. The CSD shall Indemnify (with counsel reasonably acceptable to the Indemnitee) Indemnitees for any Losses arising out of or related to the CSD's performance (or failure to perform) its obligations. To the extent that Developer incurs Losses that arise through an act or omission of the CSD, the CSD shall Indemnify Developer for such Losses. The CFD budget shall include sufficient funding to fulfill the Indemnity obligations specified herein.

4.4.4.7. Formation Costs. Developer shall bear all costs and expenses associated with the formation of the CSD and CFD (including without limitation, completion in a manner acceptable to City of any required elections and reports) and the City's preparation or review of any documents or materials necessary in conjunction therewith, including, without limitation, the retention of consultants, and reimbursement for City overhead, staff and City attorney time.

4.4.5 Easement For Storm Water Management. Effective as of the City's acquisition of the Public Open Space, the City

hereby grants to Developer a non-exclusive easement over the Public Open Space for the purposes of installing, repairing, maintaining, removing and replacing such improvements as are reasonably necessary to meet the storm water management, treatment and mitigation requirements for the Project as required by any applicable City Regulations or Governmental Agency Regulations, including, but not limited to, the applicable "NPDES" permit (the "Storm Water Improvements"). Not in limitation of any other obligation in this Agreement, Developer shall Indemnify the Indemnitees against any Losses associated with Developer's exercise of its rights or the performance of activities described in this Section 4.4.5.

4.5. Small Local Business Utilization Requirements.

Developer shall comply with those provisions of the Port's Non-Discrimination and Small Local Business Utilization Policy, and the Port's Prevailing Wage Requirements attached to this Agreement for reference purposes as Exhibit I.

4.6. Local Hiring and Job Training. Developer shall comply with the local hiring and job training requirements which are attached to this Agreement for reference purposes as Exhibit J.

4.7. Prevailing Wages. Developer shall comply with all applicable requirements of the California Labor Code, including prevailing wage requirements. Developer shall use all diligent efforts to ensure that its contractors and subcontractors comply

with all provisions of the California Labor Code applicable to the Project.

4.8. Compliance with Port Art in Public Places Ordinance.

Developer shall comply with Port's Ordinance No. 3694, providing for art in public places, pursuant to the provisions of such Ordinance, attached as Exhibit K to this Agreement.

4.9. Equal Benefits. Developer shall comply with the requirements of the City's Equal Benefits Ordinance in effect as of the Adoption Date with respect to any contract or property contract as specified in Oakland Municipal Code 2.32.020 and 2.32.030.

4.10. Potential Reimbursement to Developer. The parties acknowledge that: (a) the Project Approvals require Developer to design and construct certain public improvements that the FEIR identifies Developer as having less than a 100% fair share responsibility for such improvements; and (b) other properties and developers may also directly benefit from such improvements.

As such, the City shall consider in good faith entering into a reimbursement agreement or forming a benefit district, the purpose of which is to reimburse Developer for all costs in excess of Developer's fair share responsibility using funds obtained from the benefited properties/developers. Any such reimbursement mechanism shall be based on the following: (a) the City shall use commercially reasonable efforts to identify benefited properties and developers; (b) the reimbursement

shall be based upon a benefit formula established by the City Council (such benefit formula shall be based on ascertainable criteria, taking into account, to the extent ascertainable, the benefit actually conferred on the Project Site and the benefit conferred on other developers and properties, and the owners thereof). Developer shall bear the sole cost and expense for implementing such reimbursement mechanism; however, such costs and expenses may be reimbursed through funds collected thereunder.

4.11. Affordable Housing. Developer shall comply with the affordable housing requirements which are attached to this Agreement for reference purposes as Exhibit L.

4.12. Environmentally Sustainable Project. Developer's Project design shall, to the extent commercially practicable, incorporate elements in the Project design intended for environmental sustainability, including but not limited to, use of energy-conserving design and appliances, water-conserving fixtures and landscaping, recycled-content building materials, and low-waste construction techniques. As appropriate and subject to the foregoing provision of this Section 4.12, Developer, and its representatives for design and construction of the Project, shall work with City's environmental sustainability development staff to develop reasonable, appropriate and economically feasible environmental sustainability building goals and strategies for the Project.

4.13. General Provisions With Respect to Financing Improvements. Developer shall have the right to request City to utilize, in connection with any Exactions or other on- or off-site improvement with respect to the Project, any public financing method then available under Applicable City Regulations or Laws applicable to such improvement. In connection with any such request, City shall consider, among other things, the utilization of the requested financing method, taking into account the requirements of the Applicable City Regulations and/or Laws, and the benefit to be derived with respect to the development of the Project of such public financing methods as they relate to the reduction in cost of development of the Project and the enhancement thereof to achieve the intent of the parties hereunder. If, after such good faith consideration, City agrees to utilize such financing method, City shall take such actions as may be necessary or appropriate in order so to do, and Developer shall cooperate therewith. The financing methods contemplated hereunder shall include, without limitation, formation of assessment benefit, maintenance or other districts, issuance of revenue bonds, and other similar methods which may be available from time to time, or at any time, during the Term of this Agreement. Developer shall reimburse City for all costs incurred under this Section 4.13.

4.14 Sewer Capacity. The parties acknowledge that the Project includes construction of sewer capital improvements that

mitigate the Project's impact on available capacity to treat waste water and storm water run-off. Developer's contribution to this capital improvement project is capped at one million dollars (\$1,000,000.00), payable prior to the completion of Phase II, as set forth in Exhibit C. Therefore, to the extent that any sewer connection fee charged by the City defrays the cost of similar sewer capital improvements, the Project shall not be required to bear and Developer shall not be required to pay the amount of such fee related to such capital component.

4.15. Chinatown Area Traffic Studies. Developer shall pay \$400,000.00 to the City to fund traffic studies or traffic improvements within the Chinatown area that are intended to resolve issues regarding pedestrian safety or traffic circulation. Such funds are payable as follows: (a) \$250,000.00 concurrently with the issuance of the first site permit for the Project and (b) \$150,000.00 concurrently with the issuance of the building permit for the 1,000th residential unit within the Project.

4.16 Temporary Bay Trail. Developer shall comply with the requirements regarding construction of a temporary Bay Trail which are attached to this Agreement for reference purposes as Exhibit N. Notwithstanding the terms and provisions in Article V to the contrary: (a) Developer shall Indemnify the Indemnitees from any Losses arising out of or related to construction of the temporary trail improvements; (b) the CSD shall Indemnify the

Indemnitees and Developer from any Losses arising out of the public's use of the temporary trail improvements during permitted hours; provided, however, in the event that the CSD fails to Indemnify or only partially Indemnifies any one of the Indemnitees, Developer shall be responsible for Indemnifying the Indemnatee to the extent that the CSD does not fully reimburse the Indemnatee for its Loss; and (c) City shall indemnify Developer and the CSD to the extent Developer or CSD incurs any Losses that do not arise out of or are related to an act or omission of Developer or CSD and that arise out of or are related to (a) any criminal activity occurring within the temporary trail improvements or (b) the public's use of the temporary trail improvement outside permitted hours. None of the obligations specified in the previous sentence shall extend to Losses caused solely by willful misconduct or gross negligence of the party to be indemnified. Nothing in this Section 4.16 shall be construed to limit any obligation of Developer specified in Exhibit D (Public Open Space Acquisition/Hazardous Materials), including, without limitation, obligations pertaining to insurance and Indemnity.

ARTICLE V

INDEMNITY

5.1. Developer Indemnity. Except as hereinafter specifically otherwise provided, Developer shall Indemnify the

Indemnites from any Losses arising out of, related to, or in connection with (i) any City Approval (including any litigation or other proceeding initiated by a third Person challenging any City Approval); (ii) development and construction of the Project (including any Losses associated with any alleged violations of the California Labor Code); (iii) any Governmental Agency Approval (including any litigation or other proceeding initiated by a third Person challenging any Governmental Agency Approval); (iv) any accident, injury, bodily injury, or death, or loss of or damage occurring to property damage on any Developer Parcel, or any part thereof, or within the Public Open Space unless the Loss is unrelated to any act or omission of Developer and arises at a time when Developer exercises no authority or control over the Public Open Space; (v) any use, possession, occupation, operation, maintenance, or management of the Project or the Project Site or any part thereof by Developer or any of its tenants, subtenants, Agents, or invitees; (v) any act or omission of Developer or any of its Agents, architects, engineers, contractors, subcontractors or suppliers with respect to the development or use of the Project, or the Project Site; (vi) any latent design construction or structural defect relating to the improvements on the Development Parcels or otherwise within the control of Developer or its Agents; (vii) the physical, geotechnical or environmental condition of the Project Site or any part thereof, including any hazardous materials or other

contamination in, on, under or above the Project Site (including soils and groundwater conditions), and/or (viii) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Project or the Project Site. Notwithstanding the provisions of the immediately preceding sentence to the contrary:

(a) to the extent that a Loss is caused solely by the gross negligence or willful misconduct of an Indemnitee, Developer's Indemnity obligation shall not extend to such Indemnitee's contributory share of the joint active negligence or willful misconduct; (b) in the event that any Indemnitee is partially or fully Indemnified by the CSD, Developer shall only be responsible for Indemnifying the Indemnitee to the extent that the CSD does not fully reimburse the Indemnitee for its Loss; and (c) Developer's Indemnity obligation under this Section 5.1 shall not apply to an Indemnitee to the extent Losses are caused solely by a claim filed by the City to recover any decrease in or a loss of tax revenue by City or its Agents as a result of the invalidation of any City Approval applicable to the Project or the failure of the Project to generate projected real property taxes or sales tax revenues. If Developer is required to Indemnify one or more Indemnitees hereunder, Developer shall pay within thirty (30) days after receipt from City (together with appropriate backup) any amount owing by Developer to an Indemnitee under this Section 5.1. Developer's Indemnity obligation under this Section 5.1 includes the duty to defend Indemnitees in any court action,

administrative action or other proceeding brought by any third Person included within the Indemnatee obligations under this Section 5.1. In the event Developer is defending an Indemnatee with counsel designated by Developer, then such counsel shall be reasonably acceptable to City, except that, to the extent Losses subject to Developer's Indemnity hereunder are covered by insurance carried by Developer, then counsel designated by the insurance company providing such insurance coverage shall defend City. Upon the advice of the City Attorney, City shall retain the right to reject such insurance company designated counsel (on the basis of a conflict, incompetence or similar grounds) and to require Developer to retain counsel reasonably acceptable to City for Indemnatee's defense.

5.2. Insurance. Developer shall, at all times during the Term of this Agreement, maintain and keep in full force and effect at Developer's own cost and expense, the following policies of insurance in accordance with the terms and conditions of this Section 5.2. The insurance requirements and other provisions of this Agreement shall not limit Developer's Indemnification obligations under this Article V nor any other obligation Developer may have to any Indemnatee.

5.2.1. Commercial General Liability Insurance. Developer shall maintain Commercial General Liability Insurance applicable to the Project and improvements thereon with limits of liability of not less than \$5,000,000.00 combined single limit

per occurrence and general aggregate. The Commercial General Liability Insurance hereunder shall include coverage for Bodily Injury, Broad Form Property Damage, Contractual Liability, Operations, Products and Completed Operations, Owners and Contractors Protective Liability, and/or XCU coverage, when applicable. Each Commercial General Liability Insurance policy shall provide that it is primary and any other insurance or self-insurance available to City or Agency under any other policies shall be excess insurance over the insurance required by this Section 5.2.1. Each Commercial General Liability Insurance policy shall provide for severability of interests for all insureds and additional insureds under such policy. Each Commercial General Liability Insurance policy shall name City, Agency, their respective elected and appointed officials, officers, directors, agents, employees, and members of its Boards and Commissions as additional insureds so long as, and to the extent that, the insurer issuing the Commercial General Liability Insurance policy permits such Persons to be named as an additional insured and is at no additional cost to Developer.

5.2.2. Automobile Liability Insurance. Developer shall maintain Automobile Liability Insurance with a limit of liability of not less than \$2,000,000.00 combined single limit per occurrence and general aggregate. Each Automobile Liability Insurance policy shall include coverage for owned, leased, hired, or borrowed vehicles by or on behalf of Developer, or its agents.

Each Automobile Liability Insurance policy shall provide for severability of interests for all insureds and additional insureds under such policy. Each Automobile Liability Insurance policy shall name City, Agency, their respective elected and appointed officials, officers, directors, agents, employees, and members of its Boards and Commissions as additional insureds so long as, and to the extent that, the insurer issuing the Automobile Liability Insurance policy permits such Persons to be named as an additional insured and is at no additional cost to Developer.

5.2.3. Workers' Compensation Insurance. Developer shall maintain Workers' Compensation Insurance as required by the Laws of the State. Statutory coverage may include Employers Liability coverage with limits not less than \$1,000,000.00. Developer certifies that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. Developer shall comply with the provisions of Section 3700 of the California Labor Code.

5.2.4. General Requirements of Insurance. Each policy of insurance carried by Developer hereunder shall provide that it may not be cancelled without at least thirty (30) days' prior written notice to City. Developer shall furnish to City a certificate of each such policy of insurance, stating that such

insurance is in full force and effect and, in the case of the Commercial General Liability Insurance and Automobile Liability Insurance, showing additional insureds as required by Sections 5.2.1 and 5.2.2 above. Developer shall submit the ACORD Insurance Certificate, together with the additional insured endorsement set forth on a CG 20 10 10 93 Form Designated Insured Form and/or an or equivalent form as approved by the City's Risk Manager. Each insurance company issuing a policy of insurance hereunder shall have a Best's-Rating of at least A-. Any insurance required to be maintained by Developer hereunder may be maintained under a so-called "blanket policy", insuring other parties and other locations, so long as the amount of insurance required to be provided hereunder is not thereby diminished. The insurance required by this Agreement shall be the primary insurance and any insurance maintained by the City or the Agency shall be excess to and non-contributory with the insurance required hereunder.

5.2.5. City and Agency Right to Take Out Insurance.

If for any reason Developer fails to maintain any policy of insurance required under this Section 5.2, City or Agency may at City or Agency's option, after notice of such Event of Default given in accordance with Article VIII below, take out and maintain, at Developer's expense, such insurance in the name of Developer as required pursuant to this Section 5.2; however, any failure of City or Agency to take out or maintain insurance in

accordance with this Section 5.2.5 shall not limit or waive any of City's or Agency's rights or remedies under this Agreement.

Developer shall reimburse City or Agency, as applicable, for all costs and expenses incurred by City or Agency in so doing, promptly after demand by City or Agency for such costs and expenses.

5.2.6. Subcontractors. Should the Developer subcontract out the work required under this agreement, they shall include all subcontractors as insured under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Developer may require all subcontractors to provide at their own expense evidence of all the required coverage listed in this Schedule. If this option is exercised, both the City and the Developer shall be named as additional insureds under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the term of this Agreement to verify compliance with requirements.

5.2.7. Waiver of Subrogation. The parties waive all rights against the other parties and their respective Council members, officers, directors and employees for recovery of Losses to the extent those Losses are covered by (a) forms of insurance maintained by the parties or (b) the indemnity provided by the CSD.

5.2.8. Evaluation of Adequacy of Coverage. The City maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice; provided, however, that such modifications are commercially reasonable and are then generally applicable to or then being maintained by similarly situated prudent parties. Notwithstanding the foregoing to the contrary, in no event shall the City be able to modify the insurance requirements more than once every five (5) years.

5.3. Cooperation of City. If Developer is obligated to Indemnify an Indemnitee under this Article V, Developer shall coordinate and cooperate fully with the City Attorney in fulfilling such Indemnity obligation, shall use diligent efforts to fully protect City's rights, and shall keep the City Attorney fully informed of all developments relevant to such Indemnity (subject only to any privileges which prevent the communication of any such information to the City Attorney). City shall fully cooperate with Developer as necessary to facilitate Developer's fulfillment of such Indemnity obligation.

5.4 Survival; Other Obligations. Developer's obligations under this Article V and any other Developer Indemnity under City Approvals or otherwise may have shall survive any Termination. Developer's Indemnity obligations in this Article V are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that Developer may

have to any Indemnatee in the Project Approvals, Laws or otherwise.

5.5 Release of Claims Against City and Agency. Developer hereby waives and releases any and all claims against the Indemnitees from any Losses arising at any time, including all claims arising from the joint or concurrent negligence of Indemnitees. Notwithstanding the foregoing to the contrary, Developer retains any claims against an Indemnatee that arise out of the following which occur after the Adoption Date: (a) a breach of this Agreement, (b) an Indemnatee's negligence or willful misconduct or (c) an Indemnatee's fraud.

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. For purposes of this Article VI, any action authorized to be undertaken by City Council, at City's and Agency's option, may be undertaken by the governing body of Agency, either individually or jointly with City Council.

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 in effect for annual review of development agreements under Existing City Regulations. Developer shall submit with such application a report to the Director of City Planning 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.

6.3. Finding of Compliance. Within thirty (30) 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, or does not determine otherwise within thirty (30) days after delivery of Developer's report under Section 6.2 above, the annual review shall be deemed concluded. 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. If the Director of City Planning concludes that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, he or she shall so notify Developer prior to the expiration of the 30-day period herein specified and prepare a staff report to the City Council with respect to the conclusions of the Director of City Planning and the contentions of Developer with respect thereto.

6.4. Hearing Before City Council to Determine Compliance.

After submission of the staff report of the Director of City Planning, the City Council shall conduct a noticed public hearing pursuant to Section 17.138.090.B of the Development Agreement Ordinance to determine the good faith substantial compliance by Developer with the material terms of this Agreement. At least sixty (60) 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 all staff reports and other information concerning Developer's good faith substantial compliance with the material terms of this Agreement and the conclusions and recommendations of the Director of City Planning. 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. If, after receipt of any written or oral response of Developer, and after considering all of the evidence at such 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, then 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, which time shall be not less than thirty (30) days after the date of the City Council's determination, and shall be reasonably related to the time necessary adequately to 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 Force Majeure pursuant to Section 7.1 below, then 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. Any notice to Developer of a determination of noncompliance by Developer hereunder, or of a failure by Developer to perfect the areas of noncompliance

hereunder, shall specify in reasonable detail the grounds therefor and all facts demonstrating such noncompliance or failure, so that Developer may address the issues raised in the notice of noncompliance or failure on a point-by-point basis in any hearing held by the City Council hereunder.

6.5. Meet and Confer Process. If either the Director of City Planning or the City Council makes a determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, the Director of City Planning and/or designated City Council representatives may initiate a meet and confer process with Developer pursuant to which the Parties shall meet and confer in order to determine a resolution acceptable to both Parties of the bases upon which the Director of City Planning or City Council has determined that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. If, as a result of such meet and confer process the Parties agree on a resolution of the bases related to the determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. The results and recommendations of the meet and confer process shall be presented to the City Council for review and consideration at its next regularly scheduled public meeting, including consideration of such amendments to this Agreement as may be necessary or appropriate to effectuate the resolution achieved through such meet and confer process.

Developer shall be deemed to be in good faith substantial compliance with the material terms of this Agreement, only upon City Council acceptance of the results and recommendations of the meet and confer process.

6.6. Certificate of Compliance. 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, the Director of City Planning shall issue a certificate of compliance within ten (10) 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 in order 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.

6.7. 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 Section 6.4 above and takes any of the actions specified in Section 6.4 above 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 14.14 below.

ARTICLE VII

PERMITTED DELAYS; SUPERSEDURE BY SUBSEQUENT LAWS

7.1. Permitted Delays. Performance by a Party of its obligations under this Agreement shall be excused during, and extended for a period of time equal to, any period of delay caused at any time by reason of Force Majeure. Promptly after learning of the occurrence of a Force Majeure event, the affected Party shall notify the other Party of the occurrence of such Force Majeure event. Upon the other party's receipt of such notice, the Term of this Agreement shall be extended by the period of the delay associated with the Force Majeure event specified in such therein.

7.2. Supersedure by Subsequent Laws.

7.2.1. Effect of Conflicting Law. As provided in Government Code §65869.5 of the Development Agreement Legislation, this Agreement shall not preclude application to the Project or the Project Site of changes in Laws, nor shall anything in this Agreement preclude City from imposing on Developer any fee required by Laws. As specified in Government Code §65869.5 of the Development Agreement Legislation, 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", (i) if such defaulting Party does not cure such failure within thirty (30) days following written notice of default from the other Party, where such failure is of a nature that can be cured within such 30-day period, or (ii) if such failure is not of a nature which can be cured within such 30-day period, the defaulting Party does not within such 30-day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any notice of an Event of Default given hereunder shall specify in reasonable detail the nature of the failures in performance which the noticing party claims constitute the Event of Default and the

manner in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

8.2. 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 (i) bring any proceeding in the nature of specific performance, injunctive relief or mandamus, and/or (ii) 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 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 consequential 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.

8.3. 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 the City's Agent, including 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. Any such notice shall include a provision in at least ten face bold 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, the City Sunshine Ordinance, or other noticing and procedural requirements, shall be automatically extended as may be reasonably necessary to comply with such requirements and with the 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.

8.4. Limitations on Actions. Unless otherwise provided by Laws, any action by any third Person to attack, review, set aside, void or annul any action or decision taken by a Party under this Agreement shall not be maintained by such Person unless such action or proceeding is commenced within ninety (90) days after the date such decision or action is made or taken hereunder.

8.5 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 7.

8.6. 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 (i) this Agreement is in full force and effect and a binding obligation of

the Parties, (ii) 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 (iii) 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 twenty (20) days following the receipt thereof, and if a Party fails so to do within such 20-day period, 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.

ARTICLE IX

MORTGAGEE PROTECTION; DEVELOPER RIGHTS OF CURE

9.1. Mortgagee Protection. This Agreement shall be superior and senior to the lien of any Mortgage encumbering any interest in the Project. Notwithstanding the foregoing, no Event of Default shall defeat, render invalid, diminish or impair the lien of any Mortgage made for value, but, subject to the provisions of Section 9.2 below, all of the terms and conditions contained in this Agreement shall be binding upon, inure to the benefit of and effective against any Person (including any Mortgagee) who acquires title to the Project, or any portion thereof or interest therein or improvement thereon, by foreclosure, sheriff's sale, trustee's sale, or deed in lieu thereof.

9.2. Mortgagee Not Obligated; Mortgagee as Transferee. No Mortgagee, unless such Mortgagee becomes a Transferee, shall have any obligation or duty under this Agreement, except that nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee to undertake any new construction or improvement project, or to otherwise have the benefit of any rights of Developer, or to enforce any obligation of City or Agency, under this Agreement, unless and until such Mortgagee has become a Transferee in the manner specified in Article X below.

9.3. Notice of Default to Mortgagee; Right of Mortgagee to Cure. If City or Agency receives notice from a Mortgagee requesting a copy of any notice of an Event of Default given Developer hereunder and specifying the address for service

thereof, then City or Agency, as applicable, shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City or Agency that Developer has committed an Event of Default. If City or Agency makes a determination of noncompliance under Article VI above, City or Agency, as applicable, shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Such Mortgagee shall have the right (but not the obligation) to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's or Agency's notice within the applicable time periods for cure specified in this Agreement. If, however, the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the Project, or portion thereof, such Mortgagee shall seek to obtain possession with diligence and continuity (but in no event later than one hundred and eighty [180] days after the notice of the Event of Default is given) through a receiver or otherwise, and shall thereafter remedy or cure such Event of Default or noncompliance promptly and with diligence and dispatch after obtaining possession. Other than an Event of Default or noncompliance (i) for failure to pay money; or (ii) that is reasonably susceptible of remedy or cure prior to a Mortgagee obtaining possession, so long as such Mortgagee is pursuing cure of the Event of Default or noncompliance in

conformance with the requirements of this Section 9.3, City or Agency shall not exercise any right or remedy under this Agreement on account of such Event of Default or noncompliance. When and if a Mortgagee acquires the interest of Developer encumbered by such Mortgagee's Mortgage and such Mortgagee becomes a Transferee pursuant to Section 10.6 below, then such Mortgagee shall promptly cure all monetary or other Events of Default or noncompliance then reasonably susceptible of being cured by such Mortgagee to the extent such that such Events of Default or noncompliance are not cured prior to such Mortgagee's becoming a Transferee pursuant to Section 10.6. If an Event of Default is not so reasonably susceptible of cure, then such Event of Default shall be deemed cured when such Mortgagee acquires such interest and becomes a Transferee pursuant to Section 10.6.

Subject to the Mortgagee protection provisions specified in this Section 9.3, nothing in this Agreement shall preclude City or Agency from exercising any right or remedy under this Agreement with respect to any Event of Default by Developer during the pendency of a Mortgagee's proceedings to obtain possession or title.

9.4. Priority of Mortgages. For purposes of exercising any remedy of a Mortgagee pursuant to this Article IX, or for becoming a Transferee in the manner specified in Article X below, the applicable Laws of State shall govern the rights, remedies and priorities of each Mortgagee, absent a written agreement

between Mortgagees otherwise providing. Notwithstanding the foregoing, the rights of Port in its status as a Mortgagee, and with respect to becoming a Transferee in the manner specified in Article X below, shall at all times be junior, subject and subordinate to any other Mortgagee.

9.5. Effect of Mortgagee Protection Provisions on Port. The provisions of this Article IX with respect to Mortgagees as to Port, is intended solely to provide Port the necessary protection to enable Port to assume Developer's rights, duties and obligations under this Agreement in the event of a termination of one or more of the Development Parcel Ground Leases, and to establish the relative priority between Port and other Mortgagees with respect to the right of a Mortgagee to assume Developer's rights, duties and obligations under this Agreement. Nothing in this Article IX is intended to affect the rights, duties and obligations of Port under a Development Parcel Ground Lease as the Landlord or Lessor thereunder, and the ownership of Port of the fee title interest in those certain few Development Parcels subject to a Development Parcel Ground Lease, including that any Mortgage placed by Developer on a Development Parcel pursuant to the provisions of a Development Parcel Ground Lease, shall at all times remain subject and subordinate to the Landlord's fee or Lessor's fee interest under the Development Parcel Ground Lease.

ARTICLE X

**TRANSFERS AND ASSIGNMENTS; DEVELOPER CURE RIGHTS, ALLOCATION OF
DEVELOPER RIGHTS, DUTIES AND OBLIGATIONS**

10.1. Limitations on Developer's Right to Transfer.

Developer acknowledges that the qualifications of Developer are of particular importance to City and Agency for, among others, the following reasons: (i) the importance of development of the Project Site to the Oak to Ninth Avenue District area and to the general welfare of City and Agency, with particular reference to City's and Agency's objectives as reflected in the Estuary Policy Plan and other applicable provisions of the General Plan and Redevelopment Plans (as applicable); (ii) City's and Agency's reliance upon the qualifications and ability of Developer to serve as the catalyst for development of the Project and to assure the quality of the use, operation and maintenance in the development of the Project; and that such qualifications and identity are material considerations inducing City and Agency to enter into this Agreement with Developer. In recognition of these factors, other than as expressly provided for in this Agreement, Developer may not sell, convey, assign, transfer, alienate or otherwise dispose of all or any of its interest or rights in this Agreement without in each instance obtaining the prior written approval of the City and Agency in accordance with this Article X. Approval of any one Transfer will not waive City's and Agency's right to require such approval for each and every Transfer. No Transfer shall be valid unless it is done for

a legitimate business purpose and not to deprive the City and Agency of any of the benefits under this Agreement. Developer shall reimburse the City and Agency for their reasonable costs of reviewing a proposed Transfer. Developer's rights to Transfer any right or interest under this Agreement shall be governed strictly in accordance with the provisions of this Article X, and no voluntary or involuntary successor-in-interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth in this Article X.

10.2. Conditions Precedent to All Transfers. The following conditions precedent must be satisfied prior to the effectiveness of Developer's Transfer of any right or interest under this Agreement:

10.2.1. No Event of Default. No Event of Default by Developer shall be outstanding and uncured as of the effective date of the proposed Transfer, or in the event of a Transfer by Developer of its rights, duties and obligations with respect to a portion of the Project Site, no Event of Default by Developer shall be outstanding and uncured as to any Development Parcel included within the proposed Transfer as of the effective date of the proposed Transfer, unless City Council and Agency Board has received adequate assurances satisfactory to City Council and Agency Board in their sole discretion that such Event of Default shall be cured in a timely manner either by Developer or the Transferee under the Transfer. Notwithstanding the foregoing to

the contrary, the condition precedent set forth in this Section 10.2.1 shall not apply to Mortgagee Transferees.

10.2.2. Assumption Agreement. Developer or Transferee shall have delivered to City and Agency an Assumption Agreement, the form of which shall be subject to the City Council's prior approval. In the case of a Non-Exempt Transferee, such Assumption Agreement shall be delivered no later than forty-five (45) days prior to the effective date of the proposed Transfer. With respect to an Exempt Transferee, such Assumption Agreement shall be delivered no later than five (5) days prior to the effective date of the proposed Transfer. The Assumption Agreement shall be recorded in the Official Records of the County of Alameda concurrently with the consummation of the Transfer, and a copy thereof, certified by the County Recorder as a duplicate copy of the approved assumption agreement with recording information, shall be delivered to City and Agency within three (3) days after consummation of the Transfer; provided, however, the City's and Agency's failure to receive such certified copy shall not affect Developer's release from the assumed obligations.

10.3. Non-Exempt Transferee. Unless the proposed Transferee is an Exempt Transferee, Developer shall deliver the following information to the City and Agency at least forty-five (45) days prior to the effective date of the proposed Transfer:

a. The Assumption Agreement required under Section 10.2.2;

b. Information and documentation that is reasonably sufficient (such as financial statements) to evidence the proposed Transferee's ability to (1) perform the obligations under this Agreement to be assumed by the proposed Transferee and (2) implement the portion of the Project to be constructed on the portion of the Project Site to be acquired by the proposed Transferee. City Council and Agency Board will evaluate such evidence and any other relevant information and shall approve the Transfer if it determines that (x) all conditions precedent to Transfer pursuant to Section 10.2 have been fulfilled; and (y) the prospective Transferee has the experience and financial capacity to fulfill the obligations to be assumed by such Transferee.

10.4 Transfers to Exempt Transferees. Transfers to the following Transferees shall not require the City's or Agency's prior consent (collectively "Exempt Transferees"):

- a. Affiliates;
- b. Finished Parcel Developers;
- c. Pre-Qualified Developer Transferees; or
- d. Supported Transferees.

Transfers to Exempt Transferees are subject only to the conditions precedent set forth in Section 10.2 above.

10.5 Transfers Involving Improvement of Public Open Space. Notwithstanding any term or provision of this Agreement to the contrary(including, without limitation, the definition of Master Developer Obligations), any Transfer that would release Developer from one or more obligation to improve Public Open Space shall require the City Council's prior written consent.

10.6 Mortgagee as Transferee. No Mortgage (including the execution and delivery thereof to the Mortgagee) shall constitute a Transfer. A Mortgagee shall be a Transferee only upon (i) the acquisition by such Mortgagee of the affected interest of Developer encumbered by such Mortgagee's Mortgage; and (ii) delivery to City and Agency of An Assumption Agreement pursuant to Section 10.2.2 above.

10.7 Effect of Transfer; Release; 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 the Assumption Agreement delivered under Section 10.2.2, above. Except in the event of a transfer to a Supported Transferee, Developer shall be released from all obligations assumed by the Transferee pursuant to the Assumption Agreement first accruing from and after the effective date of the Transfer; provided, however, that in no event shall Developer be released from any Master Developer Obligation without City and Agency approval as specified in Section 10.3 for Non-Exempt Transfers. From and after the effective date of the

Transfer, (a) an Event of Default by the Developer under this Agreement shall have no affect on the Transferee's rights and obligations under this Agreement; and (b) an Event of Default with respect to any Transferee shall have no affect on the Developer's rights and obligations under this Agreement.

10.8. Right of Developer to Cure Supported Transferee Default. Concurrently with service thereon to any Supported Transferee, City and Agency shall deliver to Developer any notice given with respect to such Supported Transferee's alleged Event of Default. If City and Agency make a determination of noncompliance under Article VI above, City and Agency shall likewise serve to Developer notice of such Supported Transferee's noncompliance. Developer shall have the right, to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's and Agency's notice within the applicable time periods for cure specified in this Agreement. If, the Event of Default or such noncompliance is of a nature which can only be remedied or cured by Developer upon obtaining possession of the affected Development Parcel, Developer shall seek to obtain possession with diligence and continuity, and shall thereafter remedy or cure the Event of Default or noncompliance as soon as reasonably possible after obtaining possession. So long as Developer or the Supported Transferee demonstrates to the satisfaction of City and Agency that it is diligently pursuing cure of the Event of

Default or noncompliance in conformance with the requirements of this Section 10.8, City and Agency shall not exercise any right or remedy under this Agreement on account of such Event of Default or noncompliance; however, nothing herein shall prevent the City and Agency from seeking any right or remedy under this Agreement if it determines in its sole discretion that the Developer has failed to make such a showing.

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 65868 of the Development Agreement Legislation. 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 modification to this Agreement which does not relate to the Term, permitted uses of the Project, location, density or intensity of uses of the Project, height, design or size of improvements within the Project, provisions for Dedications, or to any conditions, terms, restrictions and requirements relating to subsequent actions of City and Agency under Article IV, or related to any uses of the

Project, shall not require a noticed public hearing 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.

ARTICLE XII

NOTICES

12.1. Procedure. 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. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City:	City of Oakland Community and Economic Development Agency 250 Frank H. Ogawa Plaza, Suite 3330 Oakland, California 94612 Attention: Director of City Planning
Agency:	Redevelopment Agency of the City of Oakland 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612-2034 Attention: Redevelopment Director
Developer:	Oakland Harbor Partners, LLC c/o Signature Properties 4670 Willow Road, Suite 200 Pleasanton, CA 94588 Attention: Michael Ghielmetti Marc Stice
With a copy to:	Oakland Harbor Partners, LLC c/o Reynolds & Brown 1200 Concord Ave., Suite 200 Concord, CA 94520

Attention: Dana Parry

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 Development Parcels, 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 shall run in favor of City and Agency without regard to whether City and Agency has been, remains or is an owner of any land or interest in the Development Parcels, the Public Open Space or any parcel or subparcel thereof.

13.2. Successors to City. For purposes of this Article XIII, "City" includes any successor public agency, including Port, 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 (i) assume all of City's rights, duties and obligations under this Agreement; and (ii) 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 Agency, 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, 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 therefor 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.

Whenever, under this Agreement, the term "approve" (or any grammatical variant thereof, such as "approved" or "approval") is used in connection with the right, power or duty of City, or any representative board, commission, committee or official of City, to act in connection with any City Approval, such term shall only include the right to approve, conditionally approve, or disapprove in accordance with the applicable terms, standards and conditions of this Agreement.

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. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly

inequitable under all the circumstances or would frustrate the purposes of this Agreement.

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 - CEQA Documents
- Exhibit B - City Development Fees
- Exhibit C - Phasing Schedule/Phasing Plan
- Exhibit D - Public Open Space
Acquisition/Hazardous Materials
- Exhibit E - Development Parcels
- Exhibit F - Minimum Maintenance Standards
- Exhibit G - Project Approvals
- Exhibit H - Site Plan
- Exhibit I - Port's Non-Discrimination and Small
Local Business Utilization and
Prevailing Wage Policy
- Exhibit J - Local Hiring and Construction Job
Training
- Exhibit K - Port Art in Public Places Ordinance
(Port Ordinance No. 3694)
- Exhibit L - Affordable Housing
- Exhibit M - Conditions of Approval and Mitigation
Measures Applicable to Whole Project
- Exhibit N - Construction of Temporary Bay Trail

14.6. Entire Agreement. This written Agreement and the Exhibits hereto, and any administrative implementation memoranda entered into pursuant to Section 3.15, 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 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.

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.

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 or Agency 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 and Agency 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 its Boards and Commissions of City or Agency shall be personally liable to Developer, or any Transferee, in the event of any Event of Default committed by City or Agency 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: (i) that it has access to professional advice and support to the extent necessary to enable Developer to fully comply with the terms of this Agreement and otherwise carry out the Project; (ii) that it is duly organized and validly existing under the laws of the State of California; (iii) that it 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. Execution of Other Documentation. City, Agency and Developer shall execute any further documentation that may be necessary to carry out the intent and obligations under this Agreement, so long as such documentation does not conflict with this Agreement.

14.19. 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.

14.20. 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 Employment Nondiscrimination. Neither Developer, nor its successors, assigns, contractors and subcontractors shall not discriminate against any employee or applicant for employment in connection with construction of the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, AIDS or AIDS-related complex, or physical or mental disability. In addition, each of the following activities shall be conducted in a nondiscriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rates of pay and other forms of compensation; and selection for training, including apprenticeship.

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

14.23 City Subject to Brown Act Requirements. Developer acknowledges that all City Council actions are subject to the requirements of the provisions of the Ralph M. Brown Act (Government Code Section 54950, et seq.), and the published

agenda of the City Council and procedures of the City Council applicable thereto. City shall cause all City Council actions to conform to the foregoing requirements and Developer shall take no action which would violate the foregoing requirements.

14.24. Signature Pages. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

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

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

AUTHORIZED SIGNATURE OF CITY TO AGREEMENT:

CITY OF OAKLAND, a California
charter city

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____
Its City Attorney

AUTHORIZED SIGNATURE OF REDEVELOPMENT AGENCY OF CITY OF OAKLAND:

REDEVELOPMENT AGENCY OF THE CITY OF
OAKLAND, a public body corporate
and public

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____
Its Agency Counsel

AUTHORIZED SIGNATURE OF DEVELOPER TO AGREEMENT:
OAKLAND HARBOR PARTNERS, LLC, a
California limited liability
company

By: Signature Properties, Inc., its
Managing Member

By: _____
Michael Ghielmetti, President