

COOPERATION AGREEMENT

(Oak to Ninth Project)

This Cooperation Agreement is made and entered into effective as of _____, 2006, by and between the Oak to Ninth Community Benefits Coalition and the Redevelopment Agency of the City of Oakland.

RECITALS

A. The Agency is executing concurrently with execution of this Cooperation Agreement a Development Agreement between the City, the Agency and Oakland Harbor Partners, LLC, a California limited liability company ("Developer"), that contemplates development of the Oak to Ninth Project, a mixed-income housing/retail/open space project, under the terms set forth in the Development Agreement, as approved on _____, 2006, by Agency Resolution No. _____, and on _____, 2006, by City Ordinance No. _____ ("Oak to Ninth Project").

B. The Development Agreement includes, among other things, a commitment by the Agency to purchase a portion of the Oak to Ninth project site known as Parcel F and Parcel G for the development of affordable housing by an affordable housing developer or developers chosen pursuant to the Development Agreement.

C. The Coalition supports development of the Oak to Ninth Project because it will provide substantial affordable housing in the City of Oakland, as well as other important community benefits, as set forth in this Cooperation Agreement and the Development Agreement. The Coalition and the Agency have agreed that it is in their mutual interests to resolve any concerns of the Coalition about the Oak to Ninth Project through cooperation and settlement, rather than through litigation.

DEFINITIONS

As used in this Agreement, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

"Affordable Rent" shall be as defined in California Health and Safety Code Section 50053(b) and its implementing regulations.

The "Affordable Housing Parcels" mean Parcel F and Parcel G.

"Area Median Income" or "AMI" shall have the meaning set forth in California Health and Safety Code Section 50093 and its implementing regulations.

The "Agency" means the Redevelopment Agency of the City of Oakland, a community redevelopment agency organized and existing under the California Redevelopment Law.

The “Agreement” means this Cooperation Agreement.

The “California Community Redevelopment Law” means California Health and Safety Code Section 33000, et seq.

The “City” means the City of Oakland, a municipal corporation.

The “Coalition” means the Oak to Ninth Community Benefits Coalition, an unincorporated association comprised exclusively of the following Organizations that are signatories to this Agreement: Asian Pacific Environmental Network; East Bay Asian Youth Center (“EBAYC”); Oakland Community Organizations; and Urban Strategies Council. All obligations, powers, and responsibilities of the Coalition under this Agreement shall also be obligations, powers, and responsibilities of each Organization.

The “Developer” is defined in Recital A hereof.

The “Development Agreement” is defined in Recital A hereof.

An “Organization” means each entity that is a member of the Coalition as defined above. Obligations of an Organization shall be obligations only of: (1) the Organization itself, as distinct from its member organizations or any natural persons; and (2) natural persons when expressly authorized to speak or act on behalf of the Organization.

“Parcel F” and “Parcel G” mean those real property parcels described in Exhibit A to this Cooperation Agreement, incorporated herein by reference.

A “Party” means the Coalition, any Organization, or the Agency.

A “Project Unit” means any housing unit developed on Parcel F or Parcel G.

The “Oak to Ninth Project” is defined in Recital A.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth herein and other consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

Section I: Agreement Overview.

A. Offer to Compromise. This Agreement is an offer to compromise pursuant to California Evidence Code Section 1152, made without admission of liability, to avoid litigation.

B. Recitals True and Correct. The above recitals are true and correct and are hereby incorporated as a part of this Agreement.

C. Mutual Consideration. The Coalition’s commitment to abide by the terms of this Agreement is consideration for the Agency’s commitments to abide by the terms of this Agreement. The Agency’s commitments to abide by the terms of this Agreement are consideration for the Coalition’s commitment to abide by the terms of this Agreement.

D. Agreement Lawful and Enforceable. All Parties agree that this Agreement is lawful, enforceable, and binding on all Parties; agree to waive any challenges to the enforceability of this Agreement; and agree not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Agreement in any judicial action or proceeding.

Section II: Agency Affordable Housing Obligations.

A. Purchase of Affordable Housing Parcels. The Agency shall purchase the Affordable Housing Parcels for the development of affordable housing under the terms of this Agreement. The affordable housing developer or developers shall be chosen pursuant to the terms of the Development Agreement.

B. Affordability Restrictions. The Agency shall ensure that all Project Units shall be provided at no greater than an Affordable Rent to households earning from 25 percent to 60 percent of Area Median Income for at least 55 years from first occupancy of the Project Unit.

C. Project Unit Type Restrictions. The Agency shall ensure that not more than 25 percent of all Project Units are provided exclusively as senior housing. The Agency shall ensure that no fewer than 30 percent of all Project Units must be three-bedroom units, and no fewer than 20 percent of all Project Units must be two-bedroom units.

D. Project Development and Schedule. The Agency shall ensure that the project developed on Parcel F consists of one phase of no fewer than 150 Project Units, and that the projects developed on Parcel G consist of no fewer than 315 Project Units, along with the commercial component described in the Development Agreement. The Parcel G affordable housing projects will be developed in three phases. (The project developed on Parcel F and each project phase developed on Parcel G are each referred to herein as an “Affordable Housing Project.”) The Agency shall cause the commencement of construction of the Affordable Housing Projects on the Affordable Housing Parcels, subject to economic feasibility as defined below, no later than the following dates:

1. Parcel F, Phase I (150 units): Not later than the later of (1) July 1, 2013, or (2) the completion of the 1,000th market rate unit in the Oak to Ninth Project.
2. Parcel G, Phase II (132 units): Not later than the later of (1) July 1, 2016, or (2) the completion of the 1,800th market rate unit in the Project.
3. Parcel G, Phase III (77 units): Not later than the later of (1) July 1, 2017, or (2) the completion of the 2,100th market rate unit in the Project.
4. Parcel G, Phase IV (106 units): Not later than the later of (1) July 1, 2018, or (2) the completion of the 2,300th market rate unit in the Project.

The Agency may elect to cause the construction of the Affordable Housing Projects sooner, provided sufficient funding is available. The number of Project Units in each of the Affordable Housing Projects as set forth above may be adjusted up or down by up to five units to accommodate reasonable phasing design and architectural constraints, provided that no fewer than a total of 465 Project Units are developed on the Affordable Housing Parcels once Phase IV is constructed.

E. Economic Feasibility. For purposes of this Agreement, an Affordable Housing Project shall be considered economically feasible when, given (1) the projected cost of development (hard and soft costs) of the Affordable Housing Project, (2) the planned levels of affordability of the Affordable Housing Project, and (3) the Agency and City's guidelines and policies for providing development funding to affordable housing projects then in effect, adequate private and public financing and subsidy sources (such as bond proceeds, low income housing tax credits, state funding, federal funding, tax increment revenue from the Central City East Redevelopment Area, and the Agency's Low and Moderate Income Housing Fund) are available to complete construction of the Affordable Housing Project and are projected to be available for operation of the Affordable Housing Project. Notwithstanding the above, an Affordable Housing Project shall be considered economically feasible if Low and Moderate Income Housing Funds generated by the Oak to Ninth Project and reserved for affordable housing development on the Affordable Housing Parcels pursuant to this Agreement are sufficient along with other available sources to complete construction of the Affordable Housing Project and are projected to be available for operation of the Affordable Housing Project, irrespective of whether the use of such reserved funds is consistent with the Agency's guidelines and policies for funding affordable housing. The Agency's governing board shall annually review the projected level of funding that would be available to develop the Affordable Housing Parcels as affordable housing, relative to the Agency's overall projected levels of affordable housing funds and current Agency commitments to fund other affordable housing development. Any determination by the Agency that an Affordable Housing Project is not economically feasible shall be based upon a finding by the Agency's governing body, after a public hearing, that development of that Affordable Housing Project on the Affordable Housing Parcels as required by this Agreement is not economically feasible.

F. Commercial Development of Parcel G. The Parties acknowledge that, under the Development Agreement, a portion of Parcel G will include development of a commercial component consisting of an approximately 42,000 square foot retail condominium and a 400 space parking condominium. The Agency shall not allow commercial development on Parcel G that would make infeasible the Parcel G Affordable Housing Projects described in this Agreement. For purposes of this Section, the Parties agree that the plans set forth for Parcel G in the Development Agreement as it is initially approved shall not be considered to make infeasible the Affordable Housing Projects for Parcel G described in this Agreement.

G. Reservation of Oak to Ninth Low and Moderate Income Funds. The Agency shall reserve any funds deposited into the Agency's Low and Moderate Income Housing Fund from tax increment revenues generated by the Oak to Ninth Project for the development of the Affordable Housing Projects, retaining such funds on an ongoing basis in an effort to make development of the Affordable Housing Projects economically feasible. Any such reservation

shall be subordinate and subject to any obligations in connection with any tax allocation bonds that have been issued or will be issued by the Agency.

H. Transfer of Development Obligations Off-Site. With the authorization of the Agency’s governing body and notice to the Coalition, the Agency may develop units otherwise required under this Agreement at an identified and available location other than the Affordable Housing Parcels (“Off-Site Units”), subject to the following limitations:

1. The Agency may transfer the obligation to develop a maximum of 77 Project Units to Off-Site Units.
2. The Agency must develop 1.33 Off-Site Units for every Project Unit not developed on the Affordable Housing Parcels, rounded up to the next unit in the case of fractional units.
3. All Off-Site Units must be developed within the Central City East Redevelopment Project Area west of 27th Avenue.
4. All Off-Site Units must meet the same affordability restrictions and unit type restrictions imposed under this Agreement for Project Units.
5. Construction of such Off-Site Units must commence prior to commencement of construction on the commercial portions of Parcel G.

Such a transfer of development obligations may be combined with a negotiated purchase of the right to develop market rate units on the Affordable Housing Parcels pursuant to Exhibit L to the Development Agreement.

I. Coalition Consent to Modifications. The Agency may request a modification to the terms set forth in this Section II by providing a written request for such consent to EBAYC at the address set forth below, with copies sent to all other Organizations. EBAYC shall provide a written response to the Agency, on behalf of the Coalition, either granting the request, denying the request, or requesting additional information or negotiations, within twenty business days of receipt of the Agency’s request. If no written response is received by the Agency during that period, the request shall be deemed to have been granted by the Coalition. EBAYC’s response or lack thereof to an Agency request shall be binding on and constitute the position of the Coalition with regard to that Agency request. Through unanimous written agreement by the Coalition and written notification to the Agency, the Coalition may designate an Organization other than EBAYC to have the rights and responsibilities set forth for EBAYC in this Section II.I. All correspondence required under this Section II.I shall comply with the Notice provisions set forth in Section IV.C of this Agreement.

Section III: Coalition Release of Claims.

A. Release of Claims. Each Organization hereby waives, releases, and forever discharges the Agency and the City from all Released Claims, as defined below, in full and final settlement thereof.

B. Definition of Released Claims. “Released Claims” shall mean any and all administrative or judicial challenges, suits, petitions, claims, causes of action, actions seeking

any writ of mandate or prohibition or other writs, whether in law or in equity, seeking a court order to prevent or delay the development of the Oak to Ninth Project or any portion thereof, except for an Excluded Claim, as defined below. For purposes of this Section III.B, development of any portion of the Oak to Ninth Project is considered complete when a certificate of occupancy is issued for that portion.

C. Excluded Claims. An “Excluded Claim” shall mean: (1) any right to seek judicial enforcement of or interpretation of this Agreement; and (2) any right to challenge development of the Oak to Ninth Project in a manner inconsistent with this Agreement.

D. Covenant Not to Bring Any Released Claim. The Coalition covenants that it will not file, prosecute, bring, or advance any suit, claim, or legal action of any kind against the Agency, the City, or the Developer or an affiliated entity, based upon any Released Claim, or fund or support any individual to do so. For purposes of this Section III.D, the Coalition shall be deemed to “support” another individual’s suit, claim, or legal action when the Coalition (1) provides to another individual a substantial amount of assistance intended to assist that individual in filing suit based upon a Released Claim, and (2) that individual actually files such a suit based upon a Released Claim.

E. Defense Against Released Claims. This Agreement may be pleaded as a defense to, and may be used as the basis for an injunction against, prosecution of any Released Claim against the Developer, the Agency, or the City.

F. Acknowledgment. The Parties hereto acknowledge that this Agreement has been negotiated and agreed upon and that each Party hereto has been or had the opportunity to be represented by counsel, and has been or had the opportunity to be advised by counsel of, and understands and knowingly and specifically waives, its rights under California Civil Code §1542, which provides as follows:

A general release does not extend to the claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Section IV: Miscellaneous.

A. No Other Challenges. The Coalition represents and warrants that it has not filed any Released Claim regarding the Oak to Ninth Project.

B. Enforcement.

1. Default. Failure by any Party to perform any term or provision of this Agreement, if not cured under Section IV.B.2, shall constitute a default under this Agreement.

2. Thirty-Day Right to Cure. A Party that believes that another Party is in default of this Agreement shall, prior to taking action to enforce this Agreement or declaring the other Party to be in default: provide written notice to the Party in question of the alleged default; offer to meet and confer in a good-faith effort to resolve the issue; and provide the Party in

question thirty days to cure the alleged default. Any notice given pursuant to this provision shall specify the nature of the alleged default, and, where appropriate, the manner in which such alleged default satisfactorily may be cured. A default that consists of a Party's prosecution of a Released Claim in court may be completely cured by the defaulting Party's filing with the court a motion for dismissal of the claim in question; in such case the thirty-day period shall be extended for the time it takes the court to rule on the motion for dismissal.

3. Exclusive Remedies.

a. If the Coalition fails to cure any default during the cure period described above, the Agency may terminate this Agreement upon written notice to the Coalition, and thereafter no Party shall have any further rights or obligations hereunder. The Agency shall not be entitled to recover any damages of any kind or character from the Coalition.

b. If the Agency fails to cure any default during the cure period described above, the Coalition may seek specific performance of the Agency's obligations. Since monetary damages would be neither an adequate nor an appropriate remedy for default of this agreement, and the subject matter of this Agreement is unique, monetary damages shall in no circumstances be available as a remedy against the Agency for default under this Agreement. This Agreement may be the basis for a request for injunctive relief by the Coalition with respect to performance of any term of this Agreement. In case of default by the Agency, this Agreement may be enforced by a preliminary or permanent injunction, by a decree of specific performance, or by other such equitable order or decree of a court of competent jurisdiction.

c. The remedies set forth in this Section IV.B.3 are the Parties' respective exclusive remedies for breach of this Agreement.

C. Notice. All notices shall be in writing and shall be addressed to the affected Parties at the addresses set forth below. Notices shall be: (a) delivered by courier service to the addresses set forth below, in which case they shall be deemed delivered on the date of delivery, as evidenced by the written report of the courier service, or (b) sent by certified mail, return receipt requested, in which case they shall be deemed delivered three business days after deposit in the United States mail. Any Party may change its address or the name and address of its attorneys by giving notice in compliance with this Agreement. Notice of such a change shall be effective only upon receipt. Notice given on behalf of a Party by any attorney purporting to represent a Party shall constitute notice by such Party if the attorney is, in fact, authorized to represent such Party. The addresses of the Parties and their attorneys are:

If to Agency:

City of Oakland
Community and Economic Development Agency
250 Frank H. Ogawa Plaza
Oakland, CA 94612
Attn: Director of Redevelopment

with a copy to:

Office of the City Attorney
1 Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attn: Redevelopment Unit

If to the Coalition:

Executive Director
Asian Pacific Environmental Network
310 8th Street, Suite 309
Oakland, CA 94607

Executive Director
East Bay Asian Youth Center
2025 E. 12th Street
Oakland, CA 94606

Executive Director
Oakland Community Organizations
7200 Bancroft Ave.
#2 Eastmont Mall
Oakland, CA 994605

Executive Director
Urban Strategies Council
672 13th Street
Oakland, CA 94612

with a copy to:

Law Office of Julian Gross
The Flood Building
870 Market Street, Suite 915
San Francisco, CA 94102

D. Legal Fees and Costs for Preparation. Each Party shall bear its own legal fees and costs resulting from the preparation, negotiation and execution of this Agreement.

E. Materiality of Breach and Material Terms. Any breach of any term of this Agreement may, at the option of a non-breaching Party, be treated as a material default and a complete failure of consideration.

F. Waiver. The waiver of any provision or term of this Agreement shall not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or

failure to act upon a default, shall not be deemed a waiver of any provision or term of this Agreement.

G. Time of the Essence. Time is of the essence in this Agreement.

H. Representation of Counsel. Each of the parties has had the opportunity to be represented by counsel in the negotiation and drafting of this Agreement. Accordingly, this Agreement shall not be strictly construed against any party, and the rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Agreement.

I. Interpretation. Specific provisions of this Agreement shall take precedence over conflicting general provisions.

J. California Law. This Agreement shall be construed in accordance with the laws of the State of California, and jurisdiction and venue for any disputes arising hereunder shall be in any court empowered to enforce this Agreement in the State of California.

K. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes any prior agreements, whether written or oral.

L. Authority of Signatories. The individuals executing this Agreement represent and warrant that they have the authority to sign on behalf of the respective parties.

M. Binding and Enforceable Upon Signature. As to any Party, this Agreement shall be binding upon, and as of the date of, such Party's execution of this Agreement. This Agreement shall be enforceable by any Party hereto and each Party's respective successors and assigns.

N. Amendments. This Agreement may not be altered, amended or modified, except by an instrument in writing signed by the Parties or as otherwise provided for in this Agreement.

O. Counterparts and Additional Signatories. This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which shall constitute one and the same document.

P. Reformation. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the Parties shall amend this Agreement and/or take other action necessary to achieve the intent of this Agreement to the extent consistent with the ruling of the court.

Q. Further Assurances. Each Party covenants that it will take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings, that may be necessary or proper to achieve the purposes and objectives of this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

R. Effective Date. This Agreement shall be effective upon execution by all parties.

S. Force Majeure. Performance by any Party of its obligations hereunder shall be excused during any period of “Permitted Delay” as hereinafter defined. For purposes hereof, Permitted Delay shall mean delay beyond the control of the Party claiming the delay, and despite the good faith efforts of the Party, that prevents the Party from performing its obligations hereunder. Permitted Delay shall include, without limitation, (i) acts of God, (ii) civil commotion or terrorist acts, (iii) riots, (iv) strikes, picketing or other labor disputes, (v) shortages of materials or supplies, (vi) damage to work in progress by reason of fire, floods, earthquake or other casualties, (vii) delay caused by governmental restrictions imposed or mandated by other governmental entities, (viii) enactment of conflicting state or federal laws or regulations, and (ix) judicial decisions or similar basis for excused performance. A Party claiming a Permitted Delay under this Section must notify the other Party within twenty (20) days after the occurrence of the Permitted Delay, specifying the nature of the event, the performance from which it seeks to be excused, the expected length of time that the Party expects to be prevented from performing, and the actions that the Party intends to take to restore its ability to perform.

T. No Third Party Beneficiary. Notwithstanding any reference in this Agreement to the Developer, the Parties acknowledge that neither the Developer nor any affiliated entity is a third party beneficiary of this Agreement.

U. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect.

Section V: Limitations.

Unless expressly provided to the contrary herein or as required by law, the Agency is not relinquishing any discretion it has under any law, including, without limitation, the California Environmental Quality Act (“CEQA”), California Planning and Zoning Laws, the California Community Redevelopment Law, the City Charter, ordinances resolutions, or plans and policies.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties here caused this Agreement to be duly executed by their respective authorized officers.

“Agency”

Redevelopment Agency of the City of Oakland,

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

By: _____
Agency Administrator

Approved as to form and legality:

By: _____
Agency Counsel

“Coalition”

Oak to Ninth Community Benefits Coalition,

an unincorporated association

By: Asian Pacific Environmental Network,
a California nonprofit corporation,

By: _____
Vivian Chang, its Executive Director

By: East Bay Asian Youth Center,
a California nonprofit corporation,

By: _____
David Kakishiba, its Executive Director

By: Oakland Community Organizations,
a California nonprofit corporation,

By: _____
Ron Snyder, its Executive Director

By: Urban Strategies Council,
a California nonprofit corporation,

By: _____
Junious Williams, Jr., its Executive Director

Cooperation Agreement
(Oak to Ninth Project)

EXHIBIT A
Description of Affordable Housing Parcels

[attach map of parcels F & G here]